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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM 10-Q**

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

For the quarterly period ended January 30, 2021

OR

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

For the transition period from            to

Commission File Number: 001-33261

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**AEROVIRONMENT, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**95-2705790**  
(I.R.S. Employer Identification No.)

**900 Innovators Way**  
**Simi Valley, California**  
(Address of principal executive offices)

**93065**  
(Zip Code)

**(805) 520-8350**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name, former address and former fiscal year, if changed since last report)

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

| Title of each class                        | Trading Symbol(s) | Name of each exchange on which registered |
|--|-------------------|---|
| Common Stock, par value \$0.0001 per share | AVAV              | The NASDAQ Stock Market LLC               |

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically, every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

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

|   |  |
|---|--|
| Large accelerated filer <input checked="" type="checkbox"/> | Accelerated filer <input type="checkbox"/>         |
| Non-accelerated filer <input type="checkbox"/>              | Smaller reporting company <input type="checkbox"/> |
|   | Emerging growth company <input type="checkbox"/>   |

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.

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

As of March 3, 2021, the number of shares outstanding of the registrant's common stock, \$0.0001 par value, was 24,676,485.

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**AeroVironment, Inc.**

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

**AeroVironment, Inc.**  
**Consolidated Balance Sheets**  
(In thousands except share and per share data)

|   | January 30,<br>2021<br>(Unaudited) | April 30,<br>2020 |
|---|------------------------------------|-------------------|
| <b>Assets</b>   |                                    |                   |
| Current assets:   |                                    |                   |
| Cash and cash equivalents   | \$ 324,543                         | \$ 255,142        |
| Short-term investments  | 48,499                             | 47,507            |
| Accounts receivable, net of allowance for doubtful accounts of \$565 at January 30, 2021 and \$1,190 at April 30, 2020                              | 26,621                             | 73,660            |
| Unbilled receivables and retentions (inclusive of related party unbilled receivables of \$6,834 at January 30, 2021 and \$15,779 at April 30, 2020) | 61,084                             | 75,837            |
| Inventories   | 53,104                             | 45,535            |
| Prepaid expenses and other current assets   | 7,693                              | 6,246             |
| <b>Total current assets</b>   | <b>521,544</b>                     | <b>503,927</b>    |
| Long-term investments   | 11,222                             | 15,030            |
| Property and equipment, net   | 22,920                             | 21,694            |
| Operating lease right-of-use assets   | 11,281                             | 8,793             |
| Deferred income taxes   | 5,821                              | 4,928             |
| Intangibles, net  | 11,552                             | 13,637            |
| Goodwill  | 6,340                              | 6,340             |
| Other assets  | 312                                | 10,605            |
| <b>Total assets</b>   | <b>\$ 590,992</b>                  | <b>\$ 584,954</b> |
| <b>Liabilities and stockholders' equity</b>   |                                    |                   |
| Current liabilities:  |                                    |                   |
| Accounts payable  | \$ 15,837                          | \$ 19,859         |
| Wages and related accruals  | 20,081                             | 23,972            |
| Customer advances   | 4,279                              | 7,899             |
| Current operating lease liabilities   | 4,403                              | 3,380             |
| Income taxes payable  | 2,370                              | 1,065             |
| Other current liabilities   | 9,158                              | 10,778            |
| <b>Total current liabilities</b>  | <b>56,128</b>                      | <b>66,953</b>     |
| Non-current operating lease liabilities   | 8,426                              | 6,833             |
| Other non-current liabilities   | 243                                | 250               |
| Liability for uncertain tax positions   | 1,017                              | 1,017             |
| Commitments and contingencies   |                                    |                   |
| Stockholders' equity:   |                                    |                   |
| Preferred stock, \$0.0001 par value:  |                                    |                   |
| Authorized shares—10,000,000; none issued or outstanding at January 30, 2021 and April 30, 2020   | —                                  | —                 |
| Common stock, \$0.0001 par value:   |                                    |                   |
| Authorized shares—100,000,000   |                                    |                   |
| Issued and outstanding shares—24,102,691 shares at January 30, 2021 and 24,063,639 shares at April 30, 2020   | 2                                  | 2                 |
| Additional paid-in capital  | 184,366                            | 181,481           |
| Accumulated other comprehensive income  | 347                                | 328               |
| Retained earnings   | 340,475                            | 328,090           |
| <b>Total AeroVironment, Inc. stockholders' equity</b>   | <b>525,190</b>                     | <b>509,901</b>    |
| Noncontrolling interest   | (12)                               | —                 |
| <b>Total equity</b>   | <b>525,178</b>                     | <b>509,901</b>    |
| <b>Total liabilities and stockholders' equity</b>   | <b>\$ 590,992</b>                  | <b>\$ 584,954</b> |

See accompanying notes to consolidated financial statements (unaudited).

**AeroVironment, Inc.**  
**Consolidated Statements of Operations (Unaudited)**  
(In thousands except share and per share data)

|  | <u>Three Months Ended</u>   |                             | <u>Nine Months Ended</u>    |                             |
|--|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
|  | <u>January 30,<br/>2021</u> | <u>January 25,<br/>2020</u> | <u>January 30,<br/>2021</u> | <u>January 25,<br/>2020</u> |
| <b>Revenue:</b>  |                             |                             |                             |                             |
| Product sales  | \$ 58,348                   | \$ 36,432                   | \$ 182,233                  | \$ 159,657                  |
| Contract services (inclusive of related party revenue of \$7,480 and \$11,762 for the three months ended January 30, 2021 and January 30, 2020, respectively; and \$35,318 and \$37,491 for the nine months ended January 30, 2021 and January 25, 2020, respectively) | 20,434                      | 25,459                      | 76,664                      | 72,416                      |
|  | <u>78,782</u>               | <u>61,891</u>               | <u>258,897</u>              | <u>232,073</u>              |
| <b>Cost of sales:</b>  |                             |                             |                             |                             |
| Product sales  | 35,746                      | 21,034                      | 102,039                     | 82,244                      |
| Contract services  | 14,395                      | 17,361                      | 51,955                      | 49,895                      |
|  | <u>50,141</u>               | <u>38,395</u>               | <u>153,994</u>              | <u>132,139</u>              |
| <b>Gross margin:</b>   |                             |                             |                             |                             |
| Product sales  | 22,602                      | 15,398                      | 80,194                      | 77,413                      |
| Contract services  | 6,039                       | 8,098                       | 24,709                      | 22,521                      |
|  | <u>28,641</u>               | <u>23,496</u>               | <u>104,903</u>              | <u>99,934</u>               |
| Selling, general and administrative  | 15,652                      | 13,223                      | 42,640                      | 43,146                      |
| Research and development   | 13,631                      | 11,381                      | 36,710                      | 30,948                      |
| (Loss) income from operations  | <u>(642)</u>                | <u>(1,108)</u>              | <u>25,553</u>               | <u>25,840</u>               |
| <b>Other income:</b>   |                             |                             |                             |                             |
| Interest income, net   | 94                          | 1,122                       | 417                         | 3,717                       |
| Other (expense) income, net  | (37)                        | 120                         | 68                          | 632                         |
| (Loss) income before income taxes  | <u>(585)</u>                | <u>134</u>                  | <u>26,038</u>               | <u>30,189</u>               |
| (Benefit from) provision for income taxes  | (924)                       | (38)                        | 2,774                       | 3,203                       |
| Equity method investment loss, net of tax  | <u>(81)</u>                 | <u>(1,200)</u>              | <u>(10,891)</u>             | <u>(3,410)</u>              |
| Net income (loss)  | 258                         | (1,028)                     | 12,373                      | 23,576                      |
| Net (income) loss attributable to noncontrolling interest  | <u>(47)</u>                 | <u>20</u>                   | <u>12</u>                   | <u>27</u>                   |
| Net income (loss) attributable to AeroVironment, Inc.  | <u>\$ 211</u>               | <u>\$ (1,008)</u>           | <u>\$ 12,385</u>            | <u>\$ 23,603</u>            |
| <b>Net income (loss) per share attributable to AeroVironment, Inc.</b>   |                             |                             |                             |                             |
| Basic  | \$ 0.01                     | \$ (0.04)                   | \$ 0.52                     | \$ 0.99                     |
| Diluted  | \$ 0.01                     | \$ (0.04)                   | \$ 0.51                     | \$ 0.98                     |
| <b>Weighted-average shares outstanding:</b>  |                             |                             |                             |                             |
| Basic  | 23,942,782                  | 23,821,145                  | 23,924,017                  | 23,790,788                  |
| Diluted  | 24,260,874                  | 23,821,145                  | 24,216,371                  | 24,076,195                  |

See accompanying notes to consolidated financial statements (unaudited).

**AeroVironment, Inc.**  
**Consolidated Statements of Comprehensive Income (Loss) (Unaudited)**  
**(In thousands)**

|   | <u>Three Months Ended</u>   |                             | <u>Nine Months Ended</u>    |                             |
|---|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
|   | <u>January 30,<br/>2021</u> | <u>January 25,<br/>2020</u> | <u>January 30,<br/>2021</u> | <u>January 25,<br/>2020</u> |
| Net income (loss)   | \$ 258                      | \$ (1,028)                  | \$ 12,373                   | \$ 23,576                   |
| Other comprehensive income (loss):  |                             |                             |                             |                             |
| Change in foreign currency translation adjustments  | —                           | (112)                       | 75                          | 67                          |
| Unrealized gain (loss) on available-for-sale investments, net of<br>deferred tax benefit of \$2 for the three and nine months ended<br>January 30, 2021 | 5                           | —                           | (56)                        | —                           |
| Total comprehensive income (loss)   | <u>263</u>                  | <u>(1,140)</u>              | <u>12,392</u>               | <u>23,643</u>               |
| Net loss (income) attributable to noncontrolling interest   | (47)                        | 20                          | 12                          | 27                          |
| Comprehensive income (loss) attributable to AeroVironment, Inc.   | <u>\$ 216</u>               | <u>\$ (1,120)</u>           | <u>\$ 12,404</u>            | <u>\$ 23,670</u>            |

See accompanying notes to consolidated financial statements (unaudited).

**AeroVironment, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
**For the nine months ended January 30, 2021 and January 25, 2020 (Unaudited)**  
**(In thousands except share data)**

|  | Common Stock      |             | Additional<br>Paid-In<br>Capital | Retained<br>Earnings | Accumulated<br>Other<br>Comprehensive<br>Loss | Total<br>AeroVironment,<br>Inc. Equity | Non-<br>Controlling<br>Interest | Total             |
|--|-------------------|-------------|----------------------------------|----------------------|---|--|---------------------------------|-------------------|
|  | Shares            | Amount      |                                  |                      |   |  |                                 |                   |
| Balance at April 30, 2020  | 24,063,639        | \$ 2        | \$ 181,481                       | \$ 328,090           | \$ 328  | \$ 509,901                             | \$ —                            | \$ 509,901        |
| Net income (loss)  | —                 | —           | —                                | 12,385               | —   | 12,385                                 | (12)                            | 12,373            |
| Unrealized loss on investments   | —                 | —           | —                                | —                    | (56)  | (56)                                   | —                               | (56)              |
| Foreign currency translation   | —                 | —           | —                                | —                    | 75  | 75                                     | —                               | 75                |
| Stock options exercised  | 3,500             | —           | 86                               | —                    | —   | 86                                     | —                               | 86                |
| Restricted stock awards  | 62,675            | —           | —                                | —                    | —   | —                                      | —                               | —                 |
| Restricted stock awards forfeited  | (1,833)           | —           | —                                | —                    | —   | —                                      | —                               | —                 |
| Tax withholding payment related to net share settlement of equity awards | (25,290)          | —           | (1,955)                          | —                    | —   | (1,955)                                | —                               | (1,955)           |
| Stock based compensation   | —                 | —           | 4,754                            | —                    | —   | 4,754                                  | —                               | 4,754             |
| Balance at January 30, 2021  | <u>24,102,691</u> | <u>\$ 2</u> | <u>\$ 184,366</u>                | <u>\$ 340,475</u>    | <u>\$ 347</u>                                 | <u>\$ 525,190</u>                      | <u>\$ (12)</u>                  | <u>\$ 525,178</u> |

|  | Common Stock      |             | Additional<br>Paid-In<br>Capital | Retained<br>Earnings | Accumulated<br>Other<br>Comprehensive<br>Loss | Total<br>AeroVironment,<br>Inc. Equity | Non-<br>Controlling<br>Interest | Total             |
|--|-------------------|-------------|----------------------------------|----------------------|---|--|---------------------------------|-------------------|
|  | Shares            | Amount      |                                  |                      |   |  |                                 |                   |
| Balance at April 30, 2019  | 23,946,293        | \$ 2        | \$ 176,216                       | \$ 286,351           | \$ 2  | \$ 462,571                             | \$ 4                            | \$ 462,575        |
| Adoption of ASU 2018-09  | —                 | —           | —                                | 665                  | —   | 665                                    | —                               | 665               |
| Net income (loss)  | —                 | —           | —                                | 23,603               | —   | 23,603                                 | (27)                            | 23,576            |
| Foreign currency translation   | —                 | —           | —                                | —                    | 67  | 67                                     | —                               | 67                |
| Stock options exercised  | 3,000             | —           | 93                               | —                    | —   | 93                                     | —                               | 93                |
| Restricted stock awards  | 74,892            | —           | —                                | —                    | —   | —                                      | —                               | —                 |
| Restricted stock awards forfeited  | (11,769)          | —           | —                                | —                    | —   | —                                      | —                               | —                 |
| Tax withholding payment related to net share settlement of equity awards | (17,307)          | —           | (1,009)                          | —                    | —   | (1,009)                                | —                               | (1,009)           |
| Stock based compensation   | —                 | —           | 4,751                            | —                    | —   | 4,751                                  | —                               | 4,751             |
| Balance at January 25, 2020  | <u>23,995,109</u> | <u>\$ 2</u> | <u>\$ 180,051</u>                | <u>\$ 310,619</u>    | <u>\$ 69</u>                                  | <u>\$ 490,741</u>                      | <u>\$ (23)</u>                  | <u>\$ 490,718</u> |

See accompanying notes to consolidated financial statements (unaudited).

**AeroVironment, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
**For the three months ended January 30, 2021 and January 25, 2020 (Unaudited)**  
**(In thousands except share data)**

|  | Common Stock      |             | Additional<br>Paid-In<br>Capital | Retained<br>Earnings | Accumulated                      | Total<br>AeroVironment, Inc. Controlling<br>Equity | Non-<br>Controlling<br>Interest | Total             |
|--|-------------------|-------------|----------------------------------|----------------------|----------------------------------|--|---------------------------------|-------------------|
|  | Shares            | Amount      |                                  |                      | Other<br>Comprehensive<br>Income |  |                                 |                   |
| Balance at October 31, 2020  | 24,103,980        | \$ 2        | \$ 183,298                       | \$ 340,264           | \$ 342                           | \$ 523,906   | \$ (59)                         | \$ 523,847        |
| Net income   | —                 | —           | —                                | 211                  | —                                | 211  | 47                              | 258               |
| Unrealized loss on investments   | —                 | —           | —                                | —                    | 5                                | 5  | —                               | 5                 |
| Restricted stock awards  | 2,083             | —           | —                                | —                    | —                                | —  | —                               | —                 |
| Restricted stock awards forfeited  | (1,318)           | —           | —                                | —                    | —                                | —  | —                               | —                 |
| Tax withholding payment related to net share settlement of equity awards | (2,054)           | —           | (177)                            | —                    | —                                | (177)  | —                               | (177)             |
| Stock based compensation   | —                 | —           | 1,245                            | —                    | —                                | 1,245  | —                               | 1,245             |
| Balance at January 30, 2021  | <u>24,102,691</u> | <u>\$ 2</u> | <u>\$ 184,366</u>                | <u>\$ 340,475</u>    | <u>\$ 347</u>                    | <u>\$ 525,190</u>                                  | <u>\$ (12)</u>                  | <u>\$ 525,178</u> |

|  | Common Stock      |             | Additional<br>Paid-In<br>Capital | Retained<br>Earnings | Accumulated                      | Total<br>AeroVironment, Inc. Controlling<br>Equity | Non-<br>Controlling<br>Interest | Total             |
|--|-------------------|-------------|----------------------------------|----------------------|----------------------------------|--|---------------------------------|-------------------|
|  | Shares            | Amount      |                                  |                      | Other<br>Comprehensive<br>Income |  |                                 |                   |
| Balance at October 26, 2019  | 23,990,616        | 2           | 178,550                          | 311,627              | 181                              | 490,360  | (3)                             | 490,357           |
| Net loss   | —                 | —           | —                                | (1,008)              | —                                | (1,008)  | (20)                            | (1,028)           |
| Foreign currency translation   | —                 | —           | —                                | —                    | (112)                            | (112)  | —                               | (112)             |
| Restricted stock awards  | 9,200             | —           | —                                | —                    | —                                | —  | —                               | —                 |
| Restricted stock awards forfeited  | (764)             | —           | —                                | —                    | —                                | —  | —                               | —                 |
| Tax withholding payment related to net share settlement of equity awards | (3,943)           | —           | (266)                            | —                    | —                                | (266)  | —                               | (266)             |
| Stock-based compensation   | —                 | —           | 1,767                            | —                    | —                                | 1,767  | —                               | 1,767             |
| Balance at January 25, 2020  | <u>23,995,109</u> | <u>\$ 2</u> | <u>\$ 180,051</u>                | <u>\$ 310,619</u>    | <u>\$ 69</u>                     | <u>\$ 490,741</u>                                  | <u>\$ (23)</u>                  | <u>\$ 490,718</u> |

See accompanying notes to consolidated financial statements (unaudited).

**AeroVironment, Inc.**  
**Consolidated Statements of Cash Flows (Unaudited)**  
(In thousands)

|   | <b>Nine Months Ended</b>    |                             |
|---|-----------------------------|-----------------------------|
|   | <b>January 30,<br/>2021</b> | <b>January 25,<br/>2020</b> |
| <b>Operating activities</b>   |                             |                             |
| Net income  | \$ 12,373                   | \$ 23,576                   |
| Adjustments to reconcile net income to cash provided by operating activities:         |                             |                             |
| Depreciation and amortization   | 8,650                       | 7,107                       |
| Losses from equity method investments   | 10,891                      | 3,410                       |
| Realized gain from sale of available-for-sale investments                             | (11)                        | —                           |
| Provision for doubtful accounts   | (145)                       | (2)                         |
| Other non-cash income   | (473)                       | (719)                       |
| Non-cash lease expense  | 3,592                       | 3,453                       |
| Loss on foreign currency transactions   | 1                           | —                           |
| Deferred income taxes   | (897)                       | (946)                       |
| Stock-based compensation  | 4,754                       | 4,751                       |
| Loss (gain) on sale of property and equipment   | 2                           | (71)                        |
| Amortization of debt securities   | 143                         | (1,291)                     |
| Changes in operating assets and liabilities, net of acquisitions:                     |                             |                             |
| Accounts receivable   | 47,184                      | 3,245                       |
| Unbilled receivables and retentions   | 14,753                      | (24,364)                    |
| Inventories   | (7,569)                     | (10,766)                    |
| Income tax receivable   | —                           | 821                         |
| Prepaid expenses and other assets   | (1,622)                     | 216                         |
| Accounts payable  | (3,346)                     | (1,301)                     |
| Other liabilities   | (9,318)                     | 7,947                       |
| Net cash provided by operating activities   | 78,962                      | 15,066                      |
| <b>Investing activities</b>   |                             |                             |
| Acquisition of property and equipment   | (8,472)                     | (8,504)                     |
| Equity method investments   | (2,150)                     | (9,551)                     |
| Business acquisition, net of cash acquired  | —                           | (18,641)                    |
| Proceeds from sale of property and equipment  | —                           | 81                          |
| Redemptions of held-to-maturity investments   | —                           | 166,917                     |
| Purchases of held-to-maturity investments   | —                           | (162,517)                   |
| Redemptions of available-for-sale investments   | 130,066                     | 41,150                      |
| Purchases of available-for-sale investments   | (125,644)                   | (59,297)                    |
| Net cash used in investing activities   | (6,200)                     | (50,362)                    |
| <b>Financing activities</b>   |                             |                             |
| Tax withholding payment related to net settlement of equity awards                    | (1,955)                     | (1,009)                     |
| Holdback and retention payments for business acquisition                              | (1,492)                     | —                           |
| Exercise of stock options   | 86                          | 93                          |
| Net cash used in financing activities   | (3,361)                     | (916)                       |
| Net increase (decrease) in cash, cash equivalents, and restricted cash                | 69,401                      | (36,212)                    |
| Cash, cash equivalents and restricted cash at beginning of period                     | 255,142                     | 172,708                     |
| Cash, cash equivalents and restricted cash at end of period                           | <u>\$ 324,543</u>           | <u>\$ 136,496</u>           |
| <b>Supplemental disclosures of cash flow information</b>                              |                             |                             |
| Cash paid, net during the period for:   |                             |                             |
| Income taxes  | \$ 2,364                    | \$ 518                      |
| <b>Non-cash activities</b>  |                             |                             |
| Unrealized loss on available-for-sale investments, net of deferred tax benefit of \$2 | \$ 56                       | \$ —                        |
| Change in foreign currency translation adjustments                                    | \$ 75                       | \$ 67                       |
| Acquisitions of property and equipment included in accounts payable                   | \$ 746                      | \$ 263                      |

See accompanying notes to consolidated financial statements (unaudited).



**AeroVironment, Inc.**  
**Notes to Consolidated Financial Statements (Unaudited)**

**1. Organization and Significant Accounting Policies**

***Organization***

AeroVironment, Inc., a Delaware corporation (the “Company”), is engaged in the design, development, production, support and operation of unmanned aircraft systems (“UAS”) for various industries and governmental agencies.

***Basis of Presentation***

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“U.S. GAAP”) for interim financial information and with the instructions of Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments, consisting only of normal recurring adjustments necessary for a fair presentation with respect to the interim financial statements have been included. The results of operations for the three and nine months ended January 30, 2021 are not necessarily indicative of the results for the full year ending April 30, 2021. For further information, refer to the consolidated financial statements and footnotes thereto for the year ended April 30, 2020, included in the Company’s Annual Report on Form 10-K.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions, including estimates of anticipated contract costs and revenue utilized in the revenue recognition process, that affect the reported amounts in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

The Company’s consolidated financial statements include the assets, liabilities and operating results of wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated.

In December 2017, the Company and SoftBank Corp. (“SoftBank”) formed a joint venture, HAPSMobile Inc. (“HAPSMobile”). As the Company has the ability to exercise significant influence over the operating and financial policies of HAPSMobile, the Company’s investment has been accounted for as an equity method investment. The Company has presented its proportion of HAPSMobile’s net loss in equity method investment loss, net of tax in the consolidated statements of operations. During the nine months ended January 25, 2021, the Company recorded its proportion of a loss for HAPSMobile’s impairment of its investment in Loon LLC in the amount of \$8,363,000. The Company’s investment has been written down to zero. Refer to Note 6—Equity Method Investments for further details.

On June 10, 2019, the Company purchased 100% of the issued and outstanding member units of Pulse Aerospace, LLC (“Pulse”) pursuant to the terms of a Unit Purchase Agreement (the “Pulse Purchase Agreement”). The assets, liabilities and operating results of Pulse have been included in the Company’s consolidated financial statements. On February 12, 2021, the Company dissolved its wholly-owned subsidiary, Pulse Aerospace, LLC, the results of which were not material to the consolidated financial statements as the Company has integrated the assets and operations. Refer to Note 17—Business Acquisitions for further details.

During the nine months ended January 25, 2020, the Company dissolved its wholly-owned subsidiary, Skytower, Inc., the results of which were not material to the consolidated financial statements.

***Recently Adopted Accounting Standards***

Effective May 1, 2020, the Company adopted Accounting Standards Update (“ASU”) 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, along with several additional clarification ASU’s issued during 2018 and 2019, collectively “CECL”. CECL requires the reporting entity to estimate

expected credit losses over the life of a financial asset. CECL requires the credit loss to be recognized upon initial recognition of the financial asset. ASU 2016-13 requires the entity to adopt CECL using the modified retrospective transition approach through a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. As part of the assessment of the adequacy of the Company's allowances for credit losses, the Company considered a number of factors including, but not limited to, customer credit ratings, age of receivables, and expected loss rates. However, the adoption of CECL did not have a material impact to retained earnings for the Company.

Effective May 1, 2020, the Company adopted ASU 2018-15, "*Intangibles—Goodwill and Other— Internal-Use Software (Subtopic 350-40) Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*" ("ASU 2018-15"). ASU 2018-15 provides guidance on the treatment of accounting for fees paid by a customer in a cloud computing arrangement. This guidance includes the requirements for capitalizing implementation costs incurred in a hosting arrangement. The Company adopted ASU 2018-15 using the prospective method, applying the new guidance to all implementation costs incurred after adoption. The adoption of ASU 2018-15 did not have an impact on the Company's consolidated financial statements.

### **Revenue Recognition**

The Company's revenue is generated pursuant to written contractual arrangements to design, develop, manufacture and/or modify complex products and to provide related engineering, technical and other services according to the specifications of the customers. These contracts may be firm fixed price ("FFP"), cost plus fixed fee ("CPFF"), or time and materials ("T&M"). The Company considers all such contracts to be within the scope of ASC Topic 606.

### **Performance Obligations**

A performance obligation is a promise in a contract to transfer distinct goods or services to a customer, and it is the unit of account in ASC Topic 606. A contract's transaction price is allocated to each distinct performance obligation and revenue is recognized when each performance obligation under the terms of a contract is satisfied. Revenue is measured at the amount of consideration the Company expects to receive in exchange for transferring goods or providing services. For contracts with multiple performance obligations, the Company allocates the contract's transaction price to each performance obligation using its observable standalone selling price for products and services. When the standalone selling price is not directly observable, the Company uses its best estimate of the standalone selling price of each distinct good or service in the contract using the cost plus margin approach. This approach estimates the Company's expected costs of satisfying the performance obligation and then adds an appropriate margin for that distinct good or service.

Contract modifications are routine in the performance of the Company's contracts. In most instances, contract modifications are for additional goods and/or services that are distinct and, therefore, accounted for as new contracts.

The Company's performance obligations are satisfied over time or at a point in time. Performance obligations are satisfied over time if the customer receives the benefits as the Company performs, if the customer controls the asset as it is being developed or produced, or if the product being produced for the customer has no alternative use and the Company has a contractual right to payment for the Company's costs incurred to date plus a reasonable margin. The contractual right to payment is generally supported by termination for convenience clauses that allow the customer to unilaterally terminate the contract for convenience, pay the Company for costs incurred plus a reasonable profit, and take control of any work in process. Revenue for tactical missile systems ("TMS") product deliveries and Customer-Funded Research and Development contracts is recognized over time as costs are incurred. Contract services revenue is composed of revenue recognized on contracts for the provision of services, including repairs and maintenance, training, engineering design, development and prototyping activities, and technical support services. Contract services revenue is recognized over time as services are rendered. Typically, revenue is recognized over time using an input measure (e.g., costs incurred to date relative to total estimated costs at completion) to measure progress. Training services are recognized over time using an output method based on days of training completed.

For performance obligations satisfied over time, revenue is generally recognized using costs incurred to date relative to total estimated costs at completion to measure progress. Incurred costs represent work performed, which correspond with, and thereby best depict, transfer of control to the customer. Contract costs include labor, materials, subcontractors'

costs, other direct costs, and indirect costs applicable on government and commercial contracts.

For performance obligations which are not satisfied over time per the aforementioned criteria above, revenue is recognized at the point in time in which each performance obligation is fully satisfied. The Company's small UAS product sales revenue is composed of revenue recognized on contracts for the delivery of small UAS systems and spare parts. Revenue is recognized at the point in time when control transfers to the customer, which generally occurs when title and risk of loss have passed to the customer.

Performance obligations satisfied over time accounted for 39% of revenue during the three and nine months ended January 30, 2021. Performance obligations satisfied at a point in time accounted for 61% of revenue during the three and nine months ended January 30, 2021.

On January 30, 2021, the Company had approximately \$103,869,000 of remaining performance obligations under fully funded contracts with its customers, which the Company also refers to as funded backlog. The Company currently expects to recognize approximately 73% of the remaining performance obligations as revenue in fiscal 2021, an additional 26% in fiscal 2022, and the balance thereafter.

The Company collects sales, value added, and other taxes concurrent with revenue producing activities, which are excluded from revenue when they are both imposed on a specific transaction and collected from a customer.

### ***Contract Estimates***

Accounting for contracts and programs primarily with a duration of less than six months involves the use of various techniques to estimate total contract revenue and costs. For long-term contracts, the Company estimates the total expected costs to complete the contract and recognizes revenue based on the percentage of costs incurred at period end. Typically, revenue is recognized over time using costs incurred to date relative to total estimated costs at completion to measure progress toward satisfying the Company's performance obligations. Incurred costs represent work performed, which corresponds with, and thereby best depicts, the transfer of control to the customer. Contract costs include labor, materials, subcontractors' costs, other direct costs, and indirect costs applicable on government and commercial contracts.

Contract estimates are based on various assumptions to project the outcome of future events that may span several years. These assumptions include labor productivity and availability, the complexity of the work to be performed, the cost and availability of materials, the performance of subcontractors, and the availability and timing of funding from the customer.

The nature of the Company's contracts gives rise to several types of variable consideration, including penalty fees and incentive awards generally for late delivery and early delivery, respectively. The Company generally estimates such variable consideration as the most likely amount. In addition, the Company includes the estimated variable consideration to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the related uncertainty is resolved. These estimates are based on historical award experience, anticipated performance and the Company's best judgment at the time. Based on experience in estimating these amounts, they are included in the transaction price of the Company's contracts and the associated remaining performance obligations.

As a significant change in one or more of these estimates could affect the profitability of the Company's contracts, the Company regularly reviews and updates its contract-related estimates. Changes in cumulative revenue estimates, due to changes in the estimated transaction price or cost estimates, are recorded using a cumulative catch-up adjustment in the period identified for contracts with performance obligations recognized over time. If at any time the estimate of contract profitability indicates an anticipated loss on the contract, the Company recognizes the total loss in the quarter it is identified, and it is recorded in other current liabilities.

The impact of adjustments in contract estimates on the Company's operating earnings can be reflected in either operating costs and expenses, or revenue. The aggregate impact of adjustments in contract estimates on revenue related to performance obligations satisfied or partially satisfied in previous periods was not significant for the three or nine month

periods ended January 30, 2021. No adjustment on any one contract was material to the Company's unaudited consolidated financial statements for the three or nine month periods ended January 30, 2021.

The aggregate net favorable impact of adjustments in contract estimates on revenue related to performance obligations satisfied or partially satisfied in previous periods was approximately \$1,152,000 and \$1,169,000 for the three and nine month periods ended January 25, 2020, respectively. No adjustment on any one contract was material to the Company's unaudited consolidated financial statements for the three month period ended January 25, 2020. During the nine month period ended January 25, 2020, the Company revised its estimates of the total expected costs to complete a contract associated with a design and development agreement. The impact of the revised estimate on this contract on revenue related to performance obligations satisfied or partially satisfied in previous periods was an increase of approximately \$1,036,000.

**Revenue by Category**

The following tables present the Company's revenue disaggregated by major product line, contract type, customer category and geographic location (in thousands):

|  | <u>Three Months Ended</u> |                    | <u>Nine Months Ended</u> |                    |
|--|---------------------------|--------------------|--------------------------|--------------------|
|  | <u>January 30,</u>        | <u>January 25,</u> | <u>January 30,</u>       | <u>January 25,</u> |
|  | <u>2021</u>               | <u>2020</u>        | <u>2021</u>              | <u>2020</u>        |
| <b>Revenue by major product line/program</b> |                           |                    |                          |                    |
| Small UAS                                    | \$ 50,536                 | \$ 36,965          | \$ 165,003               | \$ 162,868         |
| TMS  | 19,598                    | 7,908              | 48,093                   | 21,419             |
| HAPS   | 7,480                     | 11,762             | 35,318                   | 37,490             |
| Other  | 1,168                     | 5,256              | 10,483                   | 10,296             |
| Total revenue                                | <u>\$ 78,782</u>          | <u>\$ 61,891</u>   | <u>\$ 258,897</u>        | <u>\$ 232,073</u>  |

|                                 | <u>Three Months Ended</u> |                    | <u>Nine Months Ended</u> |                    |
|---------------------------------|---------------------------|--------------------|--------------------------|--------------------|
|                                 | <u>January 30,</u>        | <u>January 25,</u> | <u>January 30,</u>       | <u>January 25,</u> |
|                                 | <u>2021</u>               | <u>2020</u>        | <u>2021</u>              | <u>2020</u>        |
| <b>Revenue by contract type</b> |                           |                    |                          |                    |
| FFP                             | \$ 61,230                 | \$ 40,145          | \$ 190,530               | \$ 168,607         |
| CPFF                            | 17,530                    | 20,863             | 68,329                   | 60,384             |
| T&M                             | 22                        | 883                | 38                       | 3,082              |
| Total revenue                   | <u>\$ 78,782</u>          | <u>\$ 61,891</u>   | <u>\$ 258,897</u>        | <u>\$ 232,073</u>  |

Each of these contract types presents advantages and disadvantages. Typically, the Company assumes more risk with FFP contracts. However, these types of contracts generally offer additional profits when the Company completes the work for less than originally estimated. CPFF contracts generally subject the Company to lower risk. Accordingly, the associated base fees are usually lower than fees on FFP contracts. Under T&M contracts, the Company's profit may vary if actual labor hour rates vary significantly from the negotiated rates.

|                                     | <u>Three Months Ended</u> |                    | <u>Nine Months Ended</u> |                    |
|-------------------------------------|---------------------------|--------------------|--------------------------|--------------------|
|                                     | <u>January 30,</u>        | <u>January 25,</u> | <u>January 30,</u>       | <u>January 25,</u> |
|                                     | <u>2021</u>               | <u>2020</u>        | <u>2021</u>              | <u>2020</u>        |
| <b>Revenue by customer category</b> |                           |                    |                          |                    |
| U.S. government                     | \$ 60,633                 | \$ 25,535          | \$ 170,023               | \$ 124,971         |
| Non-U.S. government                 | 18,149                    | 36,356             | 88,874                   | 107,102            |
| Total revenue                       | <u>\$ 78,782</u>          | <u>\$ 61,891</u>   | <u>\$ 258,897</u>        | <u>\$ 232,073</u>  |

|                                       | <u>Three Months Ended</u> |                    | <u>Nine Months Ended</u> |                    |
|---------------------------------------|---------------------------|--------------------|--------------------------|--------------------|
|                                       | <u>January 30,</u>        | <u>January 25,</u> | <u>January 30,</u>       | <u>January 25,</u> |
|                                       | <u>2021</u>               | <u>2020</u>        | <u>2021</u>              | <u>2020</u>        |
| <b>Revenue by geographic location</b> |                           |                    |                          |                    |
| Domestic                              | \$ 51,062                 | \$ 27,626          | \$ 150,890               | \$ 116,399         |
| International                         | 27,720                    | 34,265             | 108,007                  | 115,674            |
| Total revenue                         | <u>\$ 78,782</u>          | <u>\$ 61,891</u>   | <u>\$ 258,897</u>        | <u>\$ 232,073</u>  |

### ***Contract Balances***

The timing of revenue recognition, billings, and cash collections results in billed accounts receivable, unbilled receivables, and customer advances and deposits on the consolidated balance sheet. In the Company's services contracts, amounts are billed as work progresses in accordance with agreed-upon contractual terms, either at periodic intervals, which is generally monthly, or upon the achievement of contractual milestones. Generally, billing occurs subsequent to revenue recognition, resulting in contract assets recorded in unbilled receivables and retentions on the consolidated balance sheet. However, the Company sometimes receives advances or deposits from its customers before revenue is recognized, resulting in contract liabilities recorded in customer advances on the consolidated balance sheet. Contract liabilities are not a significant financing component as they are generally utilized to pay for contract costs within a one-year period or are used to ensure the customer meets contractual requirements. These assets and liabilities are reported on the consolidated balance sheet on a contract-by-contract basis at the end of each reporting period. For the Company's product revenue, the Company generally receives cash payments subsequent to satisfying the performance obligation via delivery of the product, resulting in billed accounts receivable. Changes in the contract asset and liability balances during the nine month period ended January 30, 2021 were not materially impacted by any other factors. For the Company's contracts, there are no significant gaps between the receipt of payment and the transfer of the associated goods and services to the customer for material amounts of consideration.

Revenue recognized for the three and nine month periods ended January 30, 2021 that was included in contract liability balances at the beginning of April 30, 2020 was \$0 and \$5,423,000, respectively; and revenue recognized for the three and nine month periods ended January 25, 2020 that was included in contract liability balances at the beginning of April 30, 2019 was \$12,000 and \$1,670,000, respectively.

### ***Segments***

Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources and in assessing performance. The Company's CODM, who is the Chief Executive Officer, makes operating decisions, assesses performance and makes resource allocation decisions, including the focus of research and development ("R&D"), on a consolidated basis for the Company's continuing operations. Accordingly, the Company operates its business as a single reportable segment.

### ***Investments***

The Company's investments are accounted for as available-for-sale and are reported at fair value. Unrealized gains and losses are excluded from earnings and reported as a separate component of stockholders' equity, net of deferred income taxes for available-for-sale investments. Gains and losses realized on the disposition of investment securities are determined on the specific identification basis and credited or charged to income. Management determines the appropriate classification of securities at the time of purchase and reevaluates such designation as of each balance sheet date.

Investments are considered to be impaired if the fair value of the investment is less than its amortized cost basis. On a quarterly basis, the Company considers available quantitative and qualitative evidence in evaluating potential impairment of its investments. If the cost of an investment exceeds its fair value, the Company evaluates if the decline in fair value resulted from a credit loss or other factors. The Company considers factors such as general market conditions and potential adverse conditions related to the financial health of the issuer based on rating agency actions. Impairments relating to credit losses are recorded in earnings through an allowance for credit losses. The allowance is limited by the amount that the fair value is less than the amortized cost basis. Impairments not related to credit losses are recorded through other comprehensive income, net of applicable taxes.

### ***Fair Values of Financial Instruments***

Fair values of cash and cash equivalents, accounts receivable, unbilled receivables and retentions, and accounts payable approximate cost due to the short period of time to maturity.

### Government Contracts

Payments to the Company on government CPFF or T&M contracts are based on provisional, or estimated indirect rates, which are subject to an annual audit by the Defense Contract Audit Agency (“DCAA”). The cost audits result in the negotiation and determination of the final indirect cost rates that the Company may use for the period(s) audited. The final rates, if different from the provisional rates, may create an additional receivable or liability for the Company for CPFF and T&M contracts.

For example, during the course of its audits, the DCAA may question the Company’s incurred costs, and if the DCAA believes the Company has accounted for such costs in a manner inconsistent with the requirements under Federal Acquisition Regulations, the DCAA auditor may recommend to the Company’s administrative contracting officer to disallow such costs. Historically, the Company has not experienced material disallowed costs as a result of government audits. However, the Company can provide no assurance that the DCAA or other government audits will not result in material disallowances for incurred costs in the future.

The Company’s revenue recognition policy calls for revenue recognized on all cost reimbursable government contracts to be recorded at actual rates unless collectability is not reasonably assured. During the fiscal year ended April 30, 2020, the Company settled rates for its incurred cost claims with the DCAA for fiscal year 2015 for an amount that was not significant. At January 30, 2021 and April 30, 2020, the Company had no reserve for incurred cost claim audits.

### Earnings (Loss) Per Share

Basic earnings (loss) per share is computed using the weighted-average number of common shares outstanding, excluding shares of unvested restricted stock.

The reconciliation of basic to diluted shares is as follows:

|  | Three Months Ended |                   | Nine Months Ended |                   |
|--|--------------------|-------------------|-------------------|-------------------|
|  | January 30, 2021   | January 25, 2020  | January 30, 2021  | January 25, 2020  |
| Denominator for basic earnings (loss) per share:                                       |                    |                   |                   |                   |
| Weighted average common shares   | 23,942,782         | 23,821,145        | 23,924,017        | 23,790,788        |
| Dilutive effect of employee stock options, restricted stock and restricted stock units | 318,092            | —                 | 292,354           | 285,407           |
| Denominator for diluted earnings (loss) per share                                      | <u>24,260,874</u>  | <u>23,821,145</u> | <u>24,216,371</u> | <u>24,076,195</u> |

Potentially dilutive shares not included in the computation of diluted weighted-average common shares because their effect would have been anti-dilutive were 0 and 24 for the three and nine months ended January 30, 2021. Due to the net loss for the three months ended January 25, 2020, no shares reserved for issuance upon exercise of stock options or shares of unvested restricted stock were included in the computation of diluted loss per share as their inclusion would have been anti-dilutive. Potentially dilutive shares not included in the computation of diluted weighted-average common shares because their effect would have been anti-dilutive were 287,408 and 3,076 for the three and nine months ended January 25, 2020, respectively.

### Recently Issued Accounting Standards

In December 2019, the FASB issued ASU 2019-12, *Simplifying the Accounting for Income Taxes* (Topic 740). This ASU simplifies the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. The guidance is effective for fiscal years beginning after December 15, 2020 and interim periods therein, with early adoption permitted. The adoption method is dependent on the specific amendment included in this update as certain amendments require retrospective adoption, modified retrospective adoption, an option of retrospective or modified retrospective, and prospective adoption. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

In January 2020, the FASB issued ASU 2020-01, *Clarifying the Interactions between Topic 321, Topic 323, and Topic*

815 (Topic 321, Topic 323, and Topic 815). This ASU clarifies accounting certain topics impacted by Topic 321 Investments—Equity Securities. These topics include measuring equity securities using the measurement alternative, how the measurement alternative should be applied to equity method accounting, and certain forward contracts and purchased options which would be accounted for under the equity method of accounting upon settlement or exercise. The guidance is effective for fiscal years beginning after December 15, 2020 and interim periods therein, with early adoption permitted. The amendments should be adopted prospectively. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

## **2. Discontinued Operations**

On June 29, 2018, the Company completed the sale of substantially all of the assets and related liabilities of its efficient energy systems business segment (the “EES Business”) to Webasto Charging Systems, Inc. (“Webasto”) pursuant to an Asset Purchase Agreement (the “Purchase Agreement”) between Webasto and the Company. In accordance with the terms of the Purchase Agreement, as amended by a side letter agreement executed at the closing, the Company received cash consideration of \$31,994,000 upon closing, which resulted in a gain of \$11,420,000 and has been recorded in gain on sale of business, net of tax in the consolidated statements of income. During the year ended April 30, 2019, the Company recorded a reduction to the gain resulting from a working capital adjustment of \$486,000. During the year ended April 30, 2020, the Company and Webasto engaged an independent accounting firm to resolve a working capital dispute with a maximum exposure of \$922,000 pursuant to the terms of the Purchase Agreement. In June 2020, the independent accounting firm determined the final adjustment to the working capital dispute to be \$341,000 which has been recorded net of tax as a loss of discontinued operations in the consolidated statements of income for the year ended April 30, 2020.

The Company is entitled to receive additional cash consideration of \$6,500,000 (the “Holdback”) upon tendering consents to assignment of two remaining customer contracts to Webasto. The Holdback was not recorded in the Company’s consolidated financial statements as the amount was not realized or realizable as of January 30, 2021. The Company’s satisfaction of the requirements for the payment of the Holdback is currently in dispute.

On February 22, 2019, Webasto filed a lawsuit alleging several claims against the Company for breach of contract, indemnity, and bad faith, including allegations regarding inaccuracy of certain diligence disclosures, failure to provide certain consents to contract assignments and related to a previously announced product recall. Webasto seeks to recover the costs of the recall and other damages totaling a minimum of \$6,500,000 in addition to attorneys’ fees, costs, and punitive damages. On August 16, 2019, the Company filed a counterclaim against Webasto seeking payment of the Holdback and declaratory relief regarding Webasto’s cancellation of an assigned contract. The Company believes that the allegations are generally meritless and is mounting a vigorous defense.

During the three months ended October 27, 2018, Webasto filed a recall report with the National Highway Traffic Safety Administration that named certain of the Company’s EES products as subject to the recall. The Company is continuing to assess the facts giving rise to the recall. Under the terms of the Purchase Agreement, the Company may be responsible for certain costs of such recall of named products the Company manufactured, sold or serviced prior to the closing of the sale of the EES Business. On August 14, 2019, Benchmark Electronics, Inc. (“Benchmark”), the company that assembled the products subject to the recall, served a demand for arbitration to the Company and Webasto, and a third-party part supplier pursuant to its contracts with the Company and Webasto, respectively. The Company filed a responsive pleading in the Benchmark arbitration on October 29, 2019, consisting of a general denial, affirmative defenses, and a reservation of the right to file counter-claims at a later date. Webasto challenged the validity of the Benchmark arbitration by filing an action in New York Superior Court. In December 2019, Webasto and Benchmark reached a settlement of their disputed claims. Benchmark withdrew its Notice of Arbitration against Webasto and the Company, but reserved its right to pursue indemnity claims against suppliers. The recall remains a significant part of the Webasto lawsuit.

Concurrent with the execution of the Purchase Agreement, the Company entered into a transition services agreement (the “TSA”) to provide certain general and administrative services to Webasto for a defined period. Income from performing services under the TSA was \$0 and \$38,000 and has been recorded in other income, net in the consolidated statements of operations for the three and nine months ended January 30, 2021, respectively, and \$57,000 and \$545,000 and has been



recorded in other income, net in the consolidated statements of operations for the three and nine months ended January 25, 2020, respectively.

### 3. Investments

Investments consist of the following (in thousands):

|  | January 30,<br>2021 | April 30,<br>2020 |
|--|---------------------|-------------------|
| <b>Short-term investments:</b>         |                     |                   |
| Available-for-sale securities:         |                     |                   |
| Municipal securities                   | 25,709              | 5,244             |
| U.S. government securities             | 13,019              | 33,771            |
| Corporate bonds                        | 9,771               | 8,492             |
| Total short-term investments           | <u>\$ 48,499</u>    | <u>\$ 47,507</u>  |
| <b>Long-term investments:</b>          |                     |                   |
| Available-for-sale securities:         |                     |                   |
| Municipal securities                   | 989                 | 1,592             |
| U.S. government securities             | 4,003               | 8,996             |
| Total available-for-sale investments   | <u>4,992</u>        | <u>10,588</u>     |
| Equity method investments              |                     |                   |
| Investment in limited partnership fund | 6,230               | 4,442             |
| Total equity method investments        | <u>6,230</u>        | <u>4,442</u>      |
| Total long-term investments            | <u>\$ 11,222</u>    | <u>\$ 15,030</u>  |

#### Available-For-Sale Securities

As of January 30, 2021 and April 30, 2020, the balance of available-for-sale securities consisted of state and local government municipal securities, U.S. government securities, U.S. government agency securities, and investment grade corporate bonds. Interest earned from these investments is recorded in interest income. Realized gains on sales of these investments on the basis of specific identification is recorded in interest income.

The following table is a summary of the activity related to the available-for-sale investments recorded in short-term and long-term investments as of January 30, 2021 and April 30, 2020, respectively (in thousands):

|                                      | January 30, 2021  |                              |                               |                  |
|--------------------------------------|-------------------|------------------------------|-------------------------------|------------------|
|                                      | Amortized<br>Cost | Gross<br>Unrealized<br>Gains | Gross<br>Unrealized<br>Losses | Fair<br>Value    |
| Municipal securities                 | \$ 26,691         | \$ 12                        | \$ (5)                        | \$ 26,698        |
| U.S. government securities           | 17,017            | 5                            | —                             | 17,022           |
| Corporate bonds                      | 9,771             | 1                            | (1)                           | 9,771            |
| Total available-for-sale investments | <u>\$ 53,479</u>  | <u>\$ 18</u>                 | <u>\$ (6)</u>                 | <u>\$ 53,491</u> |
|                                      | April 30, 2020    |                              |                               |                  |
|                                      | Amortized<br>Cost | Gross<br>Unrealized<br>Gains | Gross<br>Unrealized<br>Losses | Fair<br>Value    |
| Municipal securities                 | \$ 6,807          | \$ 29                        | \$ —                          | \$ 6,836         |
| U.S. government securities           | 42,730            | 41                           | (4)                           | 42,767           |
| Corporate bonds                      | 8,495             | —                            | (3)                           | 8,492            |
| Total available-for-sale investments | <u>\$ 58,032</u>  | <u>\$ 70</u>                 | <u>\$ (7)</u>                 | <u>\$ 58,095</u> |



The amortized cost and fair value of the available-for-sale debt securities by contractual maturity at January 30, 2021 were as follows (in thousands):

|                                       | Cost             | Fair Value       |
|---------------------------------------|------------------|------------------|
| Due within one year                   | \$ 48,494        | \$ 48,499        |
| Due after one year through five years | 4,985            | 4,992            |
| <b>Total</b>                          | <b>\$ 53,479</b> | <b>\$ 53,491</b> |

#### 4. Fair Value Measurements

Fair value is the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The fair value hierarchy contains three levels as follows:

- Level 1—Inputs to the valuation based upon quoted prices (unadjusted) for identical assets or liabilities in active markets that are accessible as of the measurement date.
- Level 2—Inputs to the valuation include quoted prices in either markets that are not active, or in active markets for similar assets or liabilities, inputs other than quoted prices that are observable, and inputs that are derived principally from or corroborated by observable market data.
- Level 3—Inputs to the valuation that are unobservable inputs for the asset or liability.

The Company's financial assets measured at fair value on a recurring basis at January 30, 2021, were as follows (in thousands):

| Description                   | Fair Value Measurement Using                                   |   |   | Total            |
|-------------------------------|--|---|---|------------------|
|                               | Quoted prices in active markets for identical assets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |                  |
| Available-for-sale securities | \$ —   | \$ 53,491                                     | \$ —                                      | \$ 53,491        |
| <b>Total</b>                  | <b>\$ —</b>  | <b>\$ 53,491</b>                              | <b>\$ —</b>                               | <b>\$ 53,491</b> |

The Company's financial assets measured at fair value on a recurring basis at April 30, 2020, were as follows (in thousands):

| Description                   | Fair Value Measurement Using                                   |   |   | Total            |
|-------------------------------|--|---|---|------------------|
|                               | Quoted prices in active markets for identical assets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |                  |
| Available-for-sale securities | \$ —   | \$ 58,095                                     | \$ —                                      | \$ 58,095        |
| <b>Total</b>                  | <b>\$ —</b>  | <b>\$ 58,095</b>                              | <b>\$ —</b>                               | <b>\$ 58,095</b> |

## 5. Inventories, net

Inventories consist of the following (in thousands):

|   | January 30,<br>2021 | April 30,<br>2020 |
|---|---------------------|-------------------|
| Raw materials                                 | \$ 23,608           | \$ 15,988         |
| Work in process                               | 12,225              | 10,340            |
| Finished goods                                | 25,843              | 29,439            |
| Inventories, gross                            | 61,676              | 55,767            |
| Reserve for inventory excess and obsolescence | (8,572)             | (10,232)          |
| Inventories, net                              | \$ 53,104           | \$ 45,535         |

## 6. Equity Method Investments

In December of 2017, the Company and SoftBank formed a joint venture, HAPSMobile, which is a Japanese corporation. As of January 30, 2021, the Company's ownership stake in HAPSMobile was approximately 7%, with the remaining 93% held by SoftBank. In connection with the formation of the joint venture on December 27, 2017, the Company initially purchased shares of HAPSMobile representing a 5% ownership interest in exchange for an investment of 210,000,000 yen (\$1,860,000). The Company subsequently purchased additional shares of HAPSMobile in order to maintain a 5% ownership stake in the joint venture. The first such purchase occurred on April 17, 2018, at which time the Company invested 150,000,000 yen (\$1,407,000) for the purchase of additional shares of HAPSMobile. On January 29, 2019, the Company invested an additional 209,500,000 yen (\$1,926,000) to maintain its 5% ownership stake. On February 9, 2019, the Company elected to purchase 632,800,000 yen (\$5,671,000) of additional shares of HAPSMobile to increase the Company's ownership in the joint venture from 5% to 10%, and on May 10, 2019, the Company purchased 500,000,000 yen (\$4,569,000) of additional shares of HAPSMobile to maintain its 10% ownership stake. The Company's ownership percentage was subsequently diluted from 10% to approximately 5%. On December 4, 2019, the Company purchased 540,050,000 yen (\$4,982,000) of additional shares of HAPSMobile to increase its ownership stake to approximately 7%.

As the Company has the ability to exercise significant influence over the operating and financial policies of HAPSMobile pursuant to the applicable Joint Venture Agreement and related organizational documents, the Company's investment is accounted for as an equity method investment. During the nine months ended January 25, 2021, the Company recorded its proportion of a loss for HAPSMobile's impairment of its investment in Loon LLC in the amount of \$8,363,000. For the three and nine months ended January 30, 2021, the Company recorded its ownership percentage of the net loss of HAPSMobile, or \$0 and \$10,810,000, respectively, in equity method investment loss, net of tax in the unaudited consolidated statement of income. HAPSMobile initially made its investment in Loon LLC in April 2019. For the three and nine months ended January 25, 2020, the Company recorded its ownership percentage of the net loss of HAPSMobile, or \$1,200,000 and \$3,410,000, respectively, in equity method investment loss, net of tax in the unaudited consolidated statement of operations. At January 30, 2021 and April 30, 2020, the carrying value of the investment in HAPSMobile of \$0 and \$10,455,000, respectively, was recorded in other assets. As the Company's investment has been written down to zero, no future losses of HAPSMobile will be recorded in equity method investment loss, net of tax in subsequent periods.

### Investment in Limited Partnership Fund

In July 2019, the Company made its initial capital contribution to a limited partnership fund focusing on highly relevant technologies and start-up companies serving defense and industrial markets. On July 15, 2020 and January 4, 2021, the Company made additional contributions of \$1,173,000 and \$977,000, respectively. Under the terms of the limited partnership agreement, the Company has committed to make additional capital contributions of \$2,904,000 to the fund. The Company accounts for investments in limited partnerships as equity method investments as the Company is deemed to have influence when it holds more than a minor interest. For the three and nine months ended January 30, 2021, the Company recorded its ownership percentage of the net loss of the limited partnership, or \$81,000 and \$361,000, respectively, in equity method investment loss in the consolidated statements of income. For the three and nine months

ended January 25, 2020, the Company recorded no net loss of the limited partnership. At January 30, 2021 and April 30, 2020, the carrying value of the investment in the limited partnership of \$6,230,000 and \$4,442,000, respectively, was recorded in long-term investments.

## 7. Warranty Reserves

The Company accrues an estimate of its exposure to warranty claims based upon both current and historical product sales data and warranty costs incurred. The warranty reserve is included in other current liabilities. The related expense is included in cost of sales. Warranty reserve activity is summarized as follows for the three and nine months ended January 30, 2021 and January 25, 2020, respectively (in thousands):

|   | Three Months Ended |                  | Nine Months Ended |                  |
|---|--------------------|------------------|-------------------|------------------|
|   | January 30, 2021   | January 25, 2020 | January 30, 2021  | January 25, 2020 |
| Beginning balance                                       | \$ 2,126           | \$ 1,875         | \$ 2,015          | \$ 1,704         |
| Warranty expense  | 277                | 250              | 1,038             | 1,469            |
| Changes in estimates related to pre-existing warranties | —                  | —                | —                 | (189)            |
| Warranty costs settled                                  | (231)              | (289)            | (881)             | (1,148)          |
| Ending balance  | <u>\$ 2,172</u>    | <u>\$ 1,836</u>  | <u>\$ 2,172</u>   | <u>\$ 1,836</u>  |

## 8. Intangibles, net

The components of intangibles are as follows (in thousands):

|                                     | January 30, 2021 | April 30, 2020   |
|-------------------------------------|------------------|------------------|
| Technology                          | \$ 14,950        | \$ 14,950        |
| Licenses                            | 1,006            | 1,006            |
| Customer relationships              | 873              | 873              |
| In-process research and development | 550              | 550              |
| Non-compete agreements              | 320              | 320              |
| Trademarks and tradenames           | 68               | 68               |
| Other                               | 3                | 3                |
| Intangibles, gross                  | 17,770           | 17,770           |
| Less accumulated amortization       | (6,218)          | (4,133)          |
| Intangibles, net                    | <u>\$ 11,552</u> | <u>\$ 13,637</u> |

The weighted average amortization period at January 30, 2021 and April 30, 2020 was four years. Amortization expense for the three and nine months ended January 30, 2021 was \$662,000 and \$2,086,000, respectively. Amortization expense for the three and nine months ended January 25, 2020 was \$775,000 and \$2,102,000, respectively.

Technology, in-process research and development, customer relationships, trademarks and tradenames, and non-compete agreements were recognized in conjunction with the Company's acquisition of Pulse on June 10, 2019. Refer to Note 17—Business Acquisitions for further details.

Estimated amortization expense for the next five years is as follows (in thousands):

|      | Year ending April 30, |
|------|-----------------------|
| 2021 | \$ 707                |
| 2022 | 2,829                 |
| 2023 | 2,688                 |
| 2024 | 2,629                 |
| 2025 | 2,492                 |
|      | <u>\$ 11,345</u>      |

## 9. Goodwill

The following table presents the changes in the Company's goodwill balance (in thousands):

|                             |                 |
|-----------------------------|-----------------|
| Balance at April 30, 2020   | \$ 6,340        |
| Additions to goodwill       | -               |
| Impairment of goodwill      | -               |
| Balance at January 30, 2021 | <u>\$ 6,340</u> |

The goodwill balance at April 30, 2020 is attributable to the acquisition of Pulse. Refer to Note 17—Business Acquisitions for further details.

## 10. Leases

The Company leases certain buildings, land and equipment. At contract inception the Company determines whether the contract is, or contains, a lease and whether the lease should be classified as an operating or a financing lease. Operating leases are recorded in operating lease right-of-use assets, current operating lease liabilities and non-current operating lease liabilities.

The Company recognizes operating lease right-of-use assets and operating lease liabilities based on the present value of the future minimum lease payments over the lease term at commencement date. The Company uses its incremental borrowing rate based on the information available at commencement date to determine the present value of future payments and the appropriate lease classification. The Company defines the initial lease term to include renewal options determined to be reasonably certain. The Company's leases have remaining lease terms of less than one year to six years, some of which may include options to extend the lease for up to 10 years, and some of which may include options to terminate the lease after two years. None of the Company's options to extend or terminate are reasonably certain of being exercised, and are therefore not included in the Company's determination of lease assets and liabilities. For operating leases, the Company recognizes lease expense for these leases on a straight-line basis over the lease term.

Many of the Company's real estate lease agreements contain incentives for tenant improvements, rent holidays, or rent escalation clauses. For tenant improvement incentives, if the incentive is determined to be a leasehold improvement owned by the lessee, the Company generally records incentive as a reduction to fixed lease payments thereby reducing rent expense. For rent holidays and rent escalation clauses during the lease term, the Company records rental expense on a straight-line basis over the term of the lease. For these lease incentives, the Company uses the date of initial possession as the commencement date, which is generally when the Company is given the right of access to the space and begins to make improvements in preparation for intended use.

The Company does not have any finance leases. The Company does not have any material restrictions or covenants in its lease agreements, sale-leaseback transactions, land easements or residual value guarantees.

In determining the inputs to the incremental borrowing rate calculation, the Company makes judgments about the value of the leased asset, its credit rating and the lease term including the probability of its exercising options to extend or terminate the underlying lease. Additionally, the Company makes judgments around contractual asset substitution rights in determining whether a contract contains a lease.

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The components of lease costs recorded in cost of sales for product sales and contract services and selling, general and administrative (“SG&A”) expense were as follows (in thousands):

|                        | <u>Nine Months Ended</u><br><u>January 30,</u><br><u>2021</u> | <u>Nine Months Ended</u><br><u>January 25,</u><br><u>2020</u> |
|------------------------|---|---|
| Operating lease cost   | \$ 3,592  | \$ 3,453  |
| Short term lease cost  | 369   | 489   |
| Variable lease cost    | 3   | 609   |
| Sublease income        | (48)  | (230)   |
| Total lease costs, net | <u>\$ 3,916</u>   | <u>\$ 4,321</u>   |

Supplemental lease information were as follows:

|  | <u>Nine Months Ended</u><br><u>January 30,</u><br><u>2021</u><br><u>(In thousands)</u> | <u>Nine Months Ended</u><br><u>January 25,</u><br><u>2020</u><br><u>(In thousands)</u> |
|--|--|--|
| Cash paid for amounts included in the measurement of operating lease liabilities | \$ 3,470   | \$ 4,029   |
| Right-of-use assets obtained in exchange for new lease liabilities               | \$ 5,760   | \$ 12,634  |
| Weighted average remaining lease term  | 43 months  | 35 months  |
| Weighted average discount rate   | 3.4%   | 3.6%   |

Maturities of operating lease liabilities as of January 30, 2021 were as follows (in thousands):

|  |                  |
|--|------------------|
| 2021   | \$ 896           |
| 2022   | 4,581            |
| 2023   | 3,173            |
| 2024   | 2,608            |
| 2025   | 1,661            |
| Thereafter   | 763              |
| Total lease payments                               | <u>13,682</u>    |
| Less: imputed interest                             | <u>(853)</u>     |
| Total present value of operating lease liabilities | <u>\$ 12,829</u> |

#### 11. Accumulated Other Comprehensive Income and Reclassifications Adjustments

The components of accumulated other comprehensive income and adjustments are as follows (in thousands):

|   | <u>Nine Months Ended</u><br><u>January 30,</u><br><u>2021</u> | <u>Nine Months Ended</u><br><u>January 25,</u><br><u>2020</u> |
|---|---|---|
| Balance, net of \$0 deferred taxes, as of April 30, 2020 and April 30, 2019                           | \$ 328  | \$ 2  |
| Changes in foreign currency translation adjustments   | 75  | 67  |
| Unrealized losses, net of \$2 of deferred taxes for the nine months ended January 30, 2021            | (56)  | —   |
| Balance, net of \$2 and \$0 deferred taxes, as of January 30, 2021 and January 25, 2020, respectively | <u>\$ 347</u>   | <u>\$ 69</u>  |

#### 12. Customer-Funded Research & Development

Customer-funded R&D costs are incurred pursuant to contracts (revenue arrangements) to perform R&D activities according to customer specifications. These costs are direct contract costs and are expensed to cost of sales as costs are

incurred. Revenue from customer-funded R&D contracts are recognized in accordance with Topic 606 over time as costs are incurred. Revenue from customer-funded R&D was approximately \$14,811,000 and \$58,979,000 for the three and nine months ended January 30, 2021, respectively. Revenue from customer-funded R&D was approximately \$17,939,000 and \$50,565,000 for the three and nine months ended January 25, 2020, respectively.

### **13. Long-Term Incentive Awards**

During the three months ended August 1, 2020, the Company granted awards under its amended and restated 2006 Equity Incentive Plan (the “Restated 2006 Plan”) to key employees (“Fiscal 2021 LTIP”). Awards under the Fiscal 2021 LTIP consist of: (i) time-based restricted stock awards, which vest in equal tranches in July 2021, July 2022 and July 2023, and (ii) performance-based restricted stock units (“PRsUs”), which vest based on the Company’s achievement of revenue and operating income targets for the three-year period ending April 30, 2023. At the award date, target achievement levels for each of the financial performance metrics were established for the PRsUs, at which levels the PRsUs would vest at 100% for each such metric. Threshold achievement levels for which the PRsUs would vest at 50% for each such metric and maximum achievement levels for which such awards would vest at 250% for each such metric were also established. The actual payout for the PRsUs at the end of the performance period will be calculated based upon the Company’s achievement of the established revenue and operating income targets for the performance period. Settlement of the PRsUs will be made in fully-vested shares of common stock. For the three and nine months ended January 30, 2021, the Company recorded \$126,000 and \$564,000 of compensation expense related to the Fiscal 2021 LTIP. The Company recorded no compensation expense related to the Fiscal 2021 LTIP for the three and nine months ended January 25, 2020. At January 30, 2021, the maximum compensation expense that may be recorded for the performance-based portion of the Fiscal 2021 LTIP is \$7,946,000.

During the three months ended July 27, 2019, the Company granted awards under the Restated 2006 Plan to key employees (“Fiscal 2020 LTIP”). Awards under the Fiscal 2020 LTIP consist of: (i) time-based restricted stock awards, which vest in equal tranches in July 2020, July 2021 and July 2022, and (ii) PRsUs, which vest based on the Company’s achievement of revenue and operating income targets for the three-year period ending April 30, 2022. At the award date, target achievement levels for each of the financial performance metrics were established for the PRsUs, at which levels the PRsUs would vest at 100% for each such metric. Threshold achievement levels for which the PRsUs would vest at 50% for each such metric and maximum achievement levels for which such awards would vest at 200% for each such metric were also established. The actual payout for the PRsUs at the end of the performance period will be calculated based upon the Company’s achievement of the established revenue and operating income targets for the performance period. Settlement of the PRsUs will be made in fully-vested shares of common stock. For the three months ended January 30, 2021, the Company recorded a reduction of \$26,000 of compensation expense related to the Fiscal 2020 LTIP, and for the nine months ended January 30, 2021, the Company recorded \$319,000 of compensation expense related to the Fiscal 2020 LTIP. For the three and nine months ended January 25, 2020, the Company recorded \$215,000 and \$512,000 of compensation expense related to the Fiscal 2020 LTIP, respectively. At January 30, 2021, the maximum compensation expense that may be recorded for the performance-based portion of the Fiscal 2020 LTIP is \$4,263,000.

During the three months ended July 28, 2018, the Company also granted awards under the Restated 2006 Plan to key employees (“Fiscal 2019 LTIP”). Awards under the Fiscal 2019 LTIP consist of: (i) time-based restricted stock awards, which vest in equal tranches in July 2019, July 2020 and July 2021, and (ii) PRsUs, which vest based on the Company’s achievement of revenue and operating income targets for the three-year period ending April 30, 2021. At the award date, target achievement levels for each of the financial performance metrics were established for the PRsUs, at which levels the PRsUs would vest at 100% for each such metric. Threshold achievement levels for which the PRsUs would vest at 50% for each such metric and maximum achievement levels for which such awards would vest at 200% for each such metric were also established. The actual payout for the PRsUs at the end of the performance period will be calculated based upon the Company’s achievement of the established revenue and operating income targets for the performance period. Settlement of the PRsUs will be made in fully-vested shares of common stock. For the three and nine months ended January 30, 2021, the Company recorded \$27,000 and \$291,000 of compensation expense related to the Fiscal 2019 LTIP, respectively. For the three and nine months ended January 25, 2020, the Company recorded \$246,000 and \$294,000 of compensation expense related to the Fiscal 2019 LTIP, respectively. At January 30, 2021, the maximum compensation expense that may be recorded for the performance-based portion of the Fiscal 2019 LTIP is \$2,478,000.

During the three months ended July 29, 2017, the Company also granted awards under the Restated 2006 Plan to key employees (“Fiscal 2018 LTIP”). Awards under the Fiscal 2018 LTIP consist of: (i) time-based restricted stock awards, which vest in equal tranches in July 2018, July 2019 and July 2020, and (ii) PRSUs, which vest based on the Company’s achievement of revenue and operating income targets for the three-year period ending April 30, 2020. During the three months ended August 1, 2020, the Company issued a total of 16,228 fully-vested shares of common stock to settle the PRSUs in the Fiscal 2018 LTIP. For the three and nine months ended January 30, 2021, the Company recorded no compensation expense. For the three and nine months ended January 25, 2020, the Company recorded \$201,000 and \$162,000 of compensation expense related to the Fiscal 2018 LTIP, respectively.

At January 30, 2021 and April 30, 2020, the Company recorded cumulative stock-based compensation expense from the Fiscal 2021 LTIP, Fiscal 2020 LTIP and Fiscal 2019 LTIP of \$2,780,000 and \$1,607,000, respectively. At each reporting period, the Company reassesses the probability of achieving the performance targets for the PRSUs. The estimation of whether the performance targets will be achieved requires judgment, and to the extent actual results or updated estimates differ from the Company’s current estimates, the cumulative effect on current and prior periods of those changes will be recorded in the period estimates are revised. No compensation cost is ultimately recognized for awards for which employees do not render the requisite service and are forfeited.

#### **14. Income Taxes**

For the three and nine months ended January 30, 2021, the Company recorded a (benefit from) and provision for income taxes of \$(924,000) and \$2,774,000, respectively, yielding effective tax rates of 157.9% and 10.7%, respectively. For the three and nine months ended January 25, 2020, the Company recorded a (benefit from) and provision for income taxes of \$(38,000) and \$3,203,000, respectively, yielding effective tax rates of (28.4)% and 10.6%, respectively. The variance from statutory rates for the three and nine months ended January 30, 2021 was primarily due to federal R&D credits, foreign derived intangible income deductions and the recording of discrete excess tax benefits resulting from the vesting of restricted stock awards and exercises of stock options. The variance from statutory rates for the three and nine months ended January 25, 2020 was primarily due to federal R&D credits, foreign derived intangible income deductions and the recording of discrete excess tax benefits resulting from the vesting of restricted stock awards and exercises of stock options.

#### **15. Share Repurchase**

In September 2015, the Company’s Board of Directors authorized a program to repurchase up to \$25,000,000 of the Company’s common stock with no specified termination date for the program. No shares were repurchased under the program during the three and nine months ended January 30, 2021 or January 25, 2020. As of January 30, 2021 and April 30, 2020, approximately \$21,200,000 remained authorized for future repurchases under this program.

#### **16. Related Party Transactions**

Related party transactions are defined as transactions between the Company and entities either controlled by the Company or that the Company can significantly influence. Although SoftBank has a controlling interest in HAPSMobile, the Company determined that it has the ability to exercise significant influence over HAPSMobile. As such, HAPSMobile and SoftBank are considered related parties of the Company. Concurrent with the formation of HAPSMobile, the Company executed a Design and Development Agreement (the “DDA”) with HAPSMobile. Under the DDA and related efforts, the Company will use its best efforts, up to a maximum net value of \$181,320,000, to design and build prototype solar powered high altitude aircraft and ground control stations for HAPSMobile and conduct low altitude and high altitude flight tests of the prototype aircraft.

The Company recorded revenue under the DDA and preliminary design agreements between the Company and SoftBank of \$7,480,000 and \$35,318,000 for the three and nine months ended January 30, 2021, respectively. The Company recorded revenue under the DDA and preliminary design agreements between the Company and SoftBank of \$11,762,000 and \$37,491,000 for the three and nine months ended January 25, 2020, respectively. At January 30, 2021 and April 30, 2020, the Company had unbilled related party receivables from HAPSMobile of \$6,834,000 and \$15,779,000 recorded in unbilled receivables and retentions on the consolidated balance sheets, respectively. Refer to Note 6—Equity Method Investments for further details.

## 17. Business Acquisitions

On June 10, 2019, the Company purchased 100% of the issued and outstanding member units of Pulse pursuant to the terms of the Pulse Purchase Agreement. The Company's acquisition of Pulse's helicopter UAS product family strengthens AeroVironment's leading family of fixed-wing small unmanned aircraft systems and increases the mission capabilities of AeroVironment's family of systems.

Pursuant to the Pulse Purchase Agreement, at closing, the Company paid \$20,650,000 in cash, less closing indebtedness and transaction costs as defined in the Pulse Purchase Agreement, less a \$250,000 retention to cover any post-closing indemnification claims, and less a \$1,250,000 holdback amount, with the retention and holdback to be released to the member unit holders of Pulse, less any amounts paid or reserved, 18 months after the closing of the transactions in accordance with the terms of the Pulse Purchase Agreement. The closing cash consideration included the payoff of the outstanding indebtedness of Pulse as of the closing date. The Company financed the acquisition entirely from available cash on hand. During the three months ended January 30, 2021, the Company paid a total of \$1,492,000 in holdback and retention payments.

In addition to the consideration paid at closing, the acquisition of Pulse included contingent consideration arrangements that required additional consideration to be paid by the Company to the sellers of Pulse if two specified research and development milestones were achieved by December 10, 2021 and the continued employment of specified employees. Amounts were payable upon the achievement of the milestones. The range of the undiscounted amounts the Company could pay under each of the contingent consideration agreements were zero or \$2,500,000 (\$5,000,000 in total if both milestones are achieved and specific key employees continued employment). The fair value of the contingent consideration recognized on the acquisition date of \$1,703,000 was estimated by applying the income approach. That measure was based on significant Level 3 inputs not observable in the market. Key assumptions include (1) a discount rate of 4.5% and (2) the probability that each of the milestones would be achieved.

During the three months ended January 25, 2020, one of the research and development milestones was achieved, and the requirements for the payout of remaining contingent consideration were concluded to not have been met. As a result, the Company recorded a gain of \$832,000 which was recorded in selling, general, and administrative expense in the consolidated statements of income. On February 26, 2020, \$2,500,000 of contingent consideration was paid to the sellers for the achieved milestone.

During the fiscal year ended April 30, 2020, the Company finalized its determination of the fair value of the assets and liabilities assumed as of the acquisition date, which is summarized in the following table (in thousands):

|  | June 10,<br>2019 |
|--|------------------|
| Technology                               | \$ 14,950        |
| Goodwill                                 | 6,340            |
| In-process R&D                           | 550              |
| Inventory                                | 334              |
| Non-compete agreements                   | 320              |
| Other assets, net of liabilities assumed | (614)            |
| Total net identified assets acquired     | <u>\$ 21,880</u> |
| Fair value of consideration:             |                  |
| Cash                                     | \$ 18,677        |
| Holdback                                 | 1,250            |
| Retention                                | 250              |
| Contingent consideration                 | 1,703            |
| Total                                    | <u>\$ 21,880</u> |



Determining the fair value of the intangible assets acquired requires significant judgment, including the amount and timing of expected future cash flows, long-term growth rates and discount rates. The fair value of the intangibles assets was determined using a discounted cash flow analysis, which were based on the Company's best estimate of future sales, earnings and cash flows after considering such factors as general market conditions, anticipated customer demand, changes in working capital, long term business plans and recent operating performance. Use of different estimates and judgments could yield materially different results.

The goodwill is attributable to the synergies the Company expects to achieve through leveraging the acquired technology to its existing customers, the workforce of Pulse and expected future customers in the helicopter UAS market. For tax purposes the acquisition was treated as an asset purchase and the goodwill is deductible ratably over a period of fifteen years.

**Supplemental Pro Forma Information (unaudited)**

The following unaudited pro forma summary presents consolidated information of the Company as if the business acquisition had occurred on May 1, 2018 (in thousands):

|  | <u>Three Months Ended</u>        |                                  | <u>Nine Months Ended</u>         |                                  |
|--|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
|  | <u>January 25</u><br><u>2020</u> | <u>January 26</u><br><u>2019</u> | <u>January 25</u><br><u>2020</u> | <u>January 26</u><br><u>2019</u> |
| Revenue  | \$ 61,891                        | \$ 75,922                        | \$ 232,300                       | \$ 228,533                       |
| Net income attributable to AeroVironment, Inc. | \$ (726)                         | \$ 7,244                         | \$ 24,227                        | \$ 38,471                        |

The Company did not have any material, nonrecurring pro forma adjustments directly attributable to the business acquisition included in the reported pro forma revenue and earnings.

These pro forma amounts have been calculated by applying the Company's accounting policies, assuming transaction costs had been incurred during the three months ended July 28, 2018, reflecting the additional amortization that would have been charged assuming the fair value adjustments to intangible assets had been applied from May 1, 2018 with the consequential tax effects, and including the results of Pulse prior to acquisition.

The Company incurred approximately \$344,000 and \$1,036,000 of acquisition-related expenses for the three and nine months ended January 25, 2020, respectively. These expenses are included in selling, general and administrative, research and development, and product cost of sales on the Company's consolidated statement of operations.

The unaudited pro forma supplemental information is based on estimates and assumptions, which the Company believes are reasonable and are not necessarily indicative of the results that have been realized had the acquisitions been consolidated in the tables above as of May 1, 2018, nor are they indicative of results of operations that may occur in the future.

## **18. Subsequent Events**

### **Arcturus Acquisition**

On February 19, 2021, the Company closed its acquisition of Arcturus UAV, Inc., a California corporation ("Arcturus UAV") pursuant to the Stock Purchase Agreement (the "Arcturus Purchase Agreement") with Arcturus UAV and each of the shareholders and other equity interest holders of Arcturus UAV (collectively, the "Arcturus Sellers"), to purchase 100% of the issued and outstanding equity of Arcturus UAV (the "Arcturus Acquisition"). Arcturus UAV, headquartered in Petaluma, California, designs, engineers, tools, and manufactures unmanned aerial and aircraft systems including airborne platforms, payloads and payload integration, ground control systems, and ground support equipment and other items and services related generally to unmanned aircraft systems. Arcturus UAV became a wholly-owned subsidiary of the Company as of February 19, 2021.

Pursuant to the Arcturus Purchase Agreement, at the closing of the Arcturus Acquisition, the Company paid approximately \$431,000,000 (subject to certain customary adjustments and escrow arrangements set forth in the Arcturus Purchase Agreement), financed with a combination of approximately \$159,000,000 of cash-on-hand, \$200,000,000 of financing pursuant to the Term Loan Facility, described below, and the issuance of approximately \$72,000,000 of unregistered, restricted shares of common stock. As specified in the Arcturus Purchase agreement, the number of shares issued was determined based on a value of \$50,000,000 and a calculated average price as of the last business day prior to execution of the Arcturus Purchase Agreement.

The final cash consideration is subject to certain customary adjustments, including for net working capital, cash, debt and unpaid transaction expenses (including change in control related payments triggered by the transaction) of Arcturus UAV at the Arcturus Closing, less \$6,500,000 to be held in escrow to address final purchase price adjustments post-Arcturus Closing, if any (the "Adjustment Escrow"), and \$1,822,500 to be held in escrow to address Arcturus UAV's and/or the Sellers' indemnification obligations (the "Indemnification Escrow"). The Adjustment Escrow, less any negative post-Closing adjustment to the cash consideration paid at Closing, is to be released to the Arcturus Sellers upon completion of the post-Arcturus Closing purchase price adjustment process; the Indemnification Escrow, less any amounts paid or reserved, is to be released to the Arcturus Sellers 12 months following the Arcturus Closing. To further address potential breaches of Arcturus UAV's and the Sellers' representations and warranties beyond the application of the Indemnification Escrow, the Company also obtained representation and warranty insurance policies providing \$40,000,000 in coverage, subject to customary terms, exclusions and retention amounts.

Due to the timing of the close of the acquisition, the purchase accounting for the business combination is incomplete at the time of this filing. As a result, the Company is unable to provide the amounts recognized as of the acquisition date for the major classes of assets acquired and liabilities assumed, pre-acquisition contingencies and goodwill. In addition, the Company is unable to provide pro forma revenues and earnings of the combined entity. All required disclosures will be included in the Company's Annual Report on Form 10-K for the fiscal year quarter ending April 30, 2021.

### **Credit Facilities**

In connection with the consummation of the Arcturus Acquisition on February 19, 2021, the Company, as borrower, and Arcturus UAV, as guarantor, entered into a Credit Agreement with certain lenders, letter of credit issuers, Bank of America, N.A., as the administrative agent and the swingline lender, and BofA Securities, Inc., JPMorgan Chase Bank, N.A., and U.S. Bank National Association, as joint lead arrangers and joint bookrunners (the "Credit Agreement").

The Credit Agreement and its associated Security and Pledge Agreement set forth the terms and conditions for (i) a five-year \$100 million revolving credit facility, which includes a \$10 million sublimit for the issuance of standby and commercial letters of credit (the "Revolving Facility"), and (ii) a five-year amortized \$200 million term A loan (the "Term Loan Facility", and together with the Revolving Facility, the "Credit Facilities"). Certain existing letters of credit issued by JPMorgan Chase Bank were reserved for under the Revolving Facility at closing and remain outstanding under the terms thereof. Upon execution of the Credit Agreement, the Company drew the full principal of the Term Loan Facility for use in the acquisition of Arcturus UAV. The Term Loan Facility requires payment of 5% of the outstanding obligations in each of the first four loan years, with the remaining 80.0% payable in loan year five, consisting of three quarterly payments of 1.25% each, with the remaining outstanding principal amount of the Term Loan Facility due and payable on the final maturity date. Proceeds from the Term Loan Facility were used in part to finance a portion of the cash consideration for the Arcturus Acquisition. Borrowings under the Revolving Facility may be used for working capital and other general corporate purposes.

The Credit Facilities provide the Company with a choice of interest rates between (a) LIBOR (with a 0% floor) plus the Applicable Margin; or (b) Base Rate (defined as the highest of (a) the Federal Funds Rate plus one-half percent (0.50%), (b) the Bank of America prime rate, and (c) the one (1) month LIBOR plus one percent (1.00%)) plus the Applicable Margin. The Applicable Margin is based upon the Consolidated Leverage Ratio (as defined in the Credit Agreement) and whether the Company elects LIBOR (ranging from 1.50 - 2.25%) or Base Rate (ranging from 0.50 - 1.25%). The Company is also responsible for certain commitment fees from 0.20-0.35% depending on the Consolidated Leverage Ratio, and administrative agent expenses incurred in relation to the Credit Facilities. In the event of a default, an additional 2% default interest rate would apply.

Any borrowing under the Credit Agreement may be repaid, in whole or in part, at any time and from time to time without premium or penalty other than customary breakage costs, and any amounts repaid under the Revolving Facility may be reborrowed. Mandatory prepayments are required under the revolving loans when borrowings and letter of credit usage exceed the aggregate revolving commitments of all lenders. Mandatory prepayments are also required in connection with the disposition of assets to the extent not reinvested and unpermitted debt transactions.

In support of its obligations pursuant to the Credit Facilities, the Company has granted security interests in substantially all of the personal property of the Company and its domestic subsidiaries, including a pledge of the equity interests in its subsidiaries (limited to 65% of outstanding equity interests in the case of foreign subsidiaries), and the proceeds thereof, with customary exclusions and exceptions. The Company's existing and future domestic subsidiaries, including Arcturus UAV (as of the closing of its acquisition by the Company), will be guarantors for the Credit Facilities.

The Credit Agreement contains certain customary representations and warranties and affirmative and negative covenants, including certain restrictions on the ability of the Company and its Subsidiaries (as defined in the Credit Agreement) to incur any additional indebtedness or guarantee indebtedness of others, to create liens on properties or assets, or to enter into certain asset and stock-based transactions. In addition, the Credit Agreement includes certain financial maintenance covenants, requiring that (x) the Consolidated Leverage Ratio (as defined in the Credit Agreement) shall not be more than 3.00 to 1.00 as of the end of any fiscal quarter and (y) the Consolidated Fixed Charge Coverage Ratio (as defined in the Credit Agreement) shall not be less than 1.25 to 1.00 as of the end of any fiscal quarter.

The Credit Agreement contains certain customary events of default, which include failure to make payments when due thereunder, the material inaccuracy of representations or warranties, failure to observe or perform certain covenants, cross-defaults, bankruptcy and insolvency-related events, certain judgments, certain ERISA-related events, invalidity of loan documents, or a Change of Control (as defined in the Credit Agreement). Upon the occurrence and continuation of an event of default, the Lenders may cease making future loans under the Credit Agreement and may declare all amounts owing under the Credit Agreement to be immediately due and payable.

### **Intelligent Systems Group Acquisition**

On February 23, 2021, the Company purchased certain assets of, and assumed certain liabilities of, the Intelligent Systems Group business segment (“ISG”) of Progeny Systems Corporation (the “ISG Acquisition”), a Virginia corporation (the “ISG Seller”), pursuant to the terms of an Asset Purchase Agreement (the “ISG Purchase Agreement”) of the same date by and among the Company, Seller and the sole shareholder of Seller (the “Beneficial Owner”). ISG is engaged in development of artificial intelligence-enabled computer vision, machine learning and perceptive autonomy technologies and provides related services to United States government customers.

In connection with the ISG Acquisition, the Company (i) paid a base purchase price of \$30,000,000 in cash at closing and (ii) may pay additional cash consideration of up to \$6,000,000 based on the achievement of certain revenue targets by ISG during the 3 years following closing, in each case, subject to the terms and conditions of the ISG Purchase Agreement, including certain customary adjustments.

As a condition to closing pursuant to the ISG Purchase Agreement, the Company and the ISG Seller entered into certain ancillary agreements, including a transition services agreement and two subleases pursuant to which the ISG Seller will provide the Company certain services and facilities space to accommodate the transition of ISG to the Company.

The parties to the ISG Purchase Agreement have made representations, warranties, and covenants that are customary for a transaction of this type, including, among other things, restrictions on the ISG Seller and the Beneficial Owner from engaging in certain competitive activities, as well as mutual indemnification obligations between the Company and the ISG Seller. To supplement certain indemnifications provided by the ISG Seller, the Company obtained a representation and warranty insurance policy.

Due to the timing of the close of the acquisition, the purchase accounting for the business combination is incomplete at the time of this filing. As a result, the Company is unable to provide the amounts recognized as of the acquisition date for the major classes of assets acquired and liabilities assumed, pre-acquisition contingencies and goodwill. In addition, the Company is unable to provide pro forma revenues and earnings of the combined entity. All required disclosures will be included in the Company's Annual Report on Form 10-K for the fiscal year quarter ending April 30, 2021.

### **Telerob Acquisition**

On December 3, 2020, the Company entered into a Share Purchase Agreement (the “Telerob Purchase Agreement”) with Unmanned Systems Investments GmbH, a German limited liability company incorporated under the laws of Germany (the “Telerob Seller”), and each of the unit holders of the Telerob Seller (collectively, the “Shareholders”), to purchase 100% of the issued and outstanding shares of Seller’s wholly-owned subsidiary, Telerob Gesellschaft für Fernhantierungstechnik mbH, a German company based in Ostfildern (near Stuttgart), Germany (“Telerob”), including Telerob’s wholly owned subsidiary, Telerob USA, Inc. (“Telerob USA,” and collectively with Telerob, the “Telerob Group”). The Telerob Group develops, manufactures, sells, and services remote-controlled ground robots and transport vehicles for civil and defense applications. Upon closing of the transactions contemplated by the Telerob Purchase Agreement, which is anticipated in the fourth quarter, Telerob will become a wholly-owned subsidiary of the Company.

Pursuant to the Telerob Purchase Agreement, the Company will pay approximately €37,455,000 (approximately \$45.4 million) in cash at the closing to the Telerob Seller, subject to certain purchase price adjustments, less (a) €3,000,000 (approximately \$3.6 million) to be held in escrow for breaches of the Telerob Seller's warranties; (b) transaction-related fees and costs incurred by the Telerob Seller; (c) 50% of the cost of obtaining the warranty insurance policy; and (d) payments to Shareholders or outside the ordinary course of business if made after September 30, 2020. In addition, at closing the Company will pay off approximately €7.8 million (approximately \$9.4 million) of certain indebtedness of the Telerob Group. This indebtedness may be offset by any cash on hand at the Telerob Group at closing. The escrow amount is to be released to the Telerob Seller, less any amounts paid or reserved, 30 months following the closing date.

In addition, the Telerob Seller may receive up to a total of €6,000,000 (approximately \$7.3 million) in additional cash consideration over a three year period contingent upon the achievement of three distinct milestones. The first two milestones are the achievement of specific revenue targets and the third milestone is obtaining certain contract awards from the U.S. military.

The transactions contemplated by the Telerob Purchase Agreement are subject to certain closing conditions, including: (i) clearance by the German government; (ii) the accuracy of each party's warranties (subject to customary materiality qualifiers); (iii) each party's compliance with its covenants and agreements contained in the Telerob Purchase Agreement (subject to customary materiality qualifiers); and (iv) other customary closing conditions.

## **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following is a discussion and analysis of our financial condition and the results of operations as of and for the periods presented below. The following discussion and analysis should be read in conjunction with the "Consolidated Financial Statements" and notes thereto included elsewhere in this Quarterly Report on Form 10-Q. This section and other parts of this Quarterly Report on Form 10-Q contain forward-looking statements that involve risks and uncertainties. In some cases, forward-looking statements can be identified by words such as "anticipates," "believes," "could," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "projects," "should," "will," "would" or similar expressions. Such forward-looking statements are based on current expectations, estimates and projections about our industry, our management's beliefs and assumptions made by our management. Forward-looking statements are not guarantees of future performance and our actual results may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended April 30, 2020, as updated by our subsequent filings under the Securities and Exchange Act of 1934, as amended ("the Exchange Act").

Unless required by law, we expressly disclaim any obligation to update publicly any forward-looking statements, whether as result of new information, future events or otherwise.

### **Critical Accounting Policies and Estimates**

The following should be read in conjunction with the critical accounting estimates presented in our Annual Report on Form 10-K for the fiscal year ended April 30, 2020.

Management's Discussion and Analysis of Financial Condition and Results of Operations discusses our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. When we prepare these consolidated financial statements, we are required to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Some of our accounting policies require that we make subjective judgments, including estimates that involve matters that are inherently uncertain. Our most critical estimates include those related to revenue recognition, inventory reserves for excess and obsolescence, intangible assets acquired in a business combination, goodwill, and income taxes. We base our estimates and judgments on historical experience and on various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for our judgments about the carrying values of assets and liabilities

that are not readily apparent from other sources. Our actual results may differ from these estimates under different assumptions or conditions.

We recognize revenue in accordance with ASU 2014-09, *Revenue from Contracts with Customers* (Topic 606). Topic 606 requires revenue to be recognized when promised goods or services are transferred to customers in amounts that reflect the consideration to which we expect to be entitled in exchange for those goods or services.

Revenue for small UAS product contracts with both the U.S. government and foreign governments are recognized at the point in time when the transfer of control passes to the customer, which is generally when title and risk of loss transfer. Revenue for TMS contracts is recognized over time as costs are incurred. Revenue for Customer-Funded R&D contracts is recognized over time as costs are incurred.

We review cost performance and estimates-to-complete at least quarterly and in many cases more frequently. Adjustments to original estimates for a contract's revenue, estimated costs at completion and estimated profit or loss are often required as work progresses under a contract, as experience is gained and as more information is obtained, even though the scope of work required under the contract may not change, or if contract modifications occur. The impact of revisions in estimate of completion for all types of contracts are recognized on a cumulative catch-up basis in the period in which the revisions are made. During the three and nine months ended January 30, 2021 and January 25, 2020, changes in accounting estimates on contracts recognized over time are presented below.

For the three months ended January 30, 2021 and January 25, 2020, favorable and unfavorable cumulative catch-up adjustments included in revenue were as follows (in thousands):

|                               | <b>Three Months Ended</b>   |                             |
|-------------------------------|-----------------------------|-----------------------------|
|                               | <b>January 30,<br/>2021</b> | <b>January 25,<br/>2020</b> |
| Gross favorable adjustments   | \$ 428                      | \$ 1,369                    |
| Gross unfavorable adjustments | (228)                       | (217)                       |
| Net favorable adjustments     | <u>\$ 200</u>               | <u>\$ 1,152</u>             |

For the three months ended January 30, 2021, favorable cumulative catch-up adjustments of \$0.4 million were primarily due to final cost adjustments on nine contracts, which individually were not material. For the same period, unfavorable cumulative catch-up adjustments of \$0.2 million were primarily related to higher than expected costs on 12 contracts, which individually were not material.

For the three months ended January 25, 2020, favorable cumulative catch-up adjustments of \$1.4 million were primarily due to final cost adjustments on seven contracts, which individually were not material. For the same period, unfavorable cumulative catch-up adjustments of \$0.2 million were primarily related to higher than expected costs on 13 contracts, which individually were not material.

|                               | <b>Nine Months Ended</b>    |                             |
|-------------------------------|-----------------------------|-----------------------------|
|                               | <b>January 30,<br/>2021</b> | <b>January 25,<br/>2020</b> |
| Gross favorable adjustments   | \$ 1,898                    | \$ 1,878                    |
| Gross unfavorable adjustments | (1,103)                     | (709)                       |
| Net favorable adjustments     | <u>\$ 795</u>               | <u>\$ 1,169</u>             |

For the nine months ended January 30, 2021, favorable cumulative catch-up adjustments of \$1.9 million were primarily due to final cost adjustments on 15 contracts, which individually were not material. For the same period, unfavorable cumulative catch-up adjustments of \$1.1 million were primarily related to higher than expected costs on 23 contracts, which individually were not material.

For the nine months ended January 25, 2020, favorable cumulative catch-up adjustments of \$1.9 million were primarily due to final cost adjustments on 17 contracts. The Company revised its estimates of the total expected costs to complete a contract associated with a design and development agreement, which had a favorable impact of \$1.0 million. For the same period, unfavorable cumulative catch-up adjustments of \$0.7 million were primarily related to higher than expected costs on 16 contracts, which individually were not material.

### Fiscal Periods

Due to our fixed year end date of April 30, our first and fourth quarters each consist of approximately 13 weeks. The second and third quarters each consist of exactly 13 weeks. Our first three quarters end on a Saturday. Our 2021 fiscal year ends on April 30, 2021 and our fiscal quarters end on August 1, 2020, October 31, 2020 and January 30, 2021, respectively.

### Results of Operations

The following tables set forth our results of operations for the periods indicated (in thousands):

#### *Three Months Ended January 30, 2021 Compared to Three Months Ended January 25, 2020*

|   | Three Months Ended  |                     |
|---|---------------------|---------------------|
|   | January 30,<br>2021 | January 25,<br>2020 |
| Revenue                                   | \$ 78,782           | \$ 61,891           |
| Cost of sales                             | 50,141              | 38,395              |
| Gross margin                              | 28,641              | 23,496              |
| Selling, general and administrative       | 15,652              | 13,223              |
| Research and development                  | 13,631              | 11,381              |
| Loss from operations                      | (642)               | (1,108)             |
| Other income:                             |                     |                     |
| Interest income, net                      | 94                  | 1,122               |
| Other (expense) income, net               | (37)                | 120                 |
| (Loss) income before income taxes         | (585)               | 134                 |
| Benefit from income taxes                 | (924)               | (38)                |
| Equity method investment loss, net of tax | (81)                | (1,200)             |
| Net income (loss)                         | \$ 258              | \$ (1,028)          |

**Revenue.** Revenue for the three months ended January 30, 2021 was \$78.8 million, as compared to \$61.9 million for the three months ended January 25, 2020, representing an increase of \$16.9 million, or 27%. The increase in revenue was due to an increase in product revenue of \$21.9 million, partially offset by a decrease in service revenue of \$5.0 million. The increase in product revenue was primarily due to an increase in small UAS and TMS revenue. Within small UAS, increases in product deliveries to customers within the U.S. Department of Defense were partially offset by decreases in product deliveries to international allied customers. The decrease in service revenue was primarily due to a decrease in customer-funded R&D revenue.

**Cost of Sales.** Cost of sales for the three months ended January 30, 2021 was \$50.1 million, as compared to \$38.4 million for the three months ended January 25, 2020, representing an increase of \$11.7 million, or 31%. The increase in cost of sales was a result of an increase in product cost of sales of \$14.7 million, partially offset by a decrease in service costs of sales of \$3.0 million. The increase in product cost of sales was primarily due to an increase in product sales and an unfavorable mix. The decrease in service costs of sales was primarily due to the decrease in service revenue. As a percentage of revenue, cost of sales increased from 62% to 64%, primarily due to an unfavorable product mix, partially offset by an increase in the proportion of product sales to total revenue.

**Gross Margin.** Gross margin for the three months ended January 30, 2021 was \$28.6 million, as compared to \$23.5 million for the three months ended January 25, 2020, representing an increase of \$5.1 million, or 22%. The increase in gross margin was due to an increase in product margin of \$7.2 million, partially offset by a decrease in service margin of \$2.1 million. The increase in product margin was primarily due to the increase in product sales, partially offset by an unfavorable product mix. The decrease in service margin was primarily due to the decrease in service revenue. As a percentage of revenue, gross margin decreased from 38% to 36%, primarily due to an unfavorable product mix, partially offset by an increase in the proportion of product sales to total revenue.

**Selling, General and Administrative.** SG&A expense for the three months ended January 30, 2021 was \$15.7 million, or 20% of revenue, as compared to SG&A expense of \$13.2 million, or 21% of revenue, for the three months ended January 25, 2020. The increase in SG&A expense was primarily due to an increase in acquisition related expenses of \$3.1 million related to the Arcturus Acquisition, ISG Acquisition and the pending acquisition of Telerob.

**Research and Development.** R&D expense for the three months ended January 30, 2021 was \$13.6 million, or 17% of revenue, as compared to R&D expense of \$11.4 million, or 18% of revenue, for the three months ended January 25, 2020. R&D expense increased by \$2.3 million, or 20%, for the three months ended January 30, 2021, primarily due to an increase in development activities regarding enhanced capabilities for our products and development of new product lines.

**Interest Income, net.** Interest income, net for the three months ended January 30, 2021 was \$0.1 million compared to interest income, net of \$1.1 million for the three months ended January 25, 2020. The decrease in interest income was primarily due to a decrease in the average interest rate earned on our investment portfolio.

**Other (Expense) Income, net.** Other expense, net, for the three months ended January 30, 2021 was \$37 thousand compared to other income, net of \$0.1 million for the three months ended January 25, 2020.

**Benefit from Income Taxes.** Our effective income tax rate was 157.9% for the three months ended January 30, 2021, as compared to (28.4)% for the three months ended January 25, 2020. The decrease in the effective income tax rate was primarily due to lower projected annual effective tax rate in the current fiscal year over last fiscal year.

**Equity Method Investment Loss, net of Tax.** Equity method investment loss, net of tax for the three months ended January 30, 2021 was \$0.1 million compared to \$1.2 million for the three months ended January 25, 2020.

**Nine Months Ended January 30, 2021 Compared to Nine Months Ended January 25, 2020**

|   | <b>Nine Months Ended</b>    |                             |
|---|-----------------------------|-----------------------------|
|   | <b>January 30,<br/>2021</b> | <b>January 25,<br/>2020</b> |
| Revenue                                   | \$ 258,897                  | \$ 232,073                  |
| Cost of sales:                            | 153,994                     | 132,139                     |
| Gross margin                              | 104,903                     | 99,934                      |
| Selling, general and administrative       | 42,640                      | 43,146                      |
| Research and development                  | 36,710                      | 30,948                      |
| Income from operations                    | 25,553                      | 25,840                      |
| Other income:                             |                             |                             |
| Interest income, net                      | 417                         | 3,717                       |
| Other income, net                         | 68                          | 632                         |
| Income before income taxes                | 26,038                      | 30,189                      |
| Provision for income taxes                | 2,774                       | 3,203                       |
| Equity method investment loss, net of tax | (10,891)                    | (3,410)                     |
| Net income                                | <u>\$ 12,373</u>            | <u>\$ 23,576</u>            |



**Revenue.** Revenue for the nine months ended January 30, 2021 was \$258.9 million, as compared to \$232.1 million for the nine months ended January 25, 2020, representing an increase of \$26.8 million, or 12%. The increase in revenue was due an increase in product revenue of \$22.6 million and an increase in service revenue of \$4.2 million. The increase in product deliveries was primarily due to an increase in TMS revenue and an increase in product deliveries of small UAS. Within small UAS, increases in product deliveries to customers within the U.S. Department of Defense were partially offset by decreases in product deliveries to international allied customers. The increase in service revenue was primarily due to an increase in customer-funded R&D revenue, partially offset by a decrease in engineering services revenue.

**Cost of Sales.** Cost of sales for the nine months ended January 30, 2021 was \$154.0 million, as compared to \$132.1 million for the nine months ended January 25, 2020, representing an increase of \$21.9 million, or 17%. The increase in cost of sales was a result of an increase in product cost of sales of \$19.8 million and an increase in service costs of sales of \$2.1 million. The increase in product costs was primarily due to the increase in product deliveries and an unfavorable product mix. The increase in service costs of sales was primarily due to the increase in service revenue. As a percentage of revenue, cost of sales increased from 57% to 59%, primarily due to an unfavorable product mix.

**Gross Margin.** Gross margin for the nine months ended January 30, 2021 was \$104.9 million, as compared to \$99.9 million for the nine months ended January 25, 2020. The increase in gross margin was primarily due to an increase in product margin of \$2.8 million and an increase in service margin of \$2.2 million. The increase in product margin was primarily due to an increase in product sales, partially offset by an unfavorable product mix. The increase in service margin was primarily due to an increase in service revenue. As a percentage of revenue, gross margin decreased from 43% to 41%, primarily due to an unfavorable product mix.

**Selling, General and Administrative.** SG&A expense for the nine months ended January 30, 2021 was \$42.6 million, or 16% of revenue, as compared to SG&A expense of \$43.1 million, or 19% of revenue, for the nine months ended January 25, 2020. The decrease in SG&A expense was primarily due to lower advertising, business travel and trade show expenses primarily related to COVID-19 related restrictions, partially offset by an increase in employee related expenses and acquisition related expenses of \$3.1 million related to the Arcturus Acquisition, ISG Acquisition and the pending acquisition of Telerob.

**Research and Development.** R&D expense for the nine months ended January 30, 2021 was \$36.7 million, or 14% of revenue, as compared to R&D expense of \$30.9 million, or 13% of revenue, for the nine months ended January 25, 2020. R&D expense increased by \$5.8 million, or 19%, for the nine months ended January 30, 2021, primarily due to an increase in development activities regarding enhanced capabilities for our products and development of new product lines.

**Interest Income, net.** Interest income, net for the nine months ended January 30, 2021 was \$0.4 million compared to interest income, net of \$3.7 million for the nine months ended January 25, 2020. The decrease in interest income was primarily due to a decrease in the average interest rate earned on our investment portfolio.

**Other Income, net.** Other income, net, for the nine months ended January 30, 2021 was \$0.1 million compared to other income, net of \$0.6 million for the nine months ended January 25, 2020. The decrease in other income, net was primarily due to a decrease in transition services performed on behalf of the buyer of the discontinued EES Business.

**Provision for Income Taxes.** Our effective income tax rate was 10.7% for the nine months ended January 30, 2021, as compared to 10.6% for the nine months ended January 25, 2020.

**Equity Method Investment Loss, net of Tax.** Equity method investment loss, net of tax for the nine months ended January 30, 2021 was a loss of \$10.9 million compared to equity method investment loss, net of tax of \$3.4 million for the nine months ended January 25, 2020. The increase was primarily due to a loss of \$8.4 million for our proportion of HAPSMobile's impairment of its investment in Loon LLC.

## **Backlog**

Consistent with ASC 606, we define funded backlog as remaining performance obligations under firm orders for which funding is currently appropriated to us under a customer contract. As of January 30, 2021, our funded backlog was approximately \$103.9 million.

In addition to our funded backlog, we also had unfunded backlog of \$116.1 million as of January 30, 2021. Unfunded backlog does not meet the definition of a performance obligation under ASC Topic 606. We define unfunded backlog as the total remaining potential order amounts under cost reimbursable and fixed price contracts with (i) multiple one-year options and indefinite delivery, indefinite quantity (“IDIQ”) contracts, or (ii) incremental funding. Unfunded backlog does not obligate the customer to purchase goods or services. There can be no assurance that unfunded backlog will result in any orders in any particular period, if at all. Management believes that unfunded backlog does not provide a reliable measure of future estimated revenue under our contracts. Unfunded backlog, with the exception of the remaining potential value of the FCS domain, does not include the remaining potential value associated with a U.S. Army IDIQ-type contract for small UAS because values for each of the other domains within the contract have not been disclosed by the customer, and we cannot be certain that we will secure all task orders issued against the contract.

Because of possible future changes in delivery schedules and/or cancellations of orders, backlog at any particular date is not necessarily representative of actual sales to be expected for any succeeding period, and actual sales for the year may not meet or exceed the backlog represented. Our backlog is typically subject to large variations from quarter to quarter as existing contracts expire or are renewed or new contracts are awarded. A majority of our contracts, specifically our IDIQ contracts, do not currently obligate the U.S. government to purchase any goods or services. Additionally, all U.S. government contracts included in backlog, whether or not they are funded, may be terminated at the convenience of the U.S. government.

## **Liquidity and Capital Resources**

On February 19, 2021 in connection with the consummation of the Arcturus Acquisition, we entered into a Credit Agreement for (i) a five-year \$100 million revolving credit facility, which includes a \$10 million sublimit for the issuance of standby and commercial letters of credit, and (ii) a five-year amortized \$200 million term A loan (together the “Credit Facilities”). The Term Loan Facility requires payment of 5% of the outstanding obligations in each of the first four loan years, with the remaining 80.0% payable in loan year five, consisting of three quarterly payments of 1.25% each, with the remaining outstanding principal amount of the Term Loan Facility due and payable on the final maturity date. Proceeds from the Term Loan Facility were used in part to finance a portion of the cash consideration for the Arcturus Acquisition. Borrowings under the Revolving Facility may be used for working capital and other general corporate purposes. Refer to Note 18—Subsequent Events to our unaudited consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for further details.

We anticipate funding our normal recurring trade payables, accrued expenses, ongoing R&D costs and obligations under the Credit Facilities through our existing working capital and funds provided by operating activities including those provided by our recent acquisitions of Arcturus UAV and ISG and our pending acquisition of Telerob. The majority of our purchase obligations are pursuant to funded contractual arrangements with our customers. We believe that our existing cash, cash equivalents, cash provided by operating activities and other financing sources will be sufficient to meet our anticipated working capital, capital expenditure requirements, future obligations related to the recent acquisitions and obligations under the Credit Facilities during the next twelve months. There can be no assurance, however, that our business will continue to generate cash flow at current levels. If we are unable to generate sufficient cash flow from operations, then we may be required to sell assets, reduce capital expenditures or draw on our Credit Facilities. We anticipate that existing sources of liquidity, Credit Facilities, and cash flows from operations will be sufficient to satisfy our cash needs for the foreseeable future.

Our primary liquidity needs are for financing working capital, investing in capital expenditures, supporting product development efforts, introducing new products and enhancing existing products, marketing acceptance and adoption of our products and services and financing our pending acquisition of Telerob. Our future capital requirements, to a certain extent, are also subject to general conditions in or affecting the defense industry and are subject to general economic,

political, financial, competitive, legislative and regulatory factors that are beyond our control. Moreover, to the extent that existing cash, cash equivalents, cash from operations, and cash from our Credit Facilities are insufficient to fund our future activities, we may need to raise additional funds through public or private equity or debt financing, subject to the limitations specified in our Credit Facility agreement. In addition, we may also need to seek additional equity funding or debt financing if we become a party to any agreement or letter of intent for potential investments in, or acquisitions of, businesses, services or technologies.

Our working capital requirements vary by contract type. On cost-plus-fee programs, we typically bill our incurred costs and fees monthly as work progresses, and therefore working capital investment is minimal. On fixed-price contracts, we typically are paid as we deliver products, and working capital is needed to fund labor and expenses incurred during the lead time from contract award until contract deliveries begin.

To date, COVID-19 has not had a significant impact on our liquidity, cash flows or capital resources. However, the continued spread of COVID-19 has led to disruption and volatility in the global capital markets, which, depending on future developments, could impact our capital resources and liquidity in the future. In consideration of the impact of the COVID-19 pandemic, we continue to hold a significant portion of our investments in cash and cash equivalents and U.S. government and U.S. government agency securities.

Although not material in value alone or in aggregate, during the nine months ended January 30, 2021, we made certain commitments outside of the ordinary course of business, including capital contributions of \$2.1 million to a limited partnership fund. Under the terms of the limited partnership agreement, we have committed to make capital contributions totaling \$10.0 million to the fund of which \$2.9 million was remaining at January 30, 2021.

#### Cash Flows

The following table provides our cash flow data for the nine months ended January 30, 2021 and January 25, 2020 (in thousands):

|   | Nine Months Ended   |                     |
|---|---------------------|---------------------|
|   | January 30,<br>2021 | January 25,<br>2020 |
|   | (Unaudited)         |                     |
| Net cash provided by operating activities | \$ 78,962           | \$ 15,066           |
| Net cash used in investing activities     | \$ (6,200)          | \$ (50,362)         |
| Net cash used in financing activities     | \$ (3,361)          | \$ (916)            |

**Cash Provided by Operating Activities.** Net cash provided by operating activities for the nine months ended January 30, 2021 increased by \$63.9 million to \$79.0 million, as compared to net cash provided by operating activities of \$15.1 million for the nine months ended January 25, 2020. The increase in net cash provided by operating activities was primarily due to an increase in cash as a result of changes in operating assets and liabilities of \$64.3 million, largely related to collections of receivables, and losses from equity method investments of \$7.5 million, partially offset by a decrease in net income \$11.2 million.

**Cash Used in Investing Activities.** Net cash used in investing activities decreased by \$44.2 million to \$6.2 million for the nine months ended January 30, 2021, as compared to net cash used by investing activities of \$50.4 million for the nine months ended January 25, 2020. The decrease in net cash used in investing activities was primarily due a decrease in cash used in business acquisition of \$18.6 million and a decrease in purchases net of redemptions of available-for-sale investments of \$22.6 million, partially offset by an increase in purchases net of redemptions of held-to-maturity investments of \$4.4 million.

**Cash Used in Financing Activities.** Net cash used in financing activities increased by \$2.4 million to \$3.4 million for the nine months ended January 30, 2021, as compared to net cash used by financing activities of \$0.9 million for the nine months ended January 25, 2020. The increase in net cash used by financing activities was primarily due to an increase in holdback and retention payments related to a prior business acquisition of \$1.5 million and an increase in tax withholding payments related to net settlement of equity awards of \$0.9 million.

### **Contractual Obligations**

During the three months ended January 30, 2021, there were no material changes in our contractual obligations and commercial commitments from those disclosed in our Annual Report on Form 10-K for the fiscal year ended April 30, 2020.

### **Off-Balance Sheet Arrangements**

As of January 30, 2021, we had no off-balance sheet arrangements as defined in Item 303(a)(4) of Regulation S-K.

### **Inflation**

Our operations have not been, and we do not expect them to be, materially affected by inflation. Historically, we have been successful in adjusting prices to our customers to reflect changes in our material and labor costs.

### **New Accounting Standards**

Please refer to Note 1—Organization and Significant Accounting Policies to our unaudited consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for a discussion of new accounting pronouncements and accounting pronouncements adopted during the nine months ended January 30, 2021.

## **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

In the ordinary course of business, we are exposed to various market risk factors, including fluctuations in interest rates, changes in general economic conditions, domestic and foreign competition, and foreign currency exchange rates.

### ***Interest Rate Risk***

It is our policy not to enter into interest rate derivative financial instruments. On February 19, 2021 in connection with the consummation of the Arcturus Acquisition, we entered into the Credit Facilities. The current outstanding balance of the Credit Facilities is \$200 million and bears a variable interest rate. If market interest rates increase significantly, interest due on the Credit Facilities would increase.

### ***Foreign Currency Exchange Rate Risk***

Since a significant part of our sales and expenses are denominated in U.S. dollars, we have not experienced significant foreign exchange gains or losses to date. On December 3, 2020, we entered into a share purchase agreement to purchase 100% of the issued and outstanding shares of Seller's wholly-owned subsidiary, Telerob Gesellschaft für Fernhantierungstechnik mbH for €51 million inclusive of certain contingent consideration payments. In addition, we occasionally engage in forward contracts in foreign currencies to limit our exposure on non-U.S. dollar transactions.

## **ITEM 4. CONTROLS AND PROCEDURES**

### ***Controls and Procedures***

We maintain disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired

control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by Rule 13a-15(b) under the Exchange Act, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as of January 30, 2021, the end of the period covered by this Quarterly Report on Form 10-Q.

Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that, as of January 30, 2021, the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were effective and were operating at a reasonable assurance level.

***Changes in Internal Control over Financial Reporting***

There were no changes in our internal control over financial reporting or in other factors identified in connection with the evaluation required by paragraph (d) of Rules 13a-15 or 15d-15 under the Exchange Act that occurred during the quarter ended January 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act).

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

On February 22, 2019, Webasto filed a lawsuit, which was subsequently amended on April 5, 2019, against us in Delaware Superior Court, arising from the sale of the EES Business to Webasto in June 2018. The lawsuit generally alleges several claims against us for breach of contract, indemnity, declaratory judgment, and fraud and misrepresentation, including allegations regarding inaccuracy of certain diligence disclosures, failure to provide certain consents to contract assignments and related to the previously announced recall. Webasto seeks to recover the costs of the recall and other damages totaling over \$100 million in addition to attorneys' fees, costs, and punitive damages. Additionally, Webasto is seeking a declaratory judgment that we did not meet the requirements to receive the additional \$6.5 million of the purchase price which was held back at the closing of the transaction (the "Holdback Amount"). On August 16, 2019, we filed our answer to Webasto's complaint and a counterclaim against Webasto seeking payment of the Holdback Amount and declaratory relief regarding Webasto's cancellation of an assigned contract. As to the Webasto lawsuit, our initial evaluation is that many of the allegations are meritless and that we lack sufficient information to fully analyze other allegations at this time. Discovery in this lawsuit has begun and is ongoing and, as of June 17, 2020, a trial has been set for July 14, 2021. At present, the parties continue to engage in discovery and started conducting depositions in October 2020. Depositions ceased in November 2020 due to restrictions resulting from the global COVID-19 pandemic and began again in February 2021. We expect to seek and obtain a trial continuance to account for pandemic-related delays, and therefore anticipate a new trial date in early 2022. We continue to mount a vigorous defense.

On August 14, 2019, Benchmark, the company that assembled the products subject to the recall, served a demand for arbitration to AeroVironment and Webasto pursuant to its contracts with AeroVironment and Webasto, respectively. In December 2019, Benchmark dismissed, without prejudice, all claims against us in the demand for arbitration. The recall remains a significant part of our pending litigation with Webasto.

We are subject to lawsuits, government investigations, audits and other legal proceedings from time to time in the ordinary course of our business. It is not possible to predict the outcome of any legal proceeding with any certainty. The outcome or costs we incur in connection with a legal proceeding could adversely impact our operating results and financial position.

### ITEM 1A. RISK FACTORS

Except as set forth below, there have been no material changes to the risk factors disclosed under Part I, Item 1A, "Risk Factors," of our Annual Report on Form 10-K for the fiscal year ended April 30, 2020. Please refer to that section for disclosures regarding the risks and uncertainties related to our business.

***Acquisitions could be difficult to integrate, divert the attention of key personnel, disrupt our business, dilute stockholder value and impair our financial results.***

In February 2021 we announced the acquisition of Arcturus UAV, Inc., which designs, engineers, tools, manufactures and provides unmanned UAS and related products and services, and ISG, which develops artificial intelligence-enabled computer vision, machine learning and perceptive autonomy technologies and provides related services. Additionally, in December 2020, we announced the planned acquisition of Telerob Gesellschaft für Fernhantierungstechnik mbH, a German company ("Telerob") that develops, manufactures, sells, and services remote-controlled ground robots and transport vehicles for civil and defense applications. We intend to consider additional acquisitions that could add to our customer base, technological capabilities or system offerings. Acquisitions involve numerous risks, any of which could harm our business, including the following:

- difficulties in integrating the operations, technologies, products, existing contracts, accounting and personnel of each target company and realizing the anticipated synergies of the combined businesses;
- difficulties in supporting and transitioning customers, if any, of each target company;

- diversion of financial and management resources from existing operations;
- the price we pay or other resources that we devote may exceed the value we realize, or the value we could have realized if we had allocated the purchase price or other resources to another opportunity;
- risks of entering new markets in which we have limited or no experience (including the introduction of international operations upon the planned acquisition of Telerob);
- potential loss of key employees, customers and strategic alliances from either our current business or the target company's business;
- assumption of unanticipated problems or latent liabilities, such as problems with the quality of the target company's products or its regulatory compliance;
- expanded regulatory compliance complexity and risk; and
- inability to generate sufficient revenue to offset acquisition costs.

Acquisitions also frequently result in the recording of goodwill and other intangible assets which are subject to potential impairments in the future that could harm our financial results. In addition, if we finance acquisitions by issuing equity, or securities convertible into equity, such as the stock consideration issued in the Arcturus Closing, then our existing stockholders may be diluted, which could lower the market price of our common stock. If we finance acquisitions through debt, such as the Credit Facilities we entered into in connection with the consummation of the Arcturus Acquisition, then such future debt financing may contain covenants or other provisions that limit our operational or financial flexibility.

If we fail to properly evaluate acquisitions or investments, then we may not achieve the anticipated benefits of any such acquisitions, and we may incur costs in excess of what we anticipate. The failure to successfully evaluate and execute acquisitions or investments or otherwise adequately address these risks could materially harm our business and financial results.

***Borrowings under our credit facilities could adversely affect our financial condition and restrict our operating flexibility.***

On February 19, 2021, in connection with the consummation of the Arcturus Acquisition, we entered into the Credit Agreement, which, together with its associated Security and Pledge Agreement, sets forth the terms and conditions of the Term Loan Facility and Revolving Facility. Upon execution of the Credit Agreement, we drew down \$200.0 million, the full principal amount of the Term Loan Facility, to partially finance the acquisition of Arcturus UAV.

The Term Loan Facility has a five-year term expiring in February 2026 and bears interest, at our option, either at a LIBOR rate or a base rate plus a fixed applicable margin dependent on our consolidated leverage ratio under the terms of the agreement. We are required to pay 5.0% of the outstanding obligations under the Term Loan Facility in each of the first four loan years, with the remaining 80.0% payable in the fifth loan year, consisting of three quarterly payments of 1.25% each, with the remaining outstanding principal amount of the Term Loan Facility due and payable on the maturity date. The Revolving Facility as a term of 5 years. As of February 19, 2021 we have only letters of credit issued pursuant to the Revolving Facility, totaling \$3.6 million and replacing prior letters of credit outstanding.

In support of our obligations under the Credit Facilities, we have granted security interests in substantially all of our personal property and that of our domestic subsidiaries, including a pledge of the equity interests in our subsidiaries (limited to 65% of outstanding equity interests in the case of our foreign subsidiaries), subject to customary exclusions and exceptions. In addition, our domestic subsidiaries, including Arcturus UAV, are required to be guarantors of the Credit Facilities.

In addition, our increased level of indebtedness may have important consequences to us, including:

- increasing our vulnerability to adverse general economic and industry conditions;
- requiring us to dedicate a portion of our cash flows to the payment of interest and when applicable, principal, on our indebtedness and other obligations thereby reducing the availability of our cash flow to fund working capital, capital expenditures, research and development efforts, execution of our business strategy, acquisitions and other general corporate purposes;
- limiting our flexibility in planning for, or reacting to, changes in the economy, the defense industry, and the markets in which we operate;
- subjecting us to maintenance of various financial covenants and adherence to certain other affirmative and negative covenants, requiring us to seek lender consent or waiver in relation to our financial performance or other potential strategic actions in the future;
- placing us at a competitive disadvantage compared to our competitors with less indebtedness;
- exposing us to substantial interest rate risk due to the variable interest rate under the Credit Facilities, such that, if interest rates were to increase substantially during the term of the Credit Facilities, the resulting increase in our interest payment obligations could adversely affect our operating results and our ability to service the indebtedness under the Credit Facilities; and
- making it more difficult for us to borrow additional funds in the future to fund our growth, acquisitions, working capital, capital expenditures, and other purposes.

To the extent we incur additional indebtedness, the risks described above could increase.

If we do not have sufficient funds to repay the Term Loan Facility when it becomes due in 2026, it may be necessary to refinance our debt through additional debt or equity financings. If, at the time of any such refinancing, prevailing interest rates or other factors result in higher interest rates on such refinanced debt, such increases in our interest expense could have an adverse effect on our business, results of operations and financial condition.

The Credit Agreement contain customary events of default, upon the occurrence and during the continuation of which, after any applicable grace period, the lenders would have the ability to declare the loans due and payable in whole or in part. Among other things, if we fail to make required debt payments, or if we fail to comply with financial or other covenants in the Credit Agreement, we would be in default under the terms thereof. The Credit Agreement contains customary negative covenants that include, subject to customary exclusions:

- Restrictions on additional liens on our assets.
- Restrictions on incurring additional indebtedness.
- Restrictions on new investments, including acquisitions, mergers, investments in subsidiaries that are not guarantors of the debt, and joint ventures.
- Restrictions on disposal of assets.
- Restrictions on payments of cash dividends.
- Restrictions on changing the nature of our business.
- A requirement to maintain a maximum consolidated leverage ratio and a minimum fixed charge coverage ratio.



- Restrictions on changes to our accounting policies.
- Restrictions on payments of any junior indebtedness.

To the extent we would wish to engage in any of the prohibited behaviors, we would need to obtain consent under the Credit Agreement, which may not be timely forthcoming or at all. If a default event were to occur, we may not have sufficient available cash to repay such outstanding debt obligations at the time they become due, or be able to refinance such debt on acceptable terms or at all.

Any of the foregoing limitations or events could materially and adversely affect our financial condition and results of operations.

***We are presently classified as a small business Defense contractor and the loss of our small business status may adversely affect our ability to compete for small business set-aside US government contracts.***

Because we have fewer than 1,500 employees, we are presently classified as a small business Defense contractor under our primary North American Industry Classification Systems (NAICS) industry and product specific codes (336411 - Aircraft Manufacturing) which are regulated in the United States by the Small Business Administration (SBA). Businesses that meet the small business size standard for the relevant NAICS code are able to bid on small business set-aside contracts. While we do not presently derive a substantial portion of our business from contracts which are set-aside for small businesses, we are able to bid on small business set-aside contracts as well as contracts which are open to non-small business entities. As we continue to grow and add employees, including through acquisitions, or if NAICS codes are revised, we could cease to qualify as a small business, which could adversely impact our eligibility for special small business programs and limit our ability to partner with other business entities that seek to team with small business entities as may be required under a specific contract. If we out grow our small business classification, we would not be eligible to serve as the prime contractor on small business set aside programs and may need to implement a small business subcontracting plan with other companies that qualify as a small business, for SBA approval. The loss of our small business classification could have a material adverse effect on our financial position and/or results of operations. Additionally, if we are no longer eligible for the small business exemption from compliance with the full range of Cost Accounting Standards (“CAS”), we would be required to demonstrate compliance with such standards upon the award of a contract subject to the full range of CAS, which will impose additional administrative costs on our business, and may significantly affect the manner in which we conduct our business with our customers and adversely affect our results of operations.

***We face various risks related to the COVID-19 novel coronavirus pandemic and similar public health crises which may adversely impact our business.***

In December 2019, a novel strain of a virus named SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), or coronavirus, which causes coronavirus disease, or COVID-19, was reported to have surfaced in Wuhan, China, and has reached multiple other regions and countries, including the United States and, more specifically, Southern California, where our primary operations are located. The coronavirus pandemic is evolving, and to date has led to the implementation of various responses, including government-imposed stay-at-home orders and quarantines, travel restrictions and other public health safety measures. Although our operations have mostly continued uninterrupted during the COVID-19 outbreak, adoption of work from home protocols, social distancing measures in the workplace and other responsive actions have required certain changes to our operations. If the current COVID-19 outbreak continues and results in additional periods of travel and other similar logistics restrictions, this may further reduce our and our customers’ capabilities to travel, domestically and internationally, which may impact our ability to perform certain contracts, develop and renew contracts, or market our products, or could otherwise disrupt portions of our business and have a material adverse effect on our results of operations.

Global health concerns, such as coronavirus, could result in social, economic and labor instability in the countries in which we or the third parties with whom we engage operate. It is not currently possible to ascertain the overall impact of the COVID-19 outbreak, if any, on our business. The extent to which COVID-19 impacts on our business, financial

condition and results of operations and those of our third party partners will depend on future developments as to the geographic presence of COVID-19 and government and healthcare responses to such spread including the duration of the outbreak, new information that may emerge concerning the severity of the coronavirus and the actions to contain the coronavirus or treat its impact, among others, which remain highly uncertain. We cannot presently predict the scope and severity of any potential business disruptions, but if we or any of the third parties with whom we engage, including suppliers and other third parties with whom we conduct business, were to experience prolonged shutdowns or other business disruptions, including a slowdown in the effectiveness of our workforce due to illness or otherwise, our ability to conduct our business in the manner presently planned could be materially and negatively impacted. The COVID-19 outbreak has caused delays in the timing of our customers' awarding of contracts to us, and while such delays have not yet had a significant impact on our business, there can be no assurances that any such delays would not have a material adverse impact on our business and results of operations in the future. The COVID-19 pandemic could also cause delays or limits in the ability of our customers to make timely payments to us. Additionally, our government customers may have more limited resources available to purchase our products due to deteriorating economic conditions or due to the diversion of resources to other budget priorities, including efforts to address the COVID-19 pandemic. The future progression of the COVID-19 outbreak and its resulting effects on our business, financial condition and results of operations are uncertain and are continuing to be assessed.

***A decline in the U.S. and other government budgets, changes in spending or budgetary priorities, or delays in contract awards may significantly and adversely affect our future revenue.***

Because we generate a significant portion of our total sales and our small UAS and tactical missile systems sales from the U.S. government and its agencies, our results of operations could be adversely affected by government spending caps or changes in government budgetary priorities, as well as by delays in the government budget process, program starts, or the award of contracts or orders under existing contracts. As a result, our business may be impacted due to shifts in the political environment and changes in the government and agency leadership positions as a result of the 2020 presidential election, as well as future election cycles. We cannot assure you that current levels of congressional funding for our products and services will continue and that our business will not decline. If annual budget appropriations or continuing resolutions are not enacted timely, we could face U.S. government shutdowns, which could adversely impact our programs and contracts with the U.S. government, our ability to receive timely payment from U.S. government entities and our ability to timely obtain export licenses for our products to fulfill contracts with our international customers.

Additionally, there is a possibility that political decisions following the 2020 presidential and congressional campaigns, or an impasse on policy issues, could impact future spending and program authorizations may not increase or may decrease or shift to programs in areas in which we do not provide services or are less likely to be awarded contracts. Such changes in spending authorizations and budgetary priorities may occur as a result of shifts in spending priorities from defense-related and other programs as a result of competing demands for federal funds, including in response to the COVID-19 pandemic, and the number and intensity of military conflicts or other factors.

## **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

### **Issuer Purchases of Equity Securities**

On September 24, 2015, we announced that on September 23, 2015 our Board of Directors authorized a share repurchase program (the "Share Repurchase Program"), pursuant to which we may repurchase up to \$25.0 million of our common stock from time to time, in amounts and at prices we deem appropriate, subject to market conditions and other considerations. Share repurchases may be executed through open market transactions or negotiated purchases and may be made under a Rule 10b5-1 plan. There is no expiration date for the Share Repurchase Program. The Share Repurchase Program does not obligate us to acquire any particular amount of common stock and may be suspended at any time by our Board of Directors. No shares were repurchased in the nine months ended January 30, 2021. As of January 30, 2021, approximately \$21.2 million remained authorized for future repurchases under the Share Repurchase Program.

## **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

| <b>Exhibit Number</b> | <b>Description</b>  |
|-----------------------|---|
| 3.1(1)                | <a href="#">Amended and Restated Certificate of Incorporation of AeroVironment, Inc.</a>  |
| 3.2(2)                | <a href="#">Third Amended and Restated Bylaws of AeroVironment, Inc.</a>  |
| 10.1†                 | <a href="#">Stock Purchase Agreement, dated January 11, 2021, by and among AeroVironment, Inc., Arcturus UAV, Inc., and the shareholders and other equity interest holders of Arcturus UAV, Inc.</a>  |
| 10.2                  | <a href="#">Loan commitment letter, dated January 11, 2021, by and among AeroVironment, Inc., Bank of America, N.A., BofA Securities, Inc., JPMorgan Chase Bank, N.A., and U.S. Bank National Association.</a>  |
| 10.3†                 | <a href="#">Credit Agreement, dated February 19, 2021, by and among AeroVironment, Inc., certain lenders, letter of credit issuers, Bank of America, N.A., as the administrative agent and the swingline lender, and BofA Securities, Inc., JPMorgan Chase Bank, N.A., and U.S. Bank National Association, as joint lead arrangers and joint bookrunners.</a> |
| 10.4†                 | <a href="#">Security and Pledge Agreement, dated February 19, 2021, by and among AeroVironment, Inc., certain obligors, and Bank of America, N.A., as the administrative agent.</a>   |
| 10.5†                 | <a href="#">Amendment No. 14 to the Design and Development Agreement by and between AeroVironment, Inc. and HAPSMobile Inc., dated as of January 11, 2021</a>   |
| 10.6†                 | <a href="#">Share Purchase Agreement, dated December 3, 2020, by and between AeroVironment, Inc., Unmanned Systems Investments GmbH, and each of the unit holders of Unmanned Systems Investments GmbH.</a>   |
| 31.1                  | <a href="#">Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.</a>  |
| 31.2                  | <a href="#">Certification of Interim Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.</a>  |
| 32#                   | <a href="#">Certification of Chief Executive Officer and Interim Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>  |
| 101.INS               | XBRL Instance Document – The instance document does not appear in the Interactive Data Files because its XBRL tags are embedded within the Inline XBRL document.  |
| 101.SCH               | Inline XBRL Taxonomy Extension Schema Document.   |
| 101.CAL               | Inline XBRL Taxonomy Extension Calculation Linkbase Document.   |
| 101.DEF               | Inline XBRL Taxonomy Extension Definition Linkbase Document.  |
| 101.LAB               | Inline XBRL Taxonomy Extension Label Linkbase Document.   |
| 101.PRE               | Inline XBRL Taxonomy Extension Presentation Linkbase Document.  |
| 104                   | Cover Page Interactive Data File formatted as Inline XBRL and contained in Exhibit 101  |

- (1) Incorporated by reference herein to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed March 9, 2007 (File No. 001-33261).
- (2) Incorporated by reference herein to Exhibit 3.3 to the Company's Annual Report on Form 10-K filed July 1, 2015 (File No. 001-33261).

- ‡ Pursuant to Items 601(b)(2) and/or 601(b)(10) of Regulation S-K, certain immaterial provisions of the agreement that would likely cause competitive harm to the Company if publicly disclosed have been redacted or omitted.
- † Schedules (or similar attachments) to this Exhibit have been omitted in accordance with Items 601(a)(5) and/or 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission on a confidential basis upon request.
- # The information in Exhibit 32 shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act (including this report), unless the Company specifically incorporates the foregoing information into those documents by reference.

**SIGNATURES**

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

Date: March 9, 2021

AEROVIRONMENT, INC.

By: /s/ Wahid Nawabi

\_\_\_\_\_  
Wahid Nawabi

President and Chief Executive Officer

(Principal Executive Officer)

/s/ Kevin P. McDonnell

\_\_\_\_\_  
Kevin P. McDonnell

Senior Vice President and Chief Financial Officer

(Principal Financial and Accounting Officer)

The representations and warranties contained in this agreement were made for the purposes of allocating contractual risk between the parties and not as a means of establishing facts and are qualified by information in disclosure schedules that the parties exchanged in connection with the signing of this agreement. Moreover, the representations and warranties were made only as of the date of execution of this agreement and information concerning the subject matter of the representations and warranties may change after the date of this agreement. Only parties to this agreement have a right to enforce the agreement. Accordingly, third parties, including securityholders and prospective investors, should not rely on the representations and warranties in this agreement.

Schedules (or similar attachments) to this Exhibit have been omitted in accordance with Items 601(a)(5) and/or 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission on a confidential basis upon request.

**STOCK PURCHASE AGREEMENT**

**BY AND AMONG**

**AEROVIRONMENT, INC.**

**ARCTURUS UAV, INC.**

**AND**

**SELLERS**

**DATED AS OF JANUARY 11, 2021**

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**Exhibits\***

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| Exhibit C | Form of Related Party Pay-off Letter                           |

**Schedules\***

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**\*Schedules (or similar attachments) to this Exhibit have been omitted in accordance with Items 601(a)(5) and/or 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission on a confidential basis upon request.**

# STOCK PURCHASE AGREEMENT

**THIS STOCK PURCHASE AGREEMENT** is entered into as of January 11, 2021 (this “Agreement”), by and among AeroVironment, Inc., a Delaware corporation (“Purchaser”), Arcturus UAV, Inc., a California corporation (the “Company”), each of the Persons set forth on the signature pages hereto under the heading “Sellers” (each individually, a “Seller” and collectively, “Sellers”) and D’Milo Hallerberg, solely in his capacity as the representative of Sellers (the “Sellers’ Representative”). Purchaser, the Company, and Sellers and, as applicable, the Sellers’ Representative, shall each be referred to in this Agreement as a “Party”, and collectively as the “Parties”. Capitalized terms that are used in this Agreement and not otherwise defined herein shall have the respective meanings ascribed to such terms in Section 12.1.

## WITNESSETH:

**WHEREAS**, the Company designs, engineers, tools, and manufactures unmanned aerial and aircraft systems including airborne platforms, payloads and payload integration, ground control systems, and ground support equipment and tools and other items and services related generally to unmanned aircraft systems (collectively, as operated by the Company, the “Business”). The Company’s development work includes organic in-house design and contract design and manufacturing work for third parties. Airborne platforms and supporting systems may be used for any and all purposes. Owners and operators of Company-designed, developed, or manufactured airborne platforms (including the Company as an operator) include United States and foreign commercial, military, government, and intelligence agencies and other related entities. Application and use of the Company’s unmanned aircraft systems may be overt or covert and may include intelligence gathering, reconnaissance, imagery capture, communications intelligence, signals intelligence, weapons carriage and delivery, and any and all other applications and uses for unmanned aircraft systems;

**WHEREAS**, the Shareholders own all of the issued and outstanding shares of common stock (the “Shares”) of the Company, which constitute all of the issued and outstanding shares of capital stock of the Company; and

**WHEREAS**, the Shareholders desire to sell to Purchaser, and Purchaser desires to purchase from the Shareholders, the Shares, upon the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree hereby as follows:

## ARTICLE I

### PURCHASE AND SALE

1.1 Purchase and Sale of the Shares. Upon the terms and subject to the conditions of this Agreement, at the Closing, each Shareholder shall sell and deliver to Purchaser, and Purchaser shall purchase and acquire from such Shareholder, all right, title and interest of such Shareholder in and to

such Shareholder's Shares, free and clear of all Liens, other than transfer restrictions under applicable securities Laws, for the consideration specified in Section 1.2.

1.2 Purchase Price. The aggregate purchase price for the purchase of the Shares shall be an amount equal to (a) Three Hundred Fifty-Five Million Dollars (\$355,000,000), (b) plus approximately Fifty Million Dollars (\$50,000,000) worth of shares of Purchaser's Common Stock, par value \$0.0001 per share (the "Purchaser Shares"), as calculated in accordance with, and subject to, Section 7.16 (the "Stock Consideration"), (c) plus the aggregate amount of the Estimated Closing Date Cash, (d) plus the Estimated Working Capital Increase, if any, (e) minus the Estimated Working Capital Decrease, if any, (f) minus the amount of any Estimated Unpaid Company Transaction Expenses and (g) minus the amount of any Estimated Closing Date Indebtedness (such resulting amount pursuant to Sections 1.2(a)-(g), the "Estimated Purchase Price" and, as such amount may be adjusted pursuant to the provisions of Section 1.4, the "Purchase Price"). The Estimated Purchase Price minus the Stock Consideration minus the Escrow Amount is hereinafter referred to as the "Closing Cash Consideration".

1.3 Closing Payments. Each of the payments and issuances detailed in this Section 1.3 (the "Closing Payments") shall be made in the amounts and as set forth in the Pre-Closing Statement delivered pursuant to Section 1.4(a) (provided, however, that notwithstanding anything herein to the contrary, any such Closing Payment for which compensatory Tax withholding is required by Law shall be paid via the payroll system of the Company):

(a) At the Closing, Purchaser shall pay or cause to be paid, by wire transfer of immediately available funds to the bank accounts designated in writing by each Seller or the Sellers' Representative, as applicable, at least three (3) Business Days prior to the Closing Date the following payments:

(i) to each Seller, such Seller's Pro Rata Percentage of the Closing Cash Consideration less such Seller's Related Party Pay-off Amount;

(ii) to the Escrow Agent, the sum of the Adjustment Escrow Amount and the Indemnification Escrow Amount (collectively, the "Escrow Amount"), to the accounts designated by the Escrow Agent in writing to Purchaser at least three (3) Business Days prior to the Closing, which Adjustment Escrow Amount and Indemnification Escrow Amount shall be held in separate accounts by the Escrow Agent in accordance with the terms and conditions of this Agreement and the Escrow Agreement; and

(iii) on behalf of the Company, to the payees thereof, a cash amount equal to the amount of all Estimated Closing Date Indebtedness of the types set forth in clause (i) and clause (v) of the definition of Indebtedness and all Estimated Unpaid Company Transaction Expenses due and payable as of the Closing.

(b) At the Closing, Purchaser shall deliver to each Seller a copy of the instructions issued by Purchaser to its transfer agent instructing such transfer agent to issue and deliver to each Seller its Pro Rata Percentage of the Stock Consideration in such securities accounts as are designated in writing by the Sellers' Representative at least three (3) Business Days prior to the Closing Date, subject to the terms and conditions set forth in Section 7.16,

and such issuance and delivery of the Stock Consideration shall be effective as of the Closing Date.

#### 1.4 Adjustment of the Purchase Price.

(a) Pre-Closing Statement. No less than three (3) Business Days prior to the Closing Date, but no earlier than five (5) Business Days prior to the Closing Date, the Company shall deliver to Purchaser a statement (the "Pre-Closing Statement"), certified by an executive officer of the Company, setting forth in reasonable detail, with reasonable supporting documentation, the Company's good faith estimates of (i) the Closing Date Cash (the "Estimated Closing Date Cash"), (ii) the Unpaid Company Transaction Expenses (the "Estimated Unpaid Company Transaction Expenses"), (iii) the Closing Date Working Capital (the "Estimated Working Capital"), (iv) the Estimated Working Capital Increase, if any, (v) the Estimated Working Capital Decrease, if any, (vi) the Closing Date Indebtedness (the "Estimated Closing Date Indebtedness") and (vii) the amount, and the calculation of, the Estimated Purchase Price and Closing Payments derived therefrom in accordance with Section 1.3; provided, that, in the event that the Estimated Working Capital is equal to the Working Capital Floor or the Working Capital Ceiling, or is greater than the Working Capital Floor and less than the Working Capital Ceiling, then the amounts set forth in each of clauses (a)(iv) and (a)(v) shall be Zero Dollars (\$0). The Sellers' Representative and the Company, during the period from the delivery of the Pre-Closing Statement through the Closing Date, shall, and shall cause their respective directors, officers, employees, accountants, and other relevant advisors to, provide Purchaser (and its auditors, advisors, counsel, and other representatives) reasonable access to the books and records, outside accounting firm, working papers (subject to the execution of customary access letters), and personnel of the Company relevant to their review of the Pre-Closing Statement and the calculations set forth therein, and the Company shall consider in good faith any comments made by Purchaser to the Pre-Closing Statement. Purchaser's failure to make any comment regarding, or to dispute any amount included in, the Pre-Closing Statement shall not limit, or have any effect on, Purchaser's rights pursuant to Section 1.4(b) to conduct a review of the Estimated Closing Date Cash, the Estimated Working Capital, the Estimated Working Capital Increase, if any, the Estimated Working Capital Decrease, if any, the Estimated Unpaid Company Transaction Expenses, the Estimated Closing Date Indebtedness and/or the resulting calculation of the Estimated Purchase Price. The Sellers' Representative and the Company shall reasonably cooperate with Purchaser's review of the Pre-Closing Statement and Purchaser and the Sellers' Representative shall negotiate in good faith prior to the Closing to resolve any reasonable objection Purchaser may have to the estimates or calculations contained therein; provided, however, if the Parties are unable to agree on any estimate in the Pre-Closing Statement prior to Closing, then for the purposes of this Agreement, including the revised Pre-Closing Statement, such estimate for the unresolved item shall be deemed to be the estimate of the Company provided in the originally-delivered Pre-Closing Statement.

(b) Closing Statement. No later than sixty (60) days after the Closing Date, Purchaser shall cause to be prepared in good faith and delivered to the Sellers' Representative (i) a statement (the "Closing Statement"), in form substantially similar to the Pre-Closing Statement, setting forth in reasonable detail, with reasonable supporting documentation, Purchaser's calculation of (A) the Closing Date Cash, (B) the Unpaid Company Transaction

Expenses, (C) the Closing Date Indebtedness, (D) the Closing Date Working Capital, (E) the Working Capital Increase, if any, (F) the Working Capital Decrease, if any, and (G) the Purchase Price derived therefrom; provided, that, in the event that the Closing Date Working Capital is equal to the Working Capital Floor or equal to the Working Capital Ceiling, or is greater than the Working Capital Floor and less than the Working Capital Ceiling, then the amounts set forth in each of clauses (b)(i)(E) and (b)(i)(F) shall be Zero Dollars (\$0), and (ii) a balance sheet of the Company as of the Measurement Time, in each case prepared in accordance with the Accounting Rules, which shall be so certified by the Chief Financial Officer of Purchaser. For the avoidance of doubt, unless the Sellers' Representative otherwise agrees in writing, Purchaser may not amend, adjust, supplement or modify the Closing Statement or the amount of Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, Working Capital Increase (if any) or Working Capital Decrease (if any) set forth therein following its delivery to the Sellers' Representative; provided, that Purchaser may provide additional supporting documentation and detail in connection with the dispute process set forth in Section 1.4(c), it being understood that the right to provide such additional supporting documentation and detail shall not operate to extend Purchaser's obligation to deliver the Closing Statement within the above-referenced sixty (60)-day period. If Purchaser fails to deliver the Closing Statement within such sixty (60)-day period and if after the expiration of such sixty (60)-day period Purchaser does not deliver the Closing Statement to the Sellers' Representative within ten (10) days after the Sellers' Representative's written notice to Purchaser of such failure, then in addition to any other rights Sellers may have under this Agreement, the Sellers' Representative shall have the right to elect, on behalf of Sellers, that the Estimated Closing Date Cash, the Estimated Unpaid Company Transaction Expenses, the Estimated Closing Date Indebtedness, the Estimated Working Capital Increase (if any), and the Estimated Working Capital Decrease (if any), be deemed to be the amount of the Closing Date Cash, the Unpaid Company Transaction Expenses, the Closing Date Indebtedness, the Working Capital Increase (if any), and the Estimated Working Capital Decrease (if any), as applicable, and be final and binding and used for purposes of calculating the adjustment pursuant to Section 1.4(d). The Parties acknowledge that no adjustments may be made to the Working Capital Target, the Working Capital Floor or the Working Capital Ceiling. The Parties agree that the purpose of determining Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, Closing Date Working Capital, Working Capital Increase, Working Capital Decrease, and the related purchase price adjustment contemplated by Section 1.4(b)-(e) is to identify the difference, if any, between the amount of Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, Closing Date Working Capital, Working Capital Increase, Working Capital Decrease, and the Company's estimates prepared pursuant to Section 1.4(a). During the period of time from and after the Closing Date through the final determination and payment of the Purchase Price finally determined in accordance with this Section 1.4, Purchaser and the Company shall, and shall cause their respective directors, officers, employees, accountants, and other relevant advisors to, provide the Sellers' Representative (and its auditors, advisors, counsel, and other representatives) reasonable access to the books and records, outside accounting firm, working papers (subject to the execution of customary access letters), and personnel of the Company and Purchaser relevant to their review of the Closing Statement and the calculations set forth therein.

(c) Disputes.

(i) The Sellers' Representative shall have forty-five (45) days to review the Closing Statement after receipt of the Closing Statement. If the Sellers' Representative disagrees with Purchaser's calculation of any of the Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Closing Date Working Capital, the Working Capital Increase, if any, or the Working Capital Decrease, if any, in each case as set forth in the Closing Statement, the Sellers' Representative may, within such forty-five (45)-day period, deliver a notice to Purchaser (a "Dispute Notice") disagreeing with such calculation, setting forth in reasonable detail the Sellers' Representative's basis for such disagreement, and Sellers shall be deemed to have agreed with all other items contained in the Closing Statement and the calculations of Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Closing Date Working Capital, the Working Capital Increase, if any, and the Working Capital Decrease, if any, set forth therein (except to the extent specified in such Dispute Notice or related to the items or amounts subject to such disagreement). If the Sellers' Representative fails to deliver such notice during such forty-five (45)-day period, the Sellers' Representative shall have waived Sellers' rights to contest the Closing Statement, and the calculations of Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Closing Date Working Capital, the Working Capital Increase, if any, and the Working Capital Decrease, if any, in each case as set forth therein shall be deemed to be final and binding upon the Parties and such amount shall be used for purposes of calculating the adjustment pursuant to Section 1.4(d).

(ii) If a Dispute Notice shall be duly delivered pursuant to Section 1.4(c)(i), the Sellers' Representative and Purchaser shall, during the thirty (30) days following such delivery, attempt to reach agreement on the disputed items or amounts to determine, as may be required, the amount(s) of Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Closing Date Working Capital, the Working Capital Increase, or the Working Capital Decrease, as applicable. Any such agreement shall be in writing and shall be final and binding upon the Parties. If during such period, the Sellers' Representative and Purchaser are unable to reach such agreement, then all amounts and items remaining in dispute shall be promptly submitted by the Sellers' Representative and Purchaser to Duff & Phelps, LLC, or if such accounting firm informs the Parties that it cannot or will not serve in such capacity, the Sellers' Representative and Purchaser will, within five (5) days following such notice, jointly select an accountant at another nationally recognized accounting firm mutually acceptable to the Sellers' Representative and Purchaser acting reasonably (in either case, such accounting firm, the "Accounting Referee") (provided, that if the Sellers' Representative and Purchaser are unable to agree upon an Accounting Referee within the above period, then the Parties shall utilize the American Arbitration Association to select an Accounting Referee, who shall be an accountant at a nationally recognized accounting firm which is not the independent auditor of, and did not otherwise serve as a consultant on the Transaction to, either Purchaser or Sellers or their respective Affiliates) for a determination resolving such disputed items or amounts for the purpose of calculating Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Closing Date Working Capital, the Working Capital Increase, if any, or the Working Capital Decrease, if any (it being agreed and understood that the Accounting Referee shall act as an arbitrator to determine such disputed items or amounts (and, as a result thereof, Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Closing Date Working Capital, the Working Capital Increase, if any, and the Working Capital



Decrease, if any) and shall do so based solely on written presentations and information provided by Purchaser and the Sellers' Representative and not by independent review). Within five (5) days after its appointment, the Accounting Referee shall determine the process and procedures governing the resolution of any disputed items by the Accounting Referee (it being agreed and understood that such process shall include, at a minimum, appropriate measures to ensure compliance by the applicable Parties with Section 1.4(e) and the process and procedures for the submission of any written presentations by the Sellers' Representative and Purchaser and the time periods thereof). In conducting its review, the Accounting Referee shall consider only those items or amounts in the Closing Statement and Purchaser's calculations of Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Closing Date Working Capital, the Working Capital Increase, if any, or the Working Capital Decrease, if any, which the Sellers' Representative has disputed in the Dispute Notice and that are not resolved in writing during the thirty (30)-day period following delivery of the Dispute Notice. The scope of the disputes to be resolved by the Accounting Referee shall be limited to fixing mathematical errors and determining whether the items in dispute were determined in accordance with this Agreement (including the definitions of Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, Closing Date Working Capital, Working Capital Increase, and Working Capital Decrease, and the Accounting Rules), and the Accounting Referee is not to make any other determination. The Accounting Referee shall deliver to the Sellers' Representative and Purchaser, as promptly as practicable (but in any case no later than thirty (30) days from the date the Accounting Referee determines the process and procedures governing the resolution of any disputed items by the Accounting Referee), a report setting forth its calculations of Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, Closing Date Working Capital, Working Capital Increase, and Working Capital Decrease, as applicable, which amount(s) shall, in each case, be within the range between the calculations submitted by Purchaser and the Sellers' Representative as to that item. Such report shall be final and binding upon the Parties and shall be used for purposes of calculating the adjustment pursuant to Section 1.4(d). Notwithstanding anything herein to the contrary, the dispute resolution mechanism contained in this Section 1.4(c) shall be the exclusive mechanism for resolving disputes regarding the Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Working Capital Increase, if any, and the Working Capital Decrease, if any. Judgment may be entered upon the determination of the Accounting Referee in any court having jurisdiction over the Party against which such determination is to be enforced.

(iii) If the Sellers' Representative and Purchaser submit disputed amounts and items to the Accounting Referee for resolution, the Sellers' Representative and Purchaser shall each pay their own costs and expenses incurred under this Section 1.4(c). The fees, costs and expenses of the Accounting Referee shall be borne by Sellers, on the one hand, and Purchaser, on the other hand, in proportion to the relative amount each of the Sellers' Representative's and Purchaser's determination has been modified such that the Party prevailing on the greatest dollar value of such disputes pays for the lesser proportion of the fees. For example, if Sellers' Representative challenges the calculation of the Closing Date Cash by an amount of One Hundred Thousand Dollars (\$100,000), but the Accounting Referee determines that Sellers' Representative has a valid claim for only Sixty Thousand Dollars (\$60,000), Sellers shall bear forty percent (40%) of the fees and expenses of the Accounting Referee and Purchaser shall bear the other sixty percent (60%) of such fees and expenses.

(d) Final Adjustment. Following the time that the amounts of the Closing Date Cash, Unpaid Company Transaction Expenses, Closing Date Indebtedness, the Closing Date Working Capital, the Working Capital Increase, if any, and the Working Capital Decrease, if any, are finally determined pursuant to this Section 1.4 (such finally determined amounts, respectively, the “Final Closing Date Cash”, the “Final Unpaid Company Transaction Expenses”, the “Final Closing Date Indebtedness” the “Final Closing Date Working Capital”, the “Final Working Capital Increase” and the “Final Working Capital Decrease”), the Purchase Price shall (for the purposes of this Section 1.4(d)) be recalculated using the amounts of the Final Closing Date Cash, the Final Unpaid Company Transaction Expenses, the Final Closing Date Indebtedness, the Final Closing Date Working Capital, the Final Working Capital Increase, and the Final Working Capital Decrease in lieu of the Estimated Closing Date Cash, the Estimated Unpaid Company Transaction Expenses, the Estimated Closing Date Indebtedness, the Estimated Working Capital, the Estimated Working Capital Increase, and the Estimated Working Capital Decrease and:

(i) if (x) the result of the Purchase Price as so recalculated is greater than (y) the Estimated Purchase Price paid to Sellers at Closing pursuant to Section 1.3(a) (such excess of (x) over (y), the “Surplus”), then promptly (and in any event within five (5) Business Days) after the Final Closing Date Cash, the Final Unpaid Company Transaction Expenses, the Final Closing Date Indebtedness, the Final Closing Date Working Capital, the Final Working Capital Increase, and the Final Working Capital Decrease are finally determined pursuant to this Section 1.4, (A) Purchaser shall pay to (x) Sellers on a pro rata basis (based on Sellers’ respective Pro Rata Percentages), by wire transfer of immediately available funds to the accounts designated in writing by Sellers, an amount equal to the Surplus *less* the Transaction Bonus Portion of the Surplus and (y) the Company the Transaction Bonus Portion of the Surplus for further distribution in accordance with the applicable Honored Agreements pursuant to Section 7.7(h), by wire transfer of immediately available funds (provided, however, that notwithstanding anything herein to the contrary, any such Surplus (including the Transaction Bonus Portion of any such Surplus) for which compensatory Tax withholding is required by Law shall be paid via an applicable payroll system) and (B) the Sellers’ Representative and Purchaser shall jointly instruct the Escrow Agent in writing to release (x) an amount equal to the Adjustment Escrow Funds *less* the Transaction Bonus Portion of the Adjustment Escrow Funds to Sellers (based on Sellers’ respective Pro Rata Percentages) and (y) the Transaction Bonus Portion of the Adjustment Escrow Funds to the Company for further distribution in accordance with the applicable Honored Agreements pursuant to Section 7.7(h) (provided, however, that notwithstanding anything herein to the contrary, any such portion of the Adjustment Escrow Funds (including the Transaction Bonus Portion of the Adjustment Escrow Funds) for which compensatory Tax withholding is required by Law shall be paid via an applicable payroll system);

(ii) if (x) the result of the Purchase Price as so recalculated is less than (y) the Estimated Purchase Price paid to Sellers at Closing pursuant to Section 1.3(a) (such deficit of (x) relative to (y), the “Deficit”), then the Sellers’ Representative and Purchaser shall, promptly (and in any event within five (5) Business Days) after the Final Closing Date Cash, the Final Unpaid Company Transaction Expenses, the Final Closing Date Indebtedness, the Final Closing Date Working Capital, the Final Working Capital Increase and the Final Working Capital Decrease are finally determined pursuant to this Section 1.4, jointly instruct the Escrow Agent in writing to (A) pay to Purchaser, out of the Adjustment Escrow Funds, an amount equal to the Deficit and

(B) if the Deficit is less than the amount of the Adjustment Escrow Funds, release to (x) Sellers (based on Sellers' respective Pro Rata Percentages) an amount equal to the balance of the Adjustment Escrow Funds remaining after payment to Purchaser pursuant to the preceding clause (A) less the Transaction Bonus Portion of such Adjustment Escrow Funds and (y) the Company the Transaction Bonus Portion of such Adjustment Escrow Funds for further distribution in accordance with the terms of the applicable Honored Agreements pursuant to Section 7.7(h), (provided, however, that notwithstanding anything herein to the contrary, any such portion of such Adjustment Escrow Funds (including the Transaction Bonus Portion of such Adjustment Escrow Funds) for which compensatory Tax withholding is required by Law shall be paid via an applicable payroll system). The Adjustment Escrow Funds shall be Purchaser's sole recourse with respect to, and the exclusive source of funds for, any payments required to be made by Sellers under Section 1.4(c) and this Section 1.4(d), and Sellers shall have no obligation to Purchaser to the extent the Deficit and/or any other amounts payable pursuant to Section 1.4(c) or this Section 1.4(d) exceed the Adjustment Escrow Funds; or

(iii) if the Purchase Price equals the Estimated Purchase Price paid to Sellers at Closing pursuant to Section 1.3(a), then the Sellers' Representative and Purchaser shall, promptly (and in any event within five (5) Business Days) after the Final Closing Date Cash, the Final Unpaid Company Transaction Expenses, the Final Closing Date Indebtedness, Final Closing Date Working Capital, the Final Working Capital Increase, and the Final Working Capital Decrease are finally determined pursuant to this Section 1.4, jointly instruct the Escrow Agent in writing to release (x) an amount equal to the Adjustment Escrow Funds less the Transaction Bonus Portion of the Adjustment Escrow Funds to Sellers (based on Sellers' respective Pro Rata Percentages) and (y) an amount equal to the Transaction Bonus Portion of the Adjustment Escrow Funds to the Company for further distribution in accordance with the terms of the applicable Honored Agreements pursuant to Section 7.7(h) (provided, however, that notwithstanding anything herein to the contrary, any such portion of the Adjustment Escrow Funds (including the Transaction Bonus Portion of the Adjustment Escrow Funds) for which compensatory Tax withholding is required by Law shall be paid via an applicable payroll system).

(e) Cooperation. During the period of time from and after the Closing Date through the final determination of the Final Closing Date Cash, the Final Unpaid Company Transaction Expenses, the Final Closing Date Indebtedness, the Final Closing Date Working Capital, the Final Working Capital Increase, and the Final Working Capital Decrease and payment of the Surplus or Deficit, if and as applicable, in accordance with this Section 1.4, Purchaser and the Sellers' Representative, as applicable, shall share with the other Party all written presentations and information provided by Purchaser or the Sellers' Representative, as the case may be, to the Accounting Referee.

1.5 Withholding. Notwithstanding anything to the contrary in Article I, to the extent required by the Code or applicable Law, Purchaser and the Company (and any other Person that has any withholding obligation with respect to any payment made pursuant to this Agreement) shall be permitted to deduct and withhold any required amounts from any payment required to be made under this Agreement; provided that, other than with respect to compensatory withholding, any Person that intends to deduct and withhold any amounts shall, at least three (3) days prior to withholding, use commercially reasonable efforts to notify the Sellers' Representative of its intention to deduct and withhold such amounts and the reason therefor, and such Person shall cooperate with any reasonable

request from the Sellers' Representative to obtain a reduction of or relief from such deduction or withholding; and provided further that, to the extent feasible and permitted by applicable Law, any compensatory withholding with respect to Stock Consideration payable to a Seller under this Agreement shall not reduce the number of Purchaser Shares received by such Seller, but rather such withholding shall be satisfied by, and shall reduce, any cash consideration payable to such Seller concurrently with the payment of Stock Consideration that is subject to compensatory withholding; and provided further that any compensatory withholding with respect to the settlement of any restricted stock units shall not reduce the number of Shares to be settled thereby, but rather such withholding shall be satisfied by, and shall reduce, any cash consideration payable to the holder thereof in respect of such settled Shares upon the Closing under this Agreement. Any amounts so deducted or withheld shall be treated as if paid to the applicable Person in respect of which such withholding was made.

## ARTICLE II

### CLOSING

2.1 Closing. The closing of the Transaction (the "Closing") shall take place remotely by the exchange of documents and signatures via Electronic Delivery in lieu of an in-person Closing on the second (2<sup>nd</sup>) Business Day immediately following the first day on which all of the conditions contained in Article VIII (except for those conditions which by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of such conditions) are satisfied or waived in accordance with this Agreement, or on such other date, place and time as the Sellers' Representative and Purchaser may agree in writing. The date on which the Closing occurs is referred to herein as the "Closing Date".

2.2 Deliveries by Sellers at Closing. At the Closing, Sellers' Representative (on behalf of Sellers) shall deliver, or cause to be delivered, to Purchaser the following:

- (a) the certificates required by Section 8.2(a), Section 8.2(b), Section 8.2(c), and Section 8.2(d);
- (b) a certificate, dated as of the Closing Date and duly executed by the Secretary of the Company, on behalf of the Company, certifying that attached thereto are (i) certified copies of the Company's organizational documents, (ii) true, correct, and complete copies of the resolutions of the Company's board of directors, authorizing the execution, delivery, and performance of this Agreement, the Transaction Agreements, and the Transaction, which resolutions have not been modified, rescinded, or revoked, and (iii) a certificate of status of the Company from the California Secretary of State, dated within three (3) Business Days prior to the Closing Date;
- (c) the stock certificates representing all of the Shares, duly endorsed in blank or accompanied by a stock transfer power;
- (d) the Pay-Off Letters;
- (e) evidence of the resignation of the directors and officers of the Company, effective as of the Closing;

(f) the Escrow Agreement, duly executed by the Sellers' Representative and the Escrow Agent;

(g) for each Shareholder, a properly executed affidavit prepared in accordance with Treasury Regulations section 1.1445-2(b) certifying such Shareholder's non-foreign status; and

(h) pay-off letters, duly executed by the Related Parties under the Related Party transactions set forth on Schedule 2.2(h), substantially in form of Exhibit C attached hereto (each a "Related Party Pay-off Letter").

2.3 Deliveries by Purchaser at the Closing. At Closing, Purchaser shall deliver, or cause to be delivered, to Sellers or the Sellers' Representative, as applicable, and the other payees referenced in Section 1.3, as applicable, the following:

(a) to each of Sellers and the other payees referenced in Section 1.3, the applicable Closing Payment, as set forth in the Pre-Closing Statement delivered pursuant to Section 1.4(a);

(b) to Sellers' Representative, the Escrow Agreement, duly executed by Purchaser; and

(c) to Sellers' Representative, the certificates required by Section 8.3(a) and Section 8.3(b).

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COMPANY

Except as set forth on the disclosure schedule delivered by the Company to Purchaser on the date hereof concurrently with entry into this Agreement (the "Company Disclosure Schedule") and attached to this Agreement as Schedule A, the Company hereby represents and warrants to Purchaser as follows:

3.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California. The Company has the corporate power and authority to own or lease all of its properties and assets and to carry on the Business as it is now being conducted, in all material respects. The Company is duly licensed or qualified to do business in each jurisdiction in which the nature of the Business or the character or location of any properties or assets owned or leased by it makes such licensing or qualification necessary, except for those jurisdictions where the failure to be so qualified would not have, individually or in the aggregate, a Company Material Adverse Effect.

3.2 Authority; Conflicts; Consents of Third Parties.

(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement and each other Transaction Agreement to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Transaction. The

execution and delivery of the Transaction Agreements to which the Company is a party and the consummation of the Transaction contemplated thereby have been duly authorized by the requisite action on the part of the Company. Each of the Transaction Agreements to which the Company is a party has been or will be at or prior to the Closing, duly and validly executed and delivered by the Company and (assuming the due authorization, execution and delivery by the other parties thereto) each such Transaction Agreement, when so executed and delivered, will constitute, the legal, valid and binding obligations of the Company enforceable against it in accordance with its terms, subject to applicable Equitable Principles.

(b) Except as set forth in Section 3.2(b) of the Company Disclosure Schedule, and assuming the Governmental Approvals are given, made, or obtained, as the case may be, none of the execution and delivery by the Company of this Agreement or the other Transaction Agreements to which the Company is a party or the consummation of the Transaction by the Company, conflicts with, violates or constitutes a default (with or without notice or lapse of time, or both) under, or permits the acceleration of any obligation under, or gives rise to a right of termination, modification or cancellation under any provision of, (i) the articles of incorporation or bylaws of the Company; (ii) any Material Contract, material Active Government Contract, or material Permit to which the Company is a party or by which any of its properties or assets are bound; or (iii) any Law applicable to the Company, except in the case of clauses (ii) and (iii), where such conflict, violation or default would not be, or reasonably be expected to be, individually or in the aggregate, material to the Company.

(c) Except for any filing or termination of the waiting period or other approval required under the HSR Act and the antitrust Laws of any other applicable jurisdiction (collectively, the “Antitrust Approvals”) and as set forth in Section 3.2(c) of the Company Disclosure Schedule, no consent, waiver, approval, Order, Permit, waiting period expiration or termination, or authorization of, or declaration or filing with, or notification to, any Governmental Authority (the items disclosed on Section 3.2(c) of the Company Disclosure Schedule, together with the Antitrust Approvals, shall be referred to herein as the “Governmental Approvals”) is required on the part of the Company in connection with the execution and delivery by the Company of this Agreement or the other Transaction Agreements to which the Company is a party or the consummation of the Transaction by the Company, except for those which the failure to obtain such Governmental Approvals would not be, or reasonably be expected to be, individually or in the aggregate, material to the Company.

### 3.3 Capitalization; No Subsidiaries.

(a) The authorized capital stock of the Company consists of one hundred ten thousand (110,000) shares of common stock, without par value. The issued and outstanding Equity Interests of the Company are as set forth in the Capitalization Schedule (as defined below), all of which are owned by Sellers free and clear of Liens, other than transfer restrictions under applicable securities Laws. The Company does not hold any shares as treasury stock. All of the issued and outstanding Shares have been duly authorized and validly issued and are fully paid, non-assessable, and not issued in violation of (or subject to) any preemptive rights, call rights or rights of first refusal, purchase options, or similar rights. As of the Closing, Purchaser shall own all of the issued and outstanding capital stock of the Company and no

other Person shall have any right with respect thereto. There are no declared or accrued but unpaid dividends or distributions to any Seller or former equityholder of the Company.

(b) Section 3.3(b) of the Company Disclosure Schedule (the “Capitalization Schedule”) sets forth each of the record holders of the Equity Interests of the Company, and the respective number and type of Equity Interests held by each of them. Except as set forth on the Capitalization Schedule, there are no (i) outstanding subscriptions, options, warrants, rights, calls, commitments, conversion rights, rights of exchange, plans or other agreements of any character providing for the purchase, issuance or sale of any Equity Interests in the Company, (ii) voting trusts, proxies or other agreements or understandings with respect to the voting or transfer of the equity of the Company, or (iii) stock appreciation rights or phantom stock or similar plans or rights.

(c) The Company has no Subsidiaries, and the Company does not own, directly, any Equity Interest in any other Person. The Company is not party to any Contracts to acquire any capital stock or other Equity Interest or make any investment (in the form of a loan, capital contribution, or otherwise) in any Person.

### 3.4 Financial Statements.

(a) The Company has made available to Purchaser the following financial statements (collectively the “Company Financial Statements”), each of which is set forth in Section 3.4(a) of the Company Disclosure Schedule:

(i) audited balance sheets for the Company as of December 31, 2018 and December 31, 2019, and the respective related audited statements of operations, changes in stockholder’s equity, and statements of cash flows for the fiscal years then ended; and

(ii) an unaudited balance sheet and statement of operations for the Company for the eleven (11)-month period ended November 30, 2020 (the “Unaudited Financial Statements”).

November 30, 2020 shall be referred to herein as the “Balance Sheet Date” and the balance sheet of the Company as of such date shall be referred to herein as the “Balance Sheet”.

(b) The Company Financial Statements (i) have been prepared from the books and records of the Company, (ii) present fairly, in all material respects, the financial results of operations of the Company as of the dates and for the periods indicated therein, and (iii) have been prepared in accordance with GAAP, as consistently applied by the Company throughout such periods; provided that the Unaudited Financial Statements are subject to normal year-end adjustments (none of which is material) and do not contain any footnotes.

(c) The Company has established and adhered to a system of internal accounting controls that are designed to provide reasonable assurance in all material respects regarding the reliability of financial reporting. Except as set forth in Section 3.4(c) of the Company Disclosure Schedule, in the past six (6) years, there has not been (i) any significant deficiency or weakness in any system of internal accounting controls used by the Company, (ii) any fraud or other wrongdoing that involves any of the management or other employees of



the Company who have a role in the preparation of financial statements or the internal accounting controls used by the Company, or (iii) any material written claim or allegation regarding any of the foregoing.

(d) Section 3.4(d) of the Company Disclosure Schedule contains a true, correct, and complete list, as of the Balance Sheet Date, of all Indebtedness of the Company, of the types identified in item (i) and item (v) of the definition of Indebtedness, and identifies for each such item of Indebtedness the outstanding principal and accrued but unpaid interest as of such date.

(e) Section 3.4(e) of the Company Disclosure Schedule sets forth a true, correct, and complete list of all Receivables including an aging thereof, as of the Balance Sheet Date, organized on an aggregate basis aged in thirty (30)-day intervals through the oldest Receivable reflected therein. All Receivables set forth on Section 3.4(e) of the Company Disclosure Schedule arose out of performance of services by or sales of the Company in the ordinary course of business and represent valid obligations arising from sales actually made or services actually performed by the Company. There has been no material contest or claim and there is no material right of set-off under any agreement with any obligor of any such Receivables relating to the amount or validity of such Receivables. Notwithstanding anything contained in this Section 3.4(e) to the contrary and for the avoidance of doubt, the failure to collect any Receivable shall not, in and of itself, be a breach of this Section 3.4(e).

(f) Section 3.4(f)(i) of the Company Disclosure Schedule sets forth, as of the Balance Sheet Date, all of the accounts payable of the Company. All accounts payable of the Company are reflected in the Unaudited Financial Statements or were incurred following the date of the Unaudited Financial Statements in the ordinary course of business. All such accounts payable are the result of bona fide transactions in the ordinary course of business, represent valid obligations of the Company, and, except as set forth in Section 3.4(f)(ii) of the Company Disclosure Schedule, have been paid or are not yet due and payable.

3.5 Undisclosed Liabilities. Except as set forth in Section 3.5 of the Company Disclosure Schedule, the Company has no Liabilities, other than (a) as disclosed in, set forth on, or reflected or reserved against in the Unaudited Financial Statements including any notes thereto, (b) those incurred in the ordinary course of business since the Balance Sheet Date, (c) Unpaid Company Transaction Expenses, (d) any Contingent Consideration, or (e) those that are not material to the Company.

3.6 Absence of Certain Developments. Except as set forth in Section 3.6 of the Company Disclosure Schedule, between the Balance Sheet Date and the date of this Agreement, (a) the Business has been conducted in all material respects in the ordinary course of business consistent with past practice, (b) there has not been any event, change, occurrence or circumstance that would have, individually or in the aggregate, a Company Material Adverse Effect, and (c) the Company has not taken any action that, if taken after the date of this Agreement and prior to the Closing, would constitute a violation of the covenants and restrictions set forth in Section 6.1 (subject to Schedule 6.1).

3.7 Legal Proceedings. There are no, and for the last five (5) years there have not been any, pending or, to the Knowledge of the Company, threatened material Legal Proceedings against, relating to, or otherwise affecting, the Company, the Business, its assets, or otherwise pertaining to the



ownership of the Shares or the operation of the Business. Except as set forth in Section 3.7 of the Company Disclosure Schedule, the Company has not received written notice within the past five (5) years of any material audit, inquiry, or investigation pending or threatened against the Company. There is no outstanding material Order imposed upon the Company. To the Knowledge of the Company, no facts or circumstances exist that would reasonably be expected to give rise to any material Legal Proceeding. The Company does not intend to initiate any Legal Proceeding relating to the Business, its assets, or the Shares.

### 3.8 Compliance with Laws; Permits.

(a) Except as set forth in Section 3.8(a) of the Company Disclosure Schedule, the Company is, and for the past five (5) years has been, in material compliance with all Laws applicable to the Business and its operations. During the past five (5) years, the Company has not received any written notice of, or been formally charged by a Governmental Authority with, any material violation of any applicable Laws.

(b) Except as set forth in Section 3.8(b)(i) of the Company Disclosure Schedule, the Company has obtained all material Permits that are required for the operation of the Business as presently conducted. Each material Permit held by the Company is valid, binding and in full force and effect. The Company has not received any written notice alleging the failure to hold any Permit or threatening the suspension, revocation, restriction, nonrenewal, or modification of any material Permits, or the imposition of any fine, penalty, or other sanctions with respect to such material Permits. To the Knowledge of the Company, no Governmental Authority has decided not to renew any such material Permits. The Company is in compliance with the material terms and conditions of all of the material Permits that it holds, in each case except as would not reasonably be expected to be material, individually or in the aggregate, to the Company. All material Permits of the Company are in full force and effect, not subject to appeal or challenge, and no such Permits will be adversely affected by the consummation of the Transaction. Except as set forth in Section 3.8(b)(ii) of the Company Disclosure Schedule, no Person, other than the Company, owns or has any proprietary or financial interest in any such Permits.

(c) Since January 1, 2018, neither the Company nor any of its directors, officers, or employees nor, to the Knowledge of the Company, any other Person authorized to act on its behalf (including any distributor, agent, sales intermediary or other third party), has (i) violated any Applicable Anti-Corruption Law or (ii) offered, given, promised to give, or authorized the giving of money or anything of value, to any Government Official or any other Person: (A) for the purpose of (1) corruptly or improperly influencing any act or decision of any Government Official or Person in his/her official capacity, (2) inducing any Government Official or Person to do, or omit to do, any act in violation of his/her duties, (3) securing any improper business advantage, or (4) obtaining or retaining business for the Company or directing business to any Person; or (B) in a manner that would constitute, or have the purpose or effect of, public or commercial bribery, acceptance of, or acquiescence in, extortion, kickbacks or other unlawful or improper means of obtaining business or any improper business advantage.

(d) The Company has maintained complete and accurate books and records in reasonable detail in all material respects, including records of payments to any agents, consultants, representatives, third parties, and Government Officials. Neither the Company nor any of its directors, officers, or employees, nor, to the Knowledge of the Company, any other Person authorized to act on its behalf, has established or maintained, or is maintaining, any secret, illegal, or unrecorded fund of corporate monies or other properties. No false or fictitious entries have been made in the books and records of the Company relating to any corrupt payment or gift of anything of value, including any bribe, kickback, or other illegal or improper payment.

(e) The Company has in place reasonably adequate controls and systems to ensure compliance with the Applicable Anti-Corruption Laws.

(f) Neither the Company nor any of its directors, officers, or employees nor, to the Knowledge of the Company, any other Person authorized to act on its behalf, is, or has been, (i) under administrative, civil, or criminal investigation, internal investigation by any party, or the subject of any inquiry or allegations or (ii) under an indictment, suspension, debarment, or audit (other than a routine Contract audit) by any party, in each case, in connection with alleged or possible violations of any Applicable Anti-Corruption Laws. Neither the Company nor any of its directors, officers, or employees nor, to the Knowledge of the Company, any other Person authorized to act on its behalf has received a whistleblower report of alleged or possible violations of any Applicable Anti-Corruption Laws.

(g) Neither the Company nor any of its directors, officers, or employees nor, to the Knowledge of the Company, any other Person authorized to act on its behalf has received notice, inquiry, or other communication from, or made a voluntary disclosure to, the U.S. Department of Justice or other criminal, civil or administrative enforcement agency of any domestic or non-U.S. jurisdiction in connection with alleged or possible violations of any Applicable Anti-Corruption Law.

### 3.9 Taxes.

Except as set forth in Section 3.9 of the Company Disclosure Schedule:

(a) All U.S. federal and other material Tax Returns required to be filed with respect to the Company, taking into account any validly obtained extensions of time to file, have been timely filed by the Company, or on behalf of the Company, with the appropriate Taxing Authorities, and all such Tax Returns are true, correct and complete in all material respects.

(b) All material Taxes of the Company have been timely paid to the appropriate Taxing Authority regardless of whether shown on any Tax Return.

(c) No material deficiencies for any Taxes have been proposed, asserted or assessed in writing against the Company that are still pending.

(d) The Company has withheld or collected, and paid to the appropriate Taxing Authority, all Taxes required to have been withheld or collected and remitted

(including Taxes arising as a result of payments or distributions to (i) equityholders, (ii) employees and (iii) service providers). The Company has complied in all material respects with all information reporting and withholding requirements, including maintaining all required records with respect thereto, in connection with amounts paid or owing to any employee, independent contractor, customer, creditor, equityholder or other third party.

(e) The unpaid Taxes of the Company (i) did not, as of the Balance Sheet Date, exceed the reserve for liability for Taxes set forth on the face of the Balance Sheet (rather than in any notes thereto) and (ii) will not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company in filing its Tax Returns.

(f) The Company is not currently the subject of any Tax audit or examination.

(g) No extensions of the period for assessment or collection of any Taxes are currently in effect with respect to the Company (other than extensions of time to file Tax Returns obtained in the ordinary course of business).

(h) (i) No claim has been made in writing by any Taxing Authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation in such jurisdiction and (ii) the Company is not subject to Tax in any jurisdiction other than the United States by virtue of having employees, agents, a permanent establishment (within the meaning of an applicable Tax treaty) or any other place of business in such jurisdiction.

(i) The Company is not a party to any “closing agreements” described in Code Section 7121 (or any comparable provision of state, local or foreign Tax Law) and has not requested or received any Tax ruling, in either case, that would have continuing effect after the Closing Date.

(j) There are no Liens for Taxes upon any of the assets or properties of the Company, except for Permitted Liens.

(k) The Company (i) is not currently, and has not been, a member of a consolidated, unified or affiliated group for Tax purposes; and (ii) does not have any Liability for Taxes of any Person arising from the application of Section 1.1502-6 of the Treasury Regulations or any analogous provision of state, local or foreign Law, or as a transferee or successor, by Contract (other than pursuant to any Contract, the principal subject matter of which is not Taxes), from any express or implied obligation to indemnify or otherwise assume or succeed to the Liability of any other Person, or otherwise.

(l) The Company is not a party to, bound by or obligated in any way under any Tax sharing or Tax indemnity agreement or similar Contract or arrangement (other than an agreement entered into in the ordinary course of business, the principal subject of which is not Taxes).

(m) The Company has not been a “distributing corporation” or a “controlled corporation” in a distribution in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

(n) No Tax holiday or Tax incentive or grant in any jurisdiction incurred by (or with respect to) the Company will terminate (or be subject to a clawback or recapture) as a result of any of the Transaction.

(o) The Company (i) has not deferred the employer’s share of any “applicable employment taxes” under Section 2302 of the CARES Act and (ii) has not claimed or received any credits under Sections 7001 through 7005 of the Families First Coronavirus Response Act or Section 2301 of the CARES Act.

(p) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) intercompany transactions occurring at or prior to the Closing or any excess loss account in existence at Closing described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign Tax Law); (ii) installment sale or open transaction disposition made on or prior to the Closing Date; (iii) deferred revenue or prepaid amount received on or prior to the Closing Date; (iv) change in, or improper use of, a method of accounting; or (v) election under Section 108(i) or Section 965 of the Code (or any corresponding or similar provision of state, local or foreign Tax Law).

(q) The Company has not agreed to, and is not required to make, any adjustments under Section 481(a) of the Code (or any corresponding or similar provision of state, local or foreign Tax Law) by reason of a change in method of accounting or otherwise.

(r) From its date of formation until January 1, 2018, the Company (then Arcturus UAV, LLC) was a single member limited liability company which was at all times classified as a disregarded entity for U.S. federal and applicable state and local Income Tax purposes; from January 1, 2018 until October 1, 2018, the Company (then Arcturus UAV, LLC) was at all times classified as a partnership for U.S. federal and applicable state and local Income Tax purposes; and from October 1, 2018, the Company (Arcturus UAV, Inc.) has at all times been classified as an association taxable as a corporation under Subchapter C of the Code for U.S. federal and applicable state and local Income Tax purposes. The Company does not own an interest, directly or indirectly, in any joint venture, partnership, limited liability company, association, or other entity or arrangement that is treated as a partnership for U.S. federal, state or local Income Tax purposes.

(s) The Company has not directly or indirectly participated in, or been a party to, any transaction that would constitute (i) a “reportable transaction” or “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b) or (ii) a “tax shelter” within the meaning of Section 6111 of the Code and the Treasury Regulations promulgated thereunder, whether in respect of itself, its shareholders or any other Person. All transactions with Related Parties carried out by the Company are at arm’s length and reflect a proper transfer pricing policy, in accordance with all applicable Tax Laws.

(t) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

### 3.10 Assets; Inventory.

(a) Except as set forth on Section 3.10(a) of the Company Disclosure Schedule, the Company has good and valid title to, or a valid leasehold interest in, or otherwise has rights to use, all material properties and assets (tangible or intangible) reflected on the Balance Sheet or acquired after the Balance Sheet Date, free and clear of all Liens (other than Permitted Liens), and all such properties and assets are in the possession and control of the Company, other than assets sold or otherwise disposed of in the ordinary course of business since the Balance Sheet Date. The Company owns, has a valid license to use, or valid leasehold interest in, all of the material rights, assets, and properties, that are currently used in, held for use in, or necessary to operate the Business consistent with past practice and as currently conducted, and there are no other material assets (tangible or intangible) that are used in the operation of the Business. Each tangible asset of the Company is free from material defects, has been maintained in accordance with normal industry practice, is in good operating condition and repair in all material respects (subject to reasonable wear and tear), is adequate for its current use, is in conformity with applicable Laws and Permits relating to its use and operation, and is not in need of maintenance or repairs except for ordinary, routine maintenance that is not material in nature or cost, and that has not been unduly delayed.

(b) No inventory of the Company is with customers, agents, distributors, representatives, or other Persons on consignment. The inventory of the Company is of a quality and quantity useable in the ordinary course of business of the Company and is of a quantity reasonably sufficient to enable the Company to carry on the Business, as presently conducted, immediately after the Closing, subject to adequate allowances, if any, reflected in the Unaudited Financial Statements for obsolete, excess, slow moving, lower of cost, or market and other irregular items.

### 3.11 Environmental Matters. Except as set forth in Section 3.11 of the Company Disclosure Schedule:

(a) The Company is, and for the past five (5) years has been, in material compliance with all Environmental Laws applicable to the Business and its operations. The Company has obtained, maintained, and is in material compliance with all Permits that are required under Environmental Laws for the occupation of its Leased Real Property and operation of the Business as presently conducted (collectively, the “Environmental Permits”) and the Company is not in default or material violation of any term, condition, or provision of any Environmental Permit.

(b) (i) Except as to matters with respect to which the Company has no material Liability, the Company has not caused and has not conducted Remediation or corrective action of any kind with respect to, and to the Company’s Knowledge there has not been any Release or threatened Release of Hazardous Materials, on, in, at or under any properties (including any buildings, structures, improvements, soils or subsurface strata,

surface water bodies or drainage ways, and ground waters thereof) currently comprising the Leased Real Property or any property formerly owned, leased, or operated by, or for, the Company; and (ii) the Company has not owned or operated any underground improvement containing Hazardous Materials, including any treatment or storage tank or water, gas or oil well at any property described in the foregoing sentence, and to the Company's Knowledge, no such underground improvement is present at any Leased Real Property.

(c) There is no pending or, to the Knowledge of the Company, threatened investigation by any Governmental Authority, nor any pending or, to the Knowledge of the Company, threatened action with respect to the Company relating to Hazardous Materials or otherwise under any Environmental Laws, in each case, that has given or would reasonably be expected to result in material Liabilities for the Company.

(d) There has been no generation, treatment, storage, transportation, handling, Release, disposal, or arrangement for the disposal of, contamination by, or exposure of any Person to, any Hazardous Material that has given or would reasonably be expected to give rise to any material Liabilities for the Company.

(e) The Company has made available to Purchaser all environmental, health and safety assessments, Environmental Permits, and other material environmental-related documents in the possession, custody, or control of the Company that relate to the Company, its operations, or the environmental condition of any current or former properties owned or leased thereby.

### 3.12 Material Contracts.

(a) Section 3.12(a) of the Company Disclosure Schedule sets forth a list of all of the following Contracts as of the date of this Agreement to which the Company is a party or by which it is bound (collectively, the "Material Contracts"):

(i) any Contract with each current or former (to the extent of any ongoing Liability) officer, director, employee or individual consultant of the Company that (A) provides for the payment of annual base compensation in excess of One Hundred Fifty Thousand Dollars (\$150,000), (B) provides for the payment of any compensation or benefits as a result of the consummation of the Transaction, or (C) is not terminable by the Company upon sixty (60) days' notice or less without any material Liability to the Company;

(ii) Contracts relating to the acquisition by the Company of any operating business or the capital stock of any other Person;

(iii) any Contract for the acquisition, sale, disposition, assignment, or transfer of any equity or assets of the Company (A) which is or would be material to the Company (in a single transaction or a series of related transactions, whether by merger, sale of stock, sale of assets, or otherwise) or (B) under which the Company has any outstanding Liabilities (contingent or otherwise, including earn-out provisions and indemnification obligations);

(iv) Contracts for or relating to the making of any material loans to another Person;

(v) any Contract under which the Company is (A) lessee of or holds or operates any equipment, vehicle, or other tangible personal property owned by any other Person or (B) lessor of, or permits any third party to hold or operate, any such personal property owned or controlled by the Company, except, in each case, for any lease or related leases of personal property under which the aggregate annual rental payments to any individual lessor do not exceed One Hundred Thousand Dollars (\$100,000);

(vi) Contracts which are expected to involve payment or receipt by the Company of more than Five Hundred Thousand Dollars (\$500,000) in the aggregate for any individual Contract or series of related Contracts during the fiscal year ending December 31, 2020, other than (A) purchase and sales orders entered into in the ordinary course of business using the Company's standard form of purchase order (a copy of which has been made available to Purchaser prior to the date hereof) and (B) Benefit Plans;

(vii) any Contract with any Material Customer or Material Vendor;

(viii) Contracts granting a right of first refusal, first offer or similar preferential right to purchase or acquire Equity Interests in the Company;

(ix) any Contract granting to any Person an option or a first refusal, first offer, "most favored nation," or similar preferential right to purchase or acquire any material asset of the Company or to act as supplier to the Company, or that purports to limit the ability of the Company to own, operate, sell, transfer, pledge, or otherwise dispose of any material amount of assets;

(x) Contracts containing non-competition, non-solicitation, exclusivity, or other similar covenants binding on the Company or prohibiting or materially limiting the Company's ability to conduct business with any Person in any geographic area;

(xi) Contracts for joint venture agreements or similar partnerships;

(xii) any Contract for capital expenditures or the acquisition or construction of fixed assets or purchase of capital assets requiring the payment by the Company of an amount in excess of One Hundred Thousand Dollars (\$100,000), individually, or Two Hundred Fifty Thousand Dollars (\$250,000), in the aggregate, for payments required by related Contracts, acquisitions, or constructions to any individual Person;

(xiii) any Active Government Contract;

(xiv) any Contract or Bid with a non-U.S. government or non-U.S. public sector organization;

(xv) any material Real Property Lease;

(xvi) any settlement, conciliation, or similar Contract;

(xvii) any collective bargaining agreement or any other Contract with any labor union, works council, or labor organization;

(xviii) Contracts involving any minimum purchase obligations of (A) the Company to any other Person or (B) any other Person to the Company;

(xix) Contracts relating to the incurrence, assumption or guarantee of any Indebtedness or imposing a Lien (other than Permitted Liens) on any of the assets of the Company, including indentures, guarantees, loans or credit agreements;

(xx) Contracts pursuant to which the Company (A) obtains a license to material Intellectual Property (excluding licenses of commercially available software with annual license, maintenance, or other fees of less than Twenty-Five Thousand Dollars (\$25,000) in the aggregate) or (B) grants to a third party any license to material Intellectual Property (excluding non-exclusive licenses granted to customers in the ordinary course of business); and

(xxi) Contracts with Related Parties.

(b) Each Material Contract is in full force and effect and is a legal, valid, binding and enforceable obligation of the Company, and, to the Knowledge of the Company, of the other party or parties thereto, except as enforceability may be limited by applicable Equitable Principles. With respect to each Material Contract, (i) there does not exist thereunder any material breach or material default on the part of the Company or, to the Knowledge of the Company, any other party to such Material Contract; (ii) to the Knowledge of the Company, no event has occurred which, with the passage of time or the giving of notice or both, would result in a default or breach by the Company or any other party thereto, under such Material Contract; (iii) the Company has not received written notice of any termination, non-renewal, or cancellation by another party to such Material Contract or of such party's intention to terminate, fail to renew, or cancel such Material Contract, and (iv), to the Knowledge of the Company, no party to such Material Contract has any intention to terminate, fail to renew, or cancel any Material Contract.

(c) Prior to the date hereof, the Company has made available to Purchaser a true, complete, and correct copy of each written Material Contract, together with all amendments, written waivers, or other changes thereto, and a true, complete, and correct description of the material terms and conditions of each oral Material Contract, including any waivers or other changes thereto, whether written or oral.

### 3.13 Government Contracts and Government Bids.

(a) Section 3.13(a) of the Company Disclosure Schedule sets forth a true, complete, and correct list, as of the date of this Agreement, of (i) each Government Contract for which the period of performance has not expired or terminated or final payment has not been received as of the date of this Agreement (each, an "Active Government Contract"); and (ii) Government Bids for awards of new Government Contracts made by the Company (each, an "Active Government Bid"). All Active Government Contracts were legally awarded and are binding on the parties thereto, subject to applicable Equitable Principles. The Company has made available to Purchaser true, complete, and correct copies of all Active Government Contracts.



(b) Except as set forth in Section 3.13(b) of the Company Disclosure Schedule, during the past five (5) years, the Company has complied with all material terms and material conditions of (including all representations and certifications relating to) Government Contracts and Government Bids, including all applicable Laws or regulations incorporated therein.

(c) Except as set forth in Section 3.13(c)(i) of the Company Disclosure Schedule, during the past five (5) years, (A) no Governmental Authority nor any prime contractor or higher-tier subcontractor under any Government Contracts or Government Bids has notified the Company in writing of any actual or alleged violation or breach of any statute, regulation, representation, certification, disclosure obligation or contract term; (B) the Company has received no notice of termination for convenience, cause or default, cure notice, show cause notice, or stop work order relating to any Government Contract, other than with respect to any ordinary course of business termination for convenience due to a change in scope of a Government Contract; and (C) no Government Contract of the Company has been terminated for convenience, default or cause, other than with respect to any ordinary course of business termination for convenience due to a change in scope of a Government Contract. To the Knowledge of the Company, no facts or circumstances exist upon which a termination for convenience, default, or cause may be based in the future. Except as set forth in Section 3.13(c)(ii) of the Company Disclosure Schedule, the execution, delivery or performance of this Agreement will not result in a material violation, breach or default under any Active Government Contract.

(d) Except as set forth in Section 3.13(d) of the Company Disclosure Schedule, (i) the Company is not a party to any material outstanding claims, requests for equitable adjustment, or Contract disputes relating to any Government Contract or Government Bid under the Contract Disputes Act or any other applicable Law and; (ii) during the past five (5) years, the Company has not received, and to the Knowledge of Company, no Governmental Authority, prime contractor or higher-tier subcontractor has threatened to assert, any claim, request for equitable adjustment, or dispute against the Company relating to any Government Contract or Government Bid where the amount in controversy exceeds or is expected to exceed Twenty-Five Thousand Dollars (\$25,000); (iii) to the Knowledge of the Company, there are no facts or circumstances upon which such a request for equitable adjustment, claim, or dispute in clauses (i) or (ii) may be based in the future; (iv) during the past five (5) years, the Company has not received notice of any cost disallowance, withholding, offset, overpayment or credit in excess of Twenty-Five Thousand Dollars (\$25,000) requested by, or on behalf of, a Governmental Authority; and (v) during the past five (5) years, all invoices and claims for payment, reimbursement or adjustment submitted by the Company related to a Government Contract were current, accurate and complete in all material respects as of their respective submission dates.

(e) In the past five (5) years, neither the Company nor any of its Principals (as defined in Federal Acquisition Regulation (“FAR”) 2.101 and 52.209-5), nor any of their respective employees, are or have been debarred, suspended, proposed for suspension or debarment, declared ineligible (as defined in FAR 2.101), received a notice of determination of non-responsibility or determined non-responsible by any Governmental Authority, or otherwise excluded from holding, performing, or bidding on any Government Contract. No

suspension, debarment, ineligibility (as defined in FAR 2.101), non-responsibility proceeding, or other exclusion action has been commenced or threatened against the Company or any of its Principals and, to the Knowledge of the Company, there are no facts or circumstances that would be reasonably likely to result in a suspension, debarment proceeding or ineligibility on the part of the Company or any of its Principals.

(f) Except as set forth in Section 3.13(f) of the Company Disclosure Schedule, during the past five (5) years, (i) the Company has not received written notice of any pending or threatened investigation, prosecution, administrative proceeding or audit (other than pre-award, post-award and indirect rate audits by the Defense Contract Audit Agency or the Defense Contract Management Agency or other Governmental Authorities performing a similar function that have not resulted in any investigation or claim for fraud or defective pricing or resulted in any penalty or assessment) related to any Government Contract or Government Bid of the Company; and (ii) the Company has not conducted or initiated any material internal investigation of its own initiative or at the request of any Governmental Authority, prime contractor or higher-tier subcontractor related to any Government Contract or Government Bid of Company.

(g) Except as set forth in Section 3.13(g) of the Company Disclosure Schedule, during the past five (5) years, the Company has not made any disclosure in writing to any Governmental Authority or other customer or prime contractor or higher-tier subcontractor related to any suspected or alleged violation of an applicable Law or requirement of a Government Contract or Government Bid by the Company or any of its Principals relating to a Government Contract or Government Bid nor is the Company required to make any such disclosure to a Governmental Authority.

(h) Section 3.13(h) of the Company Disclosure Schedule sets forth all facility security clearances held by the Company that the Company is permitted by Law to disclose. The Company and its employees who hold or have held security clearances are, and have been for the past five (5) years, in compliance in all material respects with applicable national security requirements, including the National Industrial Security Program Operating Manual (“NISPOM”) and all applicable requirements under each Government Contract to which the Company is a party relating to the safeguarding of and access to classified information. No termination of any facility or personnel clearances held by the Company or its employees has occurred or has, to the Knowledge of the Company, been threatened in the past five (5) years. No facts exist which are reasonably expected to give rise to the revocation, invalidation or suspension of any facility security clearance held by the Company. In the past five (5) years, the Company has not received a rating less than “Satisfactory” from any inspection or audit by the Defense Counterintelligence and Security Agency (the “DCSA”) of the U.S. Department of Defense, and there has been no unauthorized disclosure of classified information by employees of the Company.

(i) Except as set forth in Section 3.13(i) of the Company Disclosure Schedule, during the past five (5) years, the Company has not received notice of any adverse past performance evaluations or ratings in connection with any Government Contracts.

(j) All invoices and claims for payment, reimbursement or adjustment submitted by the Company in connection with a Government Contract during the last five (5) years were current, accurate, and complete in all material respects as of their respective submission dates and the Company has complied with all obligations to update such submissions. During the last five (5) years, none of the accounting or business systems or practices and procedures of the Company have been found to be non-compliant or inadequate by any Governmental Authority.

(k) During the past five (5) years, the Company has complied with all material Government Contracts requirements regarding the utilization of small or other disadvantaged business subcontractors and has not represented itself in any Government Bid as a veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business. The Company has not been awarded any Active Government Contract on the basis of its small business status, and has not submitted any Active Government Bid in which the Company is seeking an award based on its status as a small business.

(l) During the past five (5) years, the Company has not received, with respect to any Government Contract or Government Bid, any notice from a Governmental Authority raising questions or concerns regarding the possibility of actual or potential material organizational conflicts of interest (as defined in 48 C.F.R. §9.501) concerns or has been required to implement any organizational conflict of interest mitigation plan, or has agreed or undertaken to refrain from any material business activity for purposes relating to actual or perceived organizational conflicts of interest.

### 3.14 Intellectual Property and Data Privacy.

(a) Section 3.14(a) of the Company Disclosure Schedule sets forth a list of (i) all registrations and applications for the registration with a Governmental Authority of Intellectual Property owned by the Company (collectively, “Registered Intellectual Property”) and (ii) all domain names that are owned by the Company. All of the registrations and applications set forth on Section 3.14(a)(i) and Section 3.14(a)(ii) of the Company Disclosure Schedule are valid and in full force and effect, and have not been cancelled, expired, abandoned or otherwise terminated, and payment of all renewal and maintenance fees in respect thereof, and all filings related thereto, have been duly made. Except as set forth on Section 3.14(a)(iii) of the Company Disclosure Schedule, the Company owns and possesses all right, title and interest in and to each item of Intellectual Property owned by the Company, and has the valid and enforceable right to use all other material Intellectual Property used in, held for use in, or necessary for the Company’s Business as currently conducted, in each case free and clear of all Liens, except Permitted Liens. Except as set forth on Section 3.14(a)(iv) of the Company Disclosure Schedule, there are no annuities, payments, fees, responses to office actions or other filings required to be made and having a due date with respect to any Registered Intellectual Property or domain names within ninety (90) days after the date of this Agreement.

(b) Except as set forth in Section 3.14(b) of the Company Disclosure Schedule, (i) the Company does not, in the current operation of the Business, infringe, misappropriate, or otherwise violate the Intellectual Property of any third party; (ii) since

January 1, 2014, the Company has not received any written notice of any action asserting that any such infringement, misappropriation, or other violation has occurred; and (iii) since January 1, 2014, the Company has not received any written request or invitation to take a license under any Intellectual Property owned by any third party. There is no pending claim by any third party contesting the ownership, use or practice, right to use or practice, right to register, registration, priority, duration, validity, or enforceability of, or alleging misuse of, the Registered Intellectual Property or any other Intellectual Property used in or held for use in the Company's Business as currently conducted (including any litigation, interference, derivation, post-grant review, inter partes review, reissue, reexamination, opposition, cancellation, or similar action), and no such claim is or has been threatened in writing since January 1, 2014.

(c) Except as set forth in Section 3.14(c)(i) of the Company Disclosure Schedule, to the Knowledge of the Company, (x) no third party is infringing, misappropriating or otherwise violating any Intellectual Property owned by the Company that is material to the conduct of the Company's Business and (y) the Company has not delivered written notice of a claim for any such infringement, misappropriation or other violation to a third party since January 1, 2014. Except as set forth in Section 3.14(c)(ii) of the Company Disclosure Schedule, to the Knowledge of the Company, there has been no unauthorized use or disclosure of any material Company trade secret and no facts or circumstances exist that would indicate that there has been such unauthorized use or disclosure of any such Company trade secret.

(d) The Computer Systems are in good working order and operate and perform materially in accordance with their applicable specifications and as required in connection with the operation of the Business as currently conducted. The Computer Systems owned or controlled and operated by the Company are sufficient to operate the Business as currently conducted. The Company maintains reasonable and appropriate administrative, physical and technical security controls to safeguard the Computer Systems against disruption and unauthorized access or use, including employing commercially reasonable security, maintenance, disaster recovery, redundancy, backup, archiving and virus or malicious device scanning/protection measures. In the past five (5) years, there have been no material breaches of the Company's security procedures or unauthorized access, use, disclosure, modification or destruction of any of the Computer Systems or data contained in the Computer Systems. The Company has established one or more incident response plans to address any actual or threatened security incident or data breach.

(e) None of the software owned by the Company is currently or was in the past distributed or used with any Publicly Available Software in a manner that would require that any Intellectual Property owned or used by the Company be dedicated to the public domain, disclosed, distributed in source code form or made available at no charge.

(f) The Company is not a party to any escrow agreement pertaining to source code for software owned by the Company. The Company has not provided source code for any software owned by the Company to any third party.

(g) Each current and former Company employee, contractor, director, manager, and officer who has participated in, been involved in, or who contributed to, the creation or development of any material Intellectual Property owned, or purported to be owned

by, the Company has executed a valid and enforceable written Intellectual Property assignment and confidentiality agreement for the sole and exclusive benefit of the Company in the form of (i) a present assignment of all rights, title and interests that such Person may have, may have had or may hereafter acquire in or to such Intellectual Property and a valid and enforceable waiver of any and all rights (including moral rights) that such Person may have therein and (ii) a nondisclosure agreement.

(h) The Company has taken all commercially reasonable measures to protect the secrecy and value of the Company's trade secrets and proprietary information. The Company has taken all commercially reasonable steps to maintain the validity and enforceability of all material Intellectual Property owned by the Company.

(i) No restriction asserted by the Company on any Governmental Authority's use or disclosure of any technical data or computer software has been finally adjudicated as unjustified or invalid. There are no pending or, to the Knowledge of the Company, threatened pre-challenge requests for information, challenges, appeals, or other proceedings by any Governmental Authority related to the validity or justification for any restrictions asserted by the Company on such Governmental Authority's use or disclosure of any technical data or computer software.

(j) No restrictive marking applied by the Company to any technical data or computer software has been finally adjudicated as non-conforming. No Governmental Authority has notified the Company that any restrictive marking applied by the Company to any technical data or computer software is non-conforming.

(k) All technical data and computer software delivered with less than unlimited rights pursuant to a Government Contract has been identified and marked in accordance with such Government Contract.

(l) No Intellectual Property owned by the Company or used or held for use in the Company's Business as currently conducted and as presently contemplated to be conducted has been delivered to any Governmental Authority with unlimited rights.

(m) The Company is in compliance in all material respects with all Privacy and Security Laws and has implemented commercially reasonable policies, programs, and procedures (including administrative, technical, and physical safeguards): (i) to protect against unauthorized access, use, modification, and disclosure of and to protect the confidentiality, integrity, and security of, Personal Information and proprietary information in the Company's possession, custody, or control; and (ii) as required in all material respects to comply with applicable Law, including any Privacy and Security Law.

(n) In the past five (5) years, there has been no material data security breach of any Computer System or network, or unauthorized use or disclosure of any Personal Information, owned, used, stored, received, or controlled by, or on behalf of, the Company, including any unauthorized use or disclosure of Personal Information, that would constitute a breach for which notification to individuals and/or regulatory authorities is required under any applicable Privacy and Security Law.

(o) No Governmental Authority or any other Person has made any material claim (in the case of any other Person, in writing) or brought any material Legal Proceeding (including any investigation by any Governmental Authority for a violation of any Privacy and Security Law) relating to the Company's information privacy or data security practices, including with respect to the access, disclosure or use of Personal Information or proprietary information maintained by, or on behalf of, the Company, and, to the Company's Knowledge, no Governmental Authority or any other Person has threatened any such claim or Legal Proceeding or conducted any investigation or inquiry with respect thereto. Complete and accurate copies of any written complaints delivered to the Company during the past twelve (12) months alleging a violation of any Privacy and Security Law have been made available to Purchaser.

(p) The Company's past and present collection, use, retention, and dissemination of Personal Information is, and has been in the past, in compliance in all material respects with the terms of: (i) all Contracts to which the Company is a party relating to data privacy, security or breach notification; (ii) any applicable Law, including any Privacy and Security Law, or (iii) any written Company privacy policy.

(q) Except as set forth in Section 3.14(g) of the Company Disclosure Schedule, the Company has required and requires all Persons to which it provided or provides access to Personal Information to maintain the privacy and security of such information, including by contractually obligating such Persons to protect such information from unauthorized access by, or disclosure to, any unauthorized Persons.

(r) The execution, delivery and performance of the Transaction Agreements and the consummation of the Transaction, including any transfer of Personal Information resulting from the Transaction will not materially violate any Privacy and Security Law as that Law currently exists or as it existed at any time during which any Personal Information was collected or obtained by or on behalf of the Company, or any other privacy and data security requirements imposed on the Company under any Contracts. At the Closing, the Company will continue to have the right to use such Personal Information on terms and conditions identical to those on which the Company had the right to use such Personal Information immediately prior to the Closing.

3.15 Trade Compliance Laws. Except as set forth in Section 3.15 of the Company Disclosure Schedule: (a) for the past five (5) years, the Company has been in compliance in all material respects with all applicable statutory and regulatory requirements of the United States and other jurisdictions to the extent applicable to its operations related to export controls, economic sanctions, trade embargoes, imports of goods and payment of customs duties and fees, and anti-boycott compliance (collectively, the "Trade Compliance Laws"); and (b) no investigation, audit or proceeding with respect to any alleged material non-compliance with Trade Compliance Laws is pending or, to the Knowledge of the Company, threatened against the Company.

3.16 Employee Benefits Plans.

(a) Section 3.16(a) of the Company Disclosure Schedule sets forth a true, correct, and complete list of all Benefit Plans, other than offer letters entered into in the

ordinary course of business that provide for at-will employment and can be terminated without material Liability.

(b) For each Benefit Plan, the Company has provided or made available to Purchaser the following, to the extent applicable: (i) the plan document (or, in the case of an unwritten Benefit Plan, a written description of the material terms thereof and, in all cases, if applicable, form(s) thereof and any material deviations therefrom) and all amendments thereto; (ii) the most recent summary plan description (and any summaries of material modifications with respect thereto); (iii) the most recent annual report on Form 5500 (with schedules and attachments); (iv) each current trust, insurance, annuity or other funding Contract related thereto; (v) the most recent audited financial statements and actuarial or other valuation reports prepared with respect thereto; (vi) the most recently received Internal Revenue Service determination letter or opinion letter; and (vii) non-discrimination testing for the last three (3) completed plan years.

(c) No Benefit Plan is subject to Title IV of ERISA and, in the last six (6) years, the Company has not sponsored, maintained or contributed to a pension plan that is subject to Title IV of ERISA. The Company does not have any Liability pursuant to Title IV of ERISA (including by virtue of arrangements maintained by current or former Affiliates). Except as set forth in Section 3.16(c) of the Company Disclosure Schedule, to the Knowledge of the Company, no condition exists that would reasonably be expected to cause the Company (including, after the Closing, Purchaser and any of its Affiliates) to incur any such Liability. No Benefit Plan is (i) a “defined benefit plan” (as defined in Section 414 of the Code) or (ii) a “multiple employer” plan (as defined in Section 4063 or 4064 of ERISA), other than any PEO Plan.

(d) With respect to each Benefit Plan that is a “welfare plan” (as defined in Section 3(1) of ERISA) (whether or not subject to ERISA), the Company does not have any Liability with respect to an obligation to provide welfare benefits, including death or medical benefits (whether or not insured), with respect to any Person beyond such Person’s retirement or other termination of employment or service, other than coverage mandated by Section 4980B of the Code, by state Law (or other Law) or disability benefits under any employee welfare plan that have been fully provided for by insurance or otherwise.

(e) Except as has not resulted in and would not reasonably be expected to result in any material Liability to the Company, and except as set forth in Section 3.16(e) of the Company Disclosure Schedule, with respect to each Benefit Plan (other than any PEO Plan), the Company has complied and is now in compliance with all the provisions of ERISA, the Code and all Laws and regulations applicable to such Benefit Plan, and each Benefit Plan (other than any PEO Plan) has been administered in accordance with its terms. With respect to each Benefit Plan, (i) all material payments due from the Company to date have been timely made (including permissible extensions) or accrued in accordance with GAAP and (ii) each such Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service (or is subject to an opinion letter from the Internal Revenue Service) with respect to such qualification or has pending or has time remaining in which to file an application for such determination from the Internal



Revenue Service, and no event or circumstance has occurred that is reasonably expected to adversely affect the qualified status of such Benefit Plan.

(f) There is no claim (other than routine claims for benefits), Legal Proceeding, arbitration or other action pending or, to the Knowledge of the Company, threatened against or with respect to any Benefit Plan (other than any PEO Plan).

(g) With respect to each current or former employee, officer, director or individual independent contractor of the Company, the consummation of the transactions contemplated by this Agreement will not, either alone or upon the occurrence of any additional or subsequent events, whether contingent or otherwise: (i) result in any payment or benefit becoming due or payable to, or required to be provided to, any such Person, (ii) result in the acceleration of the time of payment, vesting or funding of any compensation or benefits payable to any such Person, (iii) limit or restrict the right to amend, terminate or transfer the asset of any Benefit Plan on or following the Closing, or (iv) result in any amount failing to be deductible by reason of Section 280G of the Code. There is no Contract, agreement, arrangement or policy to which the Company is a party or by which it is bound to compensate any Person for excise Taxes paid pursuant to Section 4999 of the Code.

### 3.17 Labor and Employment Matters.

(a) Except as set forth on Section 3.17(a)(i) of the Company Disclosure Schedule, the Company has provided to Purchaser a listing of all of the current employees and interns of the Company and all individuals retained by the Company as independent contractors. Except as set forth on Section 3.17(a)(ii) of the Company Disclosure Schedule, the Company has provided to Purchaser a list of all employees of the Company, by location, who have experienced an “employment loss,” “layoff,” or “relocation” as defined by the WARN Act within the past ninety (90) days.

(b) Since January 1, 2018, the Company has not been a party to, bound by or negotiated any labor or collective bargaining agreement in respect of any employee or group of employees of the Company and there is not, and has not been, any union representing, or purporting to represent, any Company employee. There are no, and since January 1, 2017 there have been no, (i) material strikes, work stoppages, work slowdowns, lockouts, handbilling, requests for representation, picketing or other similar labor activities pending or, to the Knowledge of the Company, threatened against the Company and/or (ii) material unfair labor practice charges, grievances, complaints or, to the Knowledge of the Company, investigations, regarding material labor or employment matters, pending or threatened by, or on behalf of, any employee or group of employees of the Company against the Company before a Governmental Authority.

(c) The Company is, and for the past three (3) years has been, in compliance in all material respects with all applicable Laws pertaining to labor, employment, and employment practices including all applicable Laws respecting terms and conditions of employment, health and safety, wages and hours, immigration (including the completion of Forms I-9 for all U.S. employees), employment harassment, discrimination and retaliation, whistleblowing, disability rights or benefits, plant closures and layoffs (including the WARN



Act), workers' compensation, labor relations, employee leaves of absence, paid time off, and COVID-19.

(d) The Company is and for the last five (5) years has been in compliance in all material respects with all Government Contract provisions regarding labor, employment and employment practices, including all such Government Contract provisions regarding terms and conditions of employment, wages and hours, immigration (including the verification of I-9s), discrimination, harassment, affirmative action, disability rights or benefits, equal opportunity, and whistleblower protections.

(e) Except as would not be material to the Company, at all times during the past four (4) years: (i) all Company employees classified as exempt employees under the Service Contract Act, Fair Labor Standards Act, and similar applicable foreign, state, and local wage and hour Laws have been and are properly classified as such in all material respects, and (ii) all individuals characterized by the Company as independent contractors or consultants have been and are properly classified as independent contractors under all applicable Laws. There is no amount owing to any current or former Company employee or individual retained by the Company as an independent contractor, other than amounts not yet due for payment.

(f) To the Knowledge of the Company, no current or former employee or independent contractor of the Company is in any material respect in violation of any term of any employment agreement, nondisclosure agreement, common law or statutory nondisclosure obligation, non-competition agreement, non-solicitation agreement, or restrictive covenant: (i) owed to the Company or (ii) owed to any third party with respect to such Person's right to be employed or engaged by the Company.

(g) The Company has promptly, thoroughly and impartially investigated all sexual harassment, discrimination, and retaliation allegations of which the Company has Knowledge since January 1, 2017, and took appropriate and prompt action where warranted in accordance with applicable Laws. The Company does not reasonably expect any material Liabilities with respect to any such allegations and, to the Knowledge of the Company, there are no allegations relating to officers, directors, employees, contractors, or agents of the Company that, if known to the public, would have a material and adverse impact on the reputation of the Company.

3.18 Transactions With Related Parties. Except as set forth in Section 3.18 of the Company Disclosure Schedule, no present officer, director, or stockholder of the Company, nor any Affiliate of the Company or any Person who is an immediate family member or Affiliate of the foregoing (each a "Related Party"), (a) is currently a party to any transaction or Contract with the Company, other than employment or consulting agreements entered into with individuals in the ordinary course of business; (b) possesses, directly or indirectly, any financial interest in, or is a director, officer, or employee of, any Person (other than the Company) which is a supplier, lessor, lessee, or competitor of the Company; or (c) possesses, directly or indirectly, any financial interest in any assets, tangible or intangible (including Intellectual Property rights) used or held for use in, or necessary for the operation of, the Business as currently conducted. Ownership of securities of a company whose securities are traded on any recognized securities exchange of five percent (5%) or less of any class of such securities shall not be deemed to be a financial interest for purposes of this Section 3.18.

3.19 Insurance. Section 3.19(a) of the Company Disclosure Schedule contains a list of each insurance policy, binder, or Contract carried or maintained by, or on behalf of, the Company relating to insurance coverage and/or bonding and surety arrangements (each, an “Insurance Contract” and, collectively, the “Insurance Contracts”), including the name of the insurer, the policy number, and the period, amount, and scope of coverage. The Company has delivered to Purchaser true, complete, and correct copies of each Insurance Contract. Except as set forth on Section 3.19(b) of the Company Disclosure Schedule, each Insurance Contract (i) is legal, valid, binding, and enforceable and in full force and effect, with all premiums and any other payments due and payable thereon having been paid in full and (ii) will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms immediately following the consummation of the Transaction. The Company is not in breach or default with respect to its material obligations under any Insurance Contract (including the payment of premiums). Except as set forth on Section 3.19(c) of the Company Disclosure Schedule, the Company has not received any written notice of cancellation or non-renewal of any Insurance Contract. To the Knowledge of the Company, no event has occurred that, with notice or the lapse of time, would constitute a breach or default, or permit any termination, modification, or acceleration under any Insurance Contract. All of the assets of the Company are currently insured against loss and damage under the Insurance Contracts. To the Knowledge of the Company, each of the Insurance Contracts is of the type and in the amount customarily carried by Persons conducting businesses similar to the Business as currently conducted and complies with all applicable legal requirements. There is no, and has for the past five (5) years been no, gap in insurance coverage for any material risks covered by the Insurance Contracts. Except as set forth on Section 3.19(d) of the Company Disclosure Schedule, none of the Insurance Contracts are subject to any retrospective premium adjustment, audit premium adjustment, experience-based liability adjustment, or loss-sharing cost adjustment. The Insurance Contracts satisfy in all material respects any insurance requirements under the terms of any Material Contracts, Government Contracts, and Real Property Leases. No insurer has excluded from the scope of any Insurance Contract coverage for any of the Company’s particular contractual indemnity obligations to any third parties. Except as set forth on Section 3.19(e) of the Company Disclosure Schedule, the Company has no self-insurance or co-insurance programs. Except as set forth on Section 3.19(f) of the Company Disclosure Schedule, the Company has delivered to Purchaser true, correct, and complete copies of loss run reports accurately depicting any and all claims made by the Company or any other insureds under the Insurance Contracts (or their predecessor Contracts) that have been pending or “open” at any point during the past five (5) years. There are no claims pending under any of the Insurance Contracts (or their predecessor Contracts for the preceding five (5)-year period) as to which coverage has been questioned, denied, or disputed by the insurer, or as to which the insurer has otherwise reserved its rights. Except as set forth on Section 3.19(g) of the Company Disclosure Schedule, all potentially insurable material third-party claims against, and material first-party claims of, the Company have been submitted to the appropriate insurance carrier(s) in material compliance with any applicable notice requirements.

3.20 Financial Advisors. Except for Evercore Group L.L.C., no Person has acted, directly or indirectly, as a broker, finder, agent, investment banker or financial advisor for Sellers or the Company in connection with the Transaction and no Person other than Evercore Group L.L.C. is entitled to any fee or commission or like payment from Sellers or the Company contingent upon Closing of the Transaction.

3.21 Customer and Vendors. Section 3.21 of the Company Disclosure Schedule sets forth (a) a list of the top customers of the Company, on an aggregate basis, by dollar volume of sales in

excess of Five Hundred Thousand Dollars (\$500,000) to such customers (which amount is set forth in Section 3.21 of the Company Disclosure Schedule) (collectively, the “Material Customers”), and (b) a list of the top vendors of the Company, on an aggregate basis, by dollar value of net purchases in excess of Five Hundred Thousand Dollars (\$500,000) from such vendors (which amount is set forth in Section 3.21 of the Company Disclosure Schedule) (collectively, the “Material Vendors”), in each case, for the fiscal year ended December 31, 2019, and for the eleven (11)-month period ended November 30, 2020. The Company has received no written or, to the Company’s Knowledge, oral notification from any of the Material Customers indicating that such Material Customer shall stop, materially decrease the rate of, or materially and adversely change the payment or price terms, with respect to, buying products or utilizing services from the Company. The Company has not received any written or, to the Company’s Knowledge, oral notification from any of the Material Vendors indicating that any such Material Vendor shall stop, materially decrease the rate of, or materially and adversely change the payment or price terms, with respect to, providing products or services to the Company. No Material Customer or Material Vendor has terminated, cancelled, or failed to renew, or given the Company written notice of its intention to terminate, cancel, or fail to renew, its business relationship with the Company within the past two (2) years. The Company is not party to, and in the last three (3) years has not been party to, any Legal Proceeding with any of the Material Customers or Material Vendors and, to the Knowledge of the Company, there exist no facts or circumstances that would result in any such Legal Proceeding being initiated.

3.22 Officers and Directors; Bank Accounts. Section 3.22(a) of the Company Disclosure Schedule lists the officers and directors for the Company. Section 3.22(b) of the Company Disclosure Schedule sets forth a true, correct, and complete list of all bank accounts and safe deposit boxes of the Company, including the number of each such account or box, the name of the holder of each such account or box, and the names of the Persons authorized to draw on each such account or to access each such box.

3.23 Product Warranty; Product Liability. No customers are entitled to, or benefit from, any service level or performance guarantees with respect to the products sold by the Company. No customers are currently entitled to any material refunds, credits, or rights of set-off with respect to any products and services sold by the Company. No material warranty claim is currently pending against the Company with respect to any products or services sold by the Company. The Company does not have any material Liabilities with respect to the failure of any product or service designed, manufactured, or sold by the Company to be in conformity in all material respects with all product specifications, contractual commitments, and express and implied warranties. The Company has not, and none of its products are or have ever been, subject to any product recall, withdrawal, seizure, sequestration, or quarantine, whether voluntarily or at the discretion or Order of any Governmental Authority and, to the Knowledge of the Company, there is no reasonable basis for any recall, withdrawal, seizure, sequestration, or quarantine.

3.24 Real Property.

(a) The Company does not own any real property.

(b) Section 3.24(b) of the Company Disclosure Schedule sets forth a true, correct, and complete list of all leases, subleases and occupancy agreements of real property (the “Leased Real Property”), pursuant to which the Company is the lessee or sublessee

(individually, a “Real Property Lease”). Each such Real Property Lease is in full force and effect and is a legal, valid, binding and enforceable obligation of the Company, and, to the Knowledge of the Company, of the other party or parties thereto, except as enforceability may be limited by applicable Equitable Principles. The Company has delivered to Purchaser true, correct, and complete copies of the Real Property Leases, including any restatements, amendments, supplements, and modifications thereto. The Company is not presently in material default under any material Real Property Lease, nor, to the Knowledge of the Company, has any event or state of facts occurred that, with the giving of notice or the passage of time, would mature into a default under any Real Property Lease. Except for tenant improvements at the Leased Real Property with an aggregate cost that does not exceed Five Thousand Dollars (\$5,000), the Company has completed any works of improvement required by the Real Property Leases and has paid in full any design professionals, contractors, subcontractors, material suppliers, or other Persons who pursuant to Law may file or record a Lien on the fee or leasehold estate of the Leased Real Property. The Company has made no alterations or additions to the Leased Real Property except in accordance with the Real Property Leases and Law, except as would not reasonably be expected to be material to the Company. To the extent any of the Real Property Leases granted the Company a tenant improvement allowance or other reimbursement mechanism in connection with space planning, design, engineering, construction work, materials, moving costs or other uses as permitted by such Real Property Lease, the Company has received all such funds in full.

(c) The Leased Real Property constitutes all interests in real property currently used in, held for use in, or intended to be used in, occupied, or related to the Business and that are necessary for the continued operation of the Business as presently operated. The Company holds a valid leasehold estate in each Leased Real Property pursuant to each Real Property Lease and all Real Property Leases are exclusively in writing and are in full force and effect. The Company has accepted full and complete possession of the Leased Real Property and, except as set forth on Section 3.24(c)(i) of the Company Disclosure Schedule, is the sole and actual occupant in possession thereof. No claim, controversy, dispute, or disagreement involving the Company exists with respect to any of the Real Property Leases or the Leased Real Property. Except as set forth on Section 3.24(c)(ii) of the Company Disclosure Schedule, all of the buildings, structures, fixtures and improvements on the Leased Real Property (A) are in good operating condition, and all mechanical and other systems located thereon are in good operating condition (ordinary wear and tear excepted) and (B) are without material structural defects. All of the Leased Real Property and the buildings, structures, fixtures and improvements thereon are adequate for their current uses and comply with, and are being operated and otherwise used in compliance, in all material respects, with all applicable Law. The Company has not received notice that any Leased Real Property is not in compliance, in all material respects, with applicable Law or that any buildings, structures, fixtures and improvements situated thereon are not located wholly within the boundary lines of the applicable legal parcel of real property upon which they are situated. There does not exist any actual or, to the Knowledge of the Company, threatened condemnation or eminent domain proceedings that affect any Leased Real Property. The Company has not received any notice of the intention of any Governmental Authority or other Person to take or use all or any part of any Leased Real Property.

(d) The Company has not assigned, mortgaged, transferred, or

hypothecated any Real Property Lease or any interest therein or leased or subleased all or any portion of the Leased Real Property, and, except as set forth on Section 3.24(d)(i) of the Company Disclosure Schedule, the Company is not a sublessor under any Real Property Lease, sublease, or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any Leased Real Property. A true, correct, and complete list of any subordination, nondisturbance and attornment agreements to which the Company is a party are set forth on Section 3.24(d)(ii) of the Company Disclosure Schedule.

(e) No security deposits or letters of credit held by any landlord under any Real Property Lease have been applied to any amounts owing under such Real Property Lease and the full amount of such security deposits or the full stated amounts of the letters of credit as stated in such Real Property Lease are being held by the landlord thereunder. Section 3.24(e) of the Company Disclosure Schedule sets forth the current amounts of security deposits or letters of credit held by the landlords of the Leased Real Property.

(f) Except as set forth on Section 3.24(f)(i) of the Company Disclosure Schedule, all rent, additional rent, real property Taxes, and possessory and use Taxes, insurance premiums, and all other charges or amounts required to be paid under any Real Property Lease are paid current. The Company has not received any notice from any insurance company that has issued a policy with respect to any Leased Real Property requiring performance of any structural or other repairs or alterations to such Leased Real Property. Except as set forth on Section 3.24(f)(ii) of the Company Disclosure Schedule, the Company does not own or hold, nor is the Company obligated under or a party to, any option, right of first refusal or other contractual right or obligation to purchase, acquire, sell, assign, lease or dispose of any real estate or any portion thereof or interest therein, including the Leased Real Property or any portion thereof. The Company has all certificates of occupancy and Permits of any Governmental Authority necessary for the current use and operation of each Leased Real Property, and Company has fully complied with all material requirements and conditions of the Permits applicable to it. There are no adverse claims by any Person (including adjoining property owners) or encroachments, protrusions or boundary disputes with respect to the Leased Real Property. Each Leased Real Property has access to (x) public roads or valid easements over private streets or private property for such ingress to, and egress from, such Leased Real Property and (y) water supply, storm and sanitary sewer facilities, telephone, gas and electrical connections, fire protection, drainage, telephony and data transmission and other public utilities, in the case of each of clauses (x) and (y), as is necessary to conduct the Business as it is currently conducted. The Leased Real Property and its continued use, occupancy and operation as currently used, occupied and operated, does not constitute a nonconforming use under any applicable Law relating to building, zoning, subdivision or other land use.

(g) Section 3.24(g)(i) of the Company Disclosure Schedule sets forth a true, correct, and complete list of all of the Company's subleases, licenses, or other Contracts giving any other Person, other than the Company, a right of possession or use of the Leased Real Property, including any amendment, restatement, modification or waiver of any terms or conditions thereof (collectively, the "Subleases"). Any Leased Real Property that the Company has granted a right of possession or use to an employee as a personal residence or for temporary lodging is listed on Section 3.24(g)(ii) of the Company Disclosure Schedule and except as set forth on Section 3.24(g)(ii) of the Company Disclosure Schedule, such grant of a

right of possession or use is evidenced in a written Sublease or employment agreement listed on such schedule. No rents or operating expense pass-throughs have been prepaid by any sublessee, licensee or other Person having a right of possession or use under any Sublease. Section 3.24(g)(iii) of the Company Disclosure Schedule sets forth the amounts of any security deposits held by the Company as sublessor, licensor or otherwise under any Sublease. To the Knowledge of the Company, no sublessee, licensee or other Person with a right of possession or occupancy under a Sublease is presently in material default under a Sublease and no event or state of facts has occurred that, with the giving of notice or the passage of time, would mature into a material default under any Sublease.

(h) Section 3.24(h) of the Company Disclosure Schedule sets forth a list of each site where the Company flight tests its unmanned aircraft (the “Government Testing Grounds”). Except for the Government Testing Grounds, the Company does not flight test its unmanned aircraft at any other location.

The Company has not breached or violated the terms of any license, agreement, permission, or other understanding with the owner of the Government Testing Grounds. The Company has not violated in any material respect any Law in connection with its use of the Government Testing Grounds. The Company has not received from the owner or manager of the Government Testing Grounds any written notice that terminates, suspends, or impairs the Company’s ability to use the Government Testing Grounds in the ordinary course of the Business as currently conducted.

### 3.25 Government Stimulus Payments.

(a) Other than the PPP Loan, neither the Company nor any Affiliate thereof has applied for, or received, any loans or grants pursuant to, or under, any PPP Laws. The Company has delivered to Purchaser a true, correct, and complete copy of each material PPP Loan Document relating to the PPP Loan.

(b) (i) The certifications of eligibility by the Company in the PPP Loan Documents were accurate certifications when the PPP Loan application was submitted to the PPP Lender and (ii) since applying for a PPP Loan until the repayment thereof, the Company was in material compliance with all PPP Laws and the PPP Loan Documents. All proceeds of the PPP Loan have been used by the Company solely for purposes permitted under the PPP Loan Documents.

(c) The Company has not been in material breach of, nor in material default under, any of the PPP Loan Documents and prior to the repayment of the PPP Loan was not operating in violation of any PPP Laws with respect to the PPP Loan. The PPP Loan, including all interest, fees, and other amounts owing to the PPP Lender in connection with the PPP Loan was fully repaid effective on or before May 18, 2020.

(d) The Company has not received any written notice from the PPP Lender, the SBA or any other Governmental Authority or Person regarding any actual, alleged or potential violation of the PPP Laws or any PPP Loan Document. The Company has maintained accurate and complete copies of all PPP Loan Documents and accurate and complete records of the documents supporting the application for, the use of, and the full repayment of, the PPP Loan.

3.26 NO OTHER REPRESENTATIONS OR WARRANTIES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III AND/OR IN ARTICLE IV (EACH AS MODIFIED BY THE COMPANY DISCLOSURE SCHEDULE AND SELLER DISCLOSURE SCHEDULE, RESPECTIVELY) AND/OR ANY CERTIFICATE DELIVERED BY ANY SELLER, THE SELLERS' REPRESENTATIVE OR THE COMPANY PURSUANT TO SECTION 8.2, NONE OF THE COMPANY, SELLERS OR ANY OTHER PERSON MAKES, OR HAS BEEN AUTHORIZED BY THE COMPANY OR ITS AFFILIATES TO MAKE, ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE COMPANY, SELLERS, THE SHARES OR THE TRANSACTION, AND THE COMPANY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY ANY SELLER, ANY AFFILIATE OF ANY SELLER, THE COMPANY, ANY AFFILIATE OF THE COMPANY OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS OR REPRESENTATIVES AND IF MADE, SUCH REPRESENTATION OR WARRANTY MAY NOT BE RELIED UPON BY PURCHASER OR ANY OF ITS AFFILIATES AND REPRESENTATIVES AS HAVING BEEN AUTHORIZED BY THE COMPANY OR ANY OF ITS AFFILIATES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III (AS MODIFIED BY THE COMPANY DISCLOSURE SCHEDULE) AND/OR ANY CERTIFICATE DELIVERED BY THE COMPANY PURSUANT TO SECTION 8.2, THE COMPANY HEREBY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, OPINION, PROJECTION, FORECAST, STATEMENT, MEMORANDUM, PRESENTATION, ADVICE OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER, ITS AFFILIATES OR ANY OF THEIR REPRESENTATIVES (INCLUDING ANY OPINION, PROJECTION, FORECAST, STATEMENT, MEMORANDUM, PRESENTATION, ADVICE OR INFORMATION THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER, ITS AFFILIATES OR ANY OF THEIR REPRESENTATIVES, BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF THE COMPANY OR ANY OF ITS AFFILIATES, INCLUDING, ANY INFORMATION MADE AVAILABLE IN THE DATA ROOM). NONE OF THE COMPANY, SELLERS OR ANY OTHER PERSON MAKES ANY REPRESENTATIONS OR WARRANTIES TO PURCHASER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS CONDUCTED BY THE COMPANY. NOTWITHSTANDING ANY OF THE FOREGOING TO THE CONTRARY, NOTHING IN THIS SECTION 3.26 SHALL BE DEEMED OR CONSTRUED TO PRECLUDE OR IN ANY WAY LIMIT ANY CLAIM FOR FRAUD (AS DEFINED HEREIN).

#### **ARTICLE IV**

##### **REPRESENTATIONS AND WARRANTIES WITH RESPECT TO SELLERS**

Except as set forth on the disclosure schedule delivered by Sellers to Purchaser concurrently with their entry into this Agreement (the "Seller Disclosure Schedule"), each Seller hereby represents and warrants to Purchaser, in each case solely with respect to such Seller, as follows:

4.1 Authorization of Agreement. Such Seller has the requisite power and authority to execute and deliver this Agreement and each other Transaction Agreement to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Transaction. The execution



and delivery of the Transaction Agreements and the consummation of the Transaction contemplated thereby have been duly authorized by the requisite action on the part of such Seller. Each of the Transaction Agreements to which such Seller is a party has been or will be at or prior to the Closing, duly and validly executed and delivered by such Seller and (assuming the due authorization, execution and delivery by the other parties thereto) each such Transaction Agreement, when so executed and delivered, will constitute, the legal, valid and binding obligations of such Seller, enforceable against it in accordance with its terms, subject to applicable Equitable Principles.

#### 4.2 Equity Interests.

(a) Such Seller owns the number of Equity Interests set forth opposite such Seller's name in the Capitalization Schedule free and clear of Liens, other than restrictions on transfer under applicable securities Laws.

(b) If such Seller is a Shareholder:

(i) Such Shareholder has the power, authority, and legal capacity to sell, transfer, assign, and deliver such Shareholder's Shares as provided in this Agreement and such delivery will convey to Purchaser good, valid, and marketable title to such Shareholder's Shares, free and clear of any and all Liens (other than restrictions on transfer arising under applicable securities Laws).

(ii) Such Shareholder is not a party to any voting trust, proxy, or other agreement or understanding between or among any Persons that affects or relates to the voting or giving of written consent with respect to the Shares owned by such Shareholder.

(iii) There are no preemptive rights, co-sale rights, rights of first refusal, transfer restrictions, or similar rights with respect to such Shareholder's Shares to which such Shareholder may be entitled, or that such Shareholder has granted to any other Person, in relation to the sale and purchase of such Shareholder's Shares hereunder.

4.3 Conflicts; Consents of Third Parties. Assuming the Governmental Approvals are given, made, or obtained, as the case may be, none of the execution and delivery by such Seller of this Agreement or the other Transaction Agreements to which it is a party, or the consummation of the Transaction by such Seller, conflicts with, violates or constitutes a default (with or without notice or lapse of time, or both) under, permits the acceleration of any obligation under, gives rise to a right of termination, modification or cancellation by any third party under, or requires the consent or approval of, notice to, or other action by, any Person under, any provision of (a) the trust agreement of such Seller, as applicable; (b) any material Contract to which such Seller is a party or by which any of its properties or assets are bound; or (c) any Law applicable to such Seller, except in the case of clauses (b) and (c), where such conflict, violation or default would not result, or reasonably be expected to result, individually or in the aggregate, in a material adverse effect on the ability of such Seller to perform its obligations under this Agreement.

4.4 Legal Proceedings. There are no pending or, to the Knowledge of such Seller, threatened, Legal Proceedings against such Seller (a) which, if determined adversely to such Seller, would reasonably be expected to adversely affect the ability of such Seller to consummate the Transaction or (b) challenging, or that would reasonably be expected to have the effect of preventing,



making illegal, or otherwise materially interfering with, the Transaction. There are no settlement agreements or similar written agreements with any Governmental Authority or other Person and no outstanding Orders issued by any Governmental Authority against such Seller that relate to such Seller's, direct or indirect (as the case may be), ownership of such Seller's Equity Interests, or that would otherwise prevent or materially delay the Closing.

#### 4.5 Stock Consideration.

(a) Such Seller is acquiring the Purchaser Shares as principal solely for such Seller's own account for investment purposes and not with a view to resale or distribution thereof, in whole or in part, in violation of applicable federal or state securities Laws. Such Seller does not have any agreement or arrangement, formal or informal, with any Person to sell or transfer all or any part of any of the Purchaser Shares, and such Seller does not have any plans to enter into any such agreement or arrangement. Such Seller is an "accredited investor" as defined in Regulation D under the Securities Act, and is able to bear the economic risk of holding the Purchaser Shares for an indefinite period, and, individually or with such Seller's advisors, has knowledge and experience in financial and business matters such that such Seller is capable of evaluating the risks of the investment in the Purchaser Shares.

(b) In evaluating the suitability of an investment in the Purchaser Shares, such Seller has not relied upon any representation or other information (oral or written) other than those contained in this Agreement, and in Purchaser's Annual Report on Form 10-K for the fiscal year ended April 30, 2020 and other filings with the United States Securities and Exchange Commission ("SEC") (to the extent not superseded or amended by subsequent filings) (the "Public Reports"), or as set forth in the immediately following sentence. Such Seller has had the opportunity to ask questions of and receive answers from Purchaser and its officers and directors, and to obtain such information as such Seller deems necessary to verify the accuracy (i) of the information referred to in the Public Reports and (ii) of any other information relevant to making an investment decision with respect to the Purchaser Shares.

(c) Such Seller has not and, to the Knowledge of such Seller, such Seller's Family Members and/or Affiliates have not, in each case, directly or indirectly, traded in Purchaser's securities or engaged in any transactions in the securities of Purchaser (including, without limitation, any Short Sales involving any of Purchaser's securities) on or after August 1, 2020. "Short Sales" include all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934 (the "Exchange Act") and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers.

(d) Such Seller understands and acknowledges that the Purchaser Shares have not been registered under the Securities Act or any applicable state securities Laws. Such Seller understands that the issuance and sale of the Purchaser Shares is intended to be exempt from the registration requirements of the Securities Act, by virtue of Section 4(a)(2) thereof and/or Regulation D promulgated thereunder, based, in part, upon the representations, warranties and agreements of such Seller contained in this Agreement.

(e) Such Seller understands and acknowledges that the certificates representing the Purchaser Shares, if any, or ownership statements issued under a direct registration system or other electronic book entry system will bear the legends set forth below when issued:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY, (B) IN COMPLIANCE WITH THE EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, IF AVAILABLE, AND IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS, OR (C) IN A TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE LAWS AND REGULATIONS GOVERNING THE OFFER AND SALE OF SECURITIES, AND, IN THE CASE OF (B) OR (C), THE HOLDER HAS PRIOR TO SUCH TRANSFER FURNISHED TO THE COMPANY AN OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE CORPORATION.

THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO RESTRICTIONS ON TRANSFER PURSUANT TO A STOCK PURCHASE AGREEMENT DATED JANUARY 11, 2021 BY AND AMONG THE CORPORATION, THE HOLDER AND OTHER NAMED PARTIES.

(f) Such Seller understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Purchaser Shares or the fairness or suitability of the investment in the Purchaser Shares nor have such authorities passed upon or endorsed the merits of the transaction resulting in the issuance of the Purchaser Shares.

(g) Such Seller understands that nothing in this Agreement or any other materials presented by or on behalf of Purchaser to such Seller in connection with the issuance of the Purchaser Shares constitutes legal, tax or investment advice. Such Seller has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its receipt of Purchaser Shares as Stock Consideration.

4.6 NO OTHER REPRESENTATIONS OR WARRANTIES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III AND/OR IN THIS ARTICLE IV (EACH AS MODIFIED BY THE COMPANY DISCLOSURE SCHEDULE AND SELLER DISCLOSURE SCHEDULE, RESPECTIVELY) AND/OR ANY CERTIFICATE DELIVERED BY ANY SELLER, THE SELLERS' REPRESENTATIVE OR THE COMPANY PURSUANT TO SECTION 8.2, NONE OF SELLERS, THE COMPANY OR ANY OTHER PERSON MAKES, OR HAS BEEN AUTHORIZED BY SELLERS OR THEIR AFFILIATES TO MAKE, ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE COMPANY, SELLERS, THE SHARES OR THE TRANSACTION, AND SELLERS DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY ANY SELLER, ANY AFFILIATE OF ANY SELLER, THE COMPANY, ANY AFFILIATE OF THE

COMPANY OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS OR REPRESENTATIVES AND IF MADE, SUCH REPRESENTATION OR WARRANTY MAY NOT BE RELIED UPON BY PURCHASER OR ANY OF ITS AFFILIATES AND REPRESENTATIVES AS HAVING BEEN AUTHORIZED BY SELLERS OR ANY OF THEIR AFFILIATES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE IV (AS MODIFIED BY THE SELLER DISCLOSURE SCHEDULE) AND/OR ANY CERTIFICATE DELIVERED BY ANY SELLER, THE SELLERS' REPRESENTATIVE OR THE COMPANY PURSUANT TO SECTION 8.2, SELLERS HEREBY DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, OPINION, PROJECTION, FORECAST, STATEMENT, MEMORANDUM, PRESENTATION, ADVICE OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER, ITS AFFILIATES OR ANY OF THEIR REPRESENTATIVES (INCLUDING ANY OPINION, PROJECTION, FORECAST, STATEMENT, MEMORANDUM, PRESENTATION, ADVICE OR INFORMATION THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER, ITS AFFILIATES OR ANY OF THEIR REPRESENTATIVES, BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF THE COMPANY OR ANY OF ITS AFFILIATES, INCLUDING, ANY INFORMATION MADE AVAILABLE IN THE DATA ROOM). NONE OF SELLERS, THE COMPANY OR ANY OTHER PERSON MAKES ANY REPRESENTATIONS OR WARRANTIES TO PURCHASER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS CONDUCTED BY THE COMPANY. NOTWITHSTANDING ANY OF THE FOREGOING TO THE CONTRARY, NOTHING IN THIS SECTION 4.6 SHALL BE DEEMED OR CONSTRUED TO PRECLUDE OR IN ANY WAY LIMIT ANY CLAIM FOR FRAUD (AS DEFINED HEREIN).

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES WITH RESPECT TO PURCHASER

Purchaser hereby represents and warrants as follows:

5.1 Organization. Purchaser is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization or formation. Purchaser has the corporate, limited liability company, limited partnership or other similar power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted. Purchaser is duly licensed or qualified to do business in each jurisdiction in which the nature of its business or the character or location of any properties or assets owned or leased by it makes such licensing or qualification necessary, except for those jurisdictions where the failure to be so licensed or qualified would not have, individually or in the aggregate, a Purchaser Material Adverse Effect.

5.2 Authorization of Agreement. Purchaser has the requisite corporate, limited liability company, limited partnership or other similar power and authority to execute and deliver this Agreement and each other Transaction Agreement to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Transaction. The execution and delivery of the Transaction Agreements to which it is a party and the consummation of the Transaction has been duly authorized by the requisite corporate, limited liability company, limited partnership or other similar action on the part of Purchaser. Each of the Transaction Agreements to which it is a party, has been or

will be at or prior to the Closing, duly and validly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties thereto) each of the Transaction Agreements, when so executed and delivered, will constitute, the legal, valid and binding obligations of Purchaser, enforceable against it in accordance with its terms, subject to applicable Equitable Principles.

### 5.3 Conflicts; Consents of Third Parties.

(a) Assuming the Governmental Approvals are given, made, or obtained, as the case may be, none of the execution and delivery by Purchaser of this Agreement or the other Transaction Agreements to which it is a party, or the consummation of the Transaction, conflicts with, violates or constitutes a default (with or without notice or lapse of time, or both) under, or permits the acceleration of any obligation under, or gives rise to a right of termination, modification or cancellation under, any provision of (i) the articles of incorporation, bylaws, limited liability company agreement, partnership agreement or other comparable organizational documents, of Purchaser; (ii) any material Contract or Permit to which Purchaser is a party or by which any of the properties or assets of Purchaser are bound; or (iii) any Law applicable to Purchaser, except in the case of clauses (ii) and (iii), where such conflict, violation or default would not result, or reasonably be expected to result, individually or in the aggregate, in a Purchaser Material Adverse Effect.

(b) Assuming the Governmental Approvals are given, made, or obtained, as the case may be, no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Governmental Authority is required on the part of Purchaser in connection with the execution and delivery by Purchaser of this Agreement or the other Transaction Agreements to which it is a party, or the consummation of the Transaction by Purchaser, except for (i) compliance with any applicable requirements and filings with DCSA of the U.S. Department of Defense under the NISPOM; (ii) filings with the U.S. State Department's Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations, 22 C.F.R. §§ 120-30, as amended (the "ITAR"); (iii) federal and state securities notice filings and Exchange Act reporting with respect to the Stock Consideration; and (iv) notice filing with the Nasdaq Stock Market with respect to the Stock Consideration.

5.4 Legal Proceedings. There are no pending or, to the knowledge of Purchaser, threatened, Legal Proceedings against Purchaser that would have, individually or in the aggregate, a Purchaser Material Adverse Effect. There is no outstanding Order imposed upon Purchaser or any of its assets, except for Legal Proceedings which, if adversely determined, would not have, individually or in the aggregate, a Purchaser Material Adverse Effect.

5.5 Financial Capability. As of the date of this Agreement, Purchaser has received an executed debt commitment letter dated January 11, 2021, together with the related fee letter executed in connection therewith (the "Commitment Letter") from BofA Securities, Inc., Bank of America, N.A., JPMorgan Chase Bank, N.A. and U.S. Bank National Association (the "Debt Financing Parties," which defined term for purposes of this Agreement shall include such financial institutions and their respective former, current and future Affiliates, equityholders, members, partners, controlling persons, officers, directors, employees, agents and advisors involved in such Financing (as defined below)), pursuant to

which the Debt Financing Parties have committed, subject to the terms and conditions set forth therein, to provide to Purchaser the amount of financing set forth in the Commitment Letter, to complete the Transaction. A true, correct and complete copy of the Commitment Letter, including all exhibits, schedules or amendments thereto, has been previously provided to the Company; provided, however, that the fees and other commercially sensitive information in any fee letter (including provisions in such fee letter related solely to fees, “flex terms” and economic terms), in each case that do not adversely affect the conditionality, enforceability, termination or aggregate principal amount of the financing available may have been redacted. Purchaser has fully paid any and all commitment fees or other fees required by such Commitment Letter to be paid on or before the date hereof and will pay all additional fees as they become due. As of the date hereof, the Commitment Letter is valid and in full force and effect, constitutes the legally valid and binding obligation of Purchaser and, to the knowledge of Purchaser, the other parties thereto, subject to applicable Equitable Principles, and does not contain any material misrepresentation by Purchaser. There are no conditions precedent or other contingencies related to the funding of the full amounts contemplated by the debt financing arrangements contemplated by the Commitment Letter (the “Financing”) other than as set forth in the Commitment Letter. The Commitment Letter has not been amended or modified prior to the date hereof, and, as of the date hereof, the respective commitments contained in the Commitment Letter have not been withdrawn, terminated, rescinded, amended, restated, or modified in any respect (and, no such withdrawal, termination, rescission, amendment, restatement, or modification is contemplated as of the date hereof). Assuming (a) the Financing is funded in accordance with the Commitment Letter, and (b) the accuracy of the representations and warranties of Sellers and the Company set forth in this Agreement such that the conditions set forth in Section 8.2 would be satisfied and the satisfaction or waiver of each of the conditions set forth in Sections 8.1 and 8.2, the net proceeds contemplated by the Commitment Letter (both before and after giving effect to any “flex” provisions contained in the Commitment Letter) will be sufficient for Purchaser and the Company to pay all amounts required to be paid in connection with the transactions contemplated in this Agreement and the Commitment Letter, including paying the Closing Payments at the Closing and paying all related fees and expenses. Purchaser has not incurred any obligation, commitment, restriction or liability of any kind, and Purchaser is not contemplating or aware of any obligation, commitment, restriction or liability of any kind, in either case that would reasonably be expected to impair or adversely affect such resources. Neither the fee letter between Purchaser and the Debt Financing Parties referred to in the Commitment Letter nor any other Contract between the Debt Financing Parties, on the one hand, and Purchaser or any of its Affiliates, on the other hand, contains any conditions precedent or other contingencies related to the funding of the full amount of the Financing or any provisions that could reduce the aggregate amount of the Financing set forth in the Commitment Letter or the aggregate proceeds contemplated by the Commitment Letter. Except for the Commitment Letter, there are no other agreements, side letters or arrangements to which Purchaser is a party in respect of, that modify the terms of, or that could affect the availability or amount of the Financing. As of the date hereof, Purchaser has no reason to believe that any of the conditions to the Financing would not reasonably be expected to be satisfied or that the Financing would not reasonably be expected to be available to Purchaser on the Closing Date.

5.6 Investment. Purchaser is acquiring the Shares for its own account and for investment purposes and not with a view to the distribution thereof. Purchaser acknowledges that the Shares have not been registered under the Securities Act or any state securities Law and Purchaser must bear the economic risk of its investment in the Shares until and unless the offer and sale of such Shares is subsequently registered under the Securities Act and all applicable state securities Laws or an

exemption from such registration is applicable. Purchaser has conducted an examination of available information relating to the Company and its business, Purchaser has such knowledge, sophistication and experience in business and financial matters that it is capable of evaluating an investment in the Shares, and Purchaser can bear the economic risk of an investment in the Shares and can afford a complete loss of such investment.

5.7 Solvency. As of the Closing and immediately after giving effect to the Transaction (including any financing arrangements entered into in connection therewith), (a) the amount of the “fair saleable value” of the assets of the Company will exceed (i) the value of all liabilities of the Company, including contingent and other liabilities, and (ii) the amount that will be required to pay the probable liabilities of the Company on its existing debts (including contingent liabilities) as such debts become absolute and matured, (b) the Company will not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged, and (c) the Company will be able to pay its liabilities, including contingent and other liabilities, as they mature. For purposes of the foregoing, “not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged” and “able to pay its liabilities, including contingent and other liabilities, as they mature” means that such Person will be able to generate enough cash from operations, asset dispositions or refinancing, or a combination thereof, to meet its obligations as they become due. The Transaction is not being made by Purchaser with the intent to hinder, delay or defraud any present or future creditors of Sellers or the Company.

5.8 Financial Advisors. Except for Jefferies LLC, no Person has acted, directly or indirectly, as a broker, finder, agent, investment banker or financial advisor for Purchaser or its Affiliates and no Person is entitled to any fee or commission or like payment from Purchaser or its Affiliates in connection with the Transaction.

5.9 Non-U.S. Ownership. Purchaser is not organized, chartered or incorporated under the Laws of any country other than the United States or its territories. To the actual knowledge of Purchaser, Purchaser is not, and Purchaser and the Company will not be, at or immediately following the Closing, (a) a “foreign person” as defined in Section 120.16 of the ITAR or subject to or under “foreign ownership” or “foreign control”, as defined in Section 120.37 of the ITAR, (b) a “foreign person” as defined in the Defense Production Act of 1950, 50 U.S.C. § 4565, and as implemented by regulations at 31 C.F.R. Parts 800 et seq., or (c) owned or controlled by a “foreign” interest or interests (including a “foreign” Person or Persons) as defined in the NISPOM (DOD 5220.22-M), such that any “foreign” interest(s), directly or indirectly, will own or have beneficial ownership (defined as the power to vote or direct the voting of a security or to impose or direct the disposition of a security) of five percent (5%) or more of the outstanding shares of any class of the equity securities of Purchaser or the Company, as applicable.

5.10 Purchaser Shares. The Purchaser Shares are duly authorized and, when issued and paid for in accordance with this Agreement will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens, other than transfer restrictions contained herein and under applicable securities Laws.

5.11 SEC Reports; Financial Statements. Purchaser has filed all reports, schedules, forms, statements and other documents required to be filed by Purchaser under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, since January 1, 2020 (the

foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “SEC Reports”) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Purchaser has never been an issuer subject to Rule 144(i) under the Securities Act. The financial statements of Purchaser included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing. Such financial statements (a) have been prepared in all material respects in accordance with GAAP applicable to such financial statements applied on a consistent basis during the periods involved, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and (b) fairly present in all material respects the financial position of Purchaser as of and for the dates thereof and the results of operations and cash flows for the periods then ended (subject, in the case of unaudited interim period financial statements, to normal recurring year-end audit adjustments, none of which individually or in the aggregate will be material in amount).

5.12 No Other Representations and Warranties; No Reliance; Purchaser Investigation.

(a) Notwithstanding anything contained in Article III, Article IV, this Article V or any other provision of this Agreement, but subject to Section 5.12(c), it is the explicit intent of each Party that (i) none of Sellers or the Company is making any representation or warranty whatsoever, express or implied, except those representations and warranties that are expressly set forth in Article III, Article IV (as modified by the Company Disclosure Schedule and the Seller Disclosure Schedule, respectively) and/or the certificates delivered by Sellers, the Sellers’ Representative or the Company pursuant to Section 8.2 and (ii) no other Person is making any representation or warranty whatsoever, express or implied. Accordingly, in entering into this Agreement and acquiring the Shares from the Shareholders, Purchaser acknowledges and agrees that, except as expressly set forth in Article III, Article IV (as modified by the Company Disclosure Schedule and the Seller Disclosure Schedule, respectively) and/or the certificates delivered by Sellers, the Sellers’ Representative or the Company pursuant to Section 8.2, none of Sellers, the Company or any other Person makes or shall be deemed to make, nor has any such Person been authorized by Sellers, the Sellers’ Representative or the Company to make, any promise, representation or warranty, express or implied, relating to the Company, Sellers, or any of their respective businesses, operations, assets, Liabilities, conditions or prospects or the Transaction or the Business, including with respect to the merchantability, fitness for any particular or ordinary purpose, or as to the accuracy or completeness of any information regarding any of the foregoing, or as to any other matter, notwithstanding the delivery or disclosure to Purchaser or any of its Affiliates or representatives of any documents, opinions, projections, forecasts, statements, memorandums, presentations, advice or information (whether communicated orally or in writing), and any such other promises, representations or warranties, or Liability or responsibility therefor, are hereby expressly disclaimed. Purchaser has not been induced by and has not relied upon any information, representations, warranties or statements, whether written or oral, express or implied, made by Sellers or the Company (or their respective Affiliates, officers, directors,



employees, agents or representatives) that are not expressly set forth in Article III, Article IV (as modified by the Company Disclosure Schedule and the Seller Disclosure Schedule, respectively) and/or the certificates delivered by Sellers, the Sellers' Representative or the Company pursuant to Section 8.2.

(b) Purchaser acknowledges and agrees that (i) Sellers, the Company or their respective representatives have made available to Purchaser, for the purposes of due diligence, material documents, forecasts or other information relating to the Company and the Transaction and (ii) Purchaser has made its own independent inquiry and investigation into, and, based thereon, has formed an independent judgment concerning, Sellers, the Company, the Shares and the Transaction and, in making its determination to proceed with the Transaction, Purchaser has relied on the results of its own independent investigation and independent judgment.

(c) Notwithstanding anything to the contrary contained herein, nothing in this Section 5.12 shall be deemed or construed to preclude or in any way limit any claim for Fraud.

## ARTICLE VI

### CONDUCT OF BUSINESS

6.1 Conduct of the Company Pending the Closing. From the date of this Agreement until the earlier of the Closing or valid termination of this Agreement pursuant to Article IX, except (a) as set forth in Schedule 6.1, (b) as required by applicable Law or Order, (c) as otherwise contemplated by this Agreement or (d) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed, or conditioned), (x) the Company shall conduct the Business in the ordinary course of business consistent with past practice and (y) the Company shall not:

(i) repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other Equity Interests of the Company;

(ii) declare, set aside, or pay any dividend or other distribution in respect of the Shares;

(iii) transfer, issue, sell or dispose of, or grant options, warrants or other rights to purchase or otherwise acquire, any shares of capital stock, membership interests or other Equity Interests of the Company;

(iv) effect any recapitalization, reclassification or like change in the capitalization of the Company;

(v) adopt a plan of liquidation, dissolution, restructuring, bankruptcy, suspension of payments, or other reorganization;

(vi) amend the articles of incorporation or bylaws of the Company;



(vii) (A) incur or assume any Indebtedness for borrowed money except in the ordinary course of business where such Indebtedness will be discharged at or prior to Closing or (B) make any loans or advances to any other Person;

(viii) (A) acquire any corporation, limited liability company, partnership or other business organization or division thereof or (B) sell, lease, assign, transfer, license, abandon, convey, let lapse, or otherwise dispose of material assets of the Company, except, in the case of clause (B), in the ordinary course of business;

(ix) settle or compromise any Legal Proceedings;

(x) (A) materially increase the compensation or benefits payable or to become payable to any employee of the Company, other than (x) as required by applicable Law or the terms of a Benefit Plan or (y) to the extent such increase or benefit will be considered an Unpaid Company Transaction Expense or Contingent Consideration, (B) adopt, amend or terminate any Benefit Plan, except in each case in the ordinary course of business or as may be required by an existing Contract disclosed to Purchaser in accordance with the terms of this Agreement, or (C) take any employment termination action that would constitute an “employment loss,” “layoff,” or “termination” within the meaning of the WARN Act;

(xi) enter into, modify, supplement, amend, renew, terminate, release, or waive any rights under any Material Contract or that if entered into prior to the date hereof would be a Material Contract, except for any termination of expiration of a Material Contract by its own terms;

(xii) amend, terminate or waive any provision under any Real Property Lease or Sublease;

(xiii) make, change or revoke any Tax election, method of Tax accounting, or Tax accounting period, settle or compromise any Tax Liability or claim, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, prepare any Tax Return in a manner not consistent with the past practice of the Company, file any amended Tax Return, surrender any claim for refund of Taxes, or enter into any closing agreement relating to any Tax;

(xiv) make any material change in the operations or policies with respect to selling products or services, accounting for such sales, cash management practices, or any method of accounting or accounting policies (except to the extent required by GAAP), including any change or modification of the Company’s credit, collection, or payment policies, procedures, or practices (*i.e.*, acceleration of the collection of Receivables (whether or not past due), writing off any Receivables, or failing to pay, or delaying payment of, payables or other Liabilities);

(xv) enter into any new line of business or abandon or discontinue any existing lines of business;

(xvi) enter into any Contract or transaction with any Related Party; or

(xvii) enter into any agreement or otherwise make a commitment to do anything prohibited by this Section 6.1.

6.2 Control of Business. Purchaser acknowledges and agrees that: (a) nothing contained in this Agreement shall give Purchaser, directly or indirectly, the right to control or direct the Company's operations prior to the Closing; (b) prior to the Closing, the Company's management and board of directors and equityholders shall exercise, consistent with the terms and conditions of this Agreement and applicable Law, complete control and supervision over the Company's operations; and (c) notwithstanding anything to the contrary set forth in this Agreement, no consent of Purchaser shall be required with respect to any matter set forth in Section 6.1 or elsewhere in this Agreement to the extent that the requirement of such consent is reasonably likely to violate any applicable Law or Order.

## ARTICLE VII

### COVENANTS

#### 7.1 Access to Information.

(a) From the date of this Agreement until the earlier of the valid termination of this Agreement or the Closing, upon Purchaser's reasonable request, the Company shall afford each Designated Representative reasonable access to the offices, properties, books and records of the Company and such financial, operating, and other data and information related to the Company as Purchaser may reasonably request in writing; provided, however, that (i) the Company will be given reasonable prior written notice before any such access is granted and such access shall be conducted during normal business hours under the supervision of personnel of the Company and in such a manner so as not to interfere with the normal operations of the Company; (ii) the auditors and accountants of the Company shall not be obligated to make any work papers (to the extent extant) available to any Person unless and until such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants; (iii) if the Parties are in an adversarial relationship in litigation or arbitration, the furnishing of information, documents or records in accordance with this Section 7.1(a) shall be subject to applicable rules relating to discovery; (iv) any access to the Company's properties shall be subject to the Company's reasonable security and insurance measures and shall not include the right to conduct any environmental testing, sampling or intrusive investigations of any kind; (v) Purchaser shall have no access to any Tax Returns of any Seller, including for the avoidance of doubt, any U.S. federal Income Tax Return, state or local Tax Return, or foreign Tax Return of any Seller, or any portion thereof (but excluding for the avoidance of doubt any Tax Returns of the Company) unless access to a Tax Return of a Seller for a Tax period during which the Company was a disregarded entity is necessary for Purchaser or the Company to comply with any applicable Law related to Taxes and then such access shall be limited to only those portions of such Tax Return which are required to comply with any applicable Law related to Taxes; and (vi) the Company shall not be required to provide copies of, access to or otherwise disclose to or supply Purchaser with any information that, as determined by the Company or the Sellers' Representative in good faith, (A) the Company or any Seller is under a contractual, antitrust or

other legal obligation not to supply, (B) would jeopardize the attorney-client privilege or other immunity of the Company or any Seller, (C) would conflict with any Law (including any Law relating to data protection or privacy), Order or privacy policy or notice applicable to any Seller, the Company or the assets, information or operation of the Company, or (D) upon the advice of counsel, should not be so disclosed due to its competitively sensitive nature.

(b) From and after the Closing, the Company shall be entitled to retain possession of all books and records (including documents, agreements, and financial data) relating to the Business and the Company. From and after the Closing, in connection with any reasonable business purposes, including to (i) comply with applicable Law, including any Legal Proceedings and the resolution of any claims made against or incurred by (x) the Company prior to the Closing or (y) Sellers or the Sellers' Representative (including pursuant to this Agreement), (ii) determine Sellers' or the Sellers' Representative's rights or obligations under this Agreement or (iii) prepare Tax Returns for any Seller or their Affiliates for all periods ending prior to or including the Closing Date which have not yet been filed as of the Closing Date, upon reasonable prior request and except as determined by the Company in good faith to be appropriate to ensure compliance with any applicable Law and, except as determined by the Company in good faith to reasonably be expected to violate the attorney-client privilege, other legal privilege, or contractual confidentiality obligations, Purchaser shall, and shall cause the Company to, (A) provide Sellers and the Sellers' Representative and their respective representatives with reasonable access to and/or copies of such books and records, during normal business hours and (B) make available to the Sellers' Representative and any representatives of each Seller and such Seller's Affiliates, at the Sellers' Representative's or such other representatives' respective expense, the employees of the Company, Purchaser and its Affiliates in respect of the Company or the Business whose assistance, expertise, testimony, notes and recollections or presence is necessary to assist the Sellers' Representative or Sellers in connection with the Sellers' Representative or the Sellers' inquiries for any of the purposes referred to above, including the presence of such Persons as witnesses in hearings or trials for such purposes; provided, however, that (w) the Company will be given reasonable prior written notice before any such access is granted and such access shall be conducted during normal business hours under the supervision of personnel of the Company and in such a manner so as not to interfere with the normal operations of the Company; (x) the auditors and accountants of the Company shall not be obligated to make any work papers (to the extent extant) available to any Person unless and until such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants; (y) if the Parties are in an adversarial relationship in litigation or arbitration, the furnishing of information, documents or records required by this Section 7.1(b) shall be subject to applicable rules relating to discovery; and (z) any access to the Company's properties shall be subject to the Company's reasonable security and insurance measures.

(c) As promptly as practicable after the Closing, the Sellers' Representative shall provide to Purchaser a DVD or thumb drive containing, in electronic format, all documents hosted in the Data Room.

7.2 Cooperation; Filings and Approvals; Third-Party Consents. From the date of this Agreement until the earlier of the valid termination of this Agreement or the Closing Date:

(a) Subject to the terms and conditions of this Agreement (including Section 11.2), the Parties shall cooperate with one another and use (and shall cause their respective Subsidiaries and Affiliates to use) their respective reasonable best efforts to promptly (i) take, or cause to be taken, all actions, and do, or cause to be done, all things, necessary, proper or advisable to cause the conditions to Closing to be satisfied as promptly as practicable and to consummate and make effective, in the most expeditious manner practicable, the Transaction, including preparing and filing promptly and fully all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents (including any required filings under the HSR Act and the antitrust Laws of any other applicable jurisdiction) and (ii) obtain all approvals, consents, registrations, waiting period expirations or terminations, Permits, authorizations and other confirmations from any Governmental Authority or other Person necessary, proper or advisable to consummate the Transaction; provided, that neither the Company nor any Seller shall be obligated to pay any consideration or offer to grant, or agree to, any financial or other accommodation to any Person from whom any such approval, consent, registration, Permit, authorization or other confirmation is requested. For the avoidance of doubt, the obtaining of any such approval, consent, registration, Permit, authorization or other confirmation is not a condition to Closing unless expressly set forth in Article VIII.

(b) In furtherance and not in limitation of the foregoing, (i) Purchaser and Sellers agree to make, or have their respective ultimate parent entities (as that term is defined in the HSR Act) make, an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the Transaction as promptly as practicable following the date of this Agreement (but in no event later than five (5) Business Days from the date of this Agreement) and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and use its reasonable best efforts to take, or cause to be taken, all other actions consistent with this Section 7.2 necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable (including requesting early termination of the applicable waiting periods under the HSR Act) and (ii) to the extent that any pre-merger filings are required in any other jurisdictions, Purchaser shall take the lead in submitting such filings, with the Company's reasonable assistance, as promptly as practicable following the date of this Agreement (but in no event later than five (5) Business Days from the date of this Agreement). Purchaser agrees to supply, or have its ultimate parent entity supply, and the Company and Sellers shall supply, as promptly as practicable, an appropriate response to, and to certify substantial compliance with, a request for additional information and documentary materials that may be required or requested by a Governmental Authority in connection with such required filings and use its reasonable best efforts to obtain clearance or waiting period expirations or terminations from such Governmental Authority with respect to the Transaction as promptly as practicable.

(c) Each of the Parties, as applicable, shall use its reasonable best efforts to (i) cooperate with the others in connection with any filing with or submission to a Governmental Authority in connection with the Transaction and in connection with any investigation or other inquiry by or before a Governmental Authority relating to the

Transaction, including any proceeding initiated by a private party and (ii) keep the others informed in all respects and on a current basis of any communication received by such Party from, or given by such Party to, the Federal Trade Commission, the Antitrust Division of the Department of Justice or any other Governmental Authority and of any communication received or given in connection with any proceeding by a private party, in each case regarding the Transaction. Subject to applicable Laws relating to the exchange of information and to the extent practicable, each of the Sellers' Representative, the Company and Purchaser, shall have the right to review in advance, and each will consult the other on, any filing made with, or written materials submitted to, any Governmental Authority in connection with the Transaction (although the Parties will not be obligated to share with each other the documents they include with their notifications under the HSR Act that are responsive to Items 4(c) and 4(d) of the HSR notification). The Parties may, as they deem advisable and necessary, designate any competitively sensitive materials provided to the others under this Section 7.2 as "outside counsel only." Such materials and the information contained therein shall be given only to outside counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient without the advance written consent of the Party providing such materials. In addition, to the extent reasonably practicable, all meetings and telephone calls with a Governmental Authority regarding the Transaction shall include representatives of all Parties. Subject to applicable Law, the Parties will consult and cooperate with each other in connection with any analyses, appearances, presentations, memoranda, briefs, arguments and proposals made or submitted to any Governmental Authority regarding the Transaction by or on behalf of any Party.

(d) Purchaser shall not, and shall cause its Affiliates not to, acquire or agree to acquire, by merging with or into or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets, if the entering into of a definitive agreement relating to, or the consummation of such acquisition, merger or consolidation would reasonably be expected to: (i) impose any material delay in the obtaining of, or materially increase the risk of not obtaining, any consents of any Governmental Authority necessary to consummate the Transaction or the expiration or termination of any applicable waiting period; (ii) materially increase the risk of any Governmental Authority seeking or entering an Order prohibiting the consummation of the Transaction; (iii) materially increase the risk of not being able to remove any such Order on appeal or otherwise or (iv) materially delay or prevent the consummation of the Transaction.

(e) Notwithstanding anything in this Agreement to the contrary, nothing in this Section (including "reasonable best efforts" as applied to this Section) shall require Purchaser or its Affiliates to take any of the following actions: (i) proposing, negotiating, litigating or committing to or effecting, by consent decree, hold separate order or otherwise, to hold separate or to sell, divest, lease, license, transfer, dispose of, or otherwise encumber, any assets, licenses, operations, rights, product lines, businesses or interest therein of the Company, the Purchaser or any of their respective Affiliates (or to consent to any sale, divestiture, lease, license, transfer, disposition or other encumbrance by the Company, Purchaser or any of their respective Affiliates of any of such Person's assets, licenses, operations, rights, product lines, businesses or interest therein or to any Contract by such Person to take any of the foregoing

actions), (ii) terminating existing relationships, contractual rights or obligations of the Company or of Purchaser or any of their respective Affiliates, (iii) terminating any venture or other arrangement of the Company, Purchaser or any of their respective Affiliates, (iv) taking or committing to take actions that would limit the Company's, Purchaser's or any of their respective Affiliates' freedom of action with respect to one or more of the businesses, product lines, intellectual property, or assets or property of the Company, Purchaser or any of their respective Affiliates, or (v) otherwise agreeing to any changes (including through a licensing arrangement) or restriction on, or other impairment of the Company's, Purchaser's or any of their respective Affiliates' ability to own or operate, any of their respective assets, licenses, operations, rights, product lines, businesses or interests therein or the Company's, Purchaser's or any of their respective Affiliates' ability to vote, transfer, receive dividends or otherwise exercise full ownership rights with respect to the capital stock of Purchaser or any of its Affiliates.

(f) As soon as reasonably practicable following the execution of this Agreement, the Company shall cooperate with Purchaser in the preparation of a five (5)-day notification pursuant to 22 C.F.R. § 122.4(a) of the ITAR, with such notification to be submitted by Purchaser no later than five (5) Business Days following the Closing.

(g) The Company shall use reasonable best efforts to obtain, as soon as reasonably practicable after the execution of this Agreement, any and all consents, approvals and authorizations set forth in Section 3.2(b)(ii) of the Company Disclosure Schedule, and Purchaser shall cooperate with the Company and provide information (financial or otherwise) as reasonably requested or required by the applicable third parties in connection with obtaining all such consents, approvals and authorizations; provided, that neither the Company nor any Seller shall be obligated to pay any consideration or offer to grant, or agree to, any financial or other accommodation to any Person from whom any such consent, approval or authorization is requested. For the avoidance of doubt, the obtaining of any such consent, approval or authorization is not a condition to Closing.

7.3 Confidentiality. Purchaser acknowledges that the information provided to Purchaser and its representatives in connection with this Agreement (including Section 7.1 hereof) and the Transaction is subject to the terms of each of the Confidentiality Agreement, dated September 2, 2020, by and between Purchaser and the Company (the "Confidentiality Agreement") and the Clean Team Confidentiality Agreement, dated November 18, 2020, by and between Purchaser and the Company (the "Clean Team Agreement"), the terms of which, in each case, are incorporated herein by reference. At the Closing, each of the Confidentiality Agreement and the Clean Team Agreement will be terminated and shall thereafter be of no further force and effect. From the date hereof, Purchaser shall and shall cause its Affiliates (including following the Closing, the Company) to continue to treat and hold strictly confidential the identities and financial and Personal Information of Sellers and their trustees and beneficiaries, as applicable, and Purchaser and its Affiliates will not disclose to the general public any such information, except as permitted by this Agreement or as required by Law or the rules of any applicable stock exchange.

7.4 Preservation of Records. Purchaser agrees to preserve and keep the records held by the Company or Purchaser relating to the Business prior to the Closing, for a period of seven (7) years from

the Closing Date, and shall make such records available to the Sellers' Representative and Shareholders, subject to Section 7.1(b).

7.5 Publicity. Prior to, or in conjunction with, the Closing, neither Sellers, the Sellers' Representative, nor the Company, on the one hand, nor Purchaser, on the other hand, shall issue any press release or public announcement concerning this Agreement, the other Transaction Agreements or the Transaction or make any other public disclosure containing or pertaining to the terms of this Agreement without obtaining the Sellers' Representative's or Purchaser's, as applicable, prior written approval, unless, (a) in the judgment of the Party seeking to disclose, disclosure is otherwise required by applicable Law or by the applicable rules of any stock exchange on which such disclosing Party lists securities, which shall include Purchaser's filing of a current report on Form 8-K within four (4) Business Days of the date of this Agreement; provided that, to the extent any disclosure is required by applicable Law or stock exchange rule, the Party intending to make such disclosure shall, consistent with applicable Law or stock exchange rule, provide a copy of any such disclosure to the Sellers' Representative or Purchaser, as applicable, reasonably in advance of such disclosure and give due consideration to all reasonable additions, deletions or changes suggested thereto by the Sellers' Representative or Purchaser, as applicable or (b) such press release or public announcement consists solely of information previously disclosed, in all material respects, in previous press releases or public announcements made in compliance with this Section 7.5. For the avoidance of doubt, disclosures resulting from the Parties' efforts to obtain approval and/or early termination under the HSR Act and to make any related filing under applicable Law shall be deemed not to violate this Agreement.

7.6 Satisfaction of Indebtedness. The Company shall obtain, no less than one (1) Business Day prior to the Closing Date, one (1) or more customary pay-off letters, executed by the administrative agents or the lenders under any Closing Date Indebtedness, in each case, setting forth all amounts necessary to be paid in order to fully discharge each such Closing Date Indebtedness and providing for the release of all security interests in respect thereof (the "Pay-Off Letters").

7.7 Employee Benefit Matters.

(a) All employees of the Company, as of the Closing Date, are known as "Business Employees."

(b) For a period of at least twelve (12) months following the Closing Date, Purchaser shall or shall cause one of its Affiliates (including, after the Closing, the Company) to provide to each Business Employee who continues to be employed by Purchaser or one of its Affiliates (including, after the Closing, the Company) during such period (i) with base salary or wage rates and target bonus, commission, or other incentive opportunities that are no less favorable than the base salary or wage rates and target bonus, commission and other incentive opportunities provided to such Business Employee as of immediately prior to the Closing and disclosed to Purchaser (excluding any equity or equity-based incentives, phantom stock rights, transaction bonuses, retention bonuses and similar transaction-based arrangements, provided that, for the avoidance of doubt, the foregoing exclusion shall not limit the application of Section 7.7(h)) and (ii) with employee health, welfare and retirement benefits (excluding, for the avoidance of doubt, any prerequisites and fringe benefits) that are no less favorable, in the aggregate, to the benefit plans, programs, agreements, or arrangements to such Business Employee as of immediately prior to the Closing. The Parties agree that the foregoing



does not require Purchaser or any of its Affiliates to employ or otherwise engage any Business Employee for any period of time (such that Purchaser or its Affiliates may terminate the employment of any Business Employee and cease paying the compensation set forth in this [Section 7.7\(b\)](#)). On or prior to the Closing, the Company will pay to the Business Employees all annual bonuses for the fiscal year preceding the fiscal year of Closing.

(c) Purchaser agrees that, from and after the Closing Date, Purchaser shall, and shall cause its Affiliates to, grant each Business Employee credit for any service with the Company (including service with any predecessor employer if so credited under an applicable Benefit Plan) earned prior to the Closing Date (A) for eligibility and vesting purposes and (B) for purposes of paid time off accrual and determination of level of severance pay under any benefit or compensation plan, program, agreement, or arrangement that may be established or maintained by Purchaser or any of its Affiliates (including, after the Closing, the Company) on or after the Closing Date (the “[New Plans](#)”); provided that such service need not be credited (i) to the extent that it would result in duplication of coverage or benefits; (ii) under any new plan or arrangement to the extent that such plan or arrangement does not provide prior service credit to employees generally; or (iii) any New Plan where length of service is not relevant. In addition, and without limiting the generality of the foregoing, (1) Purchaser shall ensure that each Business Employee shall be immediately eligible to participate, without any waiting time, in any and all health plans that are New Plans to the extent coverage under such New Plan replaces coverage under a comparable Benefit Plan in which such Business Employee participated immediately before such replacement; and (2) Purchaser shall (I) cause to be waived all pre-existing condition exclusion and actively-at-work requirements and similar limitations, eligibility waiting periods, and evidence of insurability requirements under any health plans that are New Plans to the extent waived or satisfied by a Business Employee (or covered dependent thereof) under any Benefit Plan as of the date of replacement and (II) to the extent a health plan that is a New Plan replaces a health plan that is a Benefit Plan, use commercially reasonable efforts to cause any covered expenses incurred on or before the date of replacement by a Business Employee (or covered dependent thereof) to be taken into account for purposes of satisfying applicable deductible, coinsurance, and maximum out-of-pocket provisions after the date of replacement, but in such plan year, under any applicable health plan that is a New Plan.

(d) Without limiting [Section 7.7\(b\)](#), following the Closing, Purchaser shall credit each Business Employee who continues to be employed by Purchaser or one of its Affiliates (including, after the Closing, the Company) with all of the paid time off, vacation, holiday, annual leave and sick leave days each such Business Employee is entitled to prior to the Closing for use following the Closing under the applicable paid time off, vacation, holiday, annual leave and sick leave policies of the Company as in effect immediately prior to the Closing.

(e) From and after the Closing, Purchaser shall cause the Company to comply with, and shall be responsible for any failure following the Closing to comply with, and bear any and all liability under, the requirements of the WARN Act.

(f) The Company shall take (or cause to be taken) all action necessary or appropriate to terminate, effective no later than the day immediately preceding the Closing



Date, any Benefit Plan that contains a cash or deferred arrangement intended to qualify under Section 401(a) of the Code (the “401(k) Plans”), unless Purchaser, in its sole and absolute discretion, agrees to sponsor and maintain any such 401(k) Plan by providing the Company with written notice of such election (an “Election Notice”) at least three (3) days before the Closing Date. Unless Purchaser timely provides an Election Notice to the Company, the Company shall deliver to Purchaser, prior to the Closing, evidence that the Company’s board of directors has validly adopted resolutions to terminate the 401(k) Plans (the form and substance of which resolutions shall be subject to review and approval of Purchaser, not to be unreasonably withheld or delayed), effective no later than the date immediately preceding the Closing Date but which may be contingent on the Closing. If the Company terminates the 401(k) Plan in accordance with this Section 7.7(f), Purchaser shall, or shall cause one of its Affiliates to, establish or designate a defined contribution retirement plan which is qualified or eligible for qualification under Section 401(a) of the Code (the “Purchaser 401(k) Plan”). Each Business Employee shall become eligible to participate, immediately following the Closing, in the Purchaser 401(k) Plan. Purchaser agrees that each Business Employee who receives an “eligible rollover distribution” (within the meaning of Section 402(c)(4) of the Code) from a 401(k) Plan shall be eligible to rollover such distribution (including any associated loan note) to the Purchaser 401(k) Plan, and Purchaser shall take all actions necessary or appropriate to timely effect such rollover.

(g) If required to avoid the imposition of Taxes under Section 4999 of the Code or the loss of deduction under Section 280G of the Code with respect to any payment or benefit in connection with the Transaction, the Company shall use commercially reasonable efforts to obtain waivers with respect to, and shall submit, at least three (3) days prior to the Closing Date, to the Company’s voting shareholders, such payments and benefits that may be made or provided pursuant to Benefit Plans or otherwise in connection with the Transaction to any Person who, with respect to the Company, is a “disqualified individual” (as such term is defined for purposes of Section 280G of the Code and the Treasury Regulations thereunder) and that, absent such shareholder approval, would reasonably be expected to be a “parachute payment” that would not be deductible by reason of Section 280G of the Code or that would be subject to an excise Tax under Section 4999 of the Code. Any such shareholder approval shall be sought by the Company in a manner that satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder, including Q&A-7 of Section 1.280G-1 of such Treasury Regulations. Any documentation prepared by the Company in connection with the foregoing vote shall be subject to review and approval of Purchaser (which approval shall not be unreasonably delayed or withheld). If a vote is required, the Company shall deliver to Purchaser, prior to the Closing, evidence that such vote has occurred.

(h) From and after the Closing, Purchaser shall assume, and Purchaser and the Company shall honor, the Company’s obligations under any Benefit Plan set forth on Schedule 7.7(h) (the “Honored Agreements”), subject to any provisions thereof related to termination or amendment of such agreements and plans. Without limiting the foregoing, Purchaser shall cause the Company to, and the Company shall, timely pay to the applicable Business Employee, through the Company’s or an applicable employer’s payroll system, any and all amounts that become due and owing after the Closing pursuant to the Honored Agreements in connection with the Transaction or otherwise pursuant to this Agreement.

(i) Nothing contained in this Agreement, expressed or implied, shall give any third Person, other than the Parties to this Agreement, any rights or remedies of any nature whatsoever, including but not limited to any right to continued employment or service, under or by reason of this Section 7.7, and no provision of this Section 7.7 shall cause any third party beneficiary rights in any current or former employee, director, consultant or other service provider of the Company to enforce the provisions of this Section 7.7 or any other matter related thereto or be construed as an amendment to any Benefit Plan, New Plan or other employee benefit plan.

#### 7.8 Director and Officer Liability; Indemnification.

(a) For a period of six (6) years after the Closing, (i) Purchaser shall not, and shall not permit the Company to, amend, repeal or modify any provision in the Company's articles of incorporation, bylaws, or other similar organizational documents relating to the exculpation, indemnification or advancement of expenses of any present or former officers, managers and/or directors (each, a "D&O Indemnified Person") (unless and to the extent required by Law) and (ii) Purchaser shall, and shall cause the Company (each, a "D&O Indemnifying Party") to, to the fullest extent permitted by the Company's organizational documents, (A) indemnify and hold harmless the D&O Indemnified Persons against all D&O Expenses (as defined below) and all Losses, claims, damages, judgments and amounts paid in settlement ("D&O Costs") in respect of any threatened, pending or completed claim, action or other Legal Proceeding, based on or arising out of or relating to the fact that such Person is or was a director or officer of the Company or arising out of acts or omissions occurring on or prior to the Closing (a "D&O Indemnifiable Claim") and (B) advance to such D&O Indemnified Persons all D&O Expenses incurred in connection with any D&O Indemnifiable Claim promptly after receipt of statements therefor. Any D&O Indemnifiable Claims shall continue until such D&O Indemnifiable Claim is disposed of or all judgments, Orders, decrees or other rulings in connection with such D&O Indemnifiable Claim are fully and finally satisfied. For the purposes of this Agreement, "D&O Expenses" shall include attorneys' fees and all other costs, charges and expenses paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, to be a witness in or participate in any D&O Indemnifiable Claim.

(b) At the Closing, Purchaser shall, or shall cause the Company to, at Purchaser's expense, obtain, maintain and fully pay for irrevocable "tail" insurance policies naming the D&O Indemnified Persons as direct beneficiaries with a claims period of at least six (6) years from the Closing Date (each, a "D&O Tail Policy") from an insurance carrier with the same or better financial-strength rating as the Company's current insurance carrier with respect to directors' and officers' liability insurance in an amount and scope at least as favorable to the Company's directors and officers as the Company's existing policies with respect to matters existing or occurring at or prior to the Closing Date. Purchaser shall not, and shall cause the Company to not, cancel or change such insurance policies in any respect.

(c) In the event that Purchaser, the Company or any of their respective successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and other assets to any Person, then, and in

each such case, Purchaser shall cause proper provision to be made so that the applicable successors and assigns or transferees expressly assume the obligations set forth in this Section 7.8.

(d) The provisions of this Section 7.8 are intended to be for the benefit of, and will be enforceable by, each D&O Indemnified Person, his or her heirs and his or her representatives, and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by Contract or otherwise.

7.9 Contact with Customers, Suppliers and Other Business Relations. Purchaser hereby agrees that it is not authorized to and shall not (and shall not permit any of its representatives, employees or Affiliates to), contact any employee, tenant, landlord, customer, supplier, content provider, advertiser, distributor or other business relation of the Company regarding the Transaction or any information provided to Purchaser and its representatives in connection therewith prior to the Closing without the prior written consent of the Sellers' Representative (which shall not be unreasonably withheld, conditioned, or delayed). If the Sellers' Representative consents to any such contact, Sellers' Representative and the Company shall be given the reasonable opportunity to participate in any discussions and meetings, and copied on all correspondence, with any such Persons prior to Closing.

7.10 Exclusivity. Each of the Company and the Sellers' Representative agrees that, from the date of this Agreement until the earlier to occur of the Closing Date and the termination of this Agreement in accordance with Article IX, neither the Sellers' Representative nor the Company shall, and they shall cause their Affiliates, and shall use their reasonable best efforts to cause their and their Affiliates' respective controlling Persons, equity holders, employees, officers, directors, advisors, and agents not to: (a) encourage, initiate, solicit, maintain, or continue any discussions or negotiations regarding, the submission of any proposal or offer (an "Acquisition Proposal") by a third party (other than Purchaser or its representatives and agents) regarding (i) the sale of all or any material assets of the Company, (ii) any sale of any Equity Interests or debt securities of the Company, whether directly or indirectly, or (iii) any merger, consolidation, public offering, share exchange, recapitalization, or other similar transaction involving the Company (the actions referred to in the immediately preceding clauses (i) through (iii), each a "Third-Party Acquisition") or (b) provide any non-public financial or other confidential or proprietary information regarding the Company (including any materials containing Purchaser's or its Affiliates' proposal and any other financial information, projections, or proposals regarding the Company) to any Person (other than to Purchaser or its representatives and agents), except in the ordinary course of business of the Company unrelated to a Third-Party Acquisition.

7.11 Notification of Certain Matters; Schedule Supplement. From the date of this Agreement until the earlier of the Closing or valid termination of this Agreement pursuant to Article IX, each of Purchaser, on the one hand, and the Company and the Sellers' Representative (acting on behalf of the Sellers), on the other hand, shall give prompt notice to the other at such time that such Party becomes aware of the occurrence, or nonoccurrence, of any event that would cause the failure of a condition set forth in Section 8.2(a), 8.2(b), or 8.3(a), as applicable; provided, that, a failure to provide notice pursuant to this Section 7.11(a) shall not constitute a breach of a covenant of Purchaser, Sellers or the Company for purposes of the condition set forth in Section 8.2(c), Section 8.2(d) or Section 8.3(b), as

applicable.

(b) The Company may, from time to time prior to the Closing, by notice in accordance with the terms of this Agreement, supplement or amend any Section of the Company Disclosure Schedule in order to add information relating to, or resulting from, facts or events occurring subsequent to the execution of this Agreement (each, a “Schedule Supplement”). In the event that the Company provides any Schedule Supplement, the matters set forth on such Schedule Supplement shall not be effective to cure and correct for purposes of Article VIII any breach of any representation or warranty that would have existed if the Company had not provided such Schedule Supplement. In the event that, prior to the Closing, the Company provides a Schedule Supplement pursuant to the terms of this Section 7.11(b) of the failure of any condition in Article VIII as a result of any breach of any representation or warranty of the Company due to facts or events occurring subsequent to the execution of this Agreement that would entitle Purchaser to not consummate the Closing, then Purchaser may terminate this Agreement in accordance with Section 9.1(d) within three (3) Business Days of such Schedule Supplement; provided, that if Purchaser has not provided notice of termination during such three (3) Business-Day period, then Purchaser’s termination right is waived. For the avoidance of doubt, if the Company provides a Schedule Supplement pursuant to the terms of this Section 7.11(b) that does not set forth a failure of any condition in Article VIII as a result of any breach of any representation or warranty that would have existed if the Company had not provided such Schedule Supplement, then Purchaser may not fail to consummate the Closing, and Purchaser may not terminate this Agreement, on the basis of such Schedule Supplement.

(c) From and after Closing, Purchaser shall be deemed to have waived any and all rights, remedies, or other recourse to which Purchaser might otherwise be entitled in respect of a breach of any representation or warranty of the Company relating to or arising from the information, facts or events included in any Schedule Supplement delivered to Purchaser prior to Closing, including any rights or remedies under Article VIII and Article X, and such Schedule Supplement shall be effective to cure and correct for all other purposes any such breach of any representation or warranty that would have existed if the Company had not provided such Schedule Supplement, and all references to any Section of the Company Disclosure Schedule that is supplemented or amended as provided in Section 7.11(b) shall for all purposes after the Closing be deemed to be a reference to such Section of the Company Disclosure Schedule as so supplemented or amended.

7.12 Release. As a material inducement to Purchaser to enter into this Agreement, effective as of the Closing, each Seller, on behalf of such Seller and such Seller’s Affiliates (other than the Company) (collectively, the “Releasing Parties”), agrees not to sue and fully releases and forever discharges Purchaser, the Company and their respective Affiliates, and their respective directors, officers, equityholders and their respective Affiliates, assigns, and successors, those prior to, and those as of, the Closing Date (collectively, the “Released Persons”), with respect to and from any and all claims, demands, rights, Liens, Contracts, covenants, Legal Proceedings, causes of action, Liabilities, obligations, debts, expenses (including reasonable attorneys’ fees), and Losses of whatever kind or nature, in each case for any matter, cause or event arising on, or prior to, the Closing Date, in Law, equity, or otherwise, whether now known or unknown, and whether or not concealed or hidden, all of which such Seller or any of such Seller’s Affiliates now owns or holds or has at any time owned or held

against the Released Persons; provided, however, that in no event shall the foregoing release apply with respect to any obligations of any Released Persons set forth in this Agreement (including the indemnification obligations set forth in Article X and Section 7.8), subject to the limitations and conditions provided in this Agreement, or any other agreement entered into pursuant to the Transaction. It is the intention of such Seller that such release be effective as a bar to each and every claim, demand, and cause of action hereinabove specified and in furtherance of such intention, such Seller, on behalf of such Seller and such Seller's Affiliates, hereby expressly waives, effective as of the Closing, any and all rights and benefits conferred upon such Seller or any of such Seller's Affiliates by the provisions of applicable Law or regulation and expressly consents that this release will be given full force and effect according to each and all of its express terms and provisions, including those related to unknown and unsuspected claims, demands, and causes of action, if any, as those relating to any other claims, demands, and causes of action hereinabove specified, but only to the extent such section is applicable to releases such as this.

Without limiting the generality of the foregoing, such Seller, on behalf of such Seller and the other Releasing Parties, specifically waives the provisions of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

The foregoing release is a bargained for and essential element of the consideration for the Parties' agreement to enter into this Agreement on the terms set forth herein.

#### 7.13 Restrictive Covenants.

(a) Covenant Not to Solicit. Each Shareholder shall not, and shall cause such Shareholder's Affiliates not to, for a period of three (3) years from and after the Closing Date, without the express written consent of Purchaser, directly or indirectly, hire, solicit, recruit, induce, or encourage any employee of Purchaser or the Company (“Restricted Persons”) to leave the employ of Purchaser or the Company; provided, however, that the foregoing provision will not apply to any Shareholder (i) soliciting or hiring Restricted Persons through generalized solicitation, recruitment, or advertisements not targeted specifically at Company or Purchaser employees or (ii) soliciting or hiring any Restricted Person whose employment or engagement has been terminated by Purchaser or the Company at least three (3) months prior to the commencement of employment-related discussions with such Restricted Person.

(b) Non-Competition. Each Shareholder shall not, and shall cause such Shareholder's Affiliates not to, for a period of three (3) years from and after the Closing Date, without the express written consent of Purchaser, directly or indirectly, (i) acquire, finance, own any interest in, manage, control, participate in, consult with, render services for, use or authorize the use of its name in connection with, provide any Intellectual Property rights to any Person engaged in, operate, or in any manner engage in (other than for Purchaser, the Company, or any

of their respective Affiliates) a Competitive Business, (ii) call on, solicit or take action that would divert business from the Company or would reasonably be expected to interfere with or diminish the relationship between the Company and any of its customers, suppliers, distributors, developers, service providers, licensors, or licensees, or other material business relation of the Company with respect to products or services of the kind or type developed, produced, marketed, furnished, or sold by the Company; provided, however, that no Shareholder shall be prohibited from (A) owning up to five percent (5%) of the outstanding stock of any Person that is publicly traded on a national securities exchange or in the over the counter market, so long as such Shareholder has no active participation in the business or management of such Person and (B) from investing in a private equity or hedge fund which invests in or maintains a Competitive Business so long as (I) such Shareholder's holdings in such fund or portfolio company of such fund is passive and (II) such Shareholder does not provide advice, manage, work for, consult with or render other services to such fund or portfolio company nor is otherwise involved in any way in the management or decision-making of such fund or portfolio company.

(c) Confidentiality. Each Seller shall, and shall cause such Seller's Affiliates to, from and after the Closing Date, keep the Confidential Information strictly confidential and shall not, and shall cause its and its Affiliates' respective employees, officers, directors, managers, and agents not to, disclose (except as expressly permitted by this Agreement) any portion of the Confidential Information to any Person; provided that, in the event that any Person subject to confidentiality under this Section 7.13(c) is compelled by applicable Law (including by request for information or documents in any Legal Proceeding, interrogatory, discovery request, subpoena, civil investigative demand, similar process, or otherwise) to disclose any Confidential Information, the Person compelled to make disclosure shall promptly notify (unless prohibited by Law) Purchaser in writing of such requirement so that Purchaser may seek an appropriate protective order, at its sole cost and expense, or waive compliance with the provisions of this Agreement applicable to such portion of the Confidential Information. If, in the absence of a protective order or the receipt of a waiver hereunder, such Person, on the advice of legal counsel, is required to disclose any Confidential Information, such Person may disclose only that portion of such Confidential Information that such Person is required to disclose; provided, however, that such Person shall use its reasonable best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information.

(d) Non-disparagement. From and after the Closing Date, each Seller and Purchaser shall not, and shall cause each of their respective controlled Affiliates not to, disparage any Seller, the Sellers' Representative, Purchaser, the Company, or any of their respective Affiliates in any way that adversely and substantially impacts the goodwill, reputation, or business relationships of any Seller, the Sellers' Representative, Purchaser, the Company, or any of their respective Affiliates with the public generally, or with any of their customers, suppliers, independent contractors, or employees; provided that nothing in this Section 7.13(d) is intended to restrict any Person from providing truthful testimony in any Legal Proceeding or truthfully cooperating with any governmental investigation or inquiry.

(e) Reasonableness. Each Seller expressly acknowledges and agrees that (i) each of the restrictions contained in this Section 7.13 are reasonable in all respects (including with respect to subject matter and time period) and such restrictions are necessary to protect Purchaser's interest in, and the value of, the Business (including the goodwill inherent therein), and (ii)



Purchaser would not have entered into this Agreement, the other Transaction Agreements, or the Transaction without the restrictions contained in this Section 7.13.

(f) Seller. For purposes of this Section 7.13, if a Seller is a trust, all references to such Seller in this Section 7.13 shall be deemed to include the grantor of such Seller.

7.14 Cooperation with Financing. Prior to the Closing, Sellers and the Company shall use commercially reasonable efforts to cooperate with Purchaser, in each case at Purchaser's sole expense, in connection with Purchaser's arrangement of the Financing or Alternative Financing as may be reasonably requested by Purchaser, including using commercially reasonable efforts to: (a) upon reasonable notice at mutually agreed times and places, cause senior management of the Company to participate in a reasonable number of meetings and presentations with the Debt Financing Parties and ratings agencies, (b) assist with the preparation of customary materials for bank information memoranda and similar customary marketing documents reasonably necessary in connection with the Financing or Alternative Financing, (c) furnish Purchaser reasonably promptly with the historical financial statements identified on Exhibit C, paragraph 6 of the Commitment Letter, (d) solely with respect to financial information and data derived from historical books and records, assist Purchaser with the preparation of pro forma financial information and pro forma financial statements, and in each case, only to the extent required to be delivered pursuant to the Commitment Letter, (e) cause senior management of the Company to assist with the preparation of customary materials for ratings agency presentations, (f) (i) take corporate actions reasonably requested by Purchaser to permit the consummation of the Financing, with such actions subject to the occurrence of, and to be effective no earlier than, the Closing Date, (ii) assist with the preparation of credit agreements, pledge and security documents and other definitive financing documents in connection with the Financing, with such documents subject to the occurrence of, and to be effective no earlier than, the Closing Date and such documents to be consistent with the terms and conditions of the Commitment Letter, and (iii) assist Purchaser reasonably with Purchaser's preparation of any schedules to definitive financing documentation, in each case required to be delivered for the Financing, and otherwise reasonably assist in facilitating the pledging of collateral contemplated by the Financing (provided, that the delivery of any possessory collateral shall not be required prior to the Closing Date), as may be reasonably requested by Purchaser, (g) furnish to Purchaser such other financial information regarding the Company that is necessary or customary for financings of the type contemplated by the Commitment Letter, in each case, as reasonably requested by Purchaser, and (h) at least five (5) Business Days prior to the Closing Date, deliver all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act, in order to satisfy the conditions set forth on Exhibit C, paragraph 9 of the Commitment Letter, in each case, to the extent such information is required in writing by Purchaser at least ten (10) Business Days prior to the Closing Date. Notwithstanding the foregoing or anything else contained herein to the contrary, nothing in this Section 7.14 shall require the Sellers, the Company or any of their respective Affiliates or representations to provide any financing cooperation that: (i) unreasonably interferes with the ongoing operations of Sellers and the Company, (ii) requires the pre-Closing Board of Directors of the Company to adopt resolutions approving the agreements, documents and instruments pursuant to which the Financing or Alternative Financing is obtained or incur any personal liability, (iii) requires the Company to execute prior to the Closing any definitive financing documents, including any credit or other agreements, pledge or security documents, or other certificates, legal opinions (including requiring the Seller's Representatives to deliver any legal opinions) or documents in connection with the Financing or Alternative Financing, (iv) requires the

Company to take any corporate actions prior to the Closing to permit the consummation of the Financing or the Alternative Financing, (v) requires the Company or Sellers to incur any Liability or pay any consideration or fee, or offer to grant or agree to any financial accommodation in connection with the Financing or Alternative Financing (prior to the Closing, with respect to the Company), (vi) requires the Company to provide cooperation that Sellers reasonably believe would (A) conflict with or result in a violation of any Material Contract, Real Property Lease, Government Contract or any Law, (B) result in the loss of attorney-client privilege or other similar legal privilege, (C) conflict with or violate Sellers' or the Company's organizational documents, or (D) cause any of Sellers' representations, warranties, covenants or other obligations in this Agreement to be breached or any condition precedent set forth in this Agreement to fail to be satisfied, (vii) requires the Company to approach any third parties prior to the Closing to discuss agreements limiting the rights of such third parties, (viii) requires the Company to consent to the pre-filing of UCC-1s or the grant of liens on the Company's assets prior to the Closing, (ix) requires the Company to provide cooperation to give representations or warranties to any third parties, or the indemnification thereof, by Sellers, or the Company prior to the Closing, (x) requires the Sellers, the Sellers' Representative and the Company to waive or amend any terms of this Agreement, and (xi) requires Sellers and the Company to deliver any projections, pro forma financial information or any other forward-looking information to any third parties. Purchaser shall indemnify, defend and hold harmless the pre-Closing directors and officers of the Company from and against any liability or obligation to providers of the Financing or Alternative Financing in connection with the Financing or Alternative Financing and any information provided in connection therewith. Purchaser shall promptly upon the Company's request reimburse the Company for all out-of-pocket costs and expenses (including fees and disbursements of counsel) incurred by the Company in connection with such cooperation and, to the extent Purchaser does not reimburse the Company for any such cost or expense on or prior to the date that is three (3) Business Days prior to the Closing, the Company shall be deemed to have a current asset in the amount of such unreimbursed costs and expenses. All non-public or otherwise confidential information regarding Sellers or the Company obtained by Purchaser pursuant to this Section 7.14 shall be kept confidential in accordance with the terms of the Confidentiality Agreement, provided, that Purchaser shall be permitted to disclose such information to the Debt Financing Parties, rating agencies and additional prospective lenders during syndication of the Financing or any permitted replacement, amended, modified or alternative financing subject to such Financing sources, rating agencies and other prospective lenders and investors entering into customary confidentiality undertakings with respect to such information consistent with the confidentiality provisions of the Commitment Letter (including through a notice and undertaking in a form customarily used in confidential information memoranda for the Financing). The Company hereby consents to the use of its logos in connection with the Financing; provided that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Company or the reputation or goodwill of the Company.

7.15 Financing. Purchaser shall use reasonable best efforts to take, or cause to be taken, all actions and do, or cause to be done, as promptly as possible, all things necessary, proper or advisable to arrange the Financing on the terms and conditions described in the Commitment Letter, including using reasonable best efforts to maintain in effect the Commitment Letter and using reasonable best efforts to, as promptly as possible, (a) satisfy on a timely basis all conditions applicable to Purchaser obtaining the Financing set forth therein, (b) negotiate and enter into definitive agreements with respect thereto on the terms and conditions contemplated by the Commitment Letter (including any related flex provisions) or on other terms in the aggregate not materially less favorable to Purchaser, (c) timely prepare the necessary offering circulars, private placement memoranda, or other offering documents or



marketing materials with respect to the Financing, (d) commence the syndication activities contemplated by the Commitment Letter and (e) consummate the Financing at or prior to the Closing. Purchaser shall give the Sellers' Representative prompt notice (and in any event no later than three (3) Business Days following) (i) of any breach in any material respect by any party to the Commitment Letter of which Purchaser becomes aware, (ii) if and when Purchaser becomes aware that any portion of the Financing contemplated by the Commitment Letter may not be available to consummate the Transaction, and (iii) of any termination of the Commitment Letter. Purchaser shall keep the Company and the Sellers' Representative informed on a reasonably current basis in reasonable detail of the status of Purchaser's efforts to arrange the Financing or Alternative Financing and provide to the Company executed copies of the definitive documents related to the Financing or Alternative Financing (excluding fees and other commercially sensitive information in any fee letter, including provisions in such fee letter related solely to fees, "flex terms" and economic terms, in each case, that do not adversely affect the conditionality, enforceability, termination or aggregate principal amount of the financing available may be redacted). If any portion of the Financing becomes unavailable on the terms and conditions contemplated in the Commitment Letter, Purchaser shall use reasonable best efforts to obtain alternative financing, including from alternative sources on Commercially Reasonable Terms ("Alternative Financing") as promptly as practicable following the occurrence of such event and the provisions of this Section 7.15 shall be applicable to the Alternative Financing and such Alternative Financing shall (A) not impose any new or additional condition or otherwise expand any condition to draw and other terms that would reasonably be expected to affect the availability thereof at the Closing and (B) be in an amount that is sufficient, when added to any portion of the Financing that is available, to pay in cash all amounts required to be paid by Purchaser in connection with this Agreement. Purchaser shall (1) comply in all material respects with the Commitment Letter and each definitive agreement with respect thereto (collectively, with the Commitment Letter, the "Debt Documents"), (2) enforce in all material respects its rights under the Commitment Letter, and (3) not permit any material amendment or modification to be made to, or any waiver of any material provision or remedy under, any Debt Document or the fee letter referred to in the Commitment Letter without the prior written consent of the Sellers' Representative.

Purchaser shall provide notice to the Sellers' Representative promptly upon receiving the Financing or, if applicable, the Alternative Financing. "Commercially Reasonable Terms" means debt financing terms available in the market from major international financing institutions to borrowers or issuers with credit ratings comparable to Purchaser (determined giving pro forma effect to the Transaction) for financing comparable to the type of financing contemplated by the Commitment Letter at the time the Alternative Financing is sought.

Notwithstanding the foregoing, compliance by Purchaser with this Section 7.15 shall not relieve Purchaser of its obligation to consummate the Transaction, whether or not the Financing or the Alternative Financing is available.

Notwithstanding anything herein to the contrary, in no event shall "reasonable best efforts" of Purchaser under this Section 7.15 be deemed or construed to require Purchaser to instigate or pursue litigation against any of the Debt Financing Parties.

7.16 Stock Consideration. The Stock Consideration shall consist of Five Hundred Seventy-Three Thousand Seven Hundred Ninety-Four (573,794) Purchaser Shares, which shall not be subject to any Purchase Price adjustment contemplated by Section 1.4 or any other adjustment between the date of this Agreement and the Closing Date, other than upon any split, subdivision, or combination of Purchaser's Common Stock pursuant to its Amended and Restated Certificate of Incorporation as currently in effect. Each Seller, in each case solely with respect to such Seller, acknowledges, covenants and agrees as follows:

(a) The Purchaser Shares constituting the Stock Consideration are “restricted securities” under applicable federal securities laws, and the Securities Act and the rules of the SEC provide in substance that Sellers may dispose of the Purchaser Shares only pursuant to an effective registration statement under the Securities Act or an exemption from registration.

(b) Purchaser has no obligation or intention to register any of the Purchaser Shares.

(c) Such Seller shall not offer, transfer, assign, or sell any record or beneficial interest in any of the Purchaser Shares without the prior written consent of Purchaser until the eighteen (18)-month anniversary of the Closing Date (the “Lock-Up Restriction”). Upon the six (6)-month anniversary of the Closing Date, the Lock-Up Restriction shall lapse and cease to apply as to one-third (1/3) of the Purchaser Shares received as Stock Consideration by each Seller; and upon the one (1)-year anniversary of the Closing Date, the Lock-Up Restriction shall lapse and cease to apply as to an additional one-third (1/3) of the Purchaser Shares received as Stock Consideration by each Seller (such that, for the avoidance of doubt, only one-third (1/3) of the Purchaser Shares received as Stock Consideration by each Seller shall be subject to the Lock-Up Restriction following the one (1)-year anniversary of the Closing Date). Upon the eighteen (18)-month anniversary of the Closing Date, the Lock-Up Restriction shall lapse and cease to apply as to the remaining Purchaser Shares received as Stock Consideration by each Seller. Upon the lapsing of the Lock-Up Restriction, a Seller may offer, transfer, assign or sell any record or beneficial interest in the Purchaser Shares; provided, that any such offer, transfer, assignment or sale may be effected solely pursuant to the registration provisions of the Securities Act or pursuant to an applicable exemption therefrom and subject to state securities Laws and regulations, as applicable.

(d) Such Seller will not, from the date of this Agreement through the Closing Date, without the prior written consent of the Company, directly or indirectly, alone or in concert with others: (i) purchase, offer or agree to purchase, or announce an intention to purchase any securities or assets of Purchaser or rights or options to acquire the same; (ii) make, or in any way participate in any “solicitation” of “proxies” to vote or “consents” (as such terms are used in the rules and regulations of the SEC), or seek to advise or influence any Person with respect to the voting of any voting securities of Purchaser; (iii) initiate or support any stockholder proposal with respect to Purchaser; (iv) seek or propose to influence or control Purchaser’s management, board of directors, policies or affairs; (v) disclose any intention, plan or arrangement inconsistent with the foregoing; (vi) form, join or in any way participate in a “group” as defined in Section 13(d)(3) of the Exchange Act in connection with any of the foregoing; or (vii) take any action that, in the sole judgment of Purchaser, may require Purchaser to make a public announcement concerning any of the foregoing.

7.17 Purchaser RWI Policy. Purchaser has provided to the Sellers’ Representative a true, correct and complete copy of the binder agreement for, and the form of, the RWI Policy. The RWI Policy does not permit, and Purchaser and its Affiliates will not amend, waive or otherwise modify the RWI Policy in any manner that would allow the insurer thereunder or any other Person to subrogate or otherwise make or bring any action or proceedings against any Seller, the Sellers’ Representative or any of their respective Affiliates or any of their respective past, present or future direct or indirect equityholders, stockholders, parents, subsidiaries, trustees, beneficiaries, grantors, directors, members,

managers, officers, employees, agents, representatives, attorneys, advisors or partners (or the functional equivalent of any of the foregoing positions) of any of the foregoing based upon, arising out of, or related to this Agreement or the Transaction, or the negotiation, execution or performance of this Agreement or the Transactions, except in the case of Fraud by Seller(s). Promptly after the Closing, Purchaser shall provide to the Sellers' Representative a true, correct and complete copy of the final RWI Policy.

7.18 Shareholder Guarantees(b) . At or before the Closing, Purchaser will use reasonable best efforts to, and Sellers' Representative shall reasonably cooperate with Purchaser to, arrange for substitute letters of credit, purchaser guarantees and other obligations to replace any letters of credit, guarantees or other obligations outstanding as of the date hereof that are set forth on Schedule 7.18 (the "Shareholder Guarantees") and Purchaser shall use its reasonable best efforts to obtain from the creditor, beneficiary, landlord or other counterparty a full release (in a form satisfactory to Sellers' Representative) of any Shareholder or their respective Affiliates (other than the Company) liable, directly or indirectly, for reimbursement to the creditor or fulfillment of other obligations to a beneficiary, landlord or counterparty in connection with amounts drawn under or paid such Shareholder Guarantees (collectively, the "Guaranteed Obligations"). To the extent any Guaranteed Obligations are not fully released at or prior to Closing, effective from and after the Closing Date, Purchaser will, and will cause each of its Affiliates (including the Company after the Closing) to, (i) indemnify, defend and hold harmless Shareholders and their Affiliates against, and reimburse Shareholders and their Affiliates for, any Guaranteed Obligations arising after the Closing Date, including costs or expenses arising after the Closing Date, in connection with such Shareholder Guarantees, including Shareholders' and their Affiliates' expenses in maintaining such Shareholder Guarantees after the Closing Date, whether or not any such Shareholder Guarantee is drawn upon or required to be performed, and will in any event promptly reimburse the Shareholders and their Affiliates to the extent any Shareholder Guarantee is called upon and the Shareholders or their Affiliates make any payment or are obligated to reimburse the party issuing such Shareholder Guarantee for any such Guaranteed Obligations, costs or expenses arising after the Closing Date and (ii) not, without the Sellers' Representatives' prior written consent, amend in any manner adverse to Sellers or any of their Affiliates, or extend (or permit the extension of), any Shareholder Guarantee or any obligation supported by any Shareholder Guarantee (including any Real Property Lease). Sellers' Representative shall in good faith cooperate with Purchaser and provide Purchaser all information reasonably requested by Purchaser to facilitate the performance of its obligations under this Section 7.18.

## ARTICLE VIII

### CONDITIONS TO CLOSING

8.1 Conditions Precedent to Obligation of the Parties. The respective obligation of each Party to consummate the Transaction is subject to the satisfaction or waiver, in writing, on or prior to the Closing Date of the following conditions:

(a) there shall not be in effect any Order by a U.S. Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transaction; provided that (i) a Party shall not be entitled to rely on the failure of this condition to be satisfied if such Order was initiated by such Party or an Affiliate of such Party and (ii) prior to asserting the failure of this condition the Party asserting such failure shall have used its

commercially reasonable efforts to have such Order vacated; and

(b) all waiting periods and other approvals applicable to the Transaction under the HSR Act shall have expired or been earlier terminated.

8.2 Conditions Precedent to Obligation of Purchaser. The obligation of Purchaser to consummate the Transaction is further subject to the satisfaction or waiver, in writing, on or prior to the Closing Date of the following conditions:

(a) (i) other than the representations and warranties of the Company set forth in Sections 3.1, 3.2(a), 3.2(b)(i), 3.3, and 3.20 (collectively, the “Company Fundamental Representations”), the representations and warranties of the Company set forth in Article III shall be true and correct (disregarding all qualifications or limitations as to “materiality,” “Company Material Adverse Effect” and words of similar import set forth therein, except with respect to Section 3.6(b) and except for the terms “Material Contract”, “Material Customer” and “Material Vendor”) as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than those representations and warranties which address matters only as of a particular date, which shall have been true and correct only as of such particular date), except in each case where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Company Material Adverse Effect, and (ii) the Company Fundamental Representations shall be true and correct as of the Closing Date in all respects, other than de minimis inaccuracies, with the same force and effect as if made on and as of the Closing Date, and Purchaser shall have received a certificate signed by an executive officer of the Company, dated as of the Closing Date, to the foregoing effect;

(b) (i) other than with respect to the representation and warranties in Sections 4.1, 4.2, 4.3(a), and 4.5 (collectively, the “Seller Fundamental Representations”), the representations and warranties of each Seller set forth in Article IV shall be true and correct in all material respects (disregarding all qualifications or limitations as to “materiality,” “Company Material Adverse Effect” and words of similar import set forth therein) as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than those representations and warranties which address matters only as of a particular date, which shall have been true and correct in all material respects only as of such particular date) and (ii) the Seller Fundamental Representations shall be true and correct in all respects, other than de minimis inaccuracies, as of the Closing Date with the same force and effect as if made on and as of the Closing Date, and Purchaser shall have received a certificate signed by the Sellers’ Representative (on behalf of each Seller), dated as of the Closing Date, to the foregoing effect;

(c) the Company shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by the Company on or prior to the Closing Date, and Purchaser shall have received a certificate signed by an executive officer of the Company, dated as of the Closing Date, to the foregoing effect;

(d) each Seller shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by Sellers on or prior to the Closing Date, and Purchaser shall have received a certificate signed by the Sellers' Representative (on behalf of each Seller), dated as of the Closing Date, to the foregoing effect; and

(e) no Company Material Adverse Effect shall have occurred since the date of this Agreement.

8.3 Conditions Precedent to Obligation of Sellers. The obligation of each Seller to consummate the Transaction is further subject to the satisfaction or waiver, in writing, on or prior to the Closing Date of the following conditions:

(a) the representations and warranties of Purchaser set forth in Article V shall be true and correct (disregarding all qualifications or limitations as to "materiality," "Purchaser Material Adverse Effect" and words of similar import set forth therein) as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than those representations and warranties which address matters only as of a particular date, which shall have been true and correct only as of such particular date), except in each case where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Purchaser Material Adverse Effect, and the Sellers' Representative shall have received a certificate signed by an authorized officer of Purchaser, dated as of the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date, and the Sellers' Representative shall have received a certificate signed by an authorized executive officer of Purchaser, dated as of the Closing Date, to the foregoing effect; and

(c) Purchaser shall have paid the Closing Payments due in accordance with Section 1.3 and Section 2.3.

## ARTICLE IX

### TERMINATION

9.1 Termination. This Agreement may be terminated prior to the Closing as follows:

(a) by mutual written consent of the Sellers' Representative (on behalf of Sellers) and Purchaser;

(b) at the election of the Sellers' Representative (on behalf of Sellers) or Purchaser on or after the date that is sixty (60) days after the date hereof (the "Outside Date"), if the Closing shall not have occurred by the close of business on such date; provided, that (i) if the Closing shall not have occurred because the condition set forth in Section 8.1(b) has not been fulfilled and (ii) all of the other conditions set forth in Article VIII have been satisfied or waived (other than those conditions that can by their terms only be satisfied in connection with

the Closing, provided that such conditions are not incapable of being performed at the Closing), then the Outside Date shall be the date that is one hundred eighty (180) days after the date hereof; provided further, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to a Party if such Party is in material breach of any of its covenants or agreements under this Agreement or to any Party whose breach of this Agreement has been the primary cause of the failure of the Closing to have occurred by the Outside Date;

(c) by the Sellers' Representative (on behalf of Sellers) or Purchaser if there shall be in effect a final, nonappealable Order of a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transaction; provided, however, that the right to terminate this Agreement under this Section 9.1(c) shall not be available to a Party if such Order was primarily due to the failure of such Party to perform any of its covenants or agreements under this Agreement;

(d) by Purchaser, if any Seller and/or the Company shall have breached any representation, warranty, covenant or other agreement contained in this Agreement that would give rise to the failure of a condition set forth in Section 8.2(a), Section 8.2(b), Section 8.2(c), Section 8.2(d), or Section 8.2(e), which breach either (i) is not cured within thirty (30) days following Sellers' Representative's receipt of written notice of such breach from Purchaser, (ii) by its nature, cannot be cured prior to the Outside Date or (iii) by its nature, is incapable of being cured; provided that the right to terminate this Agreement under this Section 9.1(d) shall not be available to Purchaser if Purchaser (x) is in material breach of any representation, warranty, covenant or other agreement contained in this Agreement or (y) fails to exercise such termination right within ten (10) days following the expiration of the thirty (30)-day period described in clause (i) above; or

(e) by the Sellers' Representative (on behalf of Sellers), if Purchaser shall have breached any representation, warranty, covenant or other agreement contained in this Agreement that would give rise to the failure of a condition set forth in Section 8.3(a) or Section 8.3(b), which breach either (i) is not cured within thirty (30) days following Purchaser's receipt of written notice of such breach from the Sellers' Representative, (ii) by its nature, cannot be cured prior to the Outside Date or (iii) by its nature, is incapable of being cured; provided that the right to terminate this Agreement under this Section 9.1(e) shall not be available to the Sellers' Representative if (x) any Seller or the Company is in material breach of any representation, warranty, covenant or other agreement contained in this Agreement or (y) the Sellers' Representative fails to exercise such termination right within ten (10) days following the expiration of the thirty (30)-day period described in clause (i) above.

9.2 Termination Procedure. In the event of the termination and abandonment of this Agreement by the Sellers' Representative or Purchaser pursuant to Section 9.1, written notice thereof shall forthwith be given to the other Party, and this Agreement shall terminate, and the consummation of the Transaction shall be abandoned, without further action by Sellers, the Company, or Purchaser.

9.3 Effect of Termination. If this Agreement is validly terminated pursuant to Section 9.1, all further obligations of the Parties under this Agreement shall terminate and such termination shall be without Liability to the Parties, except that (a) the obligations of the Parties under the Confidentiality Agreement, Section 7.3 (Confidentiality), Section 7.5 (Publicity), this Section 9.3, Article XI, and any

related definitions in Article XII shall survive such termination and not be affected thereby and (b) no such termination shall relieve any Party from Liability for any willful breach of any covenant or agreement in this Agreement.

## ARTICLE X

### INDEMNIFICATION

10.1 Survival of Representations, Warranties, Covenants and Agreements. The (x) representations and warranties made in this Agreement, and (y) indemnification obligations of Sellers set forth in Section 10.2(a)(ii), shall in each case survive the Closing and remain in full force and effect until the twelve (12)-month anniversary of the Closing Date (the "General Survival Date"), and the indemnification obligations of Sellers set forth in Section 10.2(a)(v) shall survive the Closing and remain in full force and effect until September 30, 2025. Notwithstanding the foregoing or any applicable statute of limitations, all representations and warranties related to any claim asserted on or before the General Survival Date in accordance with Section 10.5 shall survive (and any applicable statute of limitations shall be tolled) until all such claims shall have been finally resolved and payment in respect thereof, if any is required to be made, shall have been made. The covenants and agreements contained in this Agreement and requiring performance prior to Closing shall expire on the Closing Date. The covenants and agreements contained in this Agreement or any other agreement or certificate delivered in connection with the transactions contemplated hereby to be performed in whole or in part after the Closing shall survive the Closing and continue in full force and effect until such covenants or agreements are performed in accordance with the terms of this Agreement or any other agreement or certificate delivered in connection with the Transaction (other than the covenant and agreement to indemnify pursuant to Section 10.2(a), Section 10.2(b)(i), Section 10.2(b)(iii), Section 10.2(c)(i), and Section 10.2(c)(iii)), which shall each survive only for the applicable period set forth in this Section 10.1. Claims in respect of Fraud shall survive for the applicable statute of limitations for Fraud. Indemnification obligations of Sellers set forth in Section 10.2(a)(iii) shall survive the Closing and remain in full force and effect until the three (3)-year anniversary of the Closing Date. No claim for indemnification for breach of any representation, warranty, covenant or agreement contained in this Agreement may be asserted pursuant to this Agreement unless on or before the time period for survival of such claim set forth in this Section 10.1, such claim is asserted by written notice pursuant to this Article X.

10.2 General Indemnification. Subject to the limitations set forth in this Article X, from and after the Closing:

(a) Each Seller, on a joint and several basis with respect to the Indemnification Escrow Amount, and with respect to any indemnifiable amount outside of the Indemnification Escrow Amount, on a several but not joint basis (pro rata based on each Seller's Pro Rata Percentage), shall indemnify Purchaser, the Company, and their respective Affiliates, and each of their respective officers, directors, equityholders, employees, agents, representatives, heirs, successors, and permitted assigns (collectively, the "Purchaser Indemnified Parties") and hold each of them harmless from and against any and all Losses incurred or suffered directly or indirectly by such Purchaser Indemnified Parties arising out of, relating to, or resulting from:



(i) any inaccuracy in, or breach of, the representations or warranties contained in Article III or made by the Company in any certificate delivered by the Company pursuant to Section 8.2; provided, that, for the purposes of this clause (i), except with respect to the representations and warranties of the Company set forth in Section 3.6(b) and except for the terms “Material Contract”, “Material Customer” and “Material Vendor”, qualifications as to materiality, Company Material Adverse Effect, or other qualifiers of similar import contained in such representations and warranties shall be disregarded for purposes of determining whether any such failure occurred and in calculating any Losses resulting therefrom;

(ii) all Indemnified Taxes;

(iii) the matters set forth on Schedule 10.2(a)(iii);

(iv) Fraud of the Company; and/or

(v) the Taxes set forth on Schedule 10.2(a)(v) (“Specified Taxes”).

Notwithstanding anything to the contrary in this Agreement, no Seller shall have any liability or responsibility hereunder for any Tax imposed on or with respect to the Company with respect to any Tax period or portion thereof that is subsequent to the Closing Date.

(b) Each Seller shall, on a joint and several basis with respect to the Indemnification Escrow Amount, and with respect to any indemnifiable amount outside of the Indemnification Escrow Amount, on a several but not joint basis, indemnify the Purchaser Indemnified Parties from and hold each of them harmless from and against any and all Losses incurred or suffered directly or indirectly by such Purchaser Indemnified Parties arising out of, relating to, or resulting from:

(i) any inaccuracy in, or breach of the representations or warranties by such Seller contained in Article IV or in any certificate delivered by, or on behalf of, such Seller pursuant to Section 8.2; provided, that, for the purposes of this clause (i), qualifications as to materiality, material adverse effect, or other qualifiers of similar import contained in such representations and warranties shall be disregarded for purposes of determining whether any such failure occurred and in calculating any Losses resulting therefrom;

(ii) breach of any covenant or other agreement required to be performed following Closing by such Seller contained in this Agreement or in any other Transaction Agreement to which such Seller is party; and/or

(iii) Fraud of such Seller.

(c) Subject to the limitations set forth in this Article X, from and after the Closing, Purchaser shall indemnify each Seller and their respective Affiliates, and each of their respective officers, directors, equityholders, employees, agents, representatives, heirs, successors, and permitted assigns (collectively, the “Seller Indemnified Parties”) and hold each of them harmless from and against any and all Losses incurred or suffered directly or indirectly by such Seller Indemnified Parties arising out of, relating to, or resulting from:



(i) any inaccuracy in, or breach of, the representations or warranties contained in Article V or made by Purchaser in any certificate delivered by Purchaser pursuant to Section 8.3;

(ii) any breach of any covenant or other agreement required to be performed following Closing by Purchaser or the Company contained in this Agreement or in any other Transaction Agreement to which Purchaser or the Company is party; and/or

(iii) Fraud of Purchaser.

### 10.3 Limitations on Indemnification.

(a) Sellers shall not be required to indemnify any Purchaser Indemnified Party under Section 10.2(a)(i), Section 10.2(a)(ii) and/or Section 10.2(b)(i) unless and until the aggregate amount of Losses that the Purchaser Indemnified Parties are entitled to recover under this Article X exceeds One Million Eight Hundred Twenty-Two Thousand Five Hundred Dollars (\$1,822,500) (the “Deductible”) and then Sellers shall be required to indemnify the applicable Purchaser Indemnified Parties, subject to the other limitations contained herein, solely for the amount of such Losses in excess of the Deductible; provided, that, the Deductible shall not apply to Losses arising from Fraud.

(b) The maximum amount of Losses on a collective basis that may be recovered or asserted in any claim(s) by the Purchaser Indemnified Parties under Section 10.2(a)(i), Section 10.2(a)(ii), and/or Section 10.2(b)(i) (other than with respect to Fraud) shall be limited to and shall in no event exceed the Indemnification Escrow Amount, which together with the RWI Policy (subject to Section 10.4), shall be the sole and exclusive source of recovery for such Losses. Sellers shall have no obligation to directly satisfy any claim by a Purchaser Indemnified Party for indemnification under Section 10.2(a)(i), Section 10.2(a)(ii), or Section 10.2(b)(i) (other than with respect to Fraud, subject to Section 10.4). The maximum amount of Losses on a collective basis that may be recovered or asserted in any claim(s) by the Purchaser Indemnified Parties under Section 10.2(a)(v) shall be limited to and shall in no event exceed the Specified Taxes Cap (as defined in Schedule 10.2(a)(v)). With respect to claims for indemnification under Sections 10.2(a)(iii)-(v), subject to the preceding sentence, the maximum liability of any Seller to the Purchaser Indemnified Parties shall be such Seller’s Pro Rata Percentage of such Losses. The maximum liability of any Seller to the Purchaser Indemnified Parties shall not in the aggregate exceed the proceeds actually received by such Seller.

(c) The amount of any Losses for which indemnification is provided for under this Article X (without giving effect to limitations) shall be calculated net of any insurance proceeds or other amounts actually received by the Indemnatee from third parties with respect to such Losses, in each case, net of the present value of any increases in premiums, any costs of collection or deductibles resulting therewith; provided, that, in no event shall Purchaser or any other Purchaser Indemnified Party be required to initiate litigation to recover any such amounts. If an Indemnatee collects an amount in discharge of a claim of a Loss reimbursed by an Indemnitor, and such Indemnatee subsequently recovers from a third party (including under the RWI Policy) (such excess recovery, the “Excess Recovery”), such Indemnatee shall repay

to the Indemnitor an amount equal to the Excess Recovery less any costs or expenses incurred or suffered by the Indemnitee in procuring the Excess Recovery including the present value of any increases in premiums and any costs of collection or deductibles resulting therewith. Any Losses for which any Indemnitee is entitled to indemnification under this Article X shall be determined without duplication of recovery by reason of the state of facts giving rise to such Losses constituting a breach of more than one representation, warranty, covenant, or agreement. No Party will be entitled to be indemnified for an amount pertaining to any Loss to the extent that such amount pertaining to such Loss was included or taken into account in the calculation of the Purchase Price as finally adjudicated pursuant to Section 1.4.

(d) No Seller shall have any right of contribution, subrogation, or other recourse against the Company or its directors, managers, officers, employees, Affiliates, agents, attorneys, stockholders, members, representatives, assigns, or successors in respect of any claims asserted by any Purchaser Indemnified Parties, it being acknowledged and agreed that the covenants, agreements, and obligations of the Company are solely for the benefit of the Purchaser Indemnified Parties. Except to the extent prohibited by Law, upon and after becoming aware of any event which could reasonably be expected to give rise to any indemnifiable Losses hereunder, the Indemnitee shall take and cause its Affiliates to take, or cooperate with the Indemnitor if so requested by the Indemnitor in order to take, all commercially reasonable measures to mitigate the indemnifiable Losses based upon, arising out of or incurred as a result of such event; provided, that in no event shall the Indemnitee be required to initiate litigation in respect of such efforts.

10.4 Manner of Payment. After giving effect to, and otherwise subject to, the limitations set forth in Section 10.3:

(a) With respect to Losses incurred pursuant to Section 10.2(a)(i), Section 10.2(a)(ii), and/or Section 10.2(b)(i), other than any Losses arising out of, relating to, or resulting from, Fraud, the Purchaser Indemnified Parties shall be entitled to recover such Losses, first, from the then-remaining Indemnification Escrow Funds pursuant to the terms of the Escrow Agreement, and only after the Indemnification Escrow Amount is exhausted, the Purchaser Indemnified Parties shall be entitled to recover such Losses, second, from the RWI Policy. With respect to Losses arising out of, relating to, or resulting from, claims in respect of Section 10.2(a)(iv) and Section 10.2(b)(iii), the Purchaser Indemnified Parties shall be entitled to recover such Losses, first, from the then-remaining Indemnification Escrow Funds pursuant to the terms of the Escrow Agreement, and, only after the Indemnification Escrow Amount is exhausted, the Purchaser Indemnified Parties shall be entitled to recover such Losses, second, directly from (x) Sellers on a several but not joint basis (pro rata based on each Seller's Pro Rata Percentage) if indemnifiable under Section 10.2(a), or (y) the breaching Seller, if indemnifiable under Section 10.2(b), in each case, until the retention amount under the RWI Policy has been eroded, third, from the RWI Policy, to the extent the RWI Policy covers such claim and the underwriter responds in satisfaction with respect to such claim, and, if the RWI Policy is exhausted or the RWI Policy does not cover such claim or the underwriter does not respond in satisfaction with respect to such claims, the Purchaser Indemnified Parties shall be entitled to recover such Losses, fourth, directly from (x) Sellers on a several but not joint basis (pro rata based on each Seller's Pro Rata Percentage), if indemnifiable under Section 10.2(a), or (y) the breaching Seller, if indemnifiable under Section 10.2(b). With respect to

Losses arising out of, relating to, or resulting from, claims in respect of Section 10.2(a)(iii), Section 10.2(a)(v), and Section 10.2(b)(ii), the Purchaser Indemnified Parties shall be entitled to recover such Losses directly from (x) Sellers on a several but not joint basis (pro rata based on each Seller's Pro Rata Percentage) if indemnifiable under Section 10.2(a), or (y) the breaching Seller, if indemnifiable under Section 10.2(b).

(b) Subject to the limitations in Section 10.3, any direct indemnification obligations of any Indemnitor under Article X (which for the avoidance of doubt, shall not include any claims with respect to Losses incurred pursuant to Section 10.2(a)(i), Section 10.2(a)(ii), and/or Section 10.2(b)(i), other than any Losses arising out of, relating to, or resulting from, Fraud) shall be paid to the Indemnitee, by wire transfer of immediately available funds, within five (5) Business Days following the final determination of Losses for the applicable indemnification claim, pursuant to Section 10.5 or Section 11.1(e), as applicable.

#### 10.5 Claims Procedures.

(a) Direct Claims. In the event any Purchaser Indemnified Party or Seller Indemnified Party (each an "Indemnitee") shall claim indemnification hereunder for any claim (other than a Third-Party Claim) for which indemnification is provided in Section 10.2 above, the Indemnitee shall reasonably promptly after it becomes aware of facts that such Indemnitee reasonably believes may give rise to the basis for such claim, give written notice (a "Direct Claim Notice") to the party from whom indemnity is sought (each, an "Indemnitor") setting forth the basis for such claim and the nature and estimated amount of such claim, all in reasonable detail and to the extent available; provided that so long as such Direct Claim Notice is given within the applicable time period described in Section 10.1, the failure to reasonably promptly provide such notice shall not affect the rights of such Indemnitee to indemnification pursuant to this Article X, except and only to the extent that the Indemnitor shall have been actually prejudiced thereby. If the applicable Indemnitor disputes any claim set forth in the Direct Claim Notice, it shall promptly, and in any event within thirty (30) days after receipt of the Direct Claim Notice, deliver to the Indemnitee that has given the Direct Claim Notice a written notice indicating its dispute of such Direct Claim Notice and its basis for such dispute, and the applicable parties shall attempt in good faith for a period of thirty (30) days following the delivery of such written notice to agree upon the rights of the respective parties with respect to such Direct Claim Notice. If no such agreement can be reached after good faith negotiation during such thirty (30)-day period, the parties may pursue all other remedies available to them at Law or equity in accordance with this Agreement.

(b) Third-Party Claims. In the event any Indemnitee shall claim indemnification hereunder for any claim asserted by any third party, other than a claim relating to Taxes, which shall be controlled by Section 11.1(e), for which indemnification is provided in Section 10.2 (a "Third-Party Claim"), the Indemnitee shall, reasonably promptly after the assertion of such Third-Party Claim, give written notice (a "Third-Party Claim Notice") to the applicable Indemnitor setting forth, to the extent known, the basis for such claim and the nature and estimated amount of the claim, all in reasonable detail, together with copies of all notices and documents (including court papers) served on, or received by, such Indemnitee; provided that so long as such Third-Party Claim Notice is given within the applicable time period described in Section 10.1, the failure to reasonably promptly provide such notice shall not

relieve the Indemnitor of its obligations hereunder except and only to the extent that the Indemnitor shall have been actually prejudiced by such failure to so notify. The Indemnitor, upon notice to the Indemnitee within the thirty (30)-day period after receiving a Third-Party Claim Notice, shall have the right, at its sole discretion, to assume the defense of any claim set forth in such Third-Party Claim Notice, at its own cost through reputable counsel of its own selection; provided, that, prior to the Indemnitor assuming control of such defense, such Indemnitor shall agree in writing to be fully responsible for any indemnified Losses that may be asserted against the Indemnitee in such Third-Party Claim (subject to the limitations set forth in this Article X); provided, further, that the Indemnitor shall not be entitled to assume control of such defense if (1) such Third-Party Claim relates to, or arises in connection with, any criminal, civil, or administrative action, investigation, or other proceeding instituted by a Governmental Authority, (2) such Third-Party Claim seeks an injunction or other equitable relief against the Indemnitee, (3) a conflict of interest exists between the Indemnitor and the Indemnitee, or (4) with respect to any claims with respect to Losses incurred pursuant to Section 10.2(a)(i), Section 10.2(a)(ii), and/or Section 10.2(b)(i), the amount in controversy under such Third-Party Claim is greater than one hundred percent (100%) of the remaining balance of the Indemnification Escrow Funds; provided, that if a Purchaser Indemnified Party has the option, in accordance with Section 10.2, to be indemnified with respect to such Third-Party Claim pursuant to Section 10.2(a)(iii), then the limitation in this clause (4) shall not apply. Subject to the foregoing, if the Indemnitor assumes control of the defense of any Third-Party Claim, the Indemnitor shall diligently defend such Third-Party Claim and obtain the prior written consent of the Indemnitee (which shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement, compromise, or discharge of such Third-Party Claim unless (x) none of clauses (1) through (4) of this Section 10.5(b) above, as applicable, are satisfied with respect to such Third-Party Claim, (y) such settlement or compromise includes only the payment of monetary damages (which are fully paid at the time of such settlement or compromise out of funds available in the Indemnification Escrow Funds), and (z) such settlement or compromise releases the Indemnitor completely in connection with such Third-Party Claim, with no statement as to or an admission of fault by or on behalf of the Indemnitee or any of its Affiliates and no monetary or nonmonetary relief granted by or imposed upon the Indemnitee or any of its Affiliates. If the Indemnitor assumes control of the defense of any Third-Party Claim, (i) the Indemnitor shall periodically apprise the Indemnitee of the status of the claim, Liability, or expense and any resulting suit, proceeding, or enforcement action, and shall furnish the Indemnitee with all such documents and information in connection with such claim, Liability, or expense as the Indemnitee may reasonably request and (ii) the Indemnitee shall reasonably cooperate and provide reasonable assistance to the Indemnitor in defense of such Third-Party Claim. If the Indemnitor does not timely and affirmatively assume the defense of a Third-Party Claim or does not have the right to assume the defense of such Third-Party Claim pursuant to this Section 10.5(b), the Indemnitee may, diligently defend such Third-Party Claim and recover indemnifiable Losses associated therewith from Indemnitor (subject to the limitations set forth in this Article X) and shall not settle, compromise or offer to settle or compromise any such Third-Party Claim unless (1) the Indemnitor provides prior written consent, which consent will not be unreasonably withheld, conditioned or delayed, or (2) no indemnification under this Article X is sought by any Indemnitee in connection with the Third-Party Claim covered by the settlement. If the Indemnitee assumes control of the defense of any Third-Party Claim, (i) such Indemnitee may

do so through reputable counsel of its own choosing; provided, that in the case of any claim for indemnification under Section 10.2(a)(iii), such counsel shall be reasonably acceptable to Sellers' Representative, (ii) the Indemnitee shall periodically apprise the Indemnitor of the status of the claim, Liability, or expense and any resulting suit, proceeding, or enforcement action, and shall furnish the Indemnitor with all such documents and information in connection with such claim, Liability, or expense as the Indemnitor may reasonably request and (iii) the Indemnitor shall cooperate and provide reasonable assistance to the Indemnitee in defense of such Third-Party Claim. Notwithstanding anything herein to the contrary, the Indemnitee or the Indemnitor, as applicable, who has not assumed the defense of the Third-Party Claim pursuant to this Section 10.5(b), shall at all times have the right to participate fully in such defense at its own expense directly or through one counsel of its choice. For the avoidance of doubt, this Section 10.5(b) shall not apply to Tax Contests, which shall be governed exclusively by Section 11.1(e).

10.6 Final Purchase Price Adjustment. All indemnification payments under this Agreement shall be deemed adjustments to the final Purchase Price for all Tax purposes, unless otherwise required by applicable Law.

10.7 Release of Indemnification Escrow Funds. Within five (5) Business Days following the General Survival Date, Purchaser and the Sellers' Representative shall jointly instruct the Escrow Agent to pay to (x) each Seller such Seller's Pro Rata Percentage of an amount equal to the Initial Indemnity Release Amount *less* the Transaction Bonus Portion of the Initial Indemnity Release Amount and (y) the Company the Transaction Bonus Portion of the Initial Indemnity Release Amount for further distribution in accordance with the applicable Honored Agreements pursuant to Section 7.7(h) (provided, however, that notwithstanding anything herein to the contrary, any portion of such Initial Release Amount (including any Transaction Bonus Portion of such Initial Release Amount) for which compensatory Tax withholding is required by Law shall be paid via an applicable payroll system). For purposes hereof, "Initial Indemnity Release Amount" means an amount equal to (a) the then-remaining Indemnification Escrow Funds, less (b) any portion of the Indemnification Escrow Funds subject to a claim for indemnification pursuant to a Claim Notice given by a Purchaser Indemnified Party that has been submitted on or prior to the General Survival Date (each, an "Outstanding Claim"), which portion shall continue to be retained until final settlement between the Purchaser Indemnified Party and the Sellers' Representative or final non-appealable resolution of all such Outstanding Claims (or until any such portion of such amounts is determined pursuant to Section 10.5). As soon as all such claims for indemnification have been resolved or any such portion of such amounts is determined pursuant to Section 10.5 to be no longer necessary to satisfy such claims for indemnification, the Escrow Agent shall deliver the remaining portion of such undistributed amount, if any, to be released in accordance with such settlement or resolution or not required to satisfy such claims for indemnification ("Resolved Amount") to (x) each Seller such Seller's Pro Rata Percentage of an amount equal to the Resolved Amount *less* the Transaction Bonus Portion of such Resolved Amount and (y) the Company the Transaction Bonus Portion of such Resolved Amount for further distribution in accordance with the applicable Honored Agreements pursuant to Section 7.7(h) (provided, however, that notwithstanding anything herein to the contrary, any portion of such Resolved Amount (including any Transaction Bonus Portion of such Resolved Amount) for which compensatory Tax withholding is required by Law shall be paid via an applicable payroll system).

10.8 Effect of Knowledge. Subject to the limitations set forth in Section 7.11(c), rights of the Indemnitees to indemnification for the representations, warranties, covenants, and agreements set forth herein are part of the basis of the bargain contemplated by this Agreement, and their rights to indemnification shall not be affected or waived by virtue of (and Purchaser shall be deemed to have relied upon the representations, warranties, covenants, and agreements set forth herein notwithstanding) any knowledge on the part of Purchaser or any other Indemnitee of any untruth of any such representation or warranty or breach of any covenant or agreement set forth in this Agreement, regardless of whether such knowledge was obtained through the investigation by Purchaser or any other Indemnitee or through disclosure by any Seller, the Company, or any other Person, and regardless of whether such knowledge was obtained before, at, or after the Closing.

10.9 Sole Remedy. The Parties agree that, notwithstanding anything to the contrary set forth in this Agreement or otherwise, from and after the Closing, except with respect to (a) the enforcement of any determination of the Accounting Referee pursuant to Section 1.4, (b) Fraud, (c) matters addressed in the Side Letter (solely with respect to the parties thereto), and/or (d) the rights of any Party to seek injunctive relief or specific performance as provided in this Agreement, the rights of the Indemnitees to indemnification relating to this Agreement and the transactions contemplated hereby shall be strictly limited to those contained in this Article X, and such indemnification rights set forth in this Article X shall be the sole and exclusive remedies of the Indemnitees for Losses subsequent to the Closing Date with respect to any matter in any way relating to the matters set forth in this Agreement or arising in connection herewith. Notwithstanding anything to the contrary in this Agreement, the provisions of this Article X shall not affect or otherwise operate to limit the rights of any insured to recover under the RWI Policy.

## ARTICLE XI

### MISCELLANEOUS

#### 11.1 Tax Matters.

(a) Purchaser will prepare and file, or cause to be prepared and filed, all Tax Returns for the Company required to be filed after the Closing Date for all Pre-Closing Tax Periods (including the pre-Closing portion of any Straddle Period), and all such Tax Returns will be prepared in a manner consistent with the past practice of the Company, except to the extent otherwise required by applicable Law. Purchaser shall provide any such Tax Returns which are Income Tax Returns at least thirty (30) days prior to their due date to the Sellers' Representative for review and comment. The prior written consent of the Sellers' Representative will be required before filing each Tax Return described in this Section 11.1(a) that reflects Indemnified Taxes for which Sellers are liable under this Agreement, which consent will not be unreasonably withheld, delayed, or conditioned. Each of Purchaser, the Company and the Sellers' Representative shall cooperate fully, as and to the extent reasonably requested by another Party, in connection with preparing or filing any Tax Return of the Company and any audit or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information that are reasonably relevant to any such audit or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The obligations set forth in this Section

11.1(a) shall remain in effect for the statutory period during which the Taxes in question can be imposed.

(b) In the case of any Straddle Period, the amount of any Taxes other than property or similar *ad valorem* Taxes for the Pre-Closing Tax Period shall be determined based on an interim closing of the Company's books as of the close of business on the Closing Date and the amount of any property or similar *ad valorem* Taxes for a Straddle Period that relate to the Pre-Closing Tax Period shall be deemed to be the amount of such Taxes payable during the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period up to and ending on the Closing Date and the denominator of which is the total number of days in such Straddle Period.

(c) Following the Closing, without the prior written consent of the Sellers' Representative (not to be unreasonably withheld, conditioned, or delayed), Purchaser shall not cause or permit the Company to amend, refile, or otherwise modify, any Tax election or Tax Return with respect to any Pre-Closing Tax Period or, with respect to a Pre-Closing Tax Period, file any Tax Return (other than Tax Returns filed in accordance with Section 11.1(a)) or initiate any voluntary disclosure process with respect to the Company in any jurisdiction in which such entity has not previously filed such type of Tax Return or paid such type of Taxes, in each case to the extent that taking such action would cause Sellers to have Liability under this Agreement.

(d) Except to the extent reflected as an asset in the calculation of Closing Date Working Capital or otherwise having already been reflected in the calculation of the Purchase Price, any refunds for Taxes that are received by Purchaser or the Company, and any amounts credited against Taxes to which Purchaser or the Company become entitled (other than any such refunds or amounts credited resulting from the carryforward or carryback of any net operating loss ("NOL") of the Company), that relate to any Pre-Closing Tax Period shall be for the account of Sellers, and Purchaser shall pay (net of reasonable, out-of-pocket expenses incurred in connection with obtaining such refund or credit) over to (i) Sellers on a pro rata basis (based on Sellers' respective Pro Rata Percentages), by wire transfer of immediately available funds to the accounts designated in writing by Sellers, an amount equal to (A) any such refund or the amount of any such credit less (B) the Transaction Bonus Portion of any such refund or the amount of any such credit and (ii) the Company the Transaction Bonus Portion of any such refund or the amount of any such credit for further distribution in accordance with the applicable Honored Agreements pursuant to Section 7.7(h) by wire transfer of immediately available funds (provided, however, that notwithstanding anything herein to the contrary, any such portion of any such refund or the amount of any such credit (including the Transaction Bonus Portion of any such refund or the amount of any such credit) for which compensatory Tax withholding is required by Law shall be paid via an applicable payroll system), in each case, within ten (10) Business Days after receipt thereof or the filing of the applicable Tax Return on which such credit is applied. Notwithstanding anything to the contrary herein, any refund for Taxes and any amounts credited against Taxes to which the Company, Purchaser or any Affiliate thereof becomes entitled on or after the date hereof as the result of the carryforward or carryback of an NOL of the Company shall be for Purchaser's account.



(e) Purchaser and the Sellers' Representative will each promptly (but in any event within thirty (30) days following Purchaser's or the Sellers' Representative (as applicable) receipt of written notification of such Tax Contest) notify the other Party in writing of any Tax Contest relating to a Pre-Closing Tax Period (any such Tax Contest or portion thereof relating to a Pre-Closing Tax Period, a "Pre-Closing Tax Contest"), and such notice will state the nature and basis of such Pre-Closing Tax Contest and the amount of Taxes relating thereto, in each case, to the extent known, and will include copies of any written correspondence provided to, or received from, the Governmental Authority with respect to such Pre-Closing Tax Contest. The Sellers' Representative shall have the right to control, at the Sellers' expense, any Pre-Closing Tax Contest for which they could have Liability under this Agreement; provided that the Sellers' Representative (i) elects in writing delivered to Purchaser no later than fifteen (15) days of receiving notification of such Pre-Closing Tax Contest to exercise such right, (ii) diligently prosecutes such Pre-Closing Tax Contest in good faith, (iii) keeps Purchaser reasonably informed of the status of developments with respect to such Pre-Closing Tax Contest (and permits Purchaser to participate in such Pre-Closing Tax Contest at its sole cost and expense), and (iv) does not settle or concede such Pre-Closing Tax Contest without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned).

Notwithstanding the foregoing, and to the extent that a Pre-Closing Tax Contest does not relate to Specified Taxes or item two (2) set forth on Schedule 10.2(a)(iii), the Sellers' Representative shall not be entitled to assume control of the defense of such Pre-Closing Tax Contest, and Sellers shall pay the reasonable fees and expenses of counsel retained by the Indemnitee (to the extent such fees and expenses constitute a Loss with respect to a matter for which the Indemnitee is entitled to indemnification pursuant to Article X, subject to the terms and conditions set forth in Article X), if the amount of Indemnified Taxes at issue in such Pre-Closing Tax Contest exceeds one hundred percent (100%) of the amount of the then-remaining Indemnification Escrow Funds. If the Sellers' Representative does not timely elect to control a Pre-Closing Tax Contest pursuant to this Section 11.1(e), or if Purchaser controls a Pre-Closing Tax Contest pursuant to the immediately preceding sentence, such Pre-Closing Tax Contest shall be controlled by Purchaser and Purchaser shall not settle or concede such Pre-Closing Tax Contest without the prior written consent of the Sellers' Representative (not to be unreasonably withheld, conditioned, or delayed). With respect to a Pre-Closing Tax Contest for a Tax period in which the Company (then Arcturus UAV, LLC) was classified as a partnership for U.S. federal and applicable state and local Income Tax purposes, the Shareholders and Purchaser shall cooperate to cause the Company to have in effect an election under Section 6221(b) of the Code to elect out of the centralized partnership audit provisions of the Bipartisan Budget Act of the 2015.

(f) All transfer, sales, use, value added, excise, stamp, recording, documentary, registration and any and other similar Taxes and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) that are imposed on any of the Parties by any Governmental Authority in connection with the Transaction shall be borne by Purchaser. Purchaser will duly and timely prepare any Tax Returns with respect to such Taxes, and the Sellers' Representative will reasonably cooperate with Purchaser in the preparation and filing of such Tax Returns.



11.2 Expenses. Except as otherwise provided in this Agreement or the other Transaction Agreements, each Party shall bear its own costs and expenses incurred in connection with the negotiation and execution of this Agreement and the other Transaction Agreements and each other agreement, document and instrument contemplated hereby or thereby and the Transaction, whether or not the Transaction is consummated. Purchaser shall be solely responsible for (i) all governmental fees and charges applicable to any requests for Governmental Approvals, including any such fees and charges incurred (including any filing fees) in connection with satisfying the requirements of the HSR Act and antitrust Laws of any other applicable jurisdiction, and any other Laws, (ii) the premium (together with any applicable Taxes thereon) in respect of the RWI Policy, the brokerage fee payable to the broker who arranges the RWI Policy and any other premiums, costs, expenses, fees or Taxes payable in order to put the RWI Policy in place and (iii), subject to Article X, any deductibles or co-payments required to be made pursuant to the RWI Policy.

11.3 Governing Law. Except as otherwise provided in Section 11.23 below, this Agreement and any action arising out of or relating to the Transaction shall in all respects be governed by, and construed in accordance with, the Laws (excluding conflict of Laws rules and principles to the extent that to do so would result in the application of the Laws of another jurisdiction) of the State of Delaware applicable to agreements made and to be performed entirely within such State, including all matters of construction, validity and performance.

11.4 Jurisdiction; Court Proceedings; Waiver of Jury Trial. Except as otherwise provided in Section 11.23 below, any controversies, claims, actions, suits, or proceedings ("Litigation") against any Party arising out of or in any way relating to the Transaction or this Agreement shall be brought in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court of the United States of America sitting in the State of Delaware), and appellate courts thereof, and each of the Parties hereby submits to the exclusive jurisdiction of such courts for the purpose of any such Litigation; provided, that a final judgment in any such Litigation shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party irrevocably and unconditionally agrees not to assert (a) any objection which it may ever have to the laying of venue of any such Litigation in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court of the United States of America sitting in the State of Delaware), and appellate courts thereof, (b) any claim that any such Litigation brought in any such court has been brought in an inconvenient forum and (c) any claim that such court does not have jurisdiction with respect to such Litigation. To the extent that such service of process is permitted by Law, each Party irrevocably consents to the service of process in any such Litigation in such courts by utilizing the notice provisions set forth in clauses (a), (c), or (d) of Section 11.9. Each Party irrevocably and unconditionally waives any right to a trial by jury and agrees that any of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained-for agreement among the Parties irrevocably to waive their right to trial by jury in any Litigation.

11.5 Further Assurances. After the Closing, each Party shall from time to time, at the reasonable request of the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the Transaction.

11.6 Entire Agreement. This Agreement (including the Schedules and Exhibits attached hereto or delivered herewith), the other Transaction Agreements, and the Side Letter constitute the entire agreement of the Parties relating to the subject matter hereof and supersede all prior Contracts or agreements, whether oral or written. The Parties have voluntarily agreed to define their rights, Liabilities and obligations respecting the Transaction exclusively in Contract pursuant to the express terms and provisions of this Agreement, and the Parties expressly disclaim that they are owed any duties or are entitled to any remedies not expressly set forth in this Agreement.

11.7 Amendment. Except as otherwise provided in Section 11.23 below, neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented or modified orally, but only by written instrument making specific reference to this Agreement signed by Purchaser and the Sellers' Representative (on behalf of Sellers); provided, that the observance of any provision of this Agreement may be waived in writing by the Party that shall lose the benefit of such provision as a result of such waiver.

11.8 Waivers. No waiver or consent, express or implied, by any Party to or of any breach or default by any Party in the performance by such Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such Party of the same or any other obligations of such Party hereunder. No single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce any right or power, shall preclude any other or further exercise thereof or the exercise of any other right or power. Failure on the part of a Party to complain of any act of any Party or to declare any Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder until the applicable statute of limitation period has run. In the event any provision of any other Transaction Agreement shall in any way conflict with the provisions of this Agreement (except where a provision therein expressly provides that it is intended to take precedence over this Agreement), this Agreement shall control.

11.9 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made (a) as of the date delivered, if delivered personally, (b) on the date the delivering Party receives confirmation, if delivered by email as a portable document format ("PDF") document, (c) three (3) Business Days after being mailed by registered or certified mail (postage prepaid, return receipt requested) or (d) one (1) Business Day after being sent by overnight courier (providing proof of delivery), to the Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 11.9).

To the Company (prior to the Closing), to:

Arcturus UAV, Inc.  
1035 N McDowell Blvd  
Petaluma, California 94954  
Attention: D'Milo Hallerberg  
Phone: +1 (628) 288-9008  
E-mail: dhall@arcturus-uav.com

With a copy (which shall not constitute notice) to:

Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
Attention: William J. Curtin, III  
                  Gabrielle M. Witt  
Phone: +1 (202) 637-6418  
Email: william.curtin@hoganlovells.com  
Email: gabrielle.witt@hoganlovells.com

To Sellers or the Sellers' Representative, to:

D'Milo Hallerberg  
c/o Arcturus UAV, Inc.  
1035 N McDowell Blvd  
Petaluma, California 94954  
Phone: +1 (628) 288-9008  
E-mail: dhall@arcturus-uav.com

With a copy (which shall not constitute notice) to:

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Attention: William J. Curtin, III  
                  Gabrielle M. Witt  
Phone: +1 (202) 637-6418  
Email: william.curtin@hoganlovells.com  
Email: gabrielle.witt@hoganlovells.com

If to Purchaser (or the Company following the Closing), to:

AeroVironment, Inc.  
900 Innovators Way  
Simi Valley, CA 93065  
Attention: Melissa Brown, VP, General Counsel & Corporate Secretary  
Phone: +1 (805) 520-8350 ext. 1369  
Email: corporatesecretary@avinc.com

With a copy (which shall not constitute notice) to:

K&L Gates LLP  
1 Park Plaza, 12<sup>th</sup> Floor  
Irvine, CA 92614  
Attention: Shoshannah D. Katz  
Phone: +1 (949) 623-3545  
Email: Shoshannah.Katz@klgates.com

11.10 Severability. Should any provision of this Agreement or the application thereof to any Person or circumstance be held invalid or unenforceable to any extent: (a) such provision shall be ineffective to the extent, and only to the extent, of such unenforceability or prohibition and shall be enforced to the greatest extent permitted by Law, (b) such unenforceability or prohibition in any jurisdiction shall not invalidate or render unenforceable such provision as applied (i) to other Persons or circumstances or (ii) in any other jurisdiction, and (c) such unenforceability or prohibition shall not affect or invalidate any other provision of this Agreement.

11.11 Specific Performance. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the Parties agree that, in addition to any other remedies, each Party shall be entitled to enforce the terms of this Agreement by a decree of specific performance or other injunctive or equitable relief without the necessity of proving the inadequacy of money damages as a remedy. Each Party hereby waives (a) any defenses that the other Parties have an adequate remedy at Law or an award of specific performance is not an appropriate remedy for any reason at Law or equity in any action for an injunction, specific performance or other equitable relief and (b) any requirement for the securing or posting of any bond in connection with such remedy.

11.12 Parties in Interest; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than (a) the Parties and their respective legal representatives, successors and permitted assigns, (b) each D&O Indemnified Person, who shall have the right to enforce the obligations of Purchaser and the Company solely with respect to Section 7.8 and (c) the Debt Financing Parties as provided in Section 11.23 below) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein, as a third party beneficiary or otherwise.

11.13 Assignment. Neither this Agreement nor any rights or obligations hereunder may be assigned by any Party, without the prior written consent of Purchaser and the Sellers' Representative; provided that Purchaser may assign its rights, but not its obligations hereunder without such consent to (a) the Debt Financing Parties or any other debt financing source as collateral security for the purpose of securing any financing in relation to the Agreement and (b) to any Affiliate of Purchaser (so long as such assignment does not relieve Purchaser of its obligations hereunder). Any assignment in violation of this Section 11.13 shall be null and void.

11.14 Cooperation with Legal Proceedings. From and after the Closing, if requested by the Sellers' Representative, Purchaser shall cooperate with Sellers in the investigation, defense or

prosecution of any Legal Proceedings pending or threatened against Sellers or any of their Affiliates with respect to the business of the Company. Without limiting the generality of the foregoing, but provided that such requests shall not unreasonably interfere with the business or operations of Purchaser, Purchaser shall make available its and the Company's employees to give depositions or testimony and shall furnish all documentary or other evidence that Sellers may reasonably request. Sellers shall reimburse Purchaser for all reasonable and documented out-of-pocket expenses incurred in connection with the performance of its obligations under this Section 11.14.

11.15 Privileged Matters; Attorney Conflict Waiver.

(a) Purchaser, on behalf of itself and its Affiliates (including the Company following the Closing) and its and their respective representatives, acknowledges and agrees that the Company's (other than as to communications, information and documents occurring or arising after Closing), Sellers' and the Sellers' Representative's attorney-client privilege, attorney work-product protection and expectation of client confidence involving any proposed sale of the Company by Sellers, this Agreement or any other Transaction Agreement or the Transaction and all communications, information, and documents covered by such privilege, protection or expectation belong to Sellers, and may be controlled, asserted or waived only by the Sellers' Representative (on behalf of Sellers). In no event shall Purchaser or any of Purchaser's Affiliates cause any such communications, information, and documents to be used against Sellers, the Sellers' Representative or their Affiliates, including in any Legal Proceeding, except in the event that any such communication, information, or document is used against Purchaser by any Seller, the Sellers' Representative or their respective Affiliates in any such Legal Proceeding. Purchaser, on behalf of itself and its Affiliates (including the Company following the Closing) and its and their respective representatives, acknowledges and agrees (i) the foregoing attorney-client privilege, work product protection and expectation of client confidence shall not be controlled, owned, used, waived or claimed by Purchaser or by any of Purchaser's Affiliates upon consummation of the Closing; and (ii) in the event of a dispute between Purchaser or any of Purchaser's Affiliates, on the one hand, and a third party, on the other hand, or any other circumstance in which a third party requests or demands that Purchaser or any of Purchaser's Affiliates produce such privileged materials or attorney work-product, Purchaser shall and shall cause the applicable Affiliate of Purchaser to assert such attorney-client privilege or attorney-work product protection to prevent disclosure of privileged materials or attorney work-product to such third party. In addition, Purchaser agrees that it would be impractical to remove all communications, information, and documents covered by such privilege, protection or expectation from the records (including e-mails and other electronic files) of the Company and that the presence or existence of any communications, information, and documents in the Company's records shall not be deemed a waiver by Sellers or the Sellers' Representative of any applicable privilege or protection. Accordingly, Purchaser will use commercially reasonable efforts not to, and will cause each of its Affiliates (including, after Closing, the Company) to use commercially reasonable efforts not to, (A) disclose any such communications, information, and documents remaining in the records of the Company after Closing in any manner that might be deemed a waiver of any applicable privilege or protection, or (B) use any such communications, information, and documents remaining in the records of the Company after Closing.

(b) The Parties acknowledge and agree that the attorney-client privilege, attorney work-product protection and expectation of client confidence involving matters of the Company

other than those matters covered by Section 11.15(a) and arising prior to the Closing and all communications, information and documents covered by such privilege, protection or expectation shall be retained and controlled by the Company, and may be waived only by the Company. Purchaser and Sellers acknowledge and agree that (i) the foregoing attorney-client privilege, work product protection and expectation of client confidence shall not be controlled, owned, used, waived or claimed by Sellers or by any of Sellers' Affiliates upon consummation of the Closing; and (ii) in the event of a dispute between Sellers or any of Sellers' Affiliates, on the one hand, and a third party, on the other hand, or any other circumstance in which a third party requests or demands that any of Sellers or Sellers' Affiliates produce privileged materials or attorney work-product of the Company, Sellers shall cause the applicable Affiliate of Sellers to assert such attorney-client privilege or attorney-work product protection to prevent disclosure of privileged materials or attorney work-product to such third party.

(c) Each of the Parties hereby agrees, on its own behalf and on behalf of its Affiliates and its and their directors, members, shareholders, partners, officers, and employees, that (i) Hogan Lovells may serve as counsel to Sellers, the Sellers' Representative and their respective Affiliates, on the one hand, and the Company, on the other hand, in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the Transaction, and that, following consummation of the Transaction, Hogan Lovells (or any successor) may serve as counsel to Sellers, any holder of interests in a Seller, the Sellers' Representative and their respective Affiliates or any director, member, shareholder, partner, officer or employee thereof, in connection with any litigation, claim or obligation arising out of or relating to this Agreement or the Transaction notwithstanding such representation and (ii) Purchaser shall not, and shall cause its Affiliates (including the Company) not to, seek or have Hogan Lovells (or any successor) disqualified from any such representation. Each of the Parties hereby consents thereto and waives any conflict of interest arising therefrom, and each of such Parties shall cause any of its Affiliates to consent to or waive any conflict of interest arising from such representation. Each of the Parties acknowledges that such consent and waiver is voluntary, that it has been carefully considered, and that the Parties have consulted with counsel or have been advised they should do so in connection herewith. The covenants, consent and waiver contained in this Section 11.15(c) are intended to be for the benefit of, and shall be enforceable by, Sellers' and their Affiliates' counsel and their legal representatives and shall not be deemed exclusive of any other rights to which Sellers' and their Affiliates' counsel is entitled whether pursuant to Law, Contract or otherwise.

#### 11.16 Authorization of the Sellers' Representative.

(a) The Sellers' Representative is hereby appointed, authorized and empowered to act as a representative, for the benefit of all Sellers, as the exclusive agent and attorney-in-fact, in connection with and to facilitate the consummation of the Transaction under this Agreement and the other Transaction Agreements, which shall include the power and authority, including power of substitution: (i) to execute and deliver such amendments, waivers, consents, notices and instructions in connection with this Agreement and any other Transaction Agreement, and the consummation of the Transaction as the Sellers' Representative, in his sole discretion, may deem necessary or desirable; (ii) to review, accept or dispute the Closing Statement, (iii) to administer and resolve any disputes or compromise such disputes with Purchaser, on Sellers' behalf (including in connection with any and all claims for indemnification brought under Article X or

Section 11.1, claims related to Taxes, or claims related to the Closing Date Cash, the Closing Date Working Capital, the Unpaid Company Transaction Expenses, any Contingent Consideration, and the Closing Date Indebtedness), and (iv) to take any and all actions that the Sellers' Representative believes are necessary or appropriate under this Agreement or the other Transaction Agreements or to effectuate the Transaction or the other transactions contemplated hereby or thereby, for and on behalf of Sellers and to resolve any dispute with Purchaser over any aspect of this Agreement and, on behalf of Sellers, to enter into any agreement to effectuate any of the foregoing that shall have the effect of binding Sellers as if Sellers had personally entered into such an agreement; provided, that no such failure to act on the part of the Sellers' Representative, except as otherwise provided in this Agreement, shall be deemed a waiver of any such right or interest by the Sellers' Representative or by Sellers unless such waiver is in writing signed by the waiving party or by the Sellers' Representative.

(b) The Sellers' Representative shall not be entitled to any fee, commission or other compensation for the performance of his services hereunder, but shall be entitled to the payment of all his out-of-pocket expenses incurred as the Sellers' Representative. The Sellers' Representative will incur no liability of any kind with respect to any action or omission by the Sellers' Representative in connection with his services pursuant to this Agreement or any other Transaction Agreement except in the event of liability directly resulting from the Sellers' Representative's willful misconduct. The Sellers' Representative shall not be liable for any action or omission pursuant to the advice of counsel. Each Seller shall indemnify, on a pro rata basis (based on such Seller's Pro Rata Percentage), the Sellers' Representative against all Losses (including any and all expense whatsoever reasonably incurred in investigating, preparing or defending against any litigation, commenced or threatened or any claims whatsoever), arising out of or in connection with any claim, investigation, challenge, action or proceeding or in connection with any appeal thereof, relating to the acts or omissions of the Sellers' Representative hereunder or otherwise. The foregoing indemnification shall not apply in the event of any action or proceeding which finally adjudicates the Liability of the Sellers' Representative hereunder for his willful misconduct. In no event will the Sellers' Representative be required to advance his own funds on behalf of Sellers or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of Sellers set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Sellers' Representative under this Section. In the event of any indemnification hereunder, upon written notice from the Sellers' Representative to Sellers as to the existence of a deficiency toward the payment of any such indemnification amount, each Seller shall promptly deliver to the Sellers' Representative full payment of his, her or its ratable share of the amount of such deficiency (based on such Seller's Pro Rata Percentage).

(c) Each Seller agrees that the Sellers' Representative may consult with counsel chosen by the Sellers' Representative and shall have full and complete authorization in good faith to act or refrain from acting in accordance with the opinion of such counsel. The Sellers' Representative may rely and shall be protected in acting, or refraining from acting, upon any written notice, instruction or request furnished to the Sellers' Representative hereunder and reasonably believed by the Sellers' Representative to be genuine and to have been signed or presented by the proper party or parties.



(d) All of the indemnities, immunities and powers granted to the Sellers' Representative under this Agreement shall survive the Closing Date, any termination of this Agreement, or any resignation or removal of the Sellers' Representative. Purchaser shall have the right to rely upon all actions taken or omitted to be taken by the Sellers' Representative pursuant to this Agreement and any other Transaction Agreement, all of which actions or omissions shall be legally binding upon all Sellers. The grant of authority provided for herein (i) is coupled with an interest and shall be irrevocable and survives the death, incompetency, bankruptcy or liquidation of any of Sellers and (ii) shall survive the Closing.

(e) The Parties acknowledge and agree that the Sellers' Representative shall have no Liability to, and shall not be liable for any Losses of, any other Party, any Purchaser Indemnified Party or Debt Financing Party in connection with any obligations of the Sellers' Representative under this Agreement, any other Transaction Agreement or otherwise in respect of this Agreement or the Transaction.

(f) The Sellers' Representative shall have the right to resign. If the Sellers' Representative resigns or is otherwise unable to fulfill its responsibilities hereunder, Sellers shall (by consent of those Sellers having a collective Pro Rata Percentage of greater than fifty percent (50%)), within ten (10) Business Days after such resignation or inability, appoint a successor to the Sellers' Representative and immediately thereafter notify Purchaser of the identity of such successor. Any such successor shall succeed the Sellers' Representative as Sellers' Representative for all purposes hereunder. If for any reason there is no Sellers' Representative at any time, all references herein to the Sellers' Representative shall be deemed to refer to Sellers.

11.17 Non-Recourse. Except as expressly set forth in the Confidentiality Agreement or any other Transaction Agreement, all claims, obligations, Liabilities, or causes of action (whether at Law, in equity, in Contract, in tort or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, or the negotiation, execution, or performance of this Agreement (including any dispute arising out of or relating in any way to the Commitment Letter or the performance thereof or the financings contemplated thereby), may be made only against the Parties that are expressly identified in the preamble to this Agreement or any of their respective permitted assigns (the "Contracting Parties"). No Person who is not a Contracting Party, including any current, former or future equityholder, incorporator, controlling Person, general or limited partner, member, Affiliate, director, officer, employee, agent, consultant, representative, or Debt Financing Party of any Contracting Party, and any financial advisor or lender to, any Contracting Party, or any current, former or future equityholder, incorporator, controlling person, general or limited partner, Affiliate, director, officer, employee, agent, consultant, representative, or Debt Financing Party, and any lender to, any of the foregoing or any of their respective successors, predecessors or assigns (or any successors, predecessors or assigns of the foregoing) (collectively, the "Non-Party Affiliates"), shall have any Liability (whether in Law or in equity, whether in Contract or in tort or otherwise) for any claims, causes of action, obligations, or Liabilities arising under, out of, in connection with, or related in any manner to this Agreement (including any claims, causes of action, obligations or Liabilities arising out of or relating in any way to the Commitment Letter or the performance thereof or the financings contemplated thereby) or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach (other than as expressly set forth in the Confidentiality Agreement or any other Transaction Agreement), including any alleged non-disclosure or misrepresentations made by any such Person or as a result of the use or reliance on any



information, documents or materials made available by such Person, and, to the maximum extent permitted by Law, each Contracting Party hereby waives and releases all claims, causes of action, obligations, or Liabilities arising under, out of, in connection with, or related in any manner to this Agreement (including any claims, causes of action, obligations or Liabilities arising out of or relating in any way to the Commitment Letter or the performance thereof or the financings contemplated thereby) or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach (other than as expressly set forth in the Confidentiality Agreement or any other Transaction Agreement) against any such Non-Party Affiliates; provided, that, for clarity, no party to the Confidentiality Agreement or any other Transaction Agreement shall be deemed a Non-Party Affiliate with respect to such documents to which it is a party. Without limiting the foregoing, to the maximum extent permitted by Law, except to the extent otherwise expressly set forth in the Confidentiality Agreement or any other Transaction Agreement, (i) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available, whether at Law, in equity, in contract, in tort or otherwise, to avoid or disregard the entity form of a Contracting Party or otherwise impose liability on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise, in each case arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach (other than as expressly set forth in the Confidentiality Agreement or any other Transaction Agreement); and (ii) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement.

11.18 No Other Duties. The only duties and obligations of the Parties under this Agreement are as specifically set forth in this Agreement, and no other duties or obligations shall be implied in fact, Law or equity, or under any principle of fiduciary obligation.

11.19 Reliance on Counsel and Other Advisors. Each Party has consulted such legal, financial, technical or other experts as it deems necessary or desirable before entering into this Agreement. Each Party represents and warrants that it has read, knows, understands and agrees with the terms and conditions of this Agreement.

11.20 Disclosure Schedules. No reference to or disclosure of any item or other matter in the Company Disclosure Schedule or the Seller Disclosure Schedule shall be construed as an admission or indication that such item or other matter is material (nor shall it establish a standard of materiality for any purpose whatsoever) or that such item or other matter is required to be referred to or disclosed in the Company Disclosure Schedule or the Seller Disclosure Schedule. The information set forth in the Company Disclosure Schedule and the Seller Disclosure Schedule is disclosed solely for the purposes of this Agreement, and no information set forth therein shall be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of any Contract. The section numbers contained in the Company Disclosure Schedule and the Seller Disclosure Schedule correspond to the section numbers in this Agreement; provided, that any information disclosed therein under any section number shall be deemed to be disclosed and incorporated in any other section of the Company Disclosure Schedule or the Seller Disclosure Schedule, as applicable, where such disclosure would be appropriate and reasonably apparent on its face whether or not such disclosure contains an express cross-reference. The Company Disclosure Schedule and the Seller

Disclosure Schedule and the information and disclosures contained therein are intended only to qualify and limit the representations, warranties and covenants of the Company and Sellers, as applicable, contained in this Agreement. Nothing in the Company Disclosure Schedule or the Seller Disclosure Schedule is intended to broaden the scope of any representation or warranty contained in this Agreement or create any covenant. Matters reflected in the Company Disclosure Schedule and the Seller Disclosure Schedule are not necessarily limited to matters required by the Agreement to be reflected in the Company Disclosure Schedule and the Seller Disclosure Schedule, respectively. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature.

11.21 Reserved.

11.22 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. Such delivery of counterparts shall be conclusive evidence of the intent to be bound hereby and to the extent applicable, the foregoing constitutes the election of the Parties to invoke any Law authorizing electronic signatures. Any such counterpart delivered by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail or by electronic signature delivered by electronic transmission (any such delivery, “Electronic Delivery”) shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party shall raise the use of Electronic Delivery to deliver a counterpart or signature, or the fact that any counterpart or signature was transmitted or communicated through the use of Electronic Delivery, as a defense to the formation of a Contract, and each Party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

11.23 Debt Financing Source Arrangements. Notwithstanding anything to the contrary contained in this Agreement, each of the Parties hereto: (a) agrees that it will not bring or support any Person, or permit any of its Affiliates to bring or support any Person, in any action, suit, proceeding, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Debt Financing Party in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including, but not limited to, any dispute arising out of or relating in any way to the Commitment Letter or the performance thereof or the financings contemplated thereby, in any forum other than the federal and New York State courts located in the Borough of Manhattan within the City of New York; (b) agrees that, except as specifically set forth in the Commitment Letter, all claims or causes of action (whether at law, in equity, in contract, in tort or otherwise) against any of the Debt Financing Parties in any way relating to the Commitment Letter or the performance thereof or the financings contemplated thereby, shall be exclusively governed by, and construed in accordance with, the internal laws of the State of New York, without giving effect to principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of laws of another jurisdiction; and (c) **HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (WHETHER AT LAW OR IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING IN ANY WAY TO THE COMMITMENT LETTER OR THE PERFORMANCE THEREOF OR THE FINANCING CONTEMPLATED THEREBY.** Notwithstanding anything to the contrary contained in this Agreement, the Debt Financing Parties are

intended third-party beneficiaries of, and shall be entitled to the protections of this provision and Sections 11.3, 11.4, 11.7 and 11.12 (and the related definitions), to the same extent as if the Debt Financing Parties were parties to this Agreement. This Section 11.23, and Sections 11.3, 11.4, 11.7 and 11.12 (and the related definitions) may not be amended, modified or supplemented, or any of their provisions waived in a manner that is adverse to or directly impairs the rights of the Debt Financing Parties, without the written consent of the Debt Financing Parties, which consent may be granted or withheld in the sole discretion of the Debt Financing Parties.

## ARTICLE XII

### DEFINITIONS AND INTERPRETATION

#### 12.1 Certain Definitions.

(a) For purposes of this Agreement, the following terms shall have the meanings specified in this Section 12.1:

“Accounting Rules” means the methodologies, principles, and assumptions set forth in Exhibit A.

“Accrued Income Taxes” means an amount, which shall not be less than Zero Dollars (\$0), equal to the aggregate amount of the net unpaid Income Taxes of the Company to the extent first due after the Closing Date, determined as if the taxable period of the Company ended as of the end of the day on the Closing Date, attributable to any taxable period (or portion thereof) ending on or prior to the Closing Date (whether or not yet due and payable as of the Closing Date), ignoring, for this purpose, (i) any Income Tax payments made after the Closing, (ii) any deferred Income Tax Liabilities or deferred Income Tax assets that are not available to offset the Liability for such Taxes for such taxable periods and (iii) any Income Taxes to the extent attributable to any transactions entered into by the Company on the Closing Date, after the Closing, and outside the ordinary course of business, but taking into account, for this purpose, (A) any amounts accrued for Income Taxes and any Income Tax assets (including, without limitation, net operating loss carryforwards, refunds, and overpayments of Taxes) that are available to offset the Liability for such Taxes for such taxable periods, and (B) Income Tax payments made prior to the Closing.

“Adjustment Escrow Amount” means Six Million Five Hundred Thousand Dollars (\$6,500,000).

“Adjustment Escrow Funds” means, at any time, the portion of the Adjustment Escrow Amount then remaining, plus any interest accrued thereon.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise; provided, that, with respect to any trust, “Affiliate” means the beneficiaries, trustees, and grantors of such trust and each of their respective Affiliates. For the

avoidance of doubt, the Company shall be deemed, for purposes of this Agreement, an Affiliate of Purchaser from and after the Closing.

“Aggregate Related Party Pay-off Amount” means the aggregate amount set forth in the Related Party Loan Pay-off Letters.

“Applicable Anti-Corruption Laws” means collectively, (i) the United States Foreign Corrupt Practices Act, (ii) the UK Bribery Act of 2010, (iii) Laws enacted pursuant to the Organization of Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and (iv) any other applicable Laws or regulations of relevant jurisdictions prohibiting bribery and corruption where the Company does business.

“Benefit Plan” means each pension, retirement, profit-sharing, deferred compensation, stock option, employee stock ownership, health and welfare, severance pay, vacation, bonus, employment agreement, offer letter, or other incentive plans, and all other employee benefit plans or fringe benefit plans, including “employee benefit plans” (as that term is defined in Section 3(3) of ERISA), in each case (a) maintained or sponsored by the Company or (b) with respect to which the Company has or could reasonably be expected to have any Liability.

“Bid” means any firm quotation, bid or proposal made by a Person that if accepted or awarded would lead to a Contract legally binding upon such Person.

“Business Day” means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

“CARES Act” means the U.S. Coronavirus Aid, Relief, and Economic Security Act.

“Cash and Cash Equivalents” means the sum of the fair market value (expressed in United States dollars) of all cash and cash equivalents of the Company. Cash and Cash Equivalents shall (x) be reduced by issued but uncleared checks and drafts of the Company and (y) be increased by checks and drafts deposited for the account of the Company, in each case as of the Measurement Time.

“Closing Date Cash” means the aggregate amount of (i) all Cash and Cash Equivalents of the Company as of the Measurement Time, plus (ii) the Aggregate Related Party Pay-off Amount.

“Closing Date Indebtedness” means all Indebtedness of the Company as of the Measurement Time.

“Closing Date Working Capital” means, with respect to the Company, an amount equal to (i) the sum of all current assets of the Company (excluding Cash and Cash Equivalents), as of the Measurement Time, specifically identified as line items (and only those line items) set forth on Exhibit A, reduced by (ii) the sum of all current liabilities of the Company, as of the Measurement Time, specifically identified as line items (and only those line items) set forth on

Exhibit A, in each case, without duplication, and as determined in accordance with the Accounting Rules. For the avoidance of doubt “Closing Date Working Capital” shall not include (A) any amount taken into account in the calculation of the Closing Date Indebtedness, Unpaid Company Transaction Expenses, (B) any income Tax assets, Income Tax Liabilities, deferred Tax assets, or deferred Tax Liabilities, or (C) any Contingent Consideration.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Company Material Adverse Effect” means any event, change, occurrence, circumstance or effect that has, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Business, financial condition or results of operations of the Company, taken as a whole; provided that no event, change, occurrence, circumstance or effect to the extent resulting from, or arising out of, any of the following (or combination of the following) shall constitute a “Company Material Adverse Effect”: (i) changes in general economic conditions in the United States or any other country or region in the world, or changes in conditions in the global economy generally; (ii) changes in conditions in the financial markets, credit markets or capital markets in the United States or any other country or region in the world or changes in currency exchange rates or interest rates or currency fluctuations; (iii) changes in political or social conditions in the United States or any other country or region in the world, acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism), earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wildfires or other natural disasters, weather conditions, epidemics, pandemics and disease outbreaks (including COVID-19) or other health crisis or public health event, or the worsening of any of the foregoing, and other force majeure events, in each case in the United States or any other country or region in the world; (iv) changes affecting the industry generally in which the Company operates; (v) the execution or announcement of this Agreement, the pendency of any investigation or challenge to the Transaction, or the consummation of the Transaction (including but not limited to, the adverse impact thereof on relationships with or the loss of any employees, suppliers, customers, advertisers, financing sources, licensors, licensees, assets, or property interests); (vi) compliance with the terms of, or the taking of any action required by this Agreement or consented to by Purchaser, or the failure to take any action prohibited by this Agreement; (vii) changes in Law, regulations, Orders, or other binding directives issued by any Governmental Authority or other legal or regulatory conditions (or the interpretation thereof); (viii) changes in GAAP or other accounting standards (or the interpretation thereof); (ix) any failure, in and of itself, by the Company to meet internal or external projections or forecasts or revenue or earnings predictions (provided that the cause or basis for the Company failing to meet such projections or forecasts or revenue or earnings predictions may be considered in determining the existence of a Company Material Adverse Effect unless such cause or basis is otherwise excluded by this definition); or (x) any matters expressly set forth in the Company Disclosure Schedule or the Seller Disclosure Schedule, except in the case of clauses (i)-(iv), (vii), and (viii) above, to the extent any such change, circumstance, event, occurrence, state of facts, or development has had a disproportionate adverse effect on the Business compared to other companies that conduct business in the same industries as the Company.

“Competitive Business” means any business that is competitive with the Business, as conducted by the Company immediately prior to the Closing.

“Computer Systems” means all of the software, hardware, databases, computer equipment, computer systems, computer networks, and other similar technology (excluding, for clarity, technology that comprises the internet) that are used by the Company or an Affiliate of the Company in the operation of the business of the Company or such Affiliate.

“Confidential Information” means (i) any matters concerning the Company, including the Business, products, markets, condition (financial or other), operations, processes, Intellectual Property rights, customers, vendors, pricing, results of operations, cash flows, and prospects and affairs of the Company and (ii) this Agreement, each other Transaction Agreement, and any information, including the terms, conditions, or any other facts, relating to this Agreement and any other Transaction Agreement or the Transaction, or any confidential discussions or negotiations related thereto; provided that “Confidential Information” shall not include information (A) that is or becomes available to the public, other than as a result of disclosure by any Seller or such Seller’s Affiliates in violation of such Person’s obligations under this Agreement or (B) that becomes available to any Seller on a non-confidential basis from a source other than the Company or its Affiliates; provided that such source is not known (after reasonable inquiry) by such Seller or its Affiliates to be bound by a legal, fiduciary, or contractual obligation of confidentiality or secrecy with respect to such information.

“Contingent Consideration” has the meaning set forth in the Transaction Bonus Agreements (as such agreements are defined in the Company Disclosure Schedule).

“Contract” means any oral or written agreement, contract, indenture, note, mortgage, bond, lease or license.

“COVID-19” means the diseases caused by SARS-CoV-2 virus or COVID-19, and any evolutions or mutations thereof or related and/or associated epidemics, pandemic or disease outbreaks.

“Data Room” means the electronic documentation site in respect of the Company and the Transaction, established by Intralinks on behalf of the Company.

“Designated Representative” means any representative of Purchaser listed in Schedule 12.1(a)(i) or any substitute therefor designated by Purchaser and reasonably acceptable to the Sellers’ Representative.

“Environmental Laws” means as enacted and in effect on or prior to the Closing Date any applicable Laws concerning pollution or protection of the environment or natural resources; public or worker health or safety (as related to exposure to Hazardous Materials); or the manufacture, handling, use, Release, threatened Release, treatment, storage, transportation, remediation, or disposal of Hazardous Materials.

“Equitable Principles” means (i) bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally, and (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity).

“Equity Interest” means any share, capital stock, partnership, limited liability company, member or similar interest in any Person, and any option, warrant, right or security convertible, exchangeable or exercisable therefor or other instrument, obligation or right, the value of which is based on any of the foregoing, in each case issued, granted, entered into, agreed to or authorized by such Person.

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

“Escrow Agent” means Citibank, N.A.

“Escrow Agreement” means that certain Escrow Agreement, substantially in the form of Exhibit B, by and among the Sellers’ Representative (on behalf of Sellers), Purchaser and the Escrow Agent, providing for the holding and disbursement of certain funds held in escrow in accordance with the terms hereof and thereof.

“Estimated Working Capital Decrease” means, in the event that the Estimated Working Capital is less than the Working Capital Floor, an amount equal to (i) the Working Capital Target minus (ii) the Estimated Working Capital.

“Estimated Working Capital Increase” means, in the event that the Estimated Working Capital is greater than the Working Capital Ceiling, an amount equal to (i) the Estimated Working Capital minus (ii) the Working Capital Target.

“Family Member” means (i), as applied to any individual, a spouse, parent, sibling or descendant of such individual or of such individual’s siblings, whether related by blood or adoption and (ii), as applied to a trust, the beneficiaries of such trust and any individual related to such beneficiary as described in clause (i) of this definition.

“Fraud” means, (i) with respect to the Company, the Company’s common law fraud under Delaware Law with respect to the making of any of the representations and warranties contained in Article III (as limited by Section 3.26 and Section 5.12), (ii) with respect to any Seller, such Seller’s common law fraud under Delaware Law with respect to the making of any of the representations and warranties contained in Article IV (as limited by Section 4.6 and Section 5.12), and (iii) with respect to Purchaser, Purchaser’s common law fraud under Delaware Law with respect to the making of any of the representations or warranties contained in Article V. “Fraud”, in each case, shall not include any fraud claim based on constructive fraud, equitable fraud, negligent misrepresentation or omission or any similar theory.

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time.

“Government Bid” means a Bid issued by a contractor that, if accepted or awarded, would result in a Government Contract.

“Government Contract” means any Contract, as amended by binding modifications or change orders, between the Company and (i) the U.S. Government, (ii) any prime contractor of the U.S. Government or (iii) any subcontractor with respect to any Contract of a type described in

clauses (i) or (ii) above. A task, purchase or delivery order under a Government Contract will not constitute a separate Government Contract, for purposes of this definition, but will be part of the Government Contract to which it relates.

“Government Official” means (i) any official, member, employee or agent of a Governmental Authority; (ii) any political party or official thereof, or any candidate for political office; (iii) an employee of any instrumentality of a Governmental Authority, including state-owned or state-controlled commercial enterprises; or (iv) an employee of any public international organization (e.g., the United Nations and the World Bank).

“Governmental Authority” means any government or governmental, judicial, administrative or regulatory body thereof, or political subdivision thereof, whether domestic, foreign, federal, state, provincial or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

“Hazardous Materials” means any substances or materials that are listed, regulated or defined under any Laws concerning pollution, contamination, protection of the environment, natural resources, or human health and safety.

“Hogan Lovells” means the international legal practice that comprises Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Income Tax” means any Tax that is imposed on, or measured by, net income or gross income, however determined.

“Income Tax Return” means any Tax Return reporting or relating to Income Taxes.

“Indebtedness” of the Company means, without duplication, (i) the outstanding principal amount of and accrued and unpaid interest of (A) indebtedness of the Company for borrowed money and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which the Company is responsible or liable; (ii) all obligations of the Company issued or assumed as the deferred purchase price of property, all conditional sale obligations of the Company and all obligations of the Company under any title retention agreement (but excluding accounts payable and other current liabilities, to the extent taken into account in the calculation of the Closing Date Working Capital); (iii) any letters of credit and banker’s acceptances, to the extent drawn; (iv) any Liability of the Company with respect to interest rate swaps, collars, caps, and similar hedging obligations; (v) all obligations of the Company under capitalized leases in accordance with GAAP; (vi) all Accrued Income Taxes; (vii) all obligations of the type referred to in clauses (i)-(vi) of other Persons for which the Company is responsible or liable, directly or indirectly, as obligor, guarantor or surety; and (viii) all obligations of the type referred to in clauses (i)-(vii) of other Persons secured by any Lien on any property or asset of the Company; provided, however, that Indebtedness shall not include (x) any amounts taken into account in the calculation of the Closing Date Working Capital, Unpaid Company Transaction Expenses, Contingent Consideration or (y) any obligations under operating leases, including leases classified as operating leases in the Company Financial Statements.



“Indemnification Escrow Amount” means One Million Eight Hundred Twenty-Two Thousand Five Hundred Dollars (\$1,822,500).

“Indemnification Escrow Funds” means, at any time, the portion of the Indemnification Escrow Amount then remaining, plus any interest accrued thereon.

“Indemnified Taxes” means, without duplication, any and all Taxes (i) imposed on the Company for a Pre-Closing Tax Period including, for the avoidance of doubt, the portion of any Straddle Period ending on the Closing Date as determined pursuant to Section 11.1(b); (ii) of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulations Section 1.1502-6 or any analogous or similar state, local or non-U.S. Law; (iii) of any Person imposed on the Company as a transferee or successor, by Contract indemnification agreement or otherwise, or pursuant to any Law, which Taxes relate to an event, agreement or transaction occurring on or before the Closing Date; or (iv) of the Sellers; *provided*, that Indemnified Taxes shall not include any Taxes to the extent such Taxes were included in the computation of Closing Date Indebtedness or Closing Date Working Capital, as finally determined.

“Intellectual Property” means any and all of the following, as they exist anywhere in the world, whether registered or unregistered: (i) copyrights in works of authorship, including software, and all copyright registration applications, registrations, and renewals in connection therewith; (ii) patents, patent applications, inventions, utility models, and patent disclosures, together with all reissuances, continuations, continuations-in-part, divisions, divisionals, provisionals, revisions, extensions, renewals, and reexaminations thereof; (iii) trade names, brand names, trademarks, service marks, logos, and trade dress, including all goodwill associated therewith, and all applications, registrations, extensions, and renewals in connection therewith; (iv) trade secrets, methods, processes and know-how; (v) domain names; (vi) social media identifiers and account names; and (vii) any other intellectual property or proprietary rights.

“IRS” means the United States Internal Revenue Service.

“Knowledge” means, (i) for purposes of Article III, the actual knowledge of the Persons set forth in Schedule 12.1(a)(ii) after due inquiry of their respective direct reports and (ii) for purposes of Article IV, with respect to a Seller, (A) if such Seller is a natural person, the actual knowledge of such natural person and (B) if such Seller is a trust, the actual knowledge of the grantor of such trust.

“Law” means all foreign, federal, state, provincial and local laws, statutes, codes, ordinances, rules, regulations, resolutions and Orders.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits or proceedings (public or private) by or before a Governmental Authority or arbiter.

“Liability” means any debt, Loss, damage, adverse claim, fine, penalty, liability, or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated or due or to become due, and whether in Contract, tort, strict

liability, or otherwise), and including all costs and expenses relating thereto including all fees, disbursements, and expenses of legal counsel, experts, engineers, and consultants and costs of investigation.

“Lien” means any lien, pledge, mortgage, deed of trust, security interest, right of way, license, option, claim, hypothec, charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof), any restriction on transfer, or any other encumbrance.

“Losses” means all damages, losses, claims, Liabilities, demands, charges, suits, penalties and expenses (including reasonable attorneys’ and other professionals’ fees and disbursements).

“Measurement Time” means 11:59 pm Eastern Standard Time on the day immediately prior to the Closing Date.

“Order” means any order, injunction, judgment, decree, determination, ruling, writ, assessment or arbitration or other award of a Governmental Authority.

“PEO Plan” means a Benefit Plan sponsored and maintained by a professional employer organization.

“Permits” means any approvals, authorizations, consents, licenses, permits or certificates obtained from a Governmental Authority.

“Permitted Liens” means (i) in the case of real property, any title or survey defects, encroachments, easements, rights of way, covenants, restrictions and similar Liens that do not secure payment of a sum of money and that do not materially detract from the value, or materially interfere with any present or intended use, of the affected parcel of real property; (ii) Liens for Taxes, assessments or other governmental charges not yet due, payable or delinquent (or which may be paid without interest or penalties) or the amount or validity of which is being contested in good faith by appropriate proceedings and for which appropriate reserves have been established in accordance with GAAP; (iii) mechanics’, carriers’, workers’, repairers’ and similar Liens arising or incurred in the ordinary course of business or the amount or validity of which is being contested in good faith by appropriate proceedings; (iv) statutory obligations (including, workers’ compensation, unemployment insurance or other social security legislation, but excluding Liens for Taxes); (v) title of the lessor under that certain Single Sided Lease Agreement, dated June 1, 2018, by and between Wells Fargo Bank N.A. and the Company; (vi) any transfer restrictions under applicable securities Laws or the governing documents of the Company; and (vii) non-exclusive licenses granted by the Company with respect to Intellectual Property owned or exclusively used by the Company, in the ordinary course of business.

“Person” means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

“Personal Information” means information that identifies or can be used to identify an individual (alone or when combined with other information), or is otherwise considered

personally identifiable information, personal data, financial data, financial information, identifying data or identifying information under any Privacy and Security Law, including: (i) government identifiers, such as Social Security or other Tax identification numbers, driver's license numbers, and other government-issued identification numbers; (ii) account, credit, or debit card numbers, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's account and account information; (iii) user names, email addresses, passwords or other credentials for accessing accounts; and (iv) biometric information, meaning an individual's physiological, biological or behavioral characteristics, that can be used, singly or in combination with each other or other identifying data, to establish an individual's identity.

“Phantom Shares” means those awards of phantom stock of, and similar equity-based incentive rights with respect to, the Company granted by the Company pursuant to the Rights Agreements and set forth on the Capitalization Schedule.

“PPP Laws” means the Paycheck Protection Program under the CARES Act, the CARES Act, the SBA's interpretation of the CARES Act and of the Paycheck Protection Program Interim Final Rule, the Small Business Act, the rules and regulations issued by any Governmental Authority in respect of any of the foregoing, and any other Laws applicable to the PPP Loan.

“PPP Lender” means Live Oak Banking Company.

“PPP Loan” means that certain loan in the amount of Three Million Twenty-Five Thousand Six Hundred Dollars (\$3,025,600.00) obtained by the Company from the PPP Lender on April 10, 2020, pursuant to the PPP Laws.

“PPP Loan Document” means any promissory note evidencing the PPP Loan, together with any application for a PPP Loan, and all other Contracts, instruments, documents and certificates executed and delivered to, or in favor of, the PPP Lender or the SBA in connection with the PPP Loan.

“Pre-Closing Tax Period” means any Tax period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

“Privacy and Security Laws” means all applicable Laws relating to the collection, use, advertising, marketing, privacy, data security, data breach, data protection or data transfer of Personal Information, including the California Consumer Privacy Act of 2018 and the EU General Data Protection Regulation (EU) 2016/679.

“Pro Rata Percentage” means, with respect to each Seller, (i) the total number of Shares and Phantom Shares owned by such Seller as set forth in the Capitalization Schedule, divided by (ii) the sum of (x) the total number of Shares issued and outstanding and (y) the total number of Phantom Shares awarded (with each such number of Phantom Shares held by a Seller equal to the numerator of the “Transaction Percentage” as defined in each applicable Phantom Stock Award Agreement), in each case, as set forth in the Capitalization Schedule.

“Publicly Available Software” means any code that is, in whole or in part, subject to the provisions of any license to software that is made generally available to the public without

requiring payment of fees or royalties (including any obligation or condition under any “open source” license such as, without limitation, the GNU General Public License, GNU Lesser General Public License, Mozilla Public License or BSD licenses).

“Purchaser Material Adverse Effect” means (i) a material adverse effect on the business, assets, properties, financial condition or results of operations of Purchaser or (ii) any event, change, occurrence, circumstance or effect that, when taken individually or together with all other adverse events, changes, occurrences, circumstances or effects, would, or is reasonably expected to, prevent or materially impede or delay Purchaser or its Affiliates from consummating the Transaction or performing its obligations under this Agreement.

“Receivables” means all accounts receivable, trade receivables, notes receivable, and other receivables of the Company, including all proceeds, credits due, and rebates receivable.

“Related Party Pay-off Amount” with respect to a Seller, means the aggregate amount set forth in such Seller’s Related Party Loan Pay-off Letter.

“Release” has the meaning set forth in Section 101(22) of CERCLA (42 U.S.C. § 9601(22)).

“Remediation” means (i) any remedial action, remedy, response or removal action as those terms are defined in 42 U.S.C. § 9601, (ii) any corrective action as that term has been construed pursuant to 42 U.S.C. § 6924, and (iii) any measures or actions required or undertaken to investigate, assess, evaluate, monitor, or otherwise delineate the presence or Release of any Hazardous Material in or into the environment or to prevent, clean up or minimize a Release or threatened release of Hazardous Material.

“Rights Agreements” means any Contract pursuant to which the Company grants awards of phantom stock, restricted stock units or similar equity or equity-based incentive compensation that could be settled in whole or in part in Purchaser Shares.

“RWI Policy” means that certain transaction representations and warranties insurance policy, which is conditionally bound as of the date of this Agreement.

“SBA” means the U.S. Small Business Administration.

“Schedules” means the Company Disclosure Schedule, the Seller Disclosure Schedule and/or any other Schedule to this Agreement, as the case may be.

“Securities Act” means the Securities Act of 1933, as amended.

“Shareholder” means a Seller who owns Shares.

“Side Letter” means that certain letter agreement, dated January 9, 2021, by and between Purchaser and Phantom Holder #1 (as such term is defined in the Seller Disclosure Schedule).

“Straddle Period” means a Tax period beginning before and ending after the Closing Date.

“Subsidiary” means any Person of which a majority of the outstanding share capital, voting securities or other equity interests is owned, directly or indirectly, by another Person.

“Tax” or “Taxes” means (i) any U.S. federal, state, local or municipal, foreign or other taxes, including all net income, capital gains, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, levy, tariff, duty (including any customs duty), equity, escheat, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, business, capital stock, sales, use, transfer, registration, value-added, surtax, estimated, ad valorem, alternative or add-on minimum, or other tax of any kind whatsoever, however denominated or computed, and in respect of each and every of the foregoing, including any fine, interest, penalty or addition thereto imposed by a Taxing Authority, whether disputed or not, and (ii) Liability for the payment of any amounts of the type described in clause (i) as a transferee or successor, by Contract, from any express or implied obligation to indemnify or otherwise assume or succeed to the Liability of any other Person, or otherwise.

“Tax Contest” means any inquiry, audit, examination, hearing, trial, appeal, or other administrative or judicial proceeding with respect to any Taxes or Tax Returns of the Company.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement or attachment thereto, and including any amendment thereof in respect of any Taxes.

“Taxing Authority” means the IRS or any governmental agency, board, bureau, body, department or authority having jurisdiction with respect to any Tax.

“Transaction” means the transactions contemplated by this Agreement and the other Transaction Agreements.

“Transaction Agreements” means this Agreement, the Confidentiality Agreement, the Escrow Agreement, and each other agreement, document, instrument or certificate contemplated by this Agreement to which Purchaser, the Company, the Sellers’ Representative or a Seller is a party or to be executed by Purchaser, the Company, the Sellers’ Representative or a Seller in connection with the consummation of the Transaction (excluding the Side Letter).

“Transaction Bonus Portion” means the portion of an amount that is to be released or payable to Sellers following the Closing that represents Contingent Consideration.

“Unpaid Company Transaction Expenses” means, without duplication and only to the extent not paid as of the Measurement Time (i) the collective amount of all out-of-pocket costs and expenses incurred by the Company in connection with the sale of the Company payable by the Company to outside legal counsel, accountants, advisors, brokers and other third parties and (ii) bonuses (including transaction, stay, retention, or other similar bonuses), change of control, or similar payments that are due to any current or former employee, officer, individual service provider, or director of the Company as a result of, or otherwise payable in connection with, the

consummation of the Transaction pursuant to any Contract entered into by the Company prior to the Closing, excluding, for the avoidance of doubt, any Contingent Consideration (including the employer portion of any payroll or similar Taxes payable in connection with any such payments); provided, however, that Unpaid Company Transaction Expenses shall not include any amounts taken into account in the calculation of the Closing Date Indebtedness and shall not include any payments triggered as a result of actions taken as of or following the Closing by Purchaser or its Affiliates.

“WARN Act” means the Federal Worker Adjustment Retraining Notification Act and any applicable similar foreign, state or local Law related to plant closings, relocations, mass layoffs and employment losses.

“Working Capital Ceiling” means an amount equal to (i) the Working Capital Target plus (ii) the Working Capital Collar Amount.

“Working Capital Collar Amount” means Two Million Five Hundred Thousand Dollars (\$2,500,000).

“Working Capital Decrease” means, in the event that the Closing Date Working Capital is less than the Working Capital Floor, an amount equal to (i) the Working Capital Target minus (ii) the Closing Date Working Capital.

“Working Capital Floor” means an amount equal to (i) the Working Capital Target minus (ii) the Working Capital Collar Amount.

“Working Capital Increase” means, in the event that the Closing Date Working Capital is greater than the Working Capital Ceiling, an amount equal to (i) the Closing Date Working Capital minus (ii) the Working Capital Target.

“Working Capital Target” means Seventeen Million Dollars (\$17,000,000).

(b) Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

|                            |                    |
|----------------------------|--------------------|
| 401(k) Plans               | Section 7.7(f)     |
| Accounting Referee         | Section 1.4(c)(ii) |
| Acquisition Proposal       | Section 7.10       |
| Active Government Bid      | Section 3.13(a)    |
| Active Government Contract | Section 3.13(a)    |
| Agreement                  | Preamble           |
| Alternative Financing      | Section 7.15       |
| Antitrust Approvals        | Section 3.2(c)     |
| Balance Sheet              | Section 3.4(a)     |
| Balance Sheet Date         | Section 3.4(a)     |
| Business                   | Recitals           |
| Business Employees         | Section 7.7(a)     |
| Capitalization Schedule    | Section 3.3(b)     |
| Clean Team Agreement       | Section 7.3        |

|   |                    |
|---|--------------------|
| Closing                                       | Section 2.1        |
| Closing Cash Consideration                    | Section 1.2        |
| Closing Date                                  | Section 2.1        |
| Closing Payments                              | Section 1.3        |
| Closing Statement                             | Section 1.4(b)     |
| Commercially Reasonable Terms                 | Section 7.15       |
| Commitment Letter                             | Section 5.5        |
| Company                                       | Preamble           |
| Company Disclosure Schedule                   | Article III        |
| Company Financial Statements                  | Section 3.4(a)     |
| Company Fundamental Representations           | Section 8.2(a)     |
| Confidentiality Agreement                     | Section 7.3        |
| Contracting Parties                           | Section 11.17      |
| Debt Documents                                | Section 7.15       |
| Debt Financing Parties                        | Section 5.5        |
| Deductible                                    | Section 10.3(a)    |
| Deficit                                       | Section 1.4(d)(ii) |
| Direct Claim Notice                           | Section 10.5(a)    |
| Dispute Notice                                | Section 1.4(c)(i)  |
| D&O Costs                                     | Section 7.8(a)     |
| D&O Expenses                                  | Section 7.8(a)     |
| D&O Indemnifiable Claim                       | Section 7.8(a)     |
| D&O Indemnified Person                        | Section 7.8(a)     |
| D&O Indemnifying Party                        | Section 7.8(a)     |
| D&O Tail Policy                               | Section 7.8(b)     |
| DCSA  | Section 3.13(h)    |
| Election Notice                               | Section 7.7(f)     |
| Electronic Delivery                           | Section 11.22      |
| Environmental Permits                         | Section 3.11(a)    |
| Escrow Amount                                 | Section 1.3(a)(ii) |
| Estimated Closing Date Cash                   | Section 1.4(a)     |
| Estimated Closing Date Indebtedness           | Section 1.4(a)     |
| Estimated Purchase Price                      | Section 1.2        |
| Estimated Unpaid Company Transaction Expenses | Section 1.4(a)     |
| Estimated Working Capital                     | Section 1.4(a)     |
| Excess Recovery                               | Section 10.3(c)    |
| Exchange Act                                  | Section 4.5(c)     |
| FAR   | Section 3.13(e)    |
| Final Closing Date Cash                       | Section 1.4(d)     |
| Final Closing Date Indebtedness               | Section 1.4(d)     |
| Final Closing Date Working Capital            | Section 1.4(d)     |
| Final Unpaid Company Transaction Expenses     | Section 1.4(d)     |
| Final Working Capital Decrease                | Section 1.4(d)     |
| Final Working Capital Increase                | Section 1.4(d)     |
| Financing                                     | Section 5.5        |
| General Survival Date                         | Section 10.1       |

|                                    |                 |
|------------------------------------|-----------------|
| Governmental Approval              | Section 3.2(c)  |
| Government Testing Grounds         | Section 3.24(h) |
| Guaranteed Obligations             | Section 7.18    |
| Honored Agreements                 | Section 7.7(h)  |
| Indemnitee                         | Section 10.5(a) |
| Indemnitor                         | Section 10.5(a) |
| Initial Indemnity Release Amount   | Section 10.7    |
| Insurance Contract(s)              | Section 3.19    |
| ITAR                               | Section 5.3(b)  |
| Leased Real Property               | Section 3.24(b) |
| Litigation                         | Section 11.4    |
| Lock-Up Restriction                | Section 7.16(c) |
| Material Contracts                 | Section 3.12(a) |
| Material Customers                 | Section 3.21(a) |
| Material Vendors                   | Section 3.21(b) |
| New Plans                          | Section 7.7(c)  |
| NISPOM                             | Section 3.13(h) |
| NOL                                | Section 11.1(d) |
| Non-Party Affiliates               | Section 11.17   |
| Outside Date                       | Section 9.1(b)  |
| Outstanding Claim                  | Section 10.7    |
| Party(ies)                         | Preamble        |
| Pay-Off Letters                    | Section 7.6     |
| PDF                                | Section 11.9    |
| Pre-Closing Statement              | Section 1.4(a)  |
| Pre-Closing Tax Contest            | Section 11.1(e) |
| Public Reports                     | Section 4.5(b)  |
| Purchaser 401(k) Plan              | Section 7.7(f)  |
| Purchase Price                     | Section 1.2     |
| Purchaser                          | Preamble        |
| Purchaser Indemnified Parties      | Section 10.2(a) |
| Purchaser Shares                   | Section 1.2     |
| Real Property Lease                | Section 3.24(b) |
| Registered Intellectual Property   | Section 3.14(a) |
| Related Party                      | Section 3.18    |
| Related Party Pay-off Letter       | Section 2.2(h)  |
| Released Persons                   | Section 7.12    |
| Releasing Parties                  | Section 7.12    |
| Resolved Amount                    | Section 10.7    |
| Restricted Persons                 | Section 7.13(a) |
| Schedule Supplement                | Section 7.11(b) |
| SEC                                | Section 4.5(b)  |
| SEC Reports                        | Section 5.11    |
| Seller(s)                          | Preamble        |
| Seller Disclosure Schedule         | Article IV      |
| Seller Fundamental Representations | Section 8.2(b)  |



|                                |                    |
|--------------------------------|--------------------|
| Seller Indemnified Parties     | Section 10.2(c)    |
| Sellers' Representative        | Preamble           |
| Shareholder Guarantees         | Section 7.18       |
| Shares                         | Recitals           |
| Short Sales                    | Section 4.5(c)     |
| Specified Taxes                | Section 10.2(a)    |
| Stock Consideration            | Section 1.2        |
| Subleases                      | Section 3.24(g)    |
| Surplus                        | Section 1.4(d)(i)  |
| Third-Party Acquisition        | Section 7.10       |
| Third-Party Claim              | Section 10.5(b)    |
| Third-Party Claim Notice       | Section 10.5(b)    |
| Trade Compliance Laws          | Section 3.15       |
| Unaudited Financial Statements | Section 3.4(a)(ii) |

12.2 Rules of Construction. In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

- (a) a capitalized term has the meaning assigned to it herein;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) references in the singular or to "him," "her," "it," "itself," or other like references, and references in the plural or the feminine or masculine reference, as the case may be, shall also, when the context so requires, be deemed to include the plural or singular, or the masculine or feminine reference, as the case may be;
- (d) the Exhibits and Schedules attached to this Agreement or delivered herewith are an integral part of this Agreement and are hereby incorporated herein and made a part hereof as if set forth herein;
- (e) references to Articles, Sections, and Exhibits shall refer to articles, sections, and exhibits of this Agreement, unless otherwise specified;
- (f) the table of contents and headings in this Agreement are for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof;
- (g) the words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement, and the words "the date hereof" when used in this Agreement refer to the date of this Agreement;
- (h) where used with respect to information, the phrases "delivered" or "made available" shall mean that the information referred to has been physically or electronically delivered to the relevant Parties or their representatives, including, in the case of "made available" to Purchaser, material that has been posted in the Data Room at least one (1)

Business Day prior to the date hereof;

(i) this Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party that drafted and caused this Agreement to be drafted;

(j) all terms defined in this Agreement have the defined meanings when used in any Schedule or Exhibit to this Agreement, any certificate or other document delivered or made available pursuant hereto, unless otherwise defined therein;

(k) time is of the essence for each and every provision of this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day;

(l) all monetary figures shall be in United States dollars unless otherwise specified;

(m) references to “include,” “includes” or “including” in this Agreement are deemed to be followed by the words “without limitation,” whether or not so specified;

(n) references to “day” or “days” are to calendar days;

(o) references to time are to US Eastern Time unless otherwise expressly specified;

(p) references to a Person are also to its successors and permitted assigns; and

(q) the use of “or” is not intended to be exclusive unless expressly indicated otherwise.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**PURCHASER:  
AEROVIRONMENT, INC.**

By: /s/Wahid Nawabi  
Name: Wahid Nawabi  
Title: Chief Executive Officer

[Signature Page to Stock Purchase Agreement]

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**COMPANY:**  
**ARCTURUS UAV, INC.**

By: /s/D'Milo Hallerberg \_\_\_\_\_  
Name: D'Milo Hallerberg  
Title: Chief Executive Officer

[Signature Page to Stock Purchase Agreement]

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**SELLERS:**

The D'Milo Hallerberg Trust

By: /s/D'Milo Hallerberg

Name: D'Milo Hallerberg

Title: Trustee

/s/Chase Hallerberg

Chase Hallerberg

/s/Olivia Rivas

Olivia Rivas

/s/Claudia Rivas

Claudia Rivas

/s/Mark Allen

Mark Allen

/s/Philip Mahill

Philip Mahill

/s/John Champion

John Champion

/s/Andrew Robinson

Andrew Robinson

/s/Dylan Hallerberg

Dylan Hallerberg

**THE SELLERS' REPRESENTATIVE:**

/s/D'Milo Hallerberg

D'Milo Hallerberg

[Signature Page to Stock Purchase Agreement]

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The representations and warranties contained in this agreement were made for the purposes of allocating contractual risk between the parties and not as a means of establishing facts and are qualified by information in disclosure schedules that the parties exchanged in connection with the signing of this agreement. Moreover, the representations and warranties were made only as of the date of execution of this agreement and information concerning the subject matter of the representations and warranties may change after the date of this agreement. Only parties to this agreement have a right to enforce the agreement. Accordingly, third parties, including securityholders and prospective investors, should not rely on the representations and warranties in this agreement.



January 11, 2021

AeroVironment, Inc.  
900 Innovators Way  
Simi Valley, CA 93065-0906

AeroVironment, Inc.  
Commitment Letter

Ladies and Gentlemen:

AeroVironment, Inc., a Delaware corporation (the "**Borrower**" or "**you**"), has advised Bank of America, N.A. (through itself or one of its designated affiliates or branch offices, "**Bank of America**"), BofA Securities, Inc. (or any of its designated affiliates, "**BofA Securities**"), JPMorgan Chase Bank, N.A. ("**JPM**") and U.S. Bank National Association ("**U.S. Bank**"; U.S. Bank, together with Bank of America, BofA Securities and JPM, the "**Commitment Parties**," "**we**" or "**us**") that you intend to acquire (the "**Acquisition**"), directly or indirectly, all of the outstanding equity interests of Arcturus UAV, Inc., a California corporation (the "**Target**") pursuant to that certain Stock Purchase Agreement, dated as of the date hereof (together with all schedules, exhibits and annexes thereto, the "**Acquisition Agreement**"), among the Target, the persons or entities identified therein as Sellers (collectively, the "**Sellers**"), D'Milo Hallerberg, solely in his capacity as the representative of the Sellers, and you. You have further advised us that, in connection with the foregoing, you intend to consummate the transactions described in the transaction description attached hereto as Exhibit A (the "**Transaction Description**"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Transaction Description, the Summary of Terms (as defined below) or the Conditions Annex (as defined below), as applicable.

You have also advised the Commitment Parties that you intend to finance the Acquisition, the costs and expenses related to the Transactions and the ongoing working capital and other general corporate purposes of the Borrower and its subsidiaries after consummation of the Acquisition from the following sources (and that no financing other than the financing described herein will be required in connection with the Transactions): (a) a term A loan in an aggregate principal amount of \$200 million (the "**Term Loan Facility**"), (b) a revolving credit facility (the "**Revolving Facility**"; the Revolving Facility, together with the Term Loan Facility, the "**Facilities**") in an aggregate principal amount of \$100 million (which shall be undrawn on and as of the Closing Date), (c) \$155 million of cash on hand of the Borrower (the "**Balance Sheet Cash**") and (d) \$50 million in common equity of the Borrower issued to the Sellers on the Closing Date (the "**Equity Contribution**").

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In connection with the foregoing, (a) Bank of America is pleased to offer to be the sole administrative agent (in such capacity, the “**Administrative Agent**”) for the Facilities and Bank of America is pleased to offer its several and not joint commitment to lend \$100 million of the Facilities (to be allocated ratably between the Term Loan Facility and the Revolving Facility), upon and subject to the terms and conditions set forth in this commitment letter, in the Transaction Description, in the Summary of Terms and Conditions attached as Exhibit B hereto (the “**Summary of Terms**”) and in the conditions annex attached hereto as Exhibit C (the “**Conditions Annex**”; this commitment letter, the Transaction Description, the Summary of Terms and the Conditions Annex, collectively, this “**Commitment Letter**”), (b) JPM is pleased to offer its several and not joint commitment to lend \$100 million of the Facilities upon and subject to the terms and conditions of this Commitment Letter (to be allocated ratably between the Term Loan Facility and the Revolving Facility) and (c) U.S. Bank is pleased to offer its several and not joint commitment to lend \$100 million of the Facilities upon and subject to the terms and conditions of this Commitment Letter (to be allocated ratably between the Term Loan Facility and the Revolving Facility).

BofA Securities, JPM and U.S. Bank are pleased to advise you of their willingness, as joint lead arrangers and joint bookrunners (in such capacities, the “**Joint Lead Arrangers**” and each a “**Joint Lead Arranger**”) for the Facilities, to use their commercially reasonable efforts to form a syndicate of financial institutions (including Bank of America, JPM and U.S. Bank) (collectively, the “**Lenders**”) acceptable to you for the Facilities. It is understood and agreed that BofA Securities shall have the “left” placement in any and all marketing materials or other documentation used in connection with the Facilities and shall hold the leading role and responsibilities conventionally associated with such “left” placement, including sole selling role in respect of the Facilities. No additional agents, co-agents or arrangers will be appointed without your and our prior written approval.

The commitments of Bank of America, JPM and U.S. Bank to fund the full amount of the Term Loan Facility (collectively, the “**Necessary Acquisition Funds**”) on the date of effectiveness of the Definitive Documentation and the consummation of the Acquisition (the “**Closing Date**”), the commitments of Bank of America, JPM and U.S. Bank to provide the Facilities, the agreements of the Joint Lead Arrangers to perform the services described herein, and the effectiveness of the Definitive Documentation, in each case, are subject solely to the conditions set forth in the Conditions Annex and, upon satisfaction (or waiver by all Commitment Parties) of the conditions set forth in the Conditions Annex, and subject to the Limited Conditionality Provision, the funding of the Necessary Acquisition Funds shall occur. As used herein, “**Definitive Documentation**” means the credit agreement and all related definitive documentation for the Facilities.

Notwithstanding anything in this Commitment Letter or the Fee Letters (as defined below) to the contrary, (a) the only representations the accuracy of which shall be a condition to the availability of the Necessary Acquisition Funds on the Closing Date shall be (i) such of the representations made by the Target in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that you (or any of your affiliates) have the right to terminate your (or such affiliates’) obligations under the Acquisition Agreement, or the right not to consummate the Acquisition, as a result of a breach of such representations in the Acquisition Agreement (the “**Specified Acquisition Agreement Representations**”), and (ii) the Specified Representations (as defined below), and (b) the terms of the Definitive Documentation shall be in a form such that they do not impair the availability of the Necessary Acquisition Funds on the Closing Date if the conditions set forth in the Conditions Annex are satisfied (it being understood that, to the extent any security interest in any Collateral is not or cannot be provided and/or perfected on the Closing Date (other than (i) the granting of a security interest pursuant to the Definitive Documentation, (ii) the perfection of the security interest in assets with respect to which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code and/or the filing of short-form intellectual property notices with the United States Patent and Trademark Office or the United States Copyright Office, and (iii) the perfection of the security interest in certificated equity interests of the Borrower’s domestic subsidiaries

(*provided, that*, with respect to any such certificates that are held by the Target or the Target's existing lenders, such certificates shall only be required to be delivered on the Closing Date to the extent such certificates are received by the Borrower on or prior to the Closing Date after the Borrower's use of commercially reasonable efforts to obtain such certificates)) after your use of commercially reasonable efforts to do so, then the grant, provision and/or perfection of a security interest in such Collateral shall not constitute a condition precedent to the availability of the Necessary Acquisition Funds on the Closing Date, but instead shall be required to be delivered within thirty (30) days after the Closing Date (or such longer period of time as may be agreed by the Administrative Agent in its sole discretion)). For purposes hereof, "**Specified Representations**" means the representations and warranties of the Credit Parties set forth in the Definitive Documentation relating to: corporate or other organizational existence; power and authority (as to execution, delivery and performance of the Definitive Documentation); due authorization, execution, delivery and performance of, and enforceability against the Credit Parties of, the Definitive Documentation; execution, delivery and performance of the Definitive Documentation not conflicting with organizational documents of the Credit Parties; execution, delivery and performance of the Definitive Documentation not violating in any material respect any law; solvency as of the Closing Date (after giving effect to the Transactions) of the Borrower and its subsidiaries on a consolidated basis (with solvency to be determined in a manner consistent with the solvency certificate to be delivered in the form set forth in Annex I attached to Exhibit C hereto); Federal reserve margin regulations; the Investment Company Act; use of proceeds not violating anti-terrorism laws, anti-corruption laws, sanctions, or the PATRIOT Act; and, subject to the provisions of this paragraph, creation, validity, perfection and first priority of security interests in the Collateral. This paragraph, and the provisions herein, shall be referred to as the "**Limited Conditionality Provision**".

The Joint Lead Arrangers reserve the right, prior to or after the Closing Date, to syndicate all or a portion of the commitments of Bank of America, JPM and U.S. Bank hereunder to prospective Lenders identified by the Joint Lead Arrangers and reasonably acceptable to you (such consent not to be unreasonably withheld or delayed); *provided, that*, notwithstanding the foregoing, (a) no Commitment Party shall be relieved, released or novated from its obligations as a Commitment Party in connection with any syndication, assignment or participation of the Facilities, including its commitments in respect thereof, until the date on which Necessary Acquisition Funds are funded, (b) no assignment or novation shall become effective as between you and us with respect to all or any portion of any Commitment Party's commitments hereunder until the date on which Necessary Acquisition Funds are funded, and (c) unless you otherwise agree in writing, each Commitment Party shall retain exclusive control over all rights and obligations with respect to its commitments, including, to the extent applicable, all rights with respect to consents, modifications, supplements, waivers and amendments, until the date on which Necessary Acquisition Funds are funded. The Joint Lead Arrangers intend to commence syndication of the Facilities promptly upon your acceptance of this Commitment Letter and the Fee Letters. You agree to actively assist the Joint Lead Arrangers in achieving a syndication of the Facilities that is satisfactory to the Joint Lead Arrangers and you. Such assistance shall include your (i) providing and causing your advisors to provide (and using commercially reasonable efforts, subject to, and not in contravention of, the Acquisition Agreement, to cause the Target and its advisors to provide) the Commitment Parties and the other Lenders upon request with all information reasonably deemed necessary by the Commitment Parties to complete syndication, including, but not limited to, information and evaluations prepared by you and your advisors, or on your behalf, or by the Target and its advisors, or on their behalf, relating to the Transactions (including the Projections (as defined below), the "**Information**"), (ii) assisting (and using commercially reasonable efforts to cause the Target, subject to, and not in contravention of, the Acquisition Agreement, to assist) in the preparation of a confidential information memorandum and other materials to be used in connection with the syndication of the Facilities (collectively with the Summary of Terms, the "**Information Materials**"), (iii) using your commercially reasonable efforts to ensure (and using commercially reasonable efforts to cause the Target, subject to, and not in contravention of, the Acquisition Agreement, to ensure) that the syndication efforts of the Joint Lead Arrangers benefit materially from your existing banking relationships, and (iv) otherwise



assisting the Commitment Parties in their syndication efforts, including by making your officers and advisors available (and using commercially reasonable efforts to cause the Target, subject to, and not in contravention of, the Acquisition Agreement, to make the Target's officers and advisors available) from time to time to attend and make presentations regarding the business and prospects of the Borrower and its subsidiaries and the Transactions, as appropriate, at one or more meetings of prospective Lenders. Notwithstanding anything to the contrary contained in this Commitment Letter or the Fee Letters, none of (A) your obligations to assist in syndication efforts as provided herein, (B) the commencement of the syndication, or (C) the success of the syndication, shall constitute a condition to the initial funding of, or availability of, the Necessary Acquisition Funds.

It is understood and agreed that the Joint Lead Arrangers will manage and control all aspects of the syndication in consultation with you, including decisions as to the selection of prospective Lenders and any titles offered to proposed Lenders, when commitments will be accepted and the final allocations of the commitments among the Lenders. It is understood that no Lender participating in the Facilities will receive compensation from you in order to obtain its commitment, except on the terms contained in this Commitment Letter and in the Fee Letters.

You represent, warrant and covenant that (and, with respect to any information relating to the Target, to your knowledge that) (a) all financial projections concerning the Borrower and its subsidiaries and/or the Target and its subsidiaries that have been or are hereafter made available to the Commitment Parties or the other Lenders by you or any of your representatives (or on your or their behalf) and/or by the Target or any of the Target's representatives (or on it or their behalf) (collectively, the "**Projections**") have been or will be prepared in good faith based upon reasonable assumptions, and (b) all Information, other than the Projections, which has been or is hereafter made available to the Commitment Parties or the other Lenders by you or any of your representatives (or on your or their behalf) and/or by the Target or any of the Target's representatives (or on it or their behalf) in connection with any aspect of the Transactions, as and when furnished, is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. You agree to furnish us with further and supplemental information from time to time until the Closing Date so that the representation, warranty and covenant in the immediately preceding sentence are correct on the Closing Date as if the Information were being furnished, and such representation, warranty and covenant were being made, on such date. In issuing the commitments set forth herein and in arranging and syndicating the Facilities, the Commitment Parties are and will be using and relying on the Information without independent verification thereof.

You acknowledge that the Commitment Parties on your behalf will make available Information Materials to the proposed syndicate of Lenders by posting the Information Materials on IntraLinks, SyndTrak or another similar electronic system. In connection with the syndication of the Facilities, unless the parties hereto otherwise agree in writing, you shall be under no obligation to provide Information Materials suitable for distribution to any Lender (each, a "**Public Lender**") that has personnel who do not wish to receive material non-public information (within the meaning of the United States federal securities laws, "**MNPI**") with respect to the Borrower or its affiliates and/or the Target or its affiliates or the respective securities of any of the foregoing. You agree, however, that: (a) the Definitive Documentation will contain provisions concerning Information Materials to be provided to Public Lenders and the absence of MNPI therefrom; (b) Information Materials made available to prospective Public Lenders in accordance with this Commitment Letter shall not contain MNPI, whether or not any Information Materials are marked "PUBLIC"; and (c) the Commitment Parties, on your behalf, may distribute the following documents to all prospective Lenders: (i) administrative materials for prospective Lenders, such as lender meeting invitations and funding and closing memoranda; (ii) term sheets summarizing the Facilities' terms and notifications of changes to the terms of the Facilities; and (iii) other materials intended for prospective Lenders after the initial distribution of the Information Materials, including drafts and final versions of the Definitive

Documentation. Upon request of the Joint Lead Arrangers, prior to distribution of Information Materials to prospective Lenders, you shall provide us with a customary letter authorizing the dissemination thereof.

By executing this Commitment Letter, you agree to reimburse Bank of America and BofA Securities from time to time on demand for all reasonable and documented out-of-pocket fees and expenses (including (a) the reasonable and documented fees, disbursements and other charges of Moore & Van Allen PLLC, as primary counsel to BofA Securities and, if reasonably necessary, one local counsel for the Administrative Agent and BofA Securities (taken as a whole) in each relevant jurisdiction and one specialty counsel for the Administrative Agent and BofA Securities (taken as a whole) in each relevant specialty (and, solely in the case of an actual or potential conflict of interest of any of the foregoing counsel, one additional primary, local or specialty counsel, as the case may be, to the affected persons similarly situated and taken as a whole), and (b) due diligence expenses) incurred in connection with the Facilities, the preparation of the Definitive Documentation and the Transactions, in each case whether or not the Transactions are consummated. You acknowledge that we may receive a benefit, including without limitation, a discount, credit or other accommodation, from any of such counsel based on the fees such counsel may receive on account of their relationship with us including, without limitation, fees paid pursuant hereto.

You agree to indemnify and hold harmless each Commitment Party, each Joint Lead Arranger, each Lender and each of their affiliates, and their and such affiliates' respective officers, directors, employees, agents, advisors and other representatives (each, an "**Indemnified Party**") from and against (and will reimburse each Indemnified Party as the same are incurred for) any and all actual or prospective claims, damages, losses, liabilities and expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel (but limited, in the case of legal fees and expenses, to the reasonable and documented out of pocket fees, disbursements and other charges of one primary counsel to all Indemnified Parties (taken as a whole) and, if reasonably necessary, a single local counsel for all Indemnified Parties (taken as a whole) in each relevant jurisdiction and a single specialty counsel for all Indemnified Parties (taken as a whole) with respect to each relevant specialty, and in the case of an actual or perceived conflict of interest, one additional primary, local or specialty counsel, as the case may be, to the affected Indemnified Parties similarly situated and taken as a whole)) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation, arbitration or proceeding or preparation of a defense in connection therewith) (a) any matters contemplated by this Commitment Letter or the Transactions, or (b) the Facilities and any other financings, or any use made or proposed to be made with the proceeds thereof (**IN ALL CASES, WHETHER OR NOT CAUSED OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNIFIED PARTY**), except to the extent such claim, damage, loss, liability or expense is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by you, your equityholders or creditors or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. You also agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you or your subsidiaries or affiliates or to your or their respective equity holders or creditors arising out of, related to or in connection with any aspect of the Transactions, except to the extent of direct, as opposed to special, indirect, consequential or punitive, damages determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. Notwithstanding any other provision of this Commitment Letter, no Indemnified Party shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems, other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Party as determined by a

final and nonappealable judgment of a court of competent jurisdiction, and you agree, to the extent permitted by applicable law, not to assert any claims against any Indemnified Party with respect to the foregoing.

This Commitment Letter, the fee letter among you, Bank of America, BofA Securities, JPM and U.S. Bank of even date herewith (the “**Joint Fee Letter**”) and the fee letter among you, Bank of America and BofA Securities of even date herewith (the “**Agency Fee Letter**”; the Agency Fee Letter, together with the Joint Fee Letter, the “**Fee Letters**” and each a “**Fee Letter**”) and the contents hereof and thereof are confidential and, except for disclosure hereof or thereof on a confidential basis to your accountants, attorneys and other professional advisors retained by you in connection with the Transactions or as otherwise required by law, may not be disclosed by you in whole or in part to any person or entity without our prior written consent; *provided, that*, it is understood and agreed that you may disclose (a) this Commitment Letter but not the Fee Letters after your acceptance of this Commitment Letter and the Fee Letters, in filings with the Securities and Exchange Commission and other applicable regulatory authorities and stock exchanges, (b) this Commitment Letter (but not the Fee Letters) to the Target and its officers, directors, accountants, attorneys and other professional advisors on a confidential and need-to-know basis, and (c) the Fee Letters to the Target and its officers, directors, accountants, attorneys and other professional advisors on a confidential and need-to-know basis, so long as portions thereof have been redacted in a manner reasonably satisfactory to Bank of America, BofA Securities, JPM and U.S. Bank, in the case of the Joint Fee Letter, or Bank of America and BofA Securities, in the case of the Agency Fee Letter (in each case, including the portions thereof addressing fees payable to the Commitment Parties and the other Lenders and other economic terms). We hereby notify you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the “**PATRIOT Act**”), each of us is required to obtain, verify and record information that identifies you and your subsidiaries, which information includes each such entity’s name and address and other information that will allow us to identify each such entity in accordance with the PATRIOT Act.

Each Commitment Party shall use all confidential information provided to it by or on behalf of you hereunder solely for the purpose of providing the services which are the subject of this Commitment Letter and otherwise in connection with the Transactions and shall treat confidentially all such information; *provided, that*, nothing herein shall prevent any Commitment Party from disclosing any such information (a) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Commitment Party agrees to inform you promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation), (b) upon the request or demand of any regulatory authority having jurisdiction over such Commitment Party or any of its affiliates, (c) to the extent that such information becomes publicly available other than by reason of disclosure in violation of this Commitment Letter by such Commitment Party, (d) to such Commitment Party’s affiliates, and their and such affiliates’ respective employees, legal counsel, independent auditors and other experts or agents who need to know such information in connection with the Transactions and are informed of the confidential nature of such information, (e) for purposes of establishing a “due diligence” defense, (f) to the extent that such information is or was received by such Commitment Party from a third party that is not to such Commitment Party’s knowledge subject to confidentiality obligations to you, (g) to the extent that such information is independently developed by such Commitment Party, (h) to potential Lenders, participants, assignees or potential counterparties to any swap or derivative transaction relating to the Borrower or any of its subsidiaries or any of their respective obligations, in each case, who agree to be bound by the terms of this paragraph (or language substantially similar to this paragraph or as otherwise reasonably acceptable to you and the Commitment Parties, including as may be agreed in any confidential information memorandum or other marketing material), or (i) with the consent of the Borrower. In addition, the Administrative Agent and the Lenders may disclose the existence of the Definitive Documentation and information about the Definitive Documentation to market data collectors, similar service providers to the lending industry and

service providers to the Administrative Agent and the Lenders in connection with the administration of the Definitive Documentation and the commitments provided in connection therewith. This paragraph shall automatically terminate and be superseded by the confidentiality provisions set forth in the Definitive Documentation upon execution and delivery thereof (and solely to the extent covered thereby) and in any event shall terminate on the second (2<sup>nd</sup>) anniversary of the date hereof.

You acknowledge that any Commitment Party or any of its respective affiliates may be providing financing or other services to parties whose interests may conflict with yours. Each Commitment Party agrees that it will not furnish confidential information obtained from you to any of its other customers and that it will treat confidential information relating to you and your affiliates with the same degree of care as it treats its own confidential information. Each Commitment Party further advises you that it will not make available to you confidential information that it has obtained or may obtain from the Sellers or any other customer. In connection with the services and transactions contemplated hereby, you agree that the Commitment Parties are permitted to access, use and share with any of their bank or non-bank affiliates, agents, advisors (legal or otherwise) or representatives any information concerning you or any of your affiliates that is or may come into the possession of the Commitment Parties or any of such affiliates.

In connection with all aspects of the Transactions, you acknowledge and agree, and acknowledge your affiliates' understanding, that: (a)(i) the arranging and other services described herein regarding the Facilities are arm's-length commercial transactions between you and your affiliates, on the one hand, and the Commitment Parties, on the other hand, (ii) the Commitment Parties are not advising you as to any legal, tax, investment, accounting, regulatory or other matters in any jurisdiction, and you have consulted your own legal, investment, accounting, regulatory and tax advisors to the extent you have deemed appropriate, and (iii) you are responsible for making your own independent judgment with respect to the Transactions and the process leading thereto and you are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and the Commitment Parties shall have no responsibility to you with respect thereto; (b)(i) each Commitment Party has been, is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as a financial advisor, an advisor, agent or fiduciary for you, any of your affiliates or any other person or entity, and (ii) no Commitment Party has any obligation to you or your affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (c) each Commitment Party and its affiliates may be engaged in a broad range of transactions that involve interests that differ from yours and those of your affiliates, and no Commitment Party has any obligation to disclose any of such interests to you or your affiliates. Any review by a Commitment party of the Borrower, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of such Commitment Party and shall not be on the behalf of the Borrower. To the fullest extent permitted by law, you hereby waive and release any claims that you may have against any Commitment Party with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Commitment Letter. You further acknowledge that the Commitment Parties are full service securities or banking firms engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, the Commitment Parties may provide investment banking and other financial services to, and/or acquire, hold or sell, for their own respective accounts and the accounts of their respective customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, you and other companies with which you have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Commitment Party or any of its respective customers, all rights in respect of such securities and financial instruments, include any voting rights, will be exercised by the holder of the rights, in its sole discretion.

This Commitment Letter and the Fee Letters shall be governed by, and construed in accordance with, the laws of the State of New York; *provided, that*, (a) the interpretation of the definition of "Company Material

Adverse Effect” (as defined in the Acquisition Agreement as in effect on the date hereof) and whether or not a “Company Material Adverse Effect” has occurred, (b) the accuracy of any of the Specified Acquisition Agreement Representations and whether as a result of any inaccuracy thereof you (or any of your affiliates) have the right to terminate your (or such affiliates’) obligations under the Acquisition Agreement, or to not consummate the Acquisition, and (c) whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement, in each case, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof. Each party hereto hereby irrevocably waives any and all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Commitment Letter, the Fee Letters, the transactions contemplated hereby and thereby or the actions of the Commitment Parties in the negotiation, performance or enforcement hereof. Each party hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in New York City in respect of any suit, action or proceeding arising out of or relating to the provisions of this Commitment Letter, the Fee Letters and the transactions contemplated hereby and thereby, and irrevocably agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. Nothing in this Commitment Letter or the Fee Letters shall affect any right that any Commitment Party or any affiliate thereof may otherwise have to bring any claim, action or proceeding relating to this Commitment Letter, the Fee Letters and/or the transactions contemplated hereby and thereby in any court of competent jurisdiction to the extent necessary or required as a matter of law to assert such claim, action or proceeding against any assets of the Borrower or any of its subsidiaries or enforce any judgment arising out of any such claim, action or proceeding. Each party hereto agrees that service of any process, summons, notice or document by registered mail addressed to such party shall be effective service of process against such party for any suit, action or proceeding relating to any such dispute. Each party hereto waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceedings brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment in any such suit, action or proceeding brought in any such court may be enforced in any other courts to whose jurisdiction you are or may be subject by suit upon judgment.

The provisions of the immediately preceding seven (7) paragraphs shall remain in full force and effect regardless of whether the Definitive Documentation shall be executed and delivered, and notwithstanding the termination of this Commitment Letter or any commitment or undertaking of any Commitment Party hereunder (but subject to the last sentence of the fourth (4<sup>th</sup>) preceding paragraph relating to the automatic termination of the obligations of the Commitment Parties under that paragraph); *provided, that*, your obligations under the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) immediately preceding paragraphs with respect to reimbursement of expenses and indemnification shall, to the extent covered thereby, be superseded by the Definitive Documentation (to the extent covered thereby) on the Closing Date.

This Commitment Letter and each Fee Letter may be in the form of an electronic record (in “.pdf” form or otherwise) and, subject to the approval of BofA Securities, may be executed using electronic signatures, which shall be considered as originals and shall have the same legal effect, validity and enforceability as a paper record. This Commitment Letter and each Fee Letter may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts shall be one and the same Commitment Letter or Fee Letter, as applicable. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties hereto of a manually signed counterpart of this Commitment Letter or a Fee Letter which has been converted into electronic form (such as scanned into “.pdf” format), or, subject to the approval of BofA Securities, an electronically signed counterpart of this Commitment Letter or such Fee Letter converted into another format, for transmission, delivery and/or retention. The Commitment Parties reserve the right to employ the services of their respective affiliates or branches in providing services contemplated hereby and to

allocate, in whole or in part, to their affiliates or branches certain fees payable to them in such manner as they and their affiliates or branches may agree in their sole discretion and, to the extent so employed, such affiliates and branches shall be entitled to the benefits and protections afforded to, and subject to the provisions governing the conduct of, the Commitment Parties hereunder.

This Commitment Letter and the Fee Letters embody the entire agreement and understanding among the Commitment Parties, you and your affiliates with respect to the Facilities and supersedes all prior agreements and understandings relating to the specific matters hereof. No party has been authorized by any Commitment Party to make any oral or written statements that are inconsistent with this Commitment Letter. This Commitment Letter is not assignable by the Borrower without our prior written consent and is intended to be solely for the benefit of the parties hereto and the Indemnified Parties.

Each of the parties hereto agrees that (a) this Commitment Letter is a binding and enforceable agreement with respect to the subject matter contained herein, including the good faith negotiation of the Definitive Documentation by the parties hereto in a manner consistent with this Commitment Letter (it being understood and agreed that the availability of the commitments being provided hereunder and the funding of the Necessary Acquisition Funds on the Closing Date are, in each case, subject to the satisfaction of the conditions precedent set forth on the Conditions Annex), and (b) each Fee Letter is a binding and enforceable agreement with respect to the subject matter contained therein; *provided, that*, nothing contained in this Commitment Letter obligates you or any of your affiliates to consummate any portion of the Transactions.

This Commitment Letter and all commitments and undertakings of the Commitment Parties hereunder will expire at 11:59 p.m. (Eastern time) on January 11, 2021 unless you execute this Commitment Letter and each Fee Letter and return them to us prior to that time, whereupon this Commitment Letter and the Fee Letters shall become binding agreements. Thereafter, all commitments and undertakings of the Commitment Parties hereunder will expire on the earliest to occur of (a) the consummation of the Acquisition (whether after giving effect to the funding of the Necessary Acquisition Funds or without the funding of the Facilities), (b) the date of the termination of the Acquisition Agreement prior to the closing of the Acquisition, and (c) 5 business days after the Outside Date (as defined in the Acquisition Agreement as in effect on the date hereof (as such date may be extended pursuant to the first proviso to Section 9.1(b) of the Acquisition Agreement as in effect on the date hereof)). In consideration of the time and resources that the Commitment Parties will devote to the Facilities, you agree that, until such expiration, you will not solicit, initiate, entertain or permit, or enter into any discussions in respect of, any offering, placement or arrangement of any competing debt securities, senior notes, bank financing, or senior credit facilities for the Borrower and/or any of its subsidiaries or the Acquisition, other than (i) any indebtedness permitted to be assumed under the Acquisition Agreement (as in effect on the date hereof), and (ii) other indebtedness to be agreed among you and the Joint Lead Arrangers.

**THIS COMMITMENT LETTER AND THE FEE LETTERS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

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We are pleased to have the opportunity to work with you in connection with this important financing.

Very truly yours,

**BANK OF AMERICA, N.A.**

By: /s/Angel Sutoyo

Name: Angel Sutoyo

Title: Senior Vice President

**BOFA SECURITIES, INC.**

By: /s/Mark Post

Name: Mark Post

Title: Managing Director

**JPMORGAN CHASE BANK, N.A.**

By: /s/Anna C. Araya

Name: Anna C. Araya

Title: Executive Director

**U.S. BANK NATIONAL ASSOCIATION**

By: /s/G. Scott Lambert

Name: G. Scott Lambert

Title: Vice President

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ACCEPTED AND AGREED TO  
AS OF THE DATE FIRST ABOVE WRITTEN:

**AEROVIRONMENT, INC.**,  
a Delaware corporation

By: /s/Kevin P. McDonnell  
Name: Kevin P. McDonnell  
Title: CFO

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AeroVironment, Inc.  
Transaction Description

Capitalized terms used but not defined in this Exhibit A shall have the meanings set forth in the Commitment Letter.

AeroVironment, Inc., a Delaware corporation (the “**Borrower**”), intends to consummate the Acquisition pursuant to the Acquisition Agreement. In connection with the foregoing, it is intended that:

(a) Pursuant to the Acquisition Agreement, the Borrower will consummate the Acquisition and the other transactions described therein or related thereto.

(b) The Borrower will (i) obtain the Term Loan Facility, and (ii) obtain the Revolving Facility.

(c) All existing indebtedness of the Target and its subsidiaries (other than any indebtedness permitted to be assumed under the Acquisition Agreement (as in effect on the date hereof)) shall have been repaid (including indebtedness arising under or in connection with that certain Credit Agreement, dated as of August 20, 2020, by and among, *inter alia*, the Target and Western Alliance Bank), all commitments with respect to all such indebtedness shall have been terminated, and all liens and security interests securing all such indebtedness, and all guaranties guarantying such indebtedness, shall have been released or terminated (collectively, the “**Refinancing**”).

(d) The Borrower will (i) make the Equity Contribution and (ii) apply the Balance Sheet Cash to pay a portion of the purchase price in connection with the Acquisition.

(e) The proceeds of the Necessary Acquisition Funds will be applied to (i) pay a portion of the purchase price in connection with the Acquisition, (ii) pay the fees, costs and expenses incurred in connection with the Transactions (such fees and expenses, the “**Transaction Costs**”), and (iii) consummate the Refinancing (the amounts set forth in clauses (i) through (iii) above, collectively, the “**Acquisition Costs**”).

The transactions described above (including the payment of Transaction Costs) on this Exhibit A are collectively referred to herein as the “**Transactions**”.

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AeroVironment, Inc.  
Summary of Terms and Conditions<sup>1</sup>

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| <u>Borrower:</u>                                   | AeroVironment, Inc., a Delaware corporation (the “ <b>Borrower</b> ”).   |
| <u>Guarantors:</u>                                 | The obligations arising under the Facilities (as defined below) (the “ <b>Obligations</b> ”) and the obligations arising in connection with any treasury or cash management services, interest rate, currency, foreign exchange or commodity swap or hedging arrangements entered into by the Borrower or any of its subsidiaries with a Lender (as defined below) (or any affiliate of any Lender) (the “ <b>Additional Secured Obligations</b> ”; the Additional Secured Obligations, together with the Obligations, the “ <b>Secured Obligations</b> ”) will be guaranteed by each existing and future direct and indirect domestic subsidiary of the Borrower (each, a “ <b>Guarantor</b> ”; the Guarantors, together with the Borrower, the “ <b>Credit Parties</b> ” and each a “ <b>Credit Party</b> ”). In addition, the Borrower will guaranty all Additional Secured Obligations of any subsidiary of the Borrower. All guarantees will be guarantees of payment and not of collection. Notwithstanding anything contained herein to the contrary, any Additional Secured Obligations of a Credit Party shall exclude certain swap obligations if, and to the extent that, such swap obligation is or becomes illegal under the Commodity Exchange Act with respect to such Credit Party (determined after giving effect to any keepwell or other support for the benefit of such Credit Party). |
| <u>Joint Lead Arrangers and Joint Bookrunners:</u> | BofA Securities, Inc. (or any of its designated affiliates, “ <b>BofA Securities</b> ”), JPMorgan Chase Bank, N.A. (“ <b>JPM</b> ”) and U.S. Bank National Association (“ <b>U.S. Bank</b> ”; U.S. Bank, together with BofA Securities and JPM, in such capacities, the “ <b>Joint Lead Arrangers</b> ” and each a “ <b>Joint Lead Arranger</b> ”) will act as joint lead arrangers and joint bookrunners for the Facilities. It is understood and agreed that BofA Securities shall have the “left” placement in any and all marketing materials or other documentation used in connection with the Facilities and shall hold the leading role and responsibilities conventionally associated with such “left” placement, including sole selling role in respect of the Facilities.   |
| <u>Administrative Agent:</u>                       | Bank of America, N.A. (through itself or one of its designated affiliates or branch offices, “ <b>Bank of America</b> ”) will act as sole administrative agent (in such capacity, the “ <b>Administrative Agent</b> ”) for the Facilities.   |
| <u>Lenders:</u>                                    | A syndicate of banks and financial institutions (including Bank of America, JPM and U.S. Bank) arranged by the Joint Lead Arrangers in consultation with the Borrower, which institutions shall be acceptable to   |

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<sup>1</sup> Capitalized terms used but not defined in this Exhibit B shall have the meanings set forth in the Commitment Letter (including Exhibit A and Exhibit C thereto).

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the Administrative Agent and the Borrower (collectively, the “**Lenders**” and each a “**Lender**”).

Facilities:

An aggregate principal amount of \$300 million will be available through the following facilities:

- (a) a \$100 million revolving credit facility available to the Borrower in U.S. dollars (the “**Revolving Facility**”), which will include a \$10 million sublimit for the issuance of standby and commercial letters of credit (each, a “**Letter of Credit**”) to the Borrower or any subsidiary of the Borrower in U.S. dollars, and a \$10 million sublimit for swingline loans (each, a “**Swingline Loan**”) available to the Borrower in U.S. dollars. Letters of Credit will be issued by Bank of America (in such capacity, the “**L/C Issuer**”), and Swingline Loans may be made available by Bank of America (in such capacity, the “**Swingline Lender**”). Each of the Lenders under the Revolving Facility will purchase an irrevocable and unconditional participation in each Letter of Credit and each Swingline Loan.
- (b) a \$200 million term A loan, all of which will be drawn by the Borrower in U.S. dollars on the Closing Date (as defined below) (the “**Term Loan Facility**”).

The Revolving Facility and the Term Loan Facility are collectively referred to herein as the “**Facilities**.”

Purpose:

The proceeds of the Revolving Facility shall be used from time to time after the Closing Date for working capital and other general corporate purposes not in contravention of any law or of the Definitive Documentation (as defined below). The Revolving Facility shall be undrawn on the Closing Date.

The proceeds of the Term Loan Facility shall be used on the Closing Date to pay the Acquisition Costs.

Closing Date:

The date of effectiveness of the Definitive Documentation and the consummation of the Acquisition (the “**Closing Date**”).

Interest Rates:

As set forth in Addendum I to this Exhibit B.

Maturity:

The Revolving Facility shall terminate, and all amounts outstanding thereunder shall be due and payable in full, on the date that is five (5) years after the Closing Date (the “**Maturity Date**”).

The Term Loan Facility shall be subject to repayment according to the Scheduled Amortization (as defined below), with the final payment of all amounts outstanding, *plus* accrued interest, being due on the Maturity Date.

Incremental Facilities:

The definitive documentation for the Facilities (the “**Definitive Documentation**”) will permit the Borrower, from time to time after the Closing Date, upon notice to the Administrative Agent, to increase the amount of the Revolving Facility (any such increase, a “**Revolving Facility Increase**”) and/or to add one or more additional tranches of term loans to the Definitive Documentation (any such additional tranche of term loans, an “**Incremental Term Facility**”; each Incremental Term Facility, together with each Revolving Facility Increase, each an “**Incremental Facility**”), in an aggregate amount for all such Incremental Facilities not to exceed an amount (the “**Incremental Amount**”) equal to, as of any date of determination, the sum of (a) the total of (i) \$100 million, *minus* (ii) the aggregate amount of all Incremental Facilities incurred prior to such date in reliance on clause (a)(i) above, *plus* (b) an unlimited amount, so long as, after giving effect to the incurrence of any such Incremental Facility on a *pro forma* basis (and assuming for such purpose that all amounts with respect thereto are fully drawn), the Consolidated Leverage Ratio (as defined below) is equal to or less than 2.00 to 1.0 (the “**Leverage-Based Prong**”).

In addition to compliance with the Incremental Amount, the incurrence of any Incremental Facility shall be subject to the following terms and conditions: (a) no existing Lender shall be required to participate in any such Incremental Facility without such Lender’s consent, and the decision to participate in any such Incremental Facility shall be made in the sole discretion of each Lender; (b) subject to the provisions set forth under the heading “Limited Condition Acquisitions” below, no default or event of default shall have occurred and be continuing at the time of incurrence of any such Incremental Facility or would exist immediately after giving effect thereto; (c) any such Incremental Facility shall rank *pari passu* in right of payment with the Facilities and shall be secured on a *pari passu* basis with the Collateral (as hereinafter defined); (d) subject to the provisions set forth under the heading “Limited Condition Acquisitions” below, the representations and warranties in the Definitive Documentation shall be true and correct in all material respects (or in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of incurrence of any such Incremental Facility, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date, and except that for purposes of this condition, the representations and warranties contained in the Definitive Documentation with respect to accuracy of financial statements shall be deemed to refer to the most recent financial statements delivered pursuant to the Definitive Documentation; (e) subject to the provisions set forth under the heading “Limited Condition Acquisitions” below, upon giving effect to any such Incremental Facility on a *pro forma* basis (and assuming for such purpose that all amounts with respect thereto are fully drawn), the Credit Parties would be in compliance with the financial covenants set forth in the Definitive Documentation; (f) with respect to any such Incremental Facility that is an Incremental Term Facility: (i) the maturity date of such Incremental Term Facility shall be

no earlier than the later of the Maturity Date and the then-latest maturity date for any then-existing Incremental Term Facility, (ii) the weighted average life to maturity of such Incremental Term Facility shall be no shorter than the then-remaining weighted average life to maturity of the term loans under the Term Loan Facility or any then-existing term loans under any then-existing Incremental Term Facility, and (iii) subject to clauses (f)(i) and (f)(ii) above, the amortization schedule applicable to such Incremental Term Facility shall be as determined by the Borrower and the lenders for such Incremental Term Facility; (g) any such Incremental Facility shall be in a minimum principal amount of \$25 million and integral multiples of \$1 million in excess thereof (or such other amount as the Administrative Agent may agree in its sole discretion); (h) the Administrative Agent shall have received (i) a certificate of the Borrower certifying that (A) before and after giving effect to the incurrence of such Incremental Facility, the conditions set forth in clauses (b) and (d) above have been satisfied, (B) the condition set forth in clause (e) above has been satisfied (which certification shall include reasonably detailed calculations to demonstrate satisfaction of such condition), and (C) to the extent such Incremental Facility is being incurred in reliance on the Leverage-Based Prong, after giving effect to the incurrence of such Incremental Facility, such Incremental Facility is permitted pursuant to the Leverage-Based Prong (which certification shall include reasonably detailed calculations to demonstrate satisfaction of such condition), (ii) a certificate of each Credit Party attaching the resolutions adopted by such Credit Party approving such Incremental Facility, and (iii) if requested by the Administrative Agent, an opinion or opinions of counsel for the Credit Parties, dated as of the date of incurrence of any such Incremental Facility, in form and substance reasonably satisfactory to the Administrative Agent; and (i)(i) any such Incremental Facility that is a Revolving Facility Increase shall be on the same terms and conditions as the Revolving Facility, and (ii) except as otherwise provided in clause (f) above, any such Incremental Facility that is an Incremental Term Facility shall be on the same terms and conditions as the Term Loan Facility, or, if not, shall be on terms and conditions satisfactory to the Administrative Agent (it being understood and agreed that the following shall be reasonably satisfactory to the Administrative Agent: (A) covenants or other provisions applicable only to periods after the later of the Maturity Date and the maturity date for any then-existing Incremental Term Facility, (B) to the extent required by any lender providing such Incremental Term Facility, covenants or other provisions that are not set forth in the Definitive Documentation at the time of incurrence of such Incremental Term Facility, so long as such covenants or other provisions are also added for the benefit of the Administrative Agent and the Lenders under the Definitive Documentation at the time of the incurrence of such Incremental Term Facility, and (C) to the extent required by any lender providing such Incremental Term Facility, customary call protection and mandatory prepayments, in each case, which may be applicable solely with respect to such Incremental Term Facility (*provided, that*, with respect to any mandatory prepayment required in connection with the establishment of such Incremental Term Facility, such mandatory prepayment shall be applied ratably to the term loans under the Term Loan Facility and any

other then-existing term loans under any then-existing Incremental Term Facility)).

In connection with any Revolving Facility Increase, the Borrower shall prepay any revolving loans under the Revolving Facility outstanding on the effective date of such Revolving Facility Increase (and pay additional amounts to reimburse the Lenders' breakage and redeployment costs in the case of prepayment of LIBOR borrowings) to the extent necessary to keep the outstanding revolving loans ratable with any revised revolving commitments arising from any non-ratable increase in connection such Revolving Facility Increase.

The Borrower may seek commitments in respect of any Incremental Facility from any existing Lender (each of which shall be entitled to agree or decline to participate in such Lender's sole discretion) and additional financial institutions who will become Lenders in connection therewith. Any new lender providing all or any portion of any Incremental Facility shall become a party to the Definitive Documentation by executing such joinder documentation as is required by the Administrative Agent.

The Definitive Documentation shall be amended to give effect to any Incremental Facility pursuant to documentation executed by lenders providing such Incremental Facility, the Administrative Agent and the Credit Parties, without the consent of any person or entity (including any other existing Lender), including amendments (a) to reflect the existence and terms of such Incremental Facility, (b) to make such other changes to the Definitive Documentation consistent with the provisions and intent of such Incremental Facility, including (i) adding provisions to permit such Incremental Facility to share in the benefits of the Definitive Documentation and to include the lenders for such Incremental Facility in any applicable voting definitions, and (ii) amending any commitment schedule to reflect such Incremental Facility, (c) notwithstanding any other provisions of the Definitive Documentation to the contrary, if applicable, to permit the loans under such Incremental Facility to be "fungible" (including for purposes of the Internal Revenue Code of 1986, as amended) with any other then-existing loans under the Definitive Documentation, and (d) to effect such other amendments to the Definitive Documentation as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of any such Incremental Facility.

Limited Condition Acquisitions: To the extent that the terms of the Definitive Documentation require (a) compliance with any basket, financial ratio or test, (b) the absence of a default or an event of default, or (c) a determination of the accuracy of any representations and warranties, in each case in connection with the consummation of a Limited Condition Acquisition (as defined below), the determination of whether the relevant condition is satisfied may be made, at the election of the Borrower, on the date of the execution of the definitive agreement with respect to such Limited Condition Acquisition (such date, the "**LCA Test Date**"), after giving effect to the relevant

Limited Condition Acquisition and any related incurrence of indebtedness on a *pro forma* basis; *provided, that*, notwithstanding the foregoing, in connection with any Limited Condition Acquisition: (A) the no default or event of default condition to the consummation of any Limited Condition Acquisition shall be satisfied if (1) no default or event of default shall have occurred and be continuing as of the LCA Test Date applicable to such Limited Condition Acquisition, and (2) no payment or bankruptcy event of default shall have occurred and be continuing at the time of consummation of such Limited Condition Acquisition; (B) if the proceeds of an Incremental Term Facility are being used to finance such Limited Condition Acquisition, then (1) the condition applicable to the incurrence of such Incremental Term Facility requiring that the representations and warranties be accurate shall be required to be satisfied at the time of closing of such Limited Condition Acquisition and the incurrence of such Incremental Term Facility but, if the lenders providing such Incremental Term Facility so agree, the representations and warranties which must be accurate at the time of closing of such Limited Condition Acquisition and the incurrence of such Incremental Term Facility may be limited to customary “specified representations”, customary “specified acquisition agreement representations” and such other representations and warranties as may be required by the lenders providing such Incremental Term Facility, and (2) the no default or event of default condition to the incurrence of such Incremental Term Facility shall, if and to the extent the lenders providing such Incremental Term Facility so agree, be satisfied if (x) no default or event of default shall have occurred and be continuing as of the LCA Test Date applicable to such Limited Condition Acquisition, and (y) no payment or bankruptcy event of default shall have occurred and be continuing at the time of the incurrence of such Incremental Term Facility in connection with the consummation of such Limited Condition Acquisition; and (C) such Limited Condition Acquisition, any related pro forma adjustments, and the related indebtedness to be incurred in connection therewith and the use of proceeds thereof shall be deemed consummated, made, incurred and/or applied at the LCA Test Date applicable to such Limited Condition Acquisition (until such time as the indebtedness is actually incurred or the applicable definitive agreement is terminated without actually consummating the applicable Limited Condition Acquisition) and outstanding thereafter for purposes of determining pro forma compliance with any financial ratio or test (other than for purposes of determining pro forma compliance in connection with the making of any restricted payment or the prepayment of certain indebtedness to be mutually agreed in the Definitive Documentation, it being understood and agreed that for purposes of determining pro forma compliance in connection with the making of any restricted payment or the prepayment of certain indebtedness to be mutually agreed in the Definitive Documentation, the Borrower shall be required to demonstrate compliance with the applicable financial ratio or test both (x) after giving effect to the applicable Limited Condition Acquisition, including related pro forma adjustments, and the incurrence of any related indebtedness to be incurred in connection therewith and the use of proceeds thereof, and (y) assuming that such Limited Condition Acquisition has not occurred). For the avoidance of doubt, if any of such ratios or amounts for which

compliance was determined or tested as of the LCA Test Date applicable to such Limited Condition Acquisition are thereafter exceeded or otherwise failed to have been complied with as a result of fluctuations in such ratio or amount, at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios or amounts will not be deemed to have been exceeded or failed to be complied with as a result of such fluctuations solely for purposes of determining whether the relevant Limited Condition Acquisition is permitted to be consummated. It is understood and agreed that the provisions set forth in this section shall not limit the conditions set forth under the heading "Conditions Precedent to All Other Extensions of Credit" below with respect to any borrowing of revolving loans under the Revolving Facility, any issuance of, extension of the expiry date of, or increase in the amount of, any Letter of Credit, any borrowing of Swingline Loans or any borrowing of term loans under the Term Loan Facility.

**"Limited Condition Acquisition"** means an acquisition permitted pursuant to the Definitive Documentation whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

Availability/Amortization:

Extensions of credit under the Revolving Facility may be made on a revolving basis up to the full amount of the Revolving Facility, Letters of Credit may be issued up to the sublimit for Letters of Credit, and Swingline Loans may be issued up to the sublimit for Swingline Loans.

Commencing as of last business day of the first full fiscal quarter of the Borrower ending after the Closing Date, the Term Loan Facility shall be subject to quarterly amortization of principal based on the annual amounts set forth below, with the balance of the Term Loan Facility paid on the Maturity Date (the "**Scheduled Amortization**"):

Principal Amount (% of original principal amount of Term Loan Facility).

|             |  |
|-------------|--|
| Loan year 1 | 5.0%   |
| Loan year 2 | 5.0%   |
| Loan year 3 | 5.0%   |
| Loan year 4 | 5.0%   |
| Loan year 5 | 80.0%, consisting of three quarterly payments of 1.25% each, with the remaining outstanding principal amount of the Term Loan Facility due and payable on the Maturity Date. |

Mandatory Prepayments and Commitment Reductions:

In addition to the Scheduled Amortization, on and after the Closing Date, the following mandatory prepayments apply: (a) one hundred percent (100%) of all net cash proceeds received in connection with asset sales, dispositions and involuntary dispositions (*provided, that*, such net cash proceeds shall not be required to be applied as set forth below (i) until the aggregate amount of net cash proceeds derived from all such asset sales, dispositions and involuntary dispositions in any fiscal year of the Borrower is equal to or greater than \$10 million, and (ii) if, at the election



of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of such asset sale, disposition or involuntary disposition), so long as no event of default shall have occurred and be continuing at the time of such asset sale, disposition or involuntary disposition or at the time of such reinvestment, the Borrower or the applicable subsidiary of the Borrower reinvests all or any portion of such net cash proceeds in assets (other than current assets as classified by generally accepted accounting principles) that are used or useful in the same or a related line of business as the Borrower and its subsidiaries were engaged in on the Closing Date (or any reasonable extensions or expansions thereof) within one hundred eighty (180) days of the date of such asset sale, disposition or involuntary disposition (or to the extent the Borrower or such subsidiary commits within such one hundred eighty (180)-day period to make such reinvestment, within one hundred eighty (180) days after such one hundred eighty (180)-day period); *provided, further, that*, for purposes of the foregoing clause (ii), if such net cash proceeds shall have not been so reinvested by the end of such period(s), such net cash proceeds shall be promptly applied as set forth below); and (b) one hundred percent (100%) of all net cash proceeds received in connection with debt issuances not otherwise permitted under the Definitive Documentation; in each case shall be applied to the prepayment of the Facilities in the following manner: *first*, to the Term Loan Facility (and to the principal repayment installments thereof in the inverse order of maturity), *second*, to outstanding Swingline Loans, and *third*, to the Revolving Facility without a corresponding permanent reduction in the Revolving Facility.

Additionally, if for any reason, as of any date of determination, the sum of (such sum being the “**Total Revolving Outstandings**”) (a) the aggregate outstanding amount of revolving loans under the Revolving Facility as of such date, *plus* (b) the aggregate outstanding amount of Letter of Credit obligations as of such date, *plus* (c) the aggregate outstanding amount of Swingline Loans as of such date, exceeds the amount of the Revolving Facility as of such date, the Borrower shall immediately prepay such revolving loans and such swingline loans and/or shall immediately cash collateralize such Letter of Credit obligations in an aggregate amount equal to such excess; *provided, that*, the Borrower shall not be required to cash collateralize such Letter of Credit obligations unless, after the prepayment of such revolving loans and such swingline loans, the Total Revolving Outstandings exceeds the amount of the Revolving Facility.

The Revolving Facility and the commitments thereunder shall terminate on the Maturity Date. The commitments under the Term Loan Facility shall terminate upon the funding of term loans thereunder on the Closing Date.

Optional Prepayments and  
Commitment Reductions:

The Borrower may prepay the Revolving Facility, in whole or in part, at any time without premium or penalty (but subject to reimbursement of the Lenders’ breakage and redeployment costs in the case of prepayment of LIBOR borrowings). The unutilized portion of the Revolving Facility may

be irrevocably reduced or terminated by the Borrower at any time without penalty.

The Borrower may prepay the Term Loan Facility in whole or in part at any time without premium or penalty (but subject to reimbursement of the Lenders' breakage and redeployment costs in the case of prepayment of LIBOR borrowings). Each prepayment of the Term Loan Facility shall be applied to the principal repayment installments thereof as directed by the Borrower.

Definitive Documentation:

The Facilities will be documented pursuant to Definitive Documentation reflecting (a) the terms and conditions set forth herein and in Exhibit C to the Commitment Letter, (b) materiality qualifications and other exceptions that give effect to and/or permit the structure and intended use of the Facilities, (c) the operational, administrative, agency and related requirements of the Administrative Agent, (d) customary increased cost, illegality, change in law, yield protection, withholding tax, capital adequacy, defaulting lender, EU and UK bail-in, borrower and lender ERISA, "hard-wired" LIBOR successor, limited liability company division, beneficial ownership and qualified financial contract-related provisions, and (e) the operational and strategic requirements of the Borrower (after giving effect to the Transactions). To the extent any other terms are not expressly set forth herein, the Definitive Documentation will (i) be negotiated in good faith within a reasonable time period to be determined based on the expected Closing Date, and (ii) contain such other terms, conditions and provisions as the Borrower and the Joint Lead Arrangers shall mutually agree.

Collateral:

Subject to the Limited Conditionality Provision, each Credit Party shall grant the Administrative Agent, for the benefit of the holders of the Secured Obligations, valid and perfected first priority liens and security interests in all of the following (collectively, the "**Collateral**"):

- (a) One hundred percent (100%) of the issued and outstanding equity interests of each domestic subsidiary directly owned by such Credit Party.
- (b) Sixty-five percent (65%) of the issued and outstanding equity interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and one hundred percent (100%) of the issued and outstanding equity interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in each foreign subsidiary directly owned by such Credit Party.
- (c) All of the present and future personal property and assets of such Credit Party, including machinery and equipment, inventory and other goods, accounts receivable, bank accounts, general intangibles, financial assets, investment property, license rights, patents, trademarks, tradenames, copyrights, chattel paper, insurance proceeds, contract rights, hedge agreements,

documents, instruments, indemnification rights, tax refunds and cash.

- (d) All proceeds and products of the property and assets described in clauses (a), (b) and (c) above.

The Collateral shall exclude the following with respect to each Credit Party: (i)(A) any fee-owned real property of such Credit Party, and (B) any real property leasehold interests of such Credit Party; (ii) any personal property (including motor vehicles, airplanes and other assets subject to certificates of title) of such Credit Party in respect of which perfection of a lien is neither (A) governed by the Uniform Commercial Code, nor (B) effected by appropriate evidence of the lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office; (iii) any asset of such Credit Party if the pledge of, or the granting of a security interest in, such asset is prohibited by law, rule or regulation applicable to such Credit Party; *provided, that*, (A) any such prohibition described in this clause (iii) on the security interests granted pursuant to the Definitive Documentation shall only apply to the extent that any such prohibition is not rendered ineffective pursuant to the Uniform Commercial Code, any other applicable law or principles of equity, and (B) in the event of the termination or elimination of any such prohibition contained in any applicable law, rule or regulation, a security interest in such assets shall be automatically and simultaneously granted pursuant to the Definitive Documentation and such assets shall be included as Collateral; (iv) any property of such Credit Party which is subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest in such property would violate the agreement pursuant to which such purchase money security interest or similar arrangement was granted or would create a right of termination in favor of any other party to such agreement; (v) any general intangible, permit, lease, license, contract or other instrument of such Credit Party to the extent the grant of a security interest in such general intangible, permit, lease, license, contract or other instrument in the manner contemplated by the Definitive Documentation, under the terms thereof or under applicable law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Credit Party's rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both); *provided, that*, (A) any such limitation described in this clause (v) on the security interests granted pursuant to the Definitive Documentation shall only apply to the extent that any such limitation could not be rendered ineffective pursuant to the Uniform Commercial Code, any other applicable law, or principles of equity, and (B) in the event of the termination or elimination of any such limitation or the requirement for any consent contained in any applicable law, general intangible, permit, lease, license, contract or other instrument, to the extent sufficient to permit any such item to become Collateral, or upon the granting of any such consent, or waiving or termination of any requirement for such consent, or the elimination of such limitation, as applicable, a security interest in such general intangible, permit, lease, license, contract or other instrument shall be automatically and

simultaneously granted under the Definitive Documentation and shall be included as Collateral; (vi) any asset of such Credit Party as to which the Administrative Agent and the Borrower reasonably agree that the cost of obtaining a security interest therein or perfection thereof are excessive in relation to the benefit to the holders of the Secured Obligations to be afforded thereby; and (vii) any “intent-to-use” application for registration of a trademark of such Credit Party filed in the United States Patent and Trademark Office pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law.

The Collateral shall ratably secure the Secured Obligations.

Conditions Precedent to Effectiveness and Borrowings on the Closing Date:

The effectiveness of the Definitive Documentation and the availability of the Necessary Acquisition Funds on the Closing Date shall be subject solely to the conditions set forth in Exhibit C to the Commitment Letter.

Conditions Precedent to All Other Extensions of Credit:

The obligation of each Lender, the Swingline Lender and the L/C Issuer to honor any request for credit extension after the funding of the Necessary Acquisition Funds on the Closing Date shall be subject to the satisfaction of the following conditions precedent:

- (a) The representations and warranties in the Definitive Documentation shall be true and correct in all material respects (or in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of such credit extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date, and except that for purposes of this condition, the representations and warranties contained in the Definitive Documentation with respect to accuracy of financial statements shall be deemed to refer to the most recent financial statements delivered pursuant to the Definitive Documentation.
- (b) No default or event of default shall exist or would result from such proposed credit extension or from the application of the proceeds thereof.
- (c) The Administrative Agent and, if applicable, the L/C Issuer or the Swingline Lender, shall have received a request for credit

extension in accordance with the requirements of the Definitive Documentation.

Representations and Warranties:

The Definitive Documentation shall include representations and warranties with respect to the following: (a) existence, qualification and power; (b) authorization; no contravention; (c) governmental authorization; other consents; (d) enforceability; (e) accuracy of financial statements; (f) no material adverse effect; (g) no litigation; (h) no default; (i) ownership of property; (j) environmental matters; (k) maintenance of insurance; (l) payment of taxes; (m) ERISA compliance; (n) margin regulation; Investment Company Act compliance; (o) accuracy of disclosure, including accuracy in all respects of the information included in any Beneficial Ownership Certification delivered to the Administrative Agent or any Lender on or prior to the Closing Date; (p) compliance with laws; (q) solvency; (r) sanctions; anti-corruption laws; (s) subsidiaries; equity interests; information with respect to Credit Parties; (t) collateral documentation and deliverables with respect to the Collateral; (u) intellectual property; licenses; (v) real properties; (w) no Credit Party is an affected financial institution; and (x) no Credit Party is a covered entity.

Affirmative Covenants:

The Definitive Documentation shall include affirmative covenants with respect to the following: (a) delivery of financial statements, budgets and forecasts; (b) delivery of compliance certificate and other information; (c) delivery of notices; (d) payment of obligations; (e) preservation of existence; maintenance of permits, licenses and franchises; preservation and renewal of intellectual property; (f) maintenance of properties; (g) maintenance of insurance; (h) compliance with laws; (i) maintenance of books and records; (j) granting of inspection rights; (k) use of proceeds; (l) covenant to guarantee obligations; (m) covenant to give security; further assurances; (n) compliance with anti-corruption laws; and (o) compliance with sanctions.

Negative Covenants:

The Definitive Documentation shall include negative covenants restricting the following: (a) liens; (b) indebtedness; (c) investments (including acquisitions); (d) fundamental changes; (e) dispositions; (f) payments of dividends, share repurchases and other distributions; (g) changes in nature of business; (h) transactions with affiliates; (i) burdensome agreements; (j) use of proceeds to purchase or carry margin stock; (k) amendments to organizational documents; changes in fiscal year; changes in legal name, state of organization or form of entity; and accounting changes; (l) sale and leaseback transactions; (m) prepayment of certain indebtedness; (n) amendment of certain indebtedness; (o) use of credit extensions (or proceeds thereof) in violation of sanctions; and (p) use of credit extensions (or proceeds thereof) in violation of anti-corruption laws.

Financial Covenants:

The following:

- (a) The Credit Parties shall not permit the Consolidated Leverage Ratio as of the end of any period of four (4) consecutive fiscal quarters of the Borrower ending as of the last day of any fiscal

quarter of the Borrower to be greater than 3.00 to 1.0; *provided, that*, upon the occurrence of a Qualified Acquisition, for each of the four (4) fiscal quarters of the Borrower immediately following the consummation of such Qualified Acquisition (including, for the avoidance of doubt, the fiscal quarter in which such Qualified Acquisition was consummated) (such period of increase, the “**Leverage Increase Period**”), the ratio set forth above shall be increased to 3.50 to 1.0; *provided, further, that*, (i) no more than one (1) Leverage Increase Period shall be in effect at any time, (ii) for at least two (2) fiscal quarters of the Borrower immediately following each Leverage Increase Period, the Consolidated Leverage Ratio as of the end of such fiscal quarters shall not be greater than 3.00 to 1.0 prior to giving effect to another Leverage Increase Period, and (iii) each Leverage Increase Period shall only apply with respect to the calculation of the Consolidated Leverage Ratio for purposes of (A) determining compliance with the financial maintenance covenant as of the end of any period of four (4) consecutive fiscal quarters of the Borrower ending as of the last day of any fiscal quarter of the Borrower, and (B) any calculation of the Consolidated Leverage Ratio in determining the permissibility of the consummation of the Qualified Acquisition with respect to which such Leverage Increase Period relates (or, to the extent such Qualified Acquisition is financed with the proceeds of an Incremental Facility, for purposes of determining the permissibility of the incurrence of such Incremental Facility in connection with the consummation of such Qualified Acquisition).

“**Consolidated Leverage Ratio**” means, as of any date of determination, the ratio of (a) consolidated funded indebtedness of the Borrower and its subsidiaries as of such date, to (b) consolidated EBITDA of the Borrower and its subsidiaries for the period of four (4) consecutive fiscal quarters of the Borrower most recently completed on or prior to such date.

“**Qualified Acquisition**” means an acquisition (or series of related acquisitions consummated in any six-month period) permitted pursuant to the Definitive Documentation for which the aggregate consideration is at least \$75 million, but only to the extent that at least \$75 million of such consideration is funded with the proceeds of consolidated funded indebtedness of the Borrower and its subsidiaries (including any indebtedness assumed by the Borrower or any of its subsidiaries in connection with such acquisition(s)); *provided, that*, for any acquisition (or series of related acquisitions) to qualify as a “Qualified Acquisition,” the Administrative Agent shall have received a certificate from a responsible officer of the Borrower certifying that such acquisition (or series of related acquisitions) meets the criteria set forth in this definition and notifying the Administrative Agent that the Borrower has elected to treat such acquisition (or series of related acquisitions) as a “Qualified Acquisition”.

- (b) The Credit Parties shall not permit the Consolidated Fixed Charge Coverage Ratio (as defined below) as of the end of any period of four (4) consecutive fiscal quarters of the Borrower ending as of the last day of any fiscal quarter of the Borrower to be less than 1.25 to 1.0.

“**Consolidated Fixed Charge Coverage Ratio**” means, as of any date of determination, the ratio of (a) the total of (i) consolidated EBITDA of the Borrower and its subsidiaries for the period of four (4) consecutive fiscal quarters of the Borrower most recently completed on or prior to such date, *minus* (ii) consolidated maintenance capital expenditures of the Borrower and its subsidiaries for such period, *to* (b) the sum of (i) consolidated cash taxes of the Borrower and its subsidiaries paid during the period of four (4) consecutive fiscal quarters of the Borrower most recently completed on or prior to such, *plus* (ii) the cash portion of consolidated interest charges of the Borrower and its subsidiaries for such period, *plus* (iii) the amount of all scheduled payments of principal on consolidated funded indebtedness of the Borrower and its subsidiaries for such period, *plus* (iv) the amount of all dividends, share repurchases and other distributions made in cash by the Borrower and its subsidiaries in such period (other than any such dividend, share repurchase or other distribution made to the Borrower or any subsidiary of the Borrower in such period).

Each of the ratios referred to above will be calculated on a *pro forma* basis.

Certain components of the Consolidated Fixed Charge Coverage Ratio shall be annualized in connection with calculations of the Consolidated Fixed Charge Coverage Ratio occurring prior to the one-year anniversary of the Closing Date.

Events of Default:

The Definitive Documentation shall include the following events of default: (a) non-payment of principal, interest, fees or other amounts; (b) default of specific covenants; (c) default of other covenants and agreements; (d) any representation, warranty, certification or statement of fact being incorrect or misleading; (e) cross-defaults to other indebtedness in an amount to be agreed; (f) bankruptcy and insolvency proceedings; (g) inability to pay debts; attachment; (h) judgments; (i) ERISA; (j) invalidity of Definitive Documentation; (k) failure of collateral documentation to create a valid and perfected first priority security interest (subject to certain exceptions to be mutually agreed) in the Collateral; and (l) change of control.

Assignments and Participations:

Subject to the consents described in the immediately following sentence, the Definitive Documentation shall permit (a) each Lender under the Revolving Facility to make assignments to other financial institutions in respect of the Revolving Facility in a minimum amount equal to \$5 million, and (b) after the funding of the Necessary Acquisition Funds on the Closing Date, each Lender under the Term Loan Facility to make assignments to other financial institutions in respect of the Term Loan

Facility in a minimum amount equal to \$1 million. No consent shall be required for any such assignment, other than: (i) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (A) an event of default has occurred and is continuing at the time of such assignment, or (B) the assignment is to a Lender, an affiliate of a Lender or an Approved Fund (as defined below); *provided, that*, the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) business days after having received notice thereof; (ii) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for any assignment (A) in respect of the Revolving Facility to an entity that is not a Lender under the Revolving Facility, an affiliate of such Lender or an Approved Fund in respect of such Lender, or (B) of any outstanding term loan under the Term Loan Facility to an entity that is not a Lender, an affiliate of a Lender or an Approved Fund; and (iii) the consent of the L/C Issuer and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility. The parties to each assignment shall execute and deliver to the Administrative Agent an assignment and assumption, together with a processing and recordation fee of \$3,500 for each assignment; *provided, that*, the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any such assignment. Each Lender will also have the right, without consent of the Borrower or the Administrative Agent, to assign as security, all or part of its rights under the Definitive Documentation to any Federal Reserve Bank.

**“Approved Fund”** means any person (other than a natural person) or entity 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 and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender, or (c) any entity or an affiliate of an entity that administers or manages a Lender.

Any Lender shall be permitted to sell participations in such Lender’s rights and obligations under the Definitive Documentation, subject to customary terms and conditions.

Waivers and Amendments:

Amendments and waivers of the provisions of the Definitive Documentation will require the approval of Lenders holding loans and commitments representing more than fifty percent (50%) of the aggregate amount of the loans and commitments under the Facilities (the **“Required Lenders”**), except that no amendment or waiver shall: (a) extend or increase any commitment of any Lender (or reinstate any terminated commitment) without the written consent of such Lender (it being understood and agreed that neither (i) a waiver of any condition precedent under the heading “Conditions Precedent to All Other Extensions of Credit” above, nor (ii) a waiver of any default or event of default, in each case, shall be considered an extension of or increase in any commitment of any Lender); (b) postpone any date for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due



to any Lender without the written consent of such Lender; (c) reduce the principal of, or the rate of interest on, any loan, or (subject to the ability to amend any fee letter solely with the consent of the parties to such fee letter) any fees or other amounts payable to any Lender without the written consent of such Lender; *provided, that*, only the consent of the Required Lenders shall be necessary to amend (i) the provisions of the Definitive Documentation with respect to default rate interest (including waiving any obligation to pay interest or fees at the Default Rate (as defined below)), or (ii) any financial covenant (or any defined term used therein), even if the effect of such amendment would be to reduce the rate of interest on any loan or to reduce any fee payable to the Lenders; (d) change certain of the provisions of the Definitive Documentation in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender that is directly and adversely affected thereby; (e) change any provision of the amendment section of the credit agreement or the definition of “Required Lenders” without the written consent of each Lender; (f) release all or substantially all of the Collateral without the written consent of each Lender; (g) subordinate the liens in the Collateral without the written consent of each Lender; (h) release all or substantially all of the value of the guaranties provided pursuant to the Definitive Documentation without the written consent of each Lender (with an exception for any release in connection with a transaction permitted pursuant to the Definitive Documentation); or (i) release the Borrower or permit the Borrower to assign or transfer any of its rights or obligations under the Definitive Documentation without the written consent of each Lender.

Indemnification:

The Credit Parties will indemnify the Administrative Agent (and any sub-agent thereof), each Joint Lead Arranger, each Lender, the L/C Issuer, the Swingline Lender, and each of their respective affiliates, and their and such affiliates’ respective officers, directors, employees, agents, advisors and other representatives (each, an “*Indemnified Party*”) against, and hold each Indemnified Party harmless from, any and all actual or prospective losses, claims, damages, liabilities and related expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel (but limited, in the case of legal fees and expenses, to the reasonable and documented out of pocket fees, disbursements and other charges of one primary counsel to all Indemnified Parties (taken as a whole) and, if reasonably necessary, a single local counsel for all Indemnified Parties (taken as a whole) in each relevant jurisdiction and a single specialty counsel for all Indemnified Parties (taken as a whole) with respect to each relevant specialty, and in the case of an actual or perceived conflict of interest, one additional primary, local or specialty counsel, as the case may be, to the affected Indemnified Parties similarly situated and taken as a whole)) incurred by any Indemnified Party or asserted against any Indemnified Party by any person or entity (including any Credit Party) arising out of, in connection with, or as a result of (a) the execution or delivery of the Definitive Documentation, the performance by the parties thereto of their respective obligations thereunder or the consummation of the transactions contemplated thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its related parties only, the

administration of the Definitive Documentation, (b) any loan under the Facilities or any Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (c) any actual or alleged presence or release of hazardous materials on or from any property owned, leased or operated by a Credit Party or any of its subsidiaries, or any environmental liability related in any way to a Credit Party or any of its subsidiaries, or (d) any actual or prospective claim, litigation, arbitration, 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 any Credit Party, and regardless of whether any Indemnified Party is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNIFIED PARTY**; *provided, that*, such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses 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 Indemnified Party.

Governing Law, etc.:

State of New York. Additionally, each of the parties shall (a) waive its right to a trial by jury, and (b) submit to New York jurisdiction.

Pricing/Fees/Expenses:

As set forth in Addendum I to this Exhibit B.

AeroVironment, Inc.  
Summary of Terms and Conditions – Addendum I  
Pricing, Fees and Expenses

Interest Rates:

The interest rates per annum applicable to the Facilities (other than in respect of Swingline Loans) will be LIBOR *plus* the Applicable Margin (as defined below) or, at the option of the Borrower, the Base Rate (to be defined as the highest of (a) the Federal Funds Rate *plus* one-half percent (0.50%), (b) the Bank of America prime rate, and (c) the one (1) month LIBOR (adjusted daily) *plus* one percent (1.00%)) *plus* the Applicable Margin. “**Applicable Margin**” means (a) in the case of LIBOR loans, (i) until delivery of financial statements and a compliance certificate for the first full fiscal quarter of the Borrower ending after the Closing Date, 2.00% per annum, and (ii) thereafter, a percentage per annum to be determined in accordance with the performance pricing grid set forth below, and (b) in the case of Base Rate loans, (i) until delivery of financial statements and a compliance certificate for the first full fiscal quarter of the Borrower ending after the Closing Date, 1.00% per annum, and (ii) thereafter, a percentage per annum to be determined in accordance with the performance pricing grid set forth below. Each Swingline Loan shall bear interest at the Base Rate *plus* the Applicable Margin for Base Rate loans. If the Base Rate shall be less than one percent (1%), such rate shall be deemed one percent (1%) for purposes of the Definitive Documentation; and if LIBOR shall be less than zero, such rate shall be deemed zero for purposes of the Definitive Documentation.

The Borrower may select interest periods with respect to LIBOR loans of one (1), two (2), three (3) or six (6) months, in each case subject to availability. Interest on each Base Rate loan and each Swingline Loan shall be due and payable on the last business day of March, June, September and December, and on the Maturity Date; and interest on each LIBOR loan shall be due and payable on the last day of each interest period applicable thereto, and if such interest period extends over three (3) months, at the end of each three (3) month interval during such interest period.

If any amount of principal of any loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, or a payment or bankruptcy default exists, all outstanding Obligations 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. If any amount (other than principal of any loan) is not paid when due (without regard 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 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. Upon the request of the Required Lenders, while any event of default exists, all outstanding Obligations shall accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable laws. Accrued and unpaid interest on past due amounts

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(including interest on past due interest) shall be due and payable upon demand.

“**Default Rate**” means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to two percent (2%) 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 Margin for Base Rate loans *plus* two percent (2%), in each case, to the fullest extent permitted by applicable law.

Commitment Fee:

Commencing on the Closing Date, a commitment fee of (a) until delivery of financial statements and a compliance certificate for the first full fiscal quarter of the Borrower ending after the Closing Date, 0.30% per annum, and (b) thereafter, a percentage per annum to be determined in accordance with the performance pricing grid set forth below, shall be payable on the actual daily unused portions of the Revolving Facility. Such fee shall be payable quarterly in arrears, commencing on the first quarterly payment date to occur after the Closing Date. Swingline Loans will not be considered utilization of the Revolving Facility for purposes of calculating the commitment fee.

Letter of Credit Fees:

Letter of Credit fees shall be payable on the maximum amount available to be drawn under each Letter of Credit at a rate per annum equal to the Applicable Margin from time to time applicable to LIBOR loans. Such fees with respect to any Letter of Credit shall be (a) payable quarterly in arrears, commencing on the first quarterly payment date to occur after the issuance of such Letter of Credit, and (b) shared proportionately by the Lenders under the Revolving Facility. In addition, a fronting fee shall be payable to the L/C Issuer for its own account, in an amount to be mutually agreed.

Performance Pricing:

The Applicable Margin with respect to LIBOR loans, Base Rate loans and the commitment fee shall be the following percentages per annum, based upon the Consolidated Leverage Ratio as set forth in the most recent compliance certificate received by the Administrative Agent pursuant to the Definitive Documentation:

| Consolidated Leverage Ratio     | LIBOR Loans | Base Rate Loans | Commitment Fee |
|---------------------------------|-------------|-----------------|----------------|
| ≤ 1.00 to 1.0                   | 1.50%       | 0.50%           | 0.20%          |
| > 1.00 to 1.0 but ≤ 1.75 to 1.0 | 1.75%       | 0.75%           | 0.25%          |
| > 1.75 to 1.0 but ≤ 2.50 to 1.0 | 2.00%       | 1.00%           | 0.30%          |
| > 2.50 to 1.0                   | 2.25%       | 1.25%           | 0.35%          |

Calculation of Interest/Fees:

Computations of interest for Base Rate loans shall be made on the basis of a year of 365/366 days. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed.

Expenses:

The Credit Parties shall pay (a) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its affiliates (including the reasonable and documented fees, disbursements and other charges of one primary counsel to the Administrative Agent and, if reasonably necessary, one local counsel for the Administrative Agent in each relevant jurisdiction and one specialty counsel for the Administrative Agent in each relevant specialty (and, solely in the case of an actual or potential conflict of interest of any of the foregoing counsel, one additional primary, local or specialty counsel, as the case may be, to the affected persons similarly situated and taken as a whole)) in connection with the syndication of the Facilities, the preparation, negotiation, execution, delivery and administration of the Definitive Documentation or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated thereby shall be consummated), (b) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, extension, reinstatement or renewal of any Letter of Credit or any demand for payment thereunder, and (c) all out-of-pocket expenses incurred by the Administrative Agent, any Lender, the Swingline Lender or the L/C Issuer (including the fees, charges and disbursement of counsel for the Administrative Agent, any Lender, the Swingline Lender or the L/C Issuer), in connection with the enforcement or protection of its rights (i) in connection with the Definitive Documentation, or (ii) in connection with loans made or Letters of Credit issued under the Facilities, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such loans or Letters of Credit.

AeroVironment, Inc.  
Summary of Additional Conditions<sup>2</sup>

Subject in all respects to the Limited Conditionality Provision, the effectiveness of the Definitive Documentation and the funding of the Necessary Acquisition Funds on the Closing Date shall be subject to the satisfaction (or waiver by all Commitment Parties) of the following conditions precedent:

1. Since the date of the Acquisition Agreement, there shall not have been a “Company Material Adverse Effect” (as defined in the Acquisition Agreement as in effect on the date of the Commitment Letter).

2. The Acquisition Agreement shall be in full force and effect. The Acquisition shall have been consummated, or substantially concurrently with the funding of the Necessary Acquisition Funds on the Closing Date shall be consummated, in all material respects in accordance with the terms of the Acquisition Agreement, without giving effect to any modifications or amendments thereto (which, for the avoidance of doubt, shall include any Schedule Supplement (as defined in the Acquisition Agreement (as in effect on the date of the Commitment Letter))) or consents or waivers thereto or thereunder by the Borrower or any of its affiliates that are material and adverse to the Lenders (in their respective capacities as such) or the Joint Lead Arrangers (in their respective capacities as such) without the prior consent of the Joint Lead Arrangers (such consent not to be unreasonably withheld, delayed or conditioned). For purposes of the condition set forth in this Section 2, it is hereby understood and agreed that: (a) any reduction of the purchase price in connection with the Acquisition shall not be deemed to be material and adverse to the interests of the Lenders and the Joint Lead Arrangers if such reduction of the purchase price shall be allocated to a reduction in the amount of the Term Loan Facility; (b) any increase of the purchase price in connection with the Acquisition shall not be deemed to be material and adverse to the interests of the Lenders and the Joint Lead Arrangers if such increase of the purchase price is (i) funded with cash on the balance sheet of the Borrower and/or is satisfied by increasing the amount of common equity of the Borrower issued to the Sellers on the Closing Date, and (ii) in an aggregate amount not in excess of \$100 million; and (c) any change to the definition of “Company Material Adverse Effect” shall be deemed material and adverse to the Lenders and the Joint Lead Arrangers.

3. All representations and warranties in the Definitive Documentation shall be made as of the Closing Date; *provided, that*, only the accuracy in all material respects (or in all respects if already qualified by materiality) of the Specified Representations shall be a condition to funding of the Necessary Acquisition Funds on the Closing Date. The Specified Acquisition Agreement Representations shall be true and correct in all material respects (or in all respects if already qualified by materiality) on the Closing Date.

4. The Refinancing shall have been, or substantially concurrently with the funding of the Necessary Acquisition Funds on the Closing Date shall be, consummated.

5. Prior to, or substantially concurrently with, the funding of the Necessary Acquisition Funds on the Closing Date, the Borrower shall have consummated the Equity Contribution.

6. The Joint Lead Arrangers shall have received (a) audited annual consolidated financial statements of the Borrower and its subsidiaries for the three (3) most recently completed fiscal years of the

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<sup>2</sup> Capitalized terms used but not defined in this Exhibit C shall have the meanings set forth in the Commitment Letter (including Exhibit A and Exhibit B thereto).

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Borrower ended at least ninety (90) days prior to the Closing Date, to include in each case a balance sheet and statements of income, cash flows and shareholders' equity (including all footnotes to the foregoing, all in reasonable detail and setting forth in comparative form the corresponding figures as of the end of, and for, the applicable preceding fiscal year of the Borrower), (b) audited annual consolidated financial statements of the Target and its subsidiaries for the fiscal years of the Target ended December 31, 2018 and December 31, 2019, to include in each case a balance sheet and statements of income, cash flows and shareholders' equity (including all footnotes to the foregoing, all in reasonable detail and setting forth in comparative form the corresponding figures as of the end of, and for, the applicable preceding fiscal year of the Target), (c) unaudited consolidated financial statements of the Borrower and its subsidiaries for each fiscal quarter of the Borrower ended after the close of its most recently ended fiscal year and at least forty-five (45) days prior to the Closing Date (other than the fourth fiscal quarter of the Borrower's fiscal year), to include in each case a balance sheet and statements of income and cash flows, all in reasonable detail and setting forth in comparative form the corresponding figures as of the end of, and for the corresponding period in, the applicable preceding fiscal year of the Borrower, (d) unaudited consolidated financial statements of the Target and its subsidiaries for each fiscal quarter of the Target ended after the close of its most recently ended fiscal year and at least forty-five (45) days prior to the Closing Date (other than the fourth fiscal quarter of the Target's fiscal year), to include in each case a balance sheet and statements of income and cash flows, all in reasonable detail and setting forth in comparative form the corresponding figures as of the end of, and for the corresponding period in, the applicable preceding fiscal year of the Target, and (e) *pro forma* financial statements of the Borrower and its subsidiaries as of and for the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period of the Borrower ended at least forty-five (45) days prior to the Closing Date (or at least ninety (90) days prior to the Closing Date if such four-fiscal quarter period of the Borrower is the end of the Borrower's fiscal year), to include a balance sheet and statements of income, cash flows and shareholders' equity, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such other financial statements). It is acknowledged and agreed that, as of the date of the Commitment Letter, the Joint Lead Arrangers have received the financial statements referred to in clauses (a), (b) and (c) above.

7. Each Credit Party shall have executed and delivered to the Administrative Agent the Definitive Documentation (which shall be consistent with the Commitment Letter and subject to the Limited Conditionality Provision) to which they are parties, and the Administrative Agent shall have received (a) a customary notice of borrowing with respect to the borrowing of the Necessary Acquisition Funds (including any customary funds flow or notice of account designation as may be required by the Administrative Agent for the disbursement of the Necessary Acquisition Funds and, if LIBOR loans are requested, a customary funding indemnity letter), (b) customary closing certificates and customary legal opinions, (c) customary organizational and governing documents, evidence of authority and good standing (or equivalent) certificates for each Credit Party in such Credit Party's state of organization, and (d) a solvency certificate in the form of Annex I to this Summary of Additional Conditions from the Borrower's chief financial officer certifying that the Borrower and its subsidiaries, on a consolidated basis after giving effect to the Transactions, are solvent.

8. The Administrative Agent shall have received, subject in all respects to the Limited Conditionality Provision, all documents and instruments required to create and perfect the Administrative Agent's security interest in the Collateral (to the extent perfection in such Collateral is required by the Definitive Documentation), and all such documents and instruments necessary for the creation and perfection of such security interests shall have been executed and delivered by the relevant Credit Parties and, if applicable, be in proper form for filing (or reasonably satisfactory arrangements shall have been mutually agreed upon for the execution, delivery and filing of such documents and instruments substantially concurrently with the consummation of the Acquisition).

9. At least five (5) business days prior to the Closing Date, (a) the Administrative Agent and each Lender shall have received all documentation and other information about the Credit Parties as has been reasonably requested by the Administrative Agent or such Lender at least ten (10) business days prior to the Closing Date that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act, and (b) if the Borrower qualifies as a “legal entity customer” under 31 CFR § 1010.230 (the “**Beneficial Ownership Regulation**”), the Borrower shall have delivered to the Administrative Agent and each Lender requesting the same at least ten (10) business days prior to the Closing Date, a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation (each such certification, a “**Beneficial Ownership Certification**”).

10. All fees required to be paid on the Closing Date pursuant to the Commitment Letter and the Fee Letters, and all reasonable out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case shall have been paid to the extent invoiced at least three (3) business days (or such shorter period of time as the Borrower may agree) prior to the Closing Date.



AeroVironment, Inc.  
Summary of Additional Conditions – Annex I  
Form of Solvency Certificate

[ ], 202[ ]

This Solvency Certificate (this “Solvency Certificate”) is being executed and delivered pursuant to Section [ ] of that certain [Credit Agreement], dated as of [ ], 202[ ] (the “Credit Agreement”), by and among AeroVironment, Inc., a Delaware corporation (the “Borrower”), the Guarantors party thereto, the Lenders party thereto, and Bank of America, N.A., in its capacities as the Administrative Agent, the Swingline Lender and the L/C Issuer. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Credit Agreement.

I, [ ], the chief financial officer of the Borrower, solely in such capacity and not in an individual capacity, hereby certify that I am the chief financial officer of the Borrower and that I am familiar with the businesses and assets of the Borrower and its Subsidiaries, I have made such other investigations and inquiries as I have deemed appropriate and I am duly authorized to execute this Solvency Certificate on behalf of the Borrower pursuant to the Credit Agreement.

I further certify, solely in my capacity as chief financial officer of the Borrower and not in my individual capacity, as of the date hereof and after giving effect to the Transactions, that (a) the fair value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of the Borrower and its Subsidiaries, on a consolidated basis, (b) the present fair salable value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, is not less than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries, on a consolidated basis, on its debts as they become absolute and matured, (c) the Borrower and its Subsidiaries, on a consolidated basis, do not intend to, and do not believe that they will, incur debts or liabilities beyond the ability of the Borrower and its Subsidiaries, on a consolidated basis, to pay such debts and liabilities as they mature, (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which the property of the Borrower and its Subsidiaries, on a consolidated basis, would constitute an unreasonably small capital, and (e) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. For purposes hereof, 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.

*[Remainder of page intentionally left blank]*

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IN WITNESS WHEREOF, I have executed this Solvency Certificate on the date first written above.

AEROVIRONMENT, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title: Chief Financial Officer

C-I-2

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The representations and warranties contained in this agreement were made for the purposes of allocating contractual risk between the parties and not as a means of establishing facts and are qualified by information in disclosure schedules that the parties exchanged in connection with the signing of this agreement. Moreover, the representations and warranties were made only as of the date of execution of this agreement and information concerning the subject matter of the representations and warranties may change after the date of this agreement. Only parties to this agreement have a right to enforce the agreement. Accordingly, third parties, including current securityholders and prospective investors, should not rely on the representations and warranties in this agreement.

Schedules (or similar attachments) to this Exhibit have been omitted in accordance with Items 601(a)(5) and/or 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission on a confidential basis upon request.

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Published CUSIP Numbers:  
Deal: 00807FAA9  
Revolving Facility: 00807FAB7  
Term A Facility: 00807FAC5

CREDIT AGREEMENT

Dated as of February 19, 2021

among

AEROVIRONMENT, INC.,  
as the Borrower,

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

BANK OF AMERICA, N.A.,  
as the Administrative Agent, the Swingline Lender and an L/C Issuer,

THE OTHER L/C ISSUERS PARTY HERETO,

and

THE LENDERS PARTY HERETO

BOFA SECURITIES, INC.,  
JPMORGAN CHASE BANK, N.A.,

and

U.S. BANK NATIONAL ASSOCIATION,  
as Joint Lead Arrangers and Joint Bookrunners

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**[\*Schedules (or similar attachments) to this Exhibit have been omitted in accordance with Items 601(a)(5) and/or 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission on a confidential basis upon request.]**

EXHIBITS

|           |   |
|-----------|---|
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## CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of February 19, 2021, among AEROVIRONMENT, INC., a Delaware corporation (the “Borrower”), the Guarantors party hereto, the Lenders party hereto, BANK OF AMERICA, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party hereto.

### PRELIMINARY STATEMENTS:

WHEREAS, the Borrower entered into that certain Stock Purchase Agreement, dated as of January 11, 2021 (together with all schedules, exhibits and annexes thereto, the “Closing Date Acquisition Agreement”), by and among the Borrower, Arcturus UAV, Inc., a California corporation (the “Closing Date Acquisition Target”), the Persons identified therein as “Sellers” (collectively, the “Sellers”), and D’Milo Hallerberg, solely in his capacity as the representative of the Sellers, pursuant to which the Borrower will acquire one hundred percent (100%) of the outstanding Equity Interests of the Closing Date Acquisition Target (the “Closing Date Acquisition”);

WHEREAS, in connection with the Closing Date Acquisition and the other transactions contemplated hereby, the Loan Parties have requested that the Lenders, the Swingline Lender, and the L/C Issuers make loans and other financial accommodations to the Borrower and its Subsidiaries as set forth herein; and

WHEREAS, the Lenders, the Swingline Lender and the L/C Issuers have agreed to make such loans and other financial accommodations to the Borrower and its Subsidiaries, 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

##### 1.01 Defined Terms.

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

“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.

“Acquisition Consideration” means the purchase consideration for any Permitted Acquisition and all other payments by any Loan Party or any Subsidiary in exchange for, or as part of, or in connection with, any Permitted Acquisition, whether paid in cash or by exchange of Equity Interests or of properties or otherwise and whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any



contingency, including any and all payments representing the purchase price and any assumptions of Indebtedness, deferred purchase price, Earn Out Obligations and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any Person. For purposes of determining the aggregate consideration paid for any Permitted Acquisition, the amount of any Earn Out Obligations shall be deemed to be the maximum amount of the earn-out payments in respect thereof as specified in the documents relating to such Permitted Acquisition.

“Additional Secured Obligations” means (a) all obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements, 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, now existing or hereafter arising and including interest, expenses 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 interest, expenses and fees are allowed claims in such proceeding; provided, that, Additional Secured Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

“Administrative Agent” means Bank of America (or any of its designated branch offices or affiliates), in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.01(a), or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form approved by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

“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.

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Applicable Percentage” means (a) in respect of the Term A Facility, with respect to any Term A Lender at any time, the percentage (carried out to the ninth decimal place) of the Term A Facility represented by (i) on or prior to the funding of the Term A Loans on the Closing Date, such Term A Lender’s Term A Commitment at such time, and (ii) thereafter, the outstanding principal amount of such Term A Lender’s Term A Loan at such time, (b) in respect of the Revolving Facility, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender’s Revolving Commitment at such time, subject to adjustment as provided in Section 2.15, and (c) in respect of an Incremental Term Facility, with respect to any Incremental Term Lender under such Incremental Term Facility at any time, the percentage (carried out to the ninth decimal place) of such Incremental Term Facility represented by (i) on or prior to the funding of the

Incremental Term Loans under such Incremental Term Facility, such Incremental Term Lender’s Incremental Term Commitment with respect to such Incremental Term Facility at such time, and (ii) thereafter, the outstanding principal amount of such Incremental Term Lender’s Incremental Term Loan advanced in connection with such Incremental Term Facility at such time. If the Revolving Commitments of all of the Revolving Lenders to make Revolving Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender in respect of the Revolving Facility shall be determined based on the Applicable Percentage of such Revolving Lender in respect of the Revolving Facility most recently in effect, giving effect to any subsequent assignments and to any Lender’s status as a Defaulting Lender at the time of determination. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 1.01(b), in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, or in such other documentation pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means (a) with respect to the Incremental Term Loans advanced in connection with any Incremental Term Facility, the percentage(s) per annum set forth in the Incremental Term Facility Agreement entered into in connection with such Incremental Term Facility, and (b) with respect to the Term A Loans, the Revolving Loans, the Swingline Loans, the Letter of Credit Fee and the Commitment Fee, the following percentages per annum, based upon the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

| Pricing Tier | Consolidated Leverage Ratio     | Commitment Fee | Letter of Credit Fee | Eurodollar Rate Loans | Base Rate Loans |
|--------------|---------------------------------|----------------|----------------------|-----------------------|-----------------|
| I            | > 2.50 to 1.0                   | 0.35%          | 2.25%                | 2.25%                 | 1.25%           |
| II           | ≤ 2.50 to 1.0 but > 1.75 to 1.0 | 0.30%          | 2.00%                | 2.00%                 | 1.00%           |
| III          | ≤ 1.75 to 1.0 but > 1.00 to 1.0 | 0.25%          | 1.75%                | 1.75%                 | 0.75%           |
| IV           | ≤ 1.00 to 1.0                   | 0.20%          | 1.50%                | 1.50%                 | 0.50%           |

Any increase or decrease in the Applicable Rate applicable pursuant to this clause (b) resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first (1<sup>st</sup>) Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, that, if a Compliance Certificate is not delivered when due in accordance with Section 6.02(a), then, upon the request of the Required Lenders, Pricing Tier I shall apply as of the first (1<sup>st</sup>) Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the first (1<sup>st</sup>) Business Day immediately following the date on which such Compliance Certificate is delivered in accordance with Section 6.02(a), whereupon the Applicable Rate applicable pursuant to this clause (b) shall be adjusted based upon the calculation of the Consolidated Leverage Ratio contained in such Compliance Certificate. The Applicable Rate applicable pursuant to this clause (b) in effect from the Closing Date until the first (1<sup>st</sup>) Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a) for the fiscal quarter ending July 31, 2021 shall be determined based upon Pricing Tier II. Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate applicable pursuant to this clause (b) for any period shall be subject to the provisions of Section 2.10(b).

“Applicable Revolving Percentage” means, with respect to any Revolving Lender at any time, such Revolving Lender’s Applicable Percentage in respect of the Revolving Facility at such time.

“Appropriate Lender” means, at any time, (a) with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time, (b) with respect to the Letter of Credit Sublimit, (i) each L/C Issuer, and (ii) if any Letters of Credit have been issued pursuant to Section 2.03, each Revolving Lender, and (c) with respect to the Swingline Sublimit, (i) the Swingline Lender, and (ii) if any Swingline Loans are outstanding pursuant to Section 2.04(a), each Revolving Lender.

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

“Arranger” means each of (a) BofA Securities, (b) JPMorgan, and (c) U.S. Bank National Association, in each case in its capacities as a joint lead arranger and a joint bookrunner.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form (including an electronic documentation form generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation of any Person, 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) in respect of any Securitization Transaction, the amount of obligations outstanding under the legal documents entered into as part of such Securitization Transaction on such date that corresponds to the outstanding net investment (including loans) of, or cash purchase price paid by, the unaffiliated third party purchasers or financial institutions participating in such transaction and, as such, would be characterized as principal if such transaction were structured as a secured lending transaction rather than as a purchase (or, to the extent structured as a secured lending transaction, is principal), and (d) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year of the Borrower ended April 30, 2020 and the related Consolidated statements of income, stockholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(b)(ii).

“Availability Period” means the period from and including the Closing Date to the earliest of (a) the Revolving Facility Maturity Date, (b) the date of termination of the Revolving Facility pursuant to Section 2.06, and (c) the date of termination of the Revolving Commitment of each Revolving Lender to make Revolving Loans and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 8.02; provided, that, notwithstanding the foregoing, no Revolving Borrowing shall be made on the Closing Date.

“Available Amount” means, as of any date of determination, an amount equal to the total of (a) the sum of, without duplication, (i) \$30,000,000, plus (ii) an amount, not less than zero in the aggregate, equal to fifty percent (50%) of the cumulative Consolidated Net Income for the period (taken as one accounting

period) commencing from the first day of the first full fiscal quarter of the Borrower ending after the Closing Date to the end of the fiscal quarter of the Borrower most recently ended prior to such date of determination in respect of which a Compliance Certificate has been delivered as required hereunder, plus (iii) one hundred percent (100%) of the net cash proceeds received by the Borrower prior to such date of determination from issuances after the Closing Date of Qualified Capital Stock of the Borrower (solely to the extent such net cash proceeds are Not Otherwise Applied), plus (iv) the amount of any Investment made following the Closing Date in reliance on the Available Amount to the extent that such amount is returned in cash prior to such date of determination from the return of, or a return on, principal of such Investment (other than a sale to a Loan Party or a Subsidiary), or from a dividend or interest received with respect to such Investment, plus (v) the amount by which Indebtedness of the Borrower or any of its Subsidiaries is reduced on the Borrower's Consolidated balance sheet prior to such date of determination upon the conversion or exchange of such Indebtedness for Qualified Capital Stock of the Borrower (less the amount of any cash or the fair market value of other property distributed by the Borrower or any Subsidiary upon such conversion or exchange, other than in connection with a restructuring), minus (b) the sum of (i) the cumulative aggregate amount of all Investments made in reliance on the Available Amount pursuant to Section 7.03(m), plus (ii) the cumulative aggregate amount of all Junior Debt Payments made in reliance on the Available Amount pursuant to Section 7.14(a)(iii).

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

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation, or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the Eurodollar Rate plus 1.00%; provided, that, if the Base Rate shall be less than one percent (1%), such rate shall be deemed one percent (1%) for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

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

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code, or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“BofA Securities” means BofA Securities, Inc.

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

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Revolving Borrowing, a Swingline Borrowing or a Term Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations).

“Capitalized Lease” means any lease that has been or is required to be, in accordance with GAAP, recorded, classified and accounted for as a capitalized lease or financing lease.

“Cash Collateralize” means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuers or the Swingline Lender (as applicable) or the Revolving Lenders, as collateral for L/C Obligations, Obligations in respect of Swingline Loans, or obligations of the Revolving Lenders to fund participations in respect of L/C Obligations or Swingline Loans (as the context may require), (a) cash or deposit account balances, (b) backstop letters of credit entered into on terms, from issuers and in amounts satisfactory to the Administrative Agent and the applicable L/C Issuer, and/or (c) if the Administrative Agent and the applicable L/C Issuer or the Swingline Lender shall agree, in their sole discretion, other credit support, in each case, in Dollars and pursuant to documentation in form and substance satisfactory to the Administrative Agent and the applicable L/C Issuer or the Swingline Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” 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) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i)(A) is a Lender, or (B) 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

(c) 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; (c) 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 (d) 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) and (c) of this definition.

“Cash Management Agreement” means any agreement that is not prohibited by the terms hereof to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

“Cash Management Bank” means any Person, in its capacity as a party to a Cash Management Agreement, that (a) at the time it enters into a Cash Management Agreement with a Loan Party or a Subsidiary, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Cash Management Agreement with a Loan Party or a Subsidiary (in each case, even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); provided, that, for any of the foregoing to be included as a “Secured Cash Management Agreement” on any date of determination by the Administrative Agent, the applicable Cash Management Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“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 or in the implementation thereof, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means 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 thirty-five percent (35)% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or other 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); or

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or other equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or other equivalent governing body was nominated, appointed or approved by individuals referred to in clause (b)(i) above constituting at the time of such election or nomination at least a majority of that board or other equivalent governing body, or (iii) whose election or nomination to that board or other equivalent governing body was nominated, appointed or approved by individuals referred to in clauses (b)(i) and (b)(ii) above constituting at the time of such election or nomination at least a majority of that board or other equivalent governing body.

“Closing Date” means February 19, 2021.

“Closing Date Acquisition” has the meaning specified in the Preliminary Statements.

“Closing Date Acquisition Agreement” has the meaning specified in the Preliminary Statements.

“Closing Date Acquisition Costs” has the meaning specified in the definition of “Transactions”.

“Closing Date Acquisition Target” has the meaning specified in the Preliminary Statements.

“Closing Date Equity Contribution” means the issuance by the Borrower of Five Hundred Seventy-Three Thousand Seven Hundred Ninety-Four (573,794) shares of the Borrower’s common Equity Interests to the Sellers on the Closing Date.

“Closing Date Refinancing” means, collectively, (a) the repayment in full of all Indebtedness of the Closing Date Acquisition Target and its Subsidiaries and the Borrower and its Subsidiaries (in each case other than Indebtedness permitted pursuant to Section 7.02), (b) the termination of all commitments with respect to all such Indebtedness, and (c) the release and/or termination of all liens and security interests securing all such Indebtedness, and all guaranties guarantying such Indebtedness.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means a collective reference to all personal property with respect to which Liens in favor of the Administrative Agent, for the benefit of the Secured Parties, are purported to be granted pursuant to and in accordance with the terms of the Collateral Documents; provided, that, “Collateral” shall not include any Excluded Property.

“Collateral Document” means each of the Security Agreement, each Joinder Agreement, each Qualifying Control Agreement, each security agreement, pledge agreement or other similar agreement delivered to the Administrative Agent pursuant to Section 6.13, and each other agreement, instrument or document that creates or purports to create a Lien in favor of the Administrative Agent, for the benefit of the Secured Parties.

“Commitment” means a Term Commitment or a Revolving Commitment, as the context may require.

“Commitment Fee” has the meaning specified in Section 2.09(a).

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

“Communication” has the meaning specified in Section 11.18.

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

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated” 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.

“Consolidated Capital Expenditures” means, for any period, for the Borrower and its Subsidiaries on a Consolidated basis, all Capital Expenditures for such period.

“Consolidated Cash Taxes” means, for any period, for the Borrower and its Subsidiaries on a Consolidated basis, the aggregate of all taxes, as determined in accordance with GAAP, to the extent the same are paid in cash for such period.

“Consolidated EBITDA” means, for any period, for the Borrower and its Subsidiaries on a Consolidated basis, an amount equal to: (a) Consolidated Net Income for such period; plus (b) the following, without duplication, to the extent deducted in calculating such Consolidated Net Income (or, in the case of amounts pursuant to clause (b)(ix) below, not already included in Consolidated Net Income): (i) Consolidated Interest Charges for such period; (ii) the provision for federal, state, local and foreign income taxes paid or payable for such period; (iii) depreciation and amortization expense for such period; (iv) any non-cash expenses, losses or charges (other than any non-cash expense, loss or charge relating to write-offs, write-downs or reserves with respect to accounts or inventory) for such period (including any non-cash stock based compensation expense for such period) which do not represent a cash item in such period or any other period; (v) fees, costs and expenses incurred in such period in connection with the Transactions; (vi) fees, costs and expenses incurred in such period in connection with the negotiation, execution and delivery of any amendments or modifications to the Loan Documents; (vii) restructuring charges or reserves (which shall include retention, severance, systems establishment cost, excess pension charges, contract termination costs, costs related to start up, closure, relocation or consolidation of facilities, costs to relocate employees, consulting fees, one time information technology costs, and one time branding costs); provided, that, the aggregate amount added back pursuant to this clause (b)(vii) for any period, when taken together with the aggregate amount added back pursuant to clause (b)(ix) below for such period, shall not exceed an amount equal to twenty percent (20%) of Consolidated EBITDA (calculated without giving effect to the add backs permitted pursuant to this clause (b)(vii) or clause (b)(ix) below) for such period; (viii) fees, costs, and expenses incurred in such period in connection with the issuance of Equity Interests or Indebtedness, the consummation of Permitted Acquisitions, and the consummation of other Investments permitted pursuant to Section 7.03 (in each case whether consummated before or after the Closing Date), whether or not such transaction is actually consummated; and (ix) the amount of net cost savings and synergies related to any Permitted Acquisition or other Investment permitted pursuant to Section 7.03, but only to the extent that such net cost savings and synergies are reasonably identifiable, factually supportable and projected by the Borrower in good faith to result from actions that have been taken (or, if not yet taken,



with respect to actions for which substantial steps have been taken) within twelve (12) months after the consummation of such Permitted Acquisition or such Investment (with the amount of any such net cost savings and synergies to be added to Consolidated EBITDA as so projected until fully realized and calculated on a Pro Forma Basis as though such net cost savings and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided, that, the aggregate amount added back pursuant to this clause (b)(ix) for any period, when taken together with the aggregate amount added back pursuant to clause (b)(vii) above for such period, shall not exceed an amount equal to twenty percent (20%) of Consolidated EBITDA (calculated without giving effect to the add backs permitted pursuant to this clause (b)(ix) or clause (b)(vii) above) for such period; minus (c) the following, without duplication, to the extent included in calculating such Consolidated Net Income: (i) non-cash income or gains for such period; and (ii) federal, state, local and foreign income tax credits received in such period.

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) the total of (i) Consolidated EBITDA for the Measurement Period most recently completed on or prior to such date, minus (ii) Consolidated Maintenance Capital Expenditures for such period, to (b) the sum of (i) Consolidated Interest Charges for the Measurement Period most recently completed on or prior to such date to the extent paid in cash, plus (ii) Consolidated Scheduled Funded Debt Payments for such period, plus (iii) Consolidated Cash Taxes for such period, plus (iv) the aggregate amount of all Designated Restricted Payments made in such period; provided, that, for purposes of calculating the Consolidated Fixed Charge Coverage Ratio: (A) Consolidated Interest Charges shall be calculated as if the Term A Loans had been made on February 1, 2021 (utilizing for any day prior to the Closing Date the interest rate which is in effect on the last day of the fiscal quarter of the Borrower ending April 30, 2021); (B) Consolidated Scheduled Funded Debt Payments shall be calculated as if a quarterly amortization payment on the Term A Facility in the principal amount of \$2,500,000 was due on April 30, 2021; (C)(1) Consolidated Interest Charges with respect to the Obligations for the period ended April 30, 2021 shall be the actual Consolidated Interest Charges with respect to the Obligations for the period of one (1) fiscal quarter then ended (subject to adjustment as provided in clauses (A) and (B) above) multiplied by four (4), and (2) Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period ended April 30, 2021 shall be the actual Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period of one (1) fiscal quarter then ended (subject to adjustment as provided in clause (B) above) multiplied by four (4); (D)(1) Consolidated Interest Charges with respect to the Obligations for the period ended July 31, 2021 shall be the actual Consolidated Interest Charges with respect to the Obligations for the period of two (2) fiscal quarters then ended (subject to adjustment as provided in clauses (A) and (B) above) multiplied by two (2), and (2) Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period ended July 31, 2021 shall be the actual Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period of two (2) fiscal quarters then ended (subject to adjustment as provided in clause (B) above) multiplied by two (2); (E)(1) Consolidated Interest Charges with respect to the Obligations for the period ended October 31, 2021 shall be the actual Consolidated Interest Charges with respect to the Obligations for the period of three (3) fiscal quarters then ended (subject to adjustment as provided in clauses (A) and (B) above) multiplied by four-thirds (4/3), and (2) Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period ended October 31, 2021 shall be the actual Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period of three (3) fiscal quarters then ended (subject to adjustment as provided in clause (B) above) multiplied by four-thirds (4/3); and (F)(1) Consolidated Interest Charges with respect to the Obligations for the period ended January 31, 2022 shall be the actual Consolidated Interest Charges with respect to the Obligations for the period of four (4) fiscal quarters then ended (subject to adjustment as provided in clauses (A) and (B) above), and (2) Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period ended January 31, 2022 shall be the actual Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period of four (4) fiscal quarters then ended (subject to adjustment as provided in clause (B) above).

“Consolidated Funded Indebtedness” means, as of any date of determination, Funded Indebtedness of the Borrower and its Subsidiaries on a Consolidated basis as of such date.

“Consolidated Interest Charges” means, for any period, for the Borrower and its Subsidiaries on a Consolidated basis, the sum, without duplication, of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case with respect to such period and to the extent treated as interest in accordance with GAAP, plus (b) all interest paid or payable with respect to discontinued operations for such period, plus (c) the portion of rent expense under Capitalized Leases for such period that is treated as interest in accordance with GAAP.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date, to (b) Consolidated EBITDA for the Measurement Period most recently completed on or prior to such date.

“Consolidated Maintenance Capital Expenditures” means, for any period, an amount equal to thirty-five percent (35%) of the amount of Consolidated Capital Expenditures for such period.

“Consolidated Net Income” means, for any period, the net income (or loss) of the Borrower and its Subsidiaries on a Consolidated basis for such period, as determined in accordance with GAAP; provided, that, Consolidated Net Income shall exclude (a) unusual and infrequent gains and unusual and infrequent losses for such period, (b) the net income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that the Borrower’s equity in any net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such period of any Person if such Person is not a Subsidiary, except that the Borrower’s equity in the net income of any such Person for such period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso).

“Consolidated Scheduled Funded Debt Payments” means, for any period, for the Borrower and its Subsidiaries on a Consolidated basis, the sum of all scheduled payments of principal on Consolidated Funded Indebtedness during such period. For purposes of this definition, “scheduled payments of principal” (a) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during the applicable period, (b) shall be deemed to include scheduled payments on any Attributable Indebtedness, and (c) shall not include any voluntary prepayments or mandatory prepayments required pursuant to Section 2.05.

“Consolidated Total Assets” means, as of any date of determination, the total assets of the Borrower and its Subsidiaries, as determined on a Consolidated basis in accordance with GAAP.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, 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.

“Covered Entity” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning specified in Section 11.21.

“Credit Extension” means each of the following: (a) a Borrowing; and (b) an L/C Credit Extension.

“Debt Issuance” means the issuance by any Loan Party or any Subsidiary of any Indebtedness other than Indebtedness permitted pursuant to Section 7.02.

“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 two percent (2%) 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 for Revolving Loans that are Base Rate Loans plus two percent (2%), in each case, to the fullest extent permitted by applicable Law.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, any L/C Issuer or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided, that, such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a

capacity, or (iii) become the subject of a Bail-In Action; provided, that, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, each L/C Issuer, the Swingline Lender and each other Lender promptly following such determination.

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

“Designated Restricted Payment” means any Restricted Payment made by the Borrower or any of its Subsidiaries in reliance on Section 7.06(a) (to the extent made to any Person other than the Borrower or any Subsidiary), Section 7.06(d) or Section 7.06(e).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any property (including the Equity Interests in any Subsidiary) owned by any Loan Party or any Subsidiary (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Capital Stock” means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, prior to the ninety-first (91<sup>st</sup>) day after the then-Latest Maturity Date, (b) requires the payment of any cash dividends, (c) is convertible into or exchangeable for (i) debt securities, or (ii) any Equity Interests referred to in clause (a) or (b) above, in each case at any time prior to the ninety-first (91<sup>st</sup>) day after the then-Latest Maturity Date, or (d) contains any repurchase obligation which may come into effect prior to the Facility Termination Date; provided, that, any Equity Interests that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the ninety-first (91<sup>st</sup>) day after the then-Latest Maturity Date shall not constitute Disqualified Capital Stock if such Equity Interests provide that the issuer thereof may not redeem or repurchase any such Equity Interests pursuant to such provisions prior to the Facility Termination Date.

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

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of the United States, any state thereof, or the District of Columbia.

“Earn Out Obligations” means, with respect to an Acquisition, all obligations of the Borrower or any Subsidiary to make earn out or other contingency payments (including purchase price adjustments, non-competition and consulting agreements, or other indemnity obligations) pursuant to the documentation relating to such Acquisition. For purposes of determining the amount of any Earn Out Obligations to be

included in the definition of Consolidated Funded Indebtedness, the amount of Earn Out Obligations shall be deemed to be the aggregate liability in respect thereof, as determined in accordance with GAAP.

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

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

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

“Electronic Copy” has the meaning specified in Section 11.18.

“Electronic Record” has the meaning assigned to that term in 15 U.S.C. § 7006.

“Electronic Signature” has the meaning assigned to that term in 15 U.S.C. § 7006.

“Eligible Assets” means property (other than current assets as classified by GAAP) that is used or useful in the same or a related line of business as the Borrower and its Subsidiaries were engaged in on the Closing Date (or any business reasonably related, incidental or ancillary thereto or reasonable extensions thereof).

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws (including common law), regulations, standards, ordinances, rules, judgments, interpretations, orders, decrees, permits, agreements or governmental restrictions relating to pollution or the protection of the Environment or human health (to the extent related to exposure to hazardous materials), including those relating to the manufacture, generation, handling, transport, storage, treatment, Release or threat of Release of Hazardous Materials, 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) whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, directly or indirectly relating to (a) any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) Release or threatened Release of any Hazardous Materials, 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, certification, registration, 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 Section 414(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 insolvent, (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.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period) (“LIBOR”), 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 from time to time) (in such case, the “LIBOR Rate”) 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; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m., London time, two (2) London Banking Days prior to such date for Dollar deposits with a term of one (1) month commencing that day;

provided, that, if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurodollar Rate Loan” means a Revolving Loan or a Term Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Account” means (a) any zero balance account, (b) any withholding tax, trust, escrow, payroll and other fiduciary account, (c) any employee benefit account, (d) any account not located in the United States (or any political subdivision thereof), and (e) any petty cash account (provided, that, the aggregate amount on deposit in all petty cash accounts excluded pursuant to this clause (e) shall not exceed \$20,000,000).

“Excluded Property” means, with respect to any Loan Party: (a)(i) any owned real property of such Loan Party, and (ii) any leased real property of such Loan Party; (b) any personal property (including motor vehicles, airplanes and other assets subject to certificates of title) of such Loan Party in respect of which perfection of a Lien is not either (i) governed by the UCC, or (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office; (c) the Equity Interests of any Foreign Subsidiary owned by such Loan Party to the extent not required to be pledged to secure the Secured Obligations pursuant to Section 6.13(a); (d) any property of such Loan Party which, subject to the terms of Section 7.09, is subject to a Lien of the type described in Section 7.01(c) pursuant to documents that prohibit such Loan Party from granting any other Liens in such property; (e) any general intangible, permit, lease, license, contract or other instrument of such Loan Party to the extent the grant of a security interest in such general intangible, permit, lease, license, contract or other instrument in the manner contemplated by the Collateral Documents, under the terms thereof or under applicable Law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Loan Party’s rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both); provided, that, (i) any such limitation described in the foregoing clause (e) on the security interests granted pursuant to the Collateral Documents shall only apply to the extent that any such prohibition is not rendered ineffective pursuant to the UCC or other applicable Law (including Debtor Relief Laws) or principles of equity, and (ii) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in any applicable Law, general intangible, permit, lease, license, contract or other instrument, to the extent sufficient to permit any such item to become Collateral, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, or the elimination of such limitation, as applicable, a security interest in such general intangible, permit, lease, license, contract or other instrument shall be automatically and simultaneously granted under the Collateral Documents and shall be included as Collateral; (f) any asset of such Loan Party if the pledge of, or the granting of a security interest in, such asset is prohibited by any Law applicable to such Loan Party; provided, that, (i) any such prohibition described in this clause (f) on the security interests granted pursuant to the Collateral Documents shall only apply to the extent that any such prohibition would not be rendered ineffective pursuant to the UCC or any other applicable Law (including Debtor Relief Laws) or principles of equity, and (ii) in the event of the termination or elimination of any such prohibition contained in any applicable Law, a security interest in such asset shall be automatically and simultaneously granted under the Collateral Documents and shall be included as Collateral; (g) any “intent-to-use” application for registration of a Trademark (as defined in the Security Agreement) of such Loan Party filed in the United States Patent and Trademark Office pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of any registration that issues

from such intent-to-use application under applicable federal law; and (h) any asset of such Loan Party as to which the Administrative Agent and the Borrower agree in writing that the cost or other consequences of obtaining a security interest therein or perfection thereof are excessive in view of the benefits to be obtained by the Secured Parties therefrom.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.11 and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or grant by such Guarantor of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any 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 Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13), or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Sections 3.01(b) or (d), 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 3.01(f); and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing JPMorgan Letter of Credit” means each Existing Letter of Credit issued by JPMorgan.

“Existing Letter of Credit” means each letter of credit set forth on Schedule 1.01(c).

“Facility” means a Term Facility or the Revolving Facility, as the context may require.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated; (b) all Obligations have been paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted); and (c) all Letters of Credit have terminated or expired (other than Letters of Credit as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the applicable L/C Issuers shall have been made).

“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 Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any



current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, that, if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Fee Letter” means the fee letter agreement, dated January 11, 2021, among the Borrower, Bank of America and BofA Securities.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“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.

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a Revolving Lender, (a) with respect to each L/C Issuer, such Defaulting Lender’s Applicable Revolving Percentage of the outstanding L/C Obligations other than L/C Obligations, as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Applicable Revolving Percentage of Swingline Loans, other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof.

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

“Funded 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, whether current or long-term, for borrowed money (including the Obligations) and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all purchase money Indebtedness of such Person; (c) the principal portion of all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person or any Subsidiary thereof (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business); (d) all obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (e) all obligations of such Person in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and not past due for more than ninety (90) days after the date on which such trade account payable was created), including any Earn Out Obligations; (f) all Attributable Indebtedness of such Person; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the

greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (h) all Funded Indebtedness of other Persons secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; (i) all Guarantees provided by such Person with respect to Funded Indebtedness of another Person; and (j) all Funded 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 joint venturer, except to the extent that such Funded Indebtedness is expressly made non-recourse to such Person. For purposes hereof, the amount of any direct obligation arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments shall be the maximum amount available to be drawn thereunder.

“Funding Indemnity Letter” means a funding indemnity letter, in form and substance satisfactory to the Administrative Agent.

“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 the FASB ASC, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including 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 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 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; provided, that, with respect to any Guarantee of the type described in clause (b) above, to the extent the Indebtedness or other obligation secured thereby has not been assumed by the guarantor or is nonrecourse to the guarantor, the amount of such Guarantee shall be deemed to be an amount equal to the lesser of (i) the fair market value of the assets subject to such Lien, and (ii) the Indebtedness or other obligation secured thereby. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” has the meaning specified in Section 10.01.

“Guarantor” means each of (a) each Person identified under the heading “Guarantors” on the signature pages hereto, (b) each Domestic Subsidiary of the Borrower that is or may from time to time become a Guarantor pursuant to Section 6.12, and (c) with respect to (i) Additional Secured Obligations owing by any Loan Party or any Subsidiary, and (ii) any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 10.01 and 10.11) under the Guaranty, the Borrower.

“Guaranty” means, collectively, the Guarantee made by the Guarantors under Article X 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.

“Hedge Bank” means any Person, in its capacity as a party to a Swap Contract, that, (a) at the time it enters into a Swap Contract not prohibited by this Agreement with a Loan Party or a Subsidiary, is a Lender, or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Swap Contract not prohibited by this Agreement with a Loan Party or a Subsidiary, in each case, even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender; provided, that, in the case of a Secured Hedge Agreement with a Person who is no longer a Lender (or an Affiliate of a Lender), such Person shall be considered a Hedge Bank only through the stated termination date (without extension or renewal) of such Secured Hedge Agreement; provided, further, that, for any of the foregoing to be included as a “Secured Hedge Agreement” on any date of determination by the Administrative Agent, the applicable Hedge Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

“HMT” has the meaning specified in the definition of “Sanction(s)”.

“Immaterial Subsidiary” means AeroVironment, Inc., an entity organized under the laws of Afghanistan; provided, that, such entity shall cease to be an Immaterial Subsidiary if, as of any date of determination, for the Measurement Period most recently ended on or prior to such date for which financial statements have been (or were required to be) delivered pursuant Section 6.01(a) or Section 6.01(b), such entity has revenues in excess of one percent (1%) of the Consolidated revenues of the Borrower and its Subsidiaries for such Measurement Period (it being understood and agreed that from and after the initial date on which such entity no longer constitutes an Immaterial Subsidiary (such initial date, the “Redesignation Date”), such entity shall not constitute an Immaterial Subsidiary for purposes of this Agreement (even if the revenues of such entity for any Measurement Period ending subsequent to the Resignation Date do not exceed one percent (1%) of the Consolidated revenues of the Borrower and its Subsidiaries for such Measurement Period)).

“Incremental Amount” means, as of any date of determination, an amount equal to the sum of (a) the total of (i) \$100,000,000, minus (ii) the aggregate original principal amount of all Incremental Facilities incurred in reliance on clause (a)(i) prior to such date, plus (b) an unlimited amount, so long as, after giving effect to the incurrence of any Incremental Facility on a Pro Forma Basis (and assuming for such purpose that such Incremental Facility is fully drawn), the Consolidated Leverage Ratio shall not exceed 2.00 to 1.0 (this clause (b), the “Leverage-Based Prong”) (it being understood and agreed that for purposes of determining the Incremental Amount on any date in connection with the incurrence of any Incremental

Facility, to the extent one or more Incremental Facilities is being incurred on such date in reliance on both clause (a) above and the Leverage-Based Prong, any portion of such Incremental Facilities incurred on such date in reliance on clause (a) above shall be disregarded for purpose of determining the amount of such Incremental Facilities that may be incurred on such date in reliance on the Leverage-Based Prong).

“Incremental Facility” has the meaning specified in Section 2.02(g).

“Incremental Term Borrowing” means, with respect to any Incremental Term Facility, a borrowing under such Incremental Term Facility consisting of simultaneous Incremental Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by Incremental Term Lenders under such Incremental Term Facility pursuant to Section 2.01(c).

“Incremental Term Commitment” means, with respect to any Incremental Term Facility, as to each Incremental Term Lender under such Incremental Term Facility, its obligation to make an Incremental Term Loan under such Incremental Term Facility.

“Incremental Term Facility” has the meaning specified in Section 2.02(g).

“Incremental Term Facility Agreement” has the meaning specified in Section 2.02(g)(ii)(D).

“Incremental Term Facility Maturity Date” means, with respect to any Incremental Term Facility, the maturity date of such Incremental Term Facility set forth in the Incremental Term Facility Agreement executed and delivered pursuant to Section 2.02(g)(ii) in connection with such Incremental Term Facility.

“Incremental Term Lender” means, with respect to any Incremental Term Facility, (a) at any time on or prior to the funding of the Incremental Term Loans under such Incremental Term Facility, any Person that has an Incremental Term Commitment under such Incremental Term Facility at such time, and (b) at any time thereafter, any Person that holds an Incremental Term Loan under such Incremental Term Facility at such time.

“Incremental Term Loan” means, with respect to any Incremental Term Facility, an advance made by an Incremental Term Lender under such Incremental Term Facility.

“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 Funded Indebtedness of such Person; (b) the Swap Termination Value of any Swap Contract entered into by Person; (c) all Guarantees provided by such Person with respect to Indebtedness of any other Person; and (d) all 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 or a Subsidiary thereof is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person or such Subsidiary.

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

“Indemnitee” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Intellectual Property” means all intellectual property rights, whether registered or unregistered, including all registered trademarks and service marks, trademark applications, trade names, copyright registrations, copyright applications, patents, patent applications, and intellectual property licenses.

“Intercompany Debt” has the meaning specified in Section 7.02(g).

“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, that, if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan or any Swingline Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swingline Loans being deemed made under the Revolving Facility for purposes of this definition).

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months thereafter (in each case, subject to availability), as selected by the Borrower in its Loan Notice; provided, that: (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and (c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“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) an Acquisition. 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, in each case, net of any return in respect thereof, including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts.

“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.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“ISP” means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application and any other document, agreement and instrument entered into by an L/C Issuer and the Borrower (or any Subsidiary) or in favor of such L/C Issuer and relating to such Letter of Credit.

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

“JPMorgan” means JPMorgan Chase Bank, N.A.

“Junior Debt” means any Indebtedness that is (a) subordinated in right of payment to the Secured Obligations, (b) secured by a Lien on the Collateral junior to the Liens created under the Collateral Documents, or (c) unsecured.

“Junior Debt Payment” means any voluntary or optional payment or prepayment of principal of, or any redemption, purchase, retirement, extinguishment, defeasance, discharge or other satisfaction prior to the scheduled maturity of (including any optional redemption, refinancing, conversion, required repurchase, exchange, open market purchase, or privately negotiated purchase), any Junior Debt.

“Latest Maturity Date” means, as of any date of determination, the latest Maturity Date in effect as of such date.

“Law” means any international, foreign, federal, state and local statute, treaty, rule, guideline, regulation, ordinance, code or administrative or judicial precedent or authority, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and any applicable administrative order, directed duty, request, license, authorization or permit of, or agreement with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Commitment” means, with respect to each L/C Issuer, the commitment of such L/C Issuer to issue Letters of Credit hereunder. The initial amount of each L/C Issuer’s L/C Commitment is set forth on Schedule 1.01(b) or, with respect to any L/C Issuer that becomes an L/C Issuer after the Closing Date, as set forth for such L/C Issuer as its L/C Commitment in the Register. The L/C Commitment of any L/C Issuer may be modified from time to time by agreement between such L/C Issuer and the Borrower and notified to the Administrative Agent.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Disbursement” means any payment made by any L/C Issuer pursuant to a Letter of Credit.

“L/C Issuer” means (a) Bank of America, in its capacity as issuer of Letters of Credit hereunder, (b) any other Lender selected by the Borrower pursuant to Section 2.03(s) from time to time to issue Letters of Credit hereunder (provided, that, no Lender shall be required to become an L/C Issuer pursuant to this clause (b) without such Lender’s consent), and (c) solely with respect to the Existing JPMorgan Letters of Credit, JPMorgan.

“L/C Obligations” means, as at any date of determination, (a) the aggregate amount available to be drawn under all outstanding Letters of Credit as of such date, plus (b) the aggregate of all Unreimbursed Amounts as of such date. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but

any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“LCA Test Date” has the meaning specified in Section 1.03(e).

“Lender” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement, and their successors and assigns and, unless the context requires otherwise, includes the Swingline Lender.

“Lending Office” means, as to the Administrative Agent, any L/C Issuer or any Lender, the office or offices of such Person described as such in such Person’s Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Borrower and the Administrative Agent; which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

“Letter of Credit” means any letter of credit issued hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven (7) days prior to the Revolving Facility Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(l).

“Letter of Credit Sublimit” means, as of any date of determination, an amount equal to the lesser of (a) \$10,000,000, and (b) the amount of the Revolving Facility as of such date. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

“Leverage-Based Prong” has the meaning specified in the definition of “Incremental Amount”.

“Leverage Increase Period” has the meaning specified in Section 7.11(a).

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

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

“LIBOR Replacement Date” has the meaning specified in Section 3.03(c).

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“LIBOR Successor Rate” has the meaning specified in Section 3.03(c).

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, the definition of Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and

implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Lien” means any mortgage, 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).

“Limited Condition Acquisition” means a Permitted Acquisition whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

“Limited Condition Acquisition Agreement” means, with respect to any Limited Condition Acquisition, the definitive documentation for such Limited Condition Acquisition.

“Limited Conditionality Provision” has the meaning specified in Section 4.01.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, a Revolving Loan or a Swingline Loan.

“Loan Document” means each of this Agreement, each Note, the Guaranty, each Collateral Document, the Fee Letter, each Issuer Document, each other agreement, instrument or document designated by its terms as a “Loan Document,” and each agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14 (but specifically excluding any Secured Hedge Agreement or any Secured Cash Management Agreement).

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other pursuant to Section 2.02(a), or (c) a continuation of Eurodollar Rate Loans pursuant to Section 2.02(a), 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 of the Borrower.

“Loan Party” means each of the Borrower and each Guarantor.

“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 specified in the definition of “Swap Contract.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole, or (b) a material adverse effect on (i) the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents, (ii) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to



which it is a party, or (iii) the rights, remedies and benefits available to, or conferred upon, the Administrative Agent or any Lender under any Loan Documents.

“Maturity Date” the Term A Facility Maturity Date, the Revolving Facility Maturity Date, or the applicable Incremental Term Facility Maturity Date, as the context may require.

“Maximum Rate” has the meaning specified in Section 11.09.

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

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during any period when a Lender constitutes a Defaulting Lender, an amount equal to one hundred three percent (103%) of the Fronting Exposure of each applicable L/C Issuer with respect to Letters of Credit issued and outstanding at such time, and (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with any provision of this Agreement (other than for the purposes described in clause (a) above), an amount equal to one hundred three percent (103%) of the Outstanding Amount of all L/C Obligations, plus any accrued and unpaid interest thereon.

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

“Multiemployer 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 by any Loan Party or any Subsidiary in connection with any Disposition, Debt Issuance or Involuntary Disposition, net of (a) direct costs incurred in connection therewith (including legal, accounting and investment banking fees and sales commissions), (b) taxes paid or payable as a result thereof, and (c) in the case of any Disposition or any Involuntary Disposition, the amount necessary to retire any Indebtedness secured by a Permitted Lien (ranking senior to any Lien created pursuant to the Collateral Documents) on the related property; it being understood that “Net Cash Proceeds” shall include 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 connection with any Disposition, Debt Issuance or Involuntary Disposition.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01, and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b)(ii).

“Non-Reimbursement Notice” has the meaning specified in Section 2.03.

“Non-Wholly Owned Subsidiary” means any Subsidiary that is not a Wholly Owned Subsidiary of the Borrower.

“Not Otherwise Applied” means, with reference to any proceeds of any transaction or event or of the Available Amount that is proposed to be applied to a particular use or transaction, that such amount has not previously been (and is not simultaneously being) applied to anything other than such particular use or transaction.

“Note” has the meaning specified in Section 2.11(a).

“Notice of Additional L/C Issuer” means a notice delivered pursuant to Section 2.03(s), in form and substance reasonably satisfactory to the Administrative Agent.

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

“NPL” means the National Priorities List under CERCLA.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, 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, now existing or hereafter arising and including interest, expenses and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof pursuant to any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding; provided, that, Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

“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 charter or 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); (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); and (e) with respect to all entities, any agreement among the holders of the Equity Interests of such entity concerning the organization, operation, governance or management of such entity or the rights and obligations of such holders.

“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 Recipient having executed, delivered, become a party to, performed its

obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any 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 (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Loans and Swingline Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PATRIOT Act” has the meaning specified in Section 11.19.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in Sections 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 or with respect to which the Borrower or any ERISA Affiliate has any liability and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means an Acquisition by any Loan Party; provided, that, (a) no Default shall have occurred and be continuing or would result from such Acquisition; (b) the property acquired (or the property of the Person acquired) shall constitute Eligible Assets (without giving effect to the exclusion of current assets in the definition thereof); (c) the Person acquired in connection with such Acquisition will become a Loan Party and/or the assets acquired shall be subject to Liens in favor of the Administrative Agent, in each case in accordance with, and to the extent required by, Section 6.12 and Section 6.13; (d) such Acquisition shall not be a “hostile” acquisition and shall have been approved by the board of directors and/or the shareholders (or equivalent) of the applicable Loan Party and the Person acquired in connection with such Acquisition; (e) the Borrower shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving Pro Forma Effect to such Acquisition, (i) the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or Section 6.01(b), and (ii) the Consolidated Leverage Ratio is at least 0.25 less than the ratio required to be maintained at such time by Section 7.11(a); and (f) prior to the consummation of any such Acquisition for which the Acquisition Consideration exceeds \$25,000,000, the Administrative Agent shall have received, if available, (i) to the extent such Acquisition is the Acquisition of a Person,

quarterly and audited financial statements of such Person for its most recently ended fiscal year and any fiscal quarters ended within the fiscal year to date, and (ii) consolidated projected income statements of the Borrower and its Subsidiaries (on a Pro Forma Basis after giving effect to such Acquisition), in form and substance reasonably satisfactory to the Administrative Agent.

“Permitted Liens” has the meaning specified in Section 7.01.

“Permitted Real Property Encumbrances” means (a) as to any particular real property at any time, such easements, encroachments, covenants, restrictions, rights of way, minor defects, irregularities or encumbrances on title which do not, in the reasonable opinion of the Administrative Agent, materially impair such real property for the purpose for which it is held by the applicable Loan Party, applicable Subsidiary, or owner, as the case may be, (b) municipal and zoning laws, regulations, codes and ordinances which are not violated in any material respect by the existing improvements and the present use made by the applicable Loan Party, the applicable Subsidiary, or owner, as the case may be, of such real property, (c) general real estate taxes and assessments not yet delinquent, and (d) leases and subleases of real property entered into in the ordinary course of business so long as such leases and subleases do not interfere in any material respect with the business of the Borrower and its Subsidiaries or materially impair the use (for its intended purpose) or value of the real property subject thereto.

“Permitted Refinancing” means, with respect to any Indebtedness of any Person, any modification, refinancing, refunding, renewal or extension of such Indebtedness; provided, that, (a) the principal amount (or accreted value, if applicable) thereof does not exceed the outstanding principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended on the date of such modification, refinancing, refund, renewal or extension, except by an amount equal to (i) unpaid accrued interest and premiums thereon (including tender premiums), plus reasonable fees and expenses (including upfront fees and original issue discount) incurred in connection with such modification, refinancing, refunding, renewal or extension, plus (ii) any existing commitments unutilized thereunder, (b) such modification, refinancing, refunding, renewal or extension has (i) a final maturity date equal to or later than the final maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended, and (ii) a Weighted Average Life to Maturity equal to or longer than the then-remaining Weighted Average Life to Maturity of the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) immediately before and after giving effect thereto, (i) no Default shall have occurred and be continuing, and (ii) the Loan Parties shall be in compliance on a Pro Forma Basis with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or (b) (and, if requested by the Administrative Agent or any Lender, the Borrower shall deliver to the Administrative Agent a Pro Forma Compliance Certificate demonstrating compliance with such condition), (d) the direct and contingent obligors of such Indebtedness shall not be changed, as a result of or in connection with such modification, refinancing, refunding, renewal or extension, (e) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Secured Obligations, such modification, refinancing, refunding, renewal or extension shall be subordinated to the Secured Obligations on terms at least as favorable, taken as a whole, to the Secured Parties as those contained in the documentation governing the Indebtedness being so modified, refinanced, refunded, renewed or extended, (f) if the Indebtedness being modified, refinanced, refunded, renewed or extended is unsecured, such modification, refinancing, refunding, renewal or extension shall be unsecured, and (g) the terms (excluding pricing, fees, rate floors, discounts, premiums and optional prepayments or redemption terms) of such Indebtedness shall not be changed in any manner that is materially adverse, taken as a whole, to the Borrower or any Subsidiary, as applicable, as a result of or in connection with such modification, refinancing, refunding, renewal or extension, except for terms applicable only to periods after the then-Latest Maturity Date.

“Permitted Transfer” means: (a) Dispositions of used, obsolete, damaged, worn-out or surplus equipment, or property no longer useful in the conduct of the business of the Borrower and its Subsidiaries or otherwise economically impracticable to maintain whether now owned or hereafter acquired, in the ordinary course of business; (b) Disposition of inventory and other goods held for sale, in each case in the ordinary course of business; (c) Dispositions of property 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) Dispositions of property (including Equity Interests) to the Borrower or to a Subsidiary; provided, that, if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party, or (ii) if such Disposition constitutes an Investment, it is permitted pursuant to Section 7.03 (without reference to this definition or to Section 7.05 (or, in each case, to any clause hereof or thereof)); (e) to the extent constituting Dispositions, fundamental changes permitted pursuant to Section 7.04 and Restricted Payments permitted pursuant to Section 7.06 (in each case, without reference to this definition or to Section 7.05 (or, in each case, to any clause hereof or thereof)); (f) non-exclusive licenses of Intellectual Property in the ordinary course of business; (g) the lapse or abandonment of any registration, or application for registration, of Intellectual Property, in each case in the ordinary course of business and which do not interfere in any material respect with the business of the Borrower and its Subsidiaries taken as a whole; (h) Dispositions of accounts receivable in connection with the collection or compromise thereof; (i) licenses, sublicenses, leases, and subleases of property (other than Intellectual Property), and the termination or non-renewal thereof, in each case in the ordinary course of business and which do not interfere in any material respect with the business of the Borrower and its Subsidiaries taken as a whole; (j) Dispositions of cash and Cash Equivalents in the ordinary course of business; (k) Involuntary Dispositions; (l) consignments of equipment or inventory in the ordinary course of business; (m) Dispositions in connection with the termination or unwinding of Swap Contracts; and (n) any Disposition of Equity Interests or Indebtedness of the Turkish Subsidiary by the Borrower to any other owner of the Equity Interests of the Turkish Subsidiary.

“Permitted Unsecured Debt” means unsecured Indebtedness of the Borrower or any Subsidiary; provided, that, (a) no Default shall have occurred and be continuing at the time of incurrence of such Indebtedness or would result therefrom, (b) such Indebtedness has a maturity date that is at least ninety-one (91) days after the Latest Maturity Date (and the terms of such Indebtedness shall not provide for any scheduled repayment, mandatory redemption or sinking fund obligations prior to the date that is ninety-one (91) days after the Latest Maturity Date (other than customary offers to repurchase upon a change of control, asset sale or casualty event and customary acceleration rights after an event of default)), (c) if such Indebtedness is subordinated in right of payment to the Secured Obligations, such Indebtedness shall be subordinated to the Secured Obligations on terms and conditions reasonably acceptable to the Administrative Agent, (d) none of the obligors or guarantors with respect to such Indebtedness shall be a Person that is not a Loan Party, (e) the terms and conditions of such Indebtedness (including financial covenants, affirmative covenants, negative covenants, representations and warranties and defaults) are customary for similar Indebtedness in light of then-prevailing market conditions and in any event, when taken as a whole (other than interest rate and redemption premiums), are no more restrictive to the Borrower and its Subsidiaries than the terms and conditions set forth in the Loan Documents, and (f) upon giving Pro Forma Effect to the incurrence of such Indebtedness (after giving effect to any Specified Transaction consummated in connection with the incurrence of such Indebtedness and assuming for such purposes that such Indebtedness is fully drawn), (i) the Loan Parties will be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or (b), and (ii) the Consolidated Leverage Ratio will be at least 0.25 less than the ratio required to be maintained at such time by Section 7.11(a) (and, if requested by the Administrative Agent or any Lender, the Borrower shall deliver to the Administrative Agent a Pro Forma Compliance Certificate demonstrating compliance with the conditions set forth in this clause (f)).

“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.

“Platform” has the meaning specified in Section 6.02.

“Pre-Adjustment Successor Rate” has the meaning specified in Section 3.03(c).

“Prism Acquisition” means the Acquisition identified by the Borrower to the Administrative Agent prior to the Closing Date as the “Prism Acquisition.”

“Pro Forma Basis”, “Pro Forma Compliance” and “Pro Forma Effect” means, in respect of a Specified Transaction, that such Specified Transaction and the following transactions in connection therewith (to the extent applicable) shall be deemed to have occurred on and as of the first day of the relevant Measurement Period: (a)(i) with respect to any Disposition, Involuntary Disposition or sale, transfer or other disposition that results in a Person ceasing to be a Subsidiary, income statement and cash flow statement items (whether positive or negative) attributable to the Person or property disposed of shall be excluded, and (ii) with respect to any Acquisition or other Investment that results in a Person becoming a Subsidiary, income statement and cash flow statement items (whether positive or negative) attributable to the Person or property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement items for the Borrower and its Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Section 1.01, and (B) such items are supported by financial statements or other information reasonably satisfactory to the Administrative Agent; (b) any retirement of Indebtedness (it being understood and agreed that in connection with any retirement of Indebtedness, interest accrued during the relevant Measurement Period shall be excluded from the applicable calculations); and (c) any incurrence or assumption of Indebtedness by the Borrower or any of its Subsidiaries (and if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination); provided, that, (x) Pro Forma Basis, Pro Forma Compliance and Pro Forma Effect in respect of any Specified Transaction shall be calculated in a reasonable and factually supportable manner, and (y) any such calculation shall be subject to the applicable limitations set forth in the definition of Consolidated EBITDA.

“Pro Forma Compliance Certificate” means a certificate of a Responsible Officer of the Borrower containing reasonably detailed calculations of the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or Section 6.01(b), as applicable, after giving Pro Forma Effect to the applicable Specified Transaction.

“Pro Forma Financial Statements” has the meaning specified in Section 4.01(d)(v).

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning specified in Section 6.02.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

“QFC Credit Support” has the meaning specified in Section 11.21.

“Qualified Acquisition” means a Permitted Acquisition (or series of related Permitted Acquisitions consummated in any six-month period) for which the aggregate Acquisition Consideration therefor is at least \$75,000,000, but only to the extent that at least \$75,000,000 of such Acquisition Consideration is funded with the proceeds of Consolidated Funded Indebtedness (including any Consolidated Funded Indebtedness assumed by the Borrower or any of its Subsidiaries in connection with such Permitted Acquisition(s)); provided, that, for any Permitted Acquisition (or series of related Permitted Acquisitions) to qualify as a “Qualified Acquisition,” the Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying that such Permitted Acquisition (or series of related Permitted Acquisitions) meets the criteria set forth in this definition and notifying the Administrative Agent that the Borrower has elected to treat such Permitted Acquisition (or series of related Permitted Acquisitions) as a “Qualified Acquisition”.

“Qualified Capital Stock” of any Person means any Equity Interests of such Person that are not Disqualified Capital Stock.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

“Recipient” means the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Redesignation Date” has the meaning specified in the definition of “Immaterial Subsidiary.”

“Register” has the meaning specified in Section 11.06(c).

“Regulation U” means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Adjustment” means, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such LIBOR Successor Rate:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governing Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (i) is published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion, or (ii) solely with respect to Term SOFR, if not currently

published, which was previously so recommended for Term SOFR and published on an information service acceptable to the Administrative Agent; or

(b) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers, and representatives of such Person and of such Person’s Affiliates.

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

“Relevant Governing Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

“Removal Effective Date” has the meaning specified in Section 9.06.

“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.

“Request for Credit Extension” means (a) with respect to a Term Borrowing, a Revolving Borrowing, a conversion or continuation of Term Loans, or a conversion or continuation of Revolving Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swingline Borrowing, a Swingline Loan Notice.

“Required Lenders” means, at any time, Lenders having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders at such time; provided, that, if at any time there exists two (2) or more Lenders that are not Affiliates, “Required Lenders” shall mean at least two (2) Lenders having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders at such time. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided, that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or the applicable L/C Issuer, as the case may be, in making such determination.

“Required Revolving Lenders” means, at any time, Revolving Lenders having Total Revolving Credit Exposures representing more than fifty percent (50%) of the Total Revolving Credit Exposures of all Revolving Lenders at such time; provided, that, if at any time there exists two (2) or more Revolving Lenders that are not Affiliates, “Required Revolving Lenders” shall mean at least two (2) Revolving Lenders having Total Revolving Credit Exposures representing more than fifty percent (50%) of the Total Revolving Credit Exposures of all Revolving Lenders at such time. The Total Revolving Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Revolving Lenders at any time; provided, that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Revolving Lender that is the Swingline Lender or the applicable L/C Issuer, as the case may be, in making such determination.



“Resignation Effective Date” has the meaning specified in Section 9.06.

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

“Responsible Officer” means, with respect to any Loan Party, (a) the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of such Loan Party, (b) solely for purposes of the delivery of incumbency certificates pursuant to this Agreement, the secretary or any assistant secretary of such Loan Party, and (c) solely for purposes of notices given pursuant to Article II, (i) any other officer or employee of such Loan Party so designated by any of the officers of such Loan Party identified in clause (a) above or clause (b) above in a notice to the Administrative Agent, or (ii) any other officer or employee of such Loan Party designated in or pursuant to an agreement between such Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, 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 Subsidiary, 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 Subsidiary, 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 the Borrower or any Subsidiary, now or hereafter outstanding.

“Revolving Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01(b).

“Revolving Commitment” means, as to each Revolving Lender, such Revolving Lender’s obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swingline Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Lender’s name on Schedule 1.01(b) under the caption “Revolving Commitment” or opposite such caption in the Assignment and Assumption or other documentation pursuant to which such Revolving Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Revolving Commitments of all of the Revolving Lenders on the Closing Date shall be \$100,000,000.

“Revolving Exposure” means, as to any Revolving Lender at any time, the aggregate principal amount of such Revolving Lender’s (a) outstanding Revolving Loans at such time, plus (b) participation in L/C Obligations at such time, plus (c) participation in Swingline Loans at such time.

“Revolving Facility” means, at any time, the aggregate amount of the Revolving Lenders’ Revolving Commitments at such time.

“Revolving Facility Maturity Date” means February 19, 2026; provided, that, if such date is not a Business Day, the Revolving Facility Maturity Date shall be the immediately preceding Business Day.

“Revolving Lender” means, at any time, (a) so long as any Revolving Commitment is in effect at such time, any Person that has a Revolving Commitment at such time, or (b) if the Revolving Commitments have terminated or expired at such time, any Person that has a Revolving Loan or a participation in L/C Obligations or Swingline Loans at such time.

“Revolving Loan” has the meaning specified in Section 2.01(b).

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global 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 OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“Scheduled Unavailability Date” has the meaning specified in Section 3.03.

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

“Secured Cash Management Agreement” means any Cash Management Agreement between any Loan Party or any Subsidiary and any Cash Management Bank.

“Secured Hedge Agreement” means any interest rate, currency, foreign exchange, or commodity Swap Contract not prohibited by this Agreement between any Loan Party or any Subsidiary and any Hedge Bank.

“Secured Obligations” means all Obligations and all Additional Secured Obligations.

“Secured Party” means each of the Administrative Agent, each Lender, each L/C Issuer, each Hedge Bank, each Cash Management Bank, each Indemnatee, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Secured Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit F.

“Securities Act” means the Securities Act of 1933.

“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.

“Security Agreement” means the security and pledge agreement, dated as of the Closing Date, executed in favor of the Administrative Agent by each of the Loan Parties.

“Sellers” has the meaning specified in the Preliminary Statements.

“SOFR” with respect to any Business Day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governing Body.

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

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property 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 is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. 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.

“Specified Closing Date Acquisition Agreement Representations” means the representations and warranties made by the Closing Date Acquisition Target in the Closing Date Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that the Borrower (or any of its Affiliates) has the right to terminate the Borrower’s (or such Affiliate’s) obligations under the Closing Date Acquisition Agreement, or has the right not to consummate the Closing Date Acquisition, in each case as a result of a breach of such representations and warranties in the Closing Date Acquisition Agreement.

“Specified Event of Default” means any Event of Default pursuant to Section 8.01(a), Section 8.01(f), or Section 8.01(g).

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

“Specified Representations” means the representations and warranties of the Loan Parties set forth in Sections 5.01(a) (solely as to the valid existence of the Loan Parties), 5.01(b)(ii), 5.02(a), 5.02(b)(i), 5.02(b)(iii), 5.04, 5.13, 5.16 (as of the Closing Date after giving effect to the Transactions), 5.17 (solely as it relates to the use of proceeds of Credit Extensions made on the Closing Date), and Section 5.19(a) (but subject to the Limited Conditionality Provision).

“Specified Transaction” means (a) any Acquisition, any Disposition, any sale, transfer or other disposition that results in a Person ceasing to be a Subsidiary, any Involuntary Disposition, or any Investment that results in a Person becoming a Subsidiary, (b) any incurrence or repayment of Indebtedness, or (c) any other event that by the terms of the Loan Documents requires Pro Forma Compliance with a test or covenant, calculation as to Pro Forma Effect with respect to a test or covenant, or requires such test or covenant to be calculated on a Pro Forma Basis.

“Subordinating Loan Party” has the meaning specified in Section 11.16.

“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.

“Supported QFC” has the meaning specified in Section 11.21.

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

“Swap Obligations” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

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

“Swingline Borrowing” means a borrowing of a Swingline Loan pursuant to Section 2.04.

“Swingline Commitment” means the commitment of the Swingline Lender to make Swingline Loans hereunder. The initial amount of the Swingline Commitment is set forth on Schedule 1.01(b). The Swingline Commitment may be modified from time to time by agreement between the Swingline Lender and the Borrower and notified to the Administrative Agent.

“Swingline Lender” means Bank of America, in its capacity as provider of Swingline Loans, or any successor swingline lender hereunder.

“Swingline Loan” has the meaning specified in Section 2.04(a).

“Swingline Loan Notice” means a notice of a Swingline Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit H or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Swingline Sublimit” means, as of any date of determination, an amount equal to the lesser of (a) \$10,000,000, and (b) the amount of the Revolving Facility as of such date. The Swingline Sublimit is part of, and not in addition to, the Revolving Facility.

“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.

“Telerob Acquisition” means the Acquisition by the Borrower of Telerob Gesellschaft für Fernhantierungstechnik mbH; provided, that, such Acquisition is consummated on substantially the terms disclosed to the Administrative Agent prior to the Closing Date.

“Telerob Immaterial Subsidiary” means any Domestic Subsidiary acquired in connection with the Telerob Acquisition that is not, as of any date of determination, a Telerob Material Subsidiary.

“Telerob Material Subsidiary” means any Domestic Subsidiary acquired in connection with the Telerob Acquisition that has (when taken together with its Subsidiaries), as of any date of determination, for the Measurement Period most recently ended on or prior to such date for which financial statements have been (or were required to be) delivered pursuant Section 6.01(a) or Section 6.01(b), revenues in excess of five percent (5%) of the Consolidated revenues of the Borrower and its Subsidiaries for such Measurement Period.

“Term A Borrowing” means a borrowing consisting of simultaneous Term A Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term A Lenders pursuant to Section 2.01(a).

“Term A Commitment” means, as to each Term A Lender, its obligation to make a Term A Loan to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term A Lender’s name on Schedule 1.01(b) under the caption “Term A Commitment”. The Term A Commitments of all of the Term A Lenders on the Closing Date shall be \$200,000,000.

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

“Term A Facility Maturity Date” means February 19, 2026; provided, that, if such date is not a Business Day, the Term A Facility Maturity Date shall be the immediately preceding Business Day.

“Term A Lender” means (a) at any time on or prior to the funding of the Term A Loans on the Closing Date, any Person that has a Term A Commitment at such time, and (b) at any time thereafter, any Person that holds a Term A Loan at such time.

“Term A Loan” means an advance made by a Term A Lender under the Term A Facility.

“Term Borrowing” means a Term A Borrowing or an Incremental Term Borrowing, as the context may require.

“Term Commitment” means a Term A Commitment or an Incremental Term Commitment, as the context may require.

“Term Facility” means the Term A Facility or an Incremental Term Facility, as the context may require.

“Term Loan” means a Term A Loan or an Incremental Term Loan, as the context may require.

“Term SOFR” means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governing Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“Threshold Amount” means \$35,000,000.

“Total Credit Exposure” means, as to any Lender at any time, (a) the unused Commitments of such Lender at such time, plus (b) the Revolving Exposure of such Lender at such time, plus (c) the Outstanding Amount of all Term Loans of such Lender at such time.

“Total Revolving Credit Exposure” means, as to any Revolving Lender at any time, (a) the unused Revolving Commitment of such Revolving Lender at such time, plus (b) the Revolving Exposure of such Revolving Lender at such time.

“Total Revolving Outstandings” means, at any time, (a) the aggregate Outstanding Amount of all Revolving Loans at such time, plus (b) the aggregate Outstanding Amount of all Swingline Loans at such time, plus (c) the aggregate Outstanding Amount of all L/C Obligations at such time.

“Transactions” means, collectively, (a) the consummation of the Closing Date Acquisition pursuant to the Closing Date Acquisition Agreement, (b) the entering into of the Loan Documents, the incurrence of the Term A Loans, and the deemed issuance of the Existing Letters of Credit hereunder, in each case on the Closing Date, (c) the consummation of the Closing Date Equity Contribution, and (d) the application of the proceeds of the Term A Loans to be borrowed on the Closing Date to (i) pay a portion of the purchase price in connection with the Closing Date Acquisition, (ii) pay the fees, costs and expenses incurred in connection with the Transactions, and (iii) consummate the Closing Date Refinancing (the amounts set forth in clauses (d)(i) through (d)(iii) above, collectively, the “Closing Date Acquisition Costs”).

“Turkish Subsidiary” means Altoy Savunma Sanayi ve Havacilik Anonim Sirketi, an entity organized under the laws of Turkey.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“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.

“UCP” means the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

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

“Unreimbursed Amount” has the meaning specified in Section 2.03(f).

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regimes” has the meaning specified in Section 11.21.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(f)(ii)(B)(3).

“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 though 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 of determination, 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 of determination and the making of such payment by (b) the then outstanding principal amount of such Indebtedness as of such date of determination.

“Wholly Owned Subsidiary” means, as to any Person, (a) any corporation one hundred percent (100%) of whose Equity Interests (other than directors’ qualifying shares or Equity Interests that are required to be held by another person in order to satisfy a foreign requirement of Law prescribing an equity owner resident in the local jurisdiction) is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person, and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person have a one hundred percent (100%) equity interest at such time.

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability

arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

#### 1.02 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, rule and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule 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.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, or disposition, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, or disposition, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person).



1.03 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, (i) Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded, (ii) all liability amounts shall be determined excluding any liability relating to any operating lease, all asset amounts shall be determined excluding any right-of-use assets relating to any operating lease, all amortization amounts shall be determined excluding any amortization of a right-of-use asset relating to any operating lease, and all interest amounts shall be determined excluding any deemed interest comprising a portion of fixed rent payable under any operating lease, in each case to the extent that such liability, asset, amortization or interest pertains to an operating lease under which the covenantor or a member of its consolidated group is the lessee and would not have been accounted for as such under GAAP as in effect on December 31, 2015, and (iii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 “Financial Instruments” (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Borrower or any Subsidiary at “fair value”, as defined therein. For purposes of determining the amount of any outstanding Indebtedness, no effect shall be given to any election by the Borrower to measure an item of Indebtedness using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification 825–10–25 (formerly known as FASB 159) or any similar accounting standard).

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein, and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Consolidation of Variable Interest Entities. All references herein to Consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a Consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary.

(d) Pro Forma Calculations. Notwithstanding anything to the contrary contained herein, all calculations of the Consolidated Leverage Ratio (including for purposes of determining the Applicable Rate or compliance with any financial covenant set forth in Section 7.11) and the Consolidated Fixed Charge Coverage Ratio, in each case, shall be made on a Pro Forma Basis with

respect to all Specified Transactions occurring during the applicable Measurement Period to which such calculation relates, and/or subsequent to the end of such Measurement Period but not later than the date of such calculation; provided, that, notwithstanding the foregoing, when calculating the Consolidated Leverage Ratio or the Consolidated Fixed Charge Coverage Ratio, in each case, for purposes of determining (i) compliance with Section 7.11, and/or (ii) the Applicable Rate, any Specified Transaction and any related adjustment contemplated in the definition of Pro Forma Basis that occurred subsequent to the end of the applicable Measurement Period shall not be given Pro Forma Effect. For purposes of determining compliance with any provision of this Agreement which requires Pro Forma Compliance with any financial covenant set forth in Section 7.11, (A) in the case of any such compliance required after delivery of financial statements for the fiscal quarter ending April 30, 2021, such Pro Forma Compliance shall be determined by reference to the maximum Consolidated Leverage Ratio and/or the minimum Consolidated Fixed Charge Coverage Ratio, as applicable, permitted for the fiscal quarter of the Borrower most recently then ended for which financial statements have been delivered (or were required to have been delivered) in accordance with Section 6.01(a) or (b), as applicable, and (B) in the case of any such compliance required prior to the delivery referred to in clause (A) above, such Pro Forma Compliance shall be determined by reference to (1) the Pro Forma Financial Statements, and (2) the maximum Consolidated Leverage Ratio and/or the minimum Consolidated Fixed Charge Coverage Ratio, as applicable, permitted for the fiscal quarter ending April 30, 2021.

(e) Limited Condition Acquisitions. Notwithstanding anything to the contrary herein, to the extent that the terms of this Agreement require (i) compliance with any basket, financial ratio or test (including any Consolidated Leverage Ratio test or any Consolidated Fixed Charge Coverage Ratio test), (ii) the absence of a Default or an Event of Default, or (iii) a determination as to whether the representations and warranties contained in this Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect), in each case in connection with the consummation of a Limited Condition Acquisition, the determination of whether the relevant condition is satisfied may be made, at the election of the Borrower, on the date of the execution of the Limited Condition Acquisition Agreement with respect to such Limited Condition Acquisition (such date, the "LCA Test Date"), after giving effect to the relevant Limited Condition Acquisition and any related incurrence of Indebtedness, on a Pro Forma Basis; provided, that, notwithstanding the foregoing, in connection with any Limited Condition Acquisition: (A) the condition set forth in clause (a) of the proviso to the definition of "Permitted Acquisition" shall be satisfied if (1) no Default shall have occurred and be continuing as of the applicable LCA Test Date, and (2) no Specified Event of Default shall have occurred and be continuing at the time of consummation of such Limited Condition Acquisition; (B) if the proceeds of an Incremental Term Facility are being used to finance such Limited Condition Acquisition, then (1) the conditions set forth in Section 2.02(g)(ii)(E) and Section 4.02(a) shall be required to be satisfied at the time of closing of the Limited Condition Acquisition and funding of such Incremental Term Facility but, if the Incremental Term Lenders providing such Incremental Term Facility so agree, the representations and warranties which must be accurate at the time of closing of the Limited Condition Acquisition and funding of such Incremental Term Facility may be limited to customary "specified representations," customary "specified acquisition agreement representations," and such other representations and warranties as may be required by the Incremental Term Lenders providing such Incremental Term Facility, and (2) the conditions set forth in Section 2.02(g)(ii)(B) and Section 4.02(b) shall, if and to the extent the Incremental Term Lenders providing such Incremental Term Facility so agree, be satisfied if (x) no Default shall have occurred and be continuing as of the applicable LCA Test Date, and (y) no Specified Event of Default shall have occurred and be continuing at the time of the funding of such Incremental Term

Facility in connection with the consummation of such Limited Condition Acquisition; and (C) such Limited Condition Acquisition, any related pro forma adjustments, and the related Indebtedness to be incurred in connection therewith and the use of proceeds thereof shall be deemed consummated, made, incurred and/or applied at the applicable LCA Test Date (until such time as the Indebtedness is actually incurred or the applicable Limited Condition Acquisition Agreement is terminated without actually consummating the applicable Limited Condition Acquisition) and outstanding thereafter for purposes of determining Pro Forma Compliance (other than for purposes of determining Pro Forma Compliance in connection with the making of any Restricted Payment or the making of any Junior Debt Payment) with any financial ratio or test (including any Consolidated Leverage Ratio test, any Consolidated Fixed Charge Coverage Ratio test, or any calculation of the financial covenants set forth in Section 7.11) (it being understood and agreed that for purposes of determining Pro Forma Compliance in connection with the making of any Restricted Payment or the making of any Junior Debt Payment, the Borrower shall demonstrate compliance with the applicable test both after giving effect to the applicable Limited Condition Acquisition and assuming that such transaction has not occurred). For the avoidance of doubt, if any of such ratios or amounts for which compliance was determined or tested as of the applicable LCA Test Date are thereafter exceeded or otherwise failed to have been complied with as a result of fluctuations in such ratio or amount (including due to fluctuations in Consolidated EBITDA), at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios or amounts will not be deemed to have been exceeded or failed to be complied with as a result of such fluctuations solely for purposes of determining whether the relevant Limited Condition Acquisition is permitted to be consummated. Except as set forth in clause (B) in the proviso to the first sentence in this Section 1.03(e) in connection with the use of the proceeds of an Incremental Term Facility to finance a Limited Condition Acquisition (and, in the case of such clause (B), only if and to the extent the Incremental Term Lenders providing such Incremental Term Facility so agree as provided in such clause (B)), it is understood and agreed that this Section 1.03(e) shall not limit the conditions set forth in Section 4.02 with respect to any proposed Credit Extension, in connection with a Limited Condition Acquisition or otherwise.

1.04 Rounding.

Any financial ratios required to be maintained by the Loan Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day.

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

1.06 Letter of Credit Amounts.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, that, with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07 UCC Terms.

Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

1.08 Rates.

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any rate that is an alternative or replacement for or successor to any of such rates (including any LIBOR Successor Rate) or the effect of any of the foregoing, or of any LIBOR Successor Rate Conforming Changes.

ARTICLE II

COMMITMENTS AND CREDIT EXTENSIONS

2.01 Loans.

(a) Term A Borrowing. Subject to the terms and conditions set forth herein, each Term A Lender severally agrees to make a Term A Loan to the Borrower, in Dollars, on the Closing Date in an amount not to exceed such Term A Lender’s Term A Commitment. The Term A Borrowing shall consist of Term A Loans made simultaneously by the Term A Lenders in accordance with their respective Term A Commitments. Any Term A Borrowing repaid or prepaid may not be reborrowed. Term A Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein; provided, that, the Term A Borrowing made on the Closing Date shall be made as Base Rate Loans unless the Borrower delivers a Funding Indemnity Letter not less than three (3) Business Days prior to the Closing Date.

(b) Revolving Borrowings. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a “Revolving Loan”) to the Borrower, in Dollars, from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Revolving Lender’s Revolving Commitment; provided, that, (i) after giving effect to any Revolving Borrowing, (A) the Total Revolving Outstandings shall not exceed the Revolving Facility, and (B) the Revolving Exposure of any Revolving Lender shall not exceed such Revolving Lender’s Revolving Commitment, and (ii) no Revolving Borrowing shall be made on the Closing Date. Within the limits of each Revolving Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow Revolving Loans, prepay Revolving Loans under Section 2.05, and reborrow Revolving Loans under this Section 2.01(b). Revolving Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein; provided, that, any Revolving Borrowing made on any of the three (3) Business Days following the Closing Date shall be made as Base Rate Loans unless the Borrower delivers a Funding Indemnity Letter not less than three (3) Business Days prior to the date of such Revolving Borrowing.

(c) Incremental Term Borrowings. Subject to Section 2.02(g), on the effective date of any Incremental Term Facility Agreement for any Incremental Term Facility, each Incremental Term Lender under such Incremental Term Facility severally agrees to make an Incremental Term Loan to the Borrower in Dollars and in the amount of such Incremental Term Lender’s Incremental Term Commitment for such Incremental Term Facility; provided, that, after giving effect to such Incremental Term Loans, the Outstanding Amount of such Incremental Term Loans under such Incremental Term Facility shall not exceed the aggregate amount of the Incremental Term

Commitments for such Incremental Term Facility. Each Incremental Term Borrowing under an Incremental Term Facility shall consist of Incremental Term Loans made simultaneously by the Incremental Term Lenders under such Incremental Term Facility in accordance with their respective Incremental Term Commitments for such Incremental Term Facility. Incremental Term Borrowings prepaid or repaid may not be reborrowed. Incremental Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

## 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Notice of Borrowing. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans, in each case, shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone or a Loan Notice; provided, that, any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Loan Notice. Each Loan Notice must be received by the Administrative Agent not later than 8:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, in connection with any conversion or continuation of any Term Loans, if less, the entire principal thereof then outstanding). Except as provided in Sections 2.03(f) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, in connection with any conversion or continuation of any Term Loans, if less, the entire principal thereof then outstanding). Each Loan Notice and each telephonic notice shall specify (A) the applicable Facility and whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, under such Facility, (B) the requested date of such Borrowing, conversion, or continuation, as the case may be (which shall be a Business Day), (C) the principal amount of Loans to be borrowed, converted, or continued, (D) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (E) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. Notwithstanding anything to the contrary herein, this Section 2.02 shall not apply to Swingline Loans or Swingline Borrowings.

(b) Advances. Following receipt of a Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 10:00 a.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds, or (ii)

wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, that, if on the date a Loan Notice with respect to a Revolving Borrowing is given by the Borrower, there are Unreimbursed Amounts outstanding, then the proceeds of such Revolving Borrowing, first, shall be applied to the payment in full of any such Unreimbursed Amounts, and second, shall be made available to the Borrower as provided above.

(c) Eurodollar Rate Loans. Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the outstanding Eurodollar Rate Loans be converted immediately to Base Rate Loans.

(d) Interest Rates. Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error.

(e) Interest Periods. After giving effect to all Term A Borrowings, all conversions of Term A Loans from one Type to the other, and all continuations of Term A Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Term A Facility. After giving effect to all Revolving Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Revolving Facility. With respect to each Incremental Term Facility, after giving effect to all Borrowings in connection with such Incremental Term Facility, all conversions of Incremental Term Loans under such Incremental Term Facility from one Type to the other, and all continuations of Incremental Term Loans under such Incremental Term Facility as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of such Incremental Term Facility.

(f) Cashless Settlement Mechanism. Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

(g) Increases in Revolving Facility; Incremental Term Facilities. The Borrower may increase the Revolving Facility (but not the Letter of Credit Sublimit or the Swingline Sublimit) and/or establish one or more new tranches of term loans (each such new tranche of term loans being an "Incremental Term Facility"; each such increase in the Revolving Facility and each Incremental Term Facility, an "Incremental Facility"), by a maximum aggregate amount for all such Incremental Facilities not to exceed, as of any date of determination, the Incremental Amount.

(i) Increases in Revolving Facility. The Borrower may at any time after the Closing Date and prior to the Revolving Facility Maturity Date, upon prior written notice by the Borrower to the Administrative Agent, increase the Revolving Facility (but not the Letter of Credit Sublimit or the Swingline Sublimit) with additional Revolving Commitments from any Revolving Lender or new Revolving Commitments from one or more other Persons selected by the Borrower and acceptable to the Administrative Agent, the Swingline Lender and each L/C Issuer (so long as such Persons would be Eligible Assignees); provided, that:

(A) any such increase shall be in a minimum principal amount of \$25,000,000 and in integral multiples of \$1,000,000 in excess thereof (or such other amount as the Administrative Agent shall agree in its sole discretion);

(B) no Default shall exist and be continuing at the time of any such increase or would exist immediately after giving effect thereto;

(C) no existing Lender shall be under any obligation to provide a Revolving Commitment in connection with such increase (or to increase its Revolving Commitment, as applicable) and any such decision whether to participate in such increase shall be in such Lender's sole and absolute discretion;

(D) (1) any new Lender shall join this Agreement by executing such joinder documents as are required by the Administrative Agent, and/or (2) any existing Lender electing to provide a Revolving Commitment in connection with such increase (or to increase its Revolving Commitment, as applicable) shall have executed a commitment agreement satisfactory to the Administrative Agent;

(E) before and after giving effect to such increase, the representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) on and as of the date of such increase, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date, and except that for purposes of this Section 2.02(g)(i)(E), the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively;

(F) the Administrative Agent shall have received (1) a certificate from a Responsible Officer of the Borrower certifying that (x) the conditions set forth in Sections 2.02(g)(i)(B) and (g)(i)(E) have been satisfied, (y) the condition set forth in Section 2.02(g)(i)(G)(1) has been satisfied (which certification shall include reasonably detailed calculations to demonstrate the satisfaction of such condition), and (z) to the extent applicable, the condition set forth in Section 2.02(g)(i)(G)(2) has been satisfied (which certification shall include reasonably detailed calculations to demonstrate the satisfaction of such condition), (2) a certificate from a Responsible Officer of each Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (3) if requested by the Administrative Agent, an opinion or opinions of counsel for the Loan Parties, dated as of the date of such increase, in form and substance satisfactory to the Administrative Agent;

(G) (1) upon giving Pro Forma Effect to any such increase (and assuming for such calculation that such increase is fully drawn), the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or Section 6.01(b), and (2) to the extent such increase is being incurred in reliance on the

Leverage-Based Prong, after giving effect to such increase, such increase is permitted pursuant to the Leverage-Based Prong;

(H) any such increase shall (1) rank pari passu in right of payment with the Obligations and in respect of the Collateral, and (2) be on the same terms and pursuant to the same documentation applicable to the Revolving Facility; and

(I) in connection with any such increase, the Borrower shall prepay any Revolving Loans outstanding on the date of such increase (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Revolving Commitments arising from any non-ratable increase in the Revolving Facility pursuant to this Section 2.02(g)(i).

(ii) Institution of Incremental Term Facilities. The Borrower may at any time after the Closing Date and prior to the Term A Facility Maturity Date, upon prior written notice to the Administrative Agent, establish an Incremental Term Facility to be provided by one or more Incremental Term Lenders for such Incremental Term Facility; provided, that:

(A) any such Incremental Term Facility shall be in a minimum aggregate principal amount of \$25,000,000 and integral multiples of \$1,000,000 in excess thereof (or such other amount as the Administrative Agent shall agree in its sole discretion);

(B) no Default shall exist and be continuing at the time of the establishment of any such Incremental Term Facility or would exist immediately after giving effect thereto;

(C) no existing Lender shall be under any obligation to become an Incremental Term Lender and any such decision whether to become an Incremental Term Lender shall be in such Lender's sole and absolute discretion;

(D) the Borrower (in consultation and coordination with the Administrative Agent) shall obtain Incremental Term Commitments for such Incremental Term Facility from existing Lenders or other Persons reasonably acceptable to the Administrative Agent, which Persons shall join in this Agreement as Incremental Term Lenders by executing an agreement, in form and substance satisfactory to the Administrative Agent, setting forth the terms applicable to such Incremental Term Facility in accordance with this Section 2.02(g)(ii) (any such agreement, an "Incremental Term Facility Agreement"), it being understood and agreed that in connection with any Incremental Term Facility, the Incremental Term Facility Agreement for such Incremental Term Facility shall only be required to be executed by the Incremental Term Lenders for such Incremental Term Facility, the Loan Parties, and the Administrative Agent (and, for the avoidance of doubt, shall not require the consent of any other Person (including any Lender));

(E) before and after giving effect to the establishment of such Incremental Term Facility, the representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects (and in all respects if any such representation or warranty is already



qualified by materiality or reference to Material Adverse Effect) on and as of the date of incurrence of such Incremental Term Facility, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date, and except that for purposes of this Section 2.02(g)(ii)(E), the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively;

(F) the Administrative Agent shall have received (1) a certificate from a Responsible Officer of the Borrower certifying that (x) the conditions set forth in Sections 2.02(g)(ii)(B) and (g)(ii)(E) have been satisfied, (y) the condition set forth in Section 2.02(g)(ii)(G)(1) has been satisfied (which certification shall include reasonably detailed calculations to demonstrate the satisfaction of such condition), and (z) to the extent applicable, the condition set forth in Section 2.02(g)(ii)(G)(2) has been satisfied (which certification shall include reasonably detailed calculations to demonstrate the satisfaction of such condition), (2) a certificate from a Responsible Officer of each Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to the incurrence of such Incremental Term Facility, and (3) if requested by the Administrative Agent, an opinion or opinions of counsel for the Loan Parties, dated as of the date of incurrence of such Incremental Term Facility, in form and substance satisfactory to the Administrative Agent;

(G) (1) upon giving Pro Forma Effect to the incurrence of any such Incremental Term Facility, the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or Section 6.01(b), and (2) to the extent such Incremental Term Facility is being incurred in reliance on the Leverage-Based Prong, after giving effect to such Incremental Term Facility, such Incremental Term Facility is permitted pursuant to the Leverage-Based Prong;

(H) the Incremental Term Facility Maturity Date for such Incremental Term Facility shall be as set forth in the Incremental Term Facility Agreement relating to such Incremental Term Facility; provided, that, such date shall not be earlier than the then-Latest Maturity Date;

(I) the Weighted Average Life to Maturity of the Incremental Term Loans advanced under such Incremental Term Facility shall be no shorter than the then-remaining Weighted Average Life to Maturity of the Term A Loans or any other then-existing Incremental Term Loans under any other then-existing Incremental Term Facility;

(J) subject to Sections 2.02(g)(ii)(H) and (g)(ii)(I), the amortization schedule applicable to the Incremental Term Loans advanced under such Incremental Term Facility shall be as determined by the Borrower and the Incremental Term Lenders for such Incremental Term Facility;

(K) any such Incremental Term Facility shall (1) rank pari passu in right of payment with the Obligations and in respect of the Collateral, and (2) except as permitted by Sections 2.02(g)(ii)(H), (g)(ii)(I), and (g)(ii)(J), be on the same terms and pursuant to the same documentation applicable to the Term A Facility; provided, that, to the extent any of the terms of the Incremental Term Loans under such Incremental Term Facility are not substantially consistent with the terms of the Term A Facility, as applicable, such terms shall be reasonably satisfactory to the Administrative Agent (it being understood and agreed that the following shall be deemed to be satisfactory to the Administrative Agent: (x) covenants or other provisions applicable only to periods after the then-Latest Maturity Date; (y) to the extent required by any Incremental Term Lender for such Incremental Term Facility, covenants or other provisions that are not set forth in Loan Documents at the time of incurrence of such Incremental Term Facility, so long as the Loan Documents are amended to include such covenants or other provisions for the benefit of the Administrative Agent and the Lenders at the time of the incurrence of such Incremental Term Facility; and (z) to the extent required by any Incremental Term Lender for such Incremental Term Facility, customary call protection and mandatory prepayments, in each case, which may be applicable solely with respect to such Incremental Term Facility; provided, that, with respect to any mandatory prepayment required in connection with the establishment of such Incremental Term Facility, such mandatory prepayment shall apply ratably to the Term A Loans and any other then-existing Incremental Term Loans under any then-existing Incremental Term Facility);

This Agreement and the other Loan Documents shall be amended to give effect to any Incremental Facility pursuant to documentation executed by lenders providing such Incremental Facility, the Administrative Agent and the Loan Parties, without the consent of any other Person (including any existing Lender), including amendments (I) to reflect the existence and terms of such Incremental Facility, (II) to make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of such Incremental Facility, including adding provisions to permit such Incremental Facility to share in the benefits of this Agreement and the other Loan Documents (including to permit any such Incremental Term Facility to share in any mandatory prepayment provided herein) and to include the lenders for such Incremental Facility in the definition of “Required Lenders” and the definition of “Required Revolving Lenders,” as applicable, (III) notwithstanding any other provisions of this Agreement or any other Loan Documents to the contrary, if applicable, to permit the loans under such Incremental Facility to be “fungible” (including for purposes of the Code) with any other then-existing Loans under this Agreement, and (IV) to effect such other amendments to the this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of any such Incremental Facility.

### 2.03 Letters of Credit.

(a) The Letter of Credit Commitment. Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Borrower may request that any L/C Issuer, in reliance on the agreements of the Revolving Lenders set forth in this Section 2.03, issue, at any time and from time to time during the Availability Period, Letters of Credit denominated in Dollars for its own account or the account of any of its Subsidiaries in such form as is acceptable to the Administrative Agent and such L/C Issuer in its reasonable determination. Letters of Credit issued hereunder shall constitute utilization of the Revolving Facility.

(b) Notice of Issuance, Amendment, Extension, Reinstatement or Renewal.

(i) To request the issuance of a Letter of Credit (or the amendment of the terms and conditions, extension of the terms and conditions, extension of the expiration date, or reinstatement of amounts paid, or renewal of an outstanding Letter of Credit), the Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable L/C Issuer) to the applicable L/C Issuer and to the Administrative Agent not later than 8:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be, a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with Section 2.03(d)), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, extend, reinstate or renew such Letter of Credit. If requested by the applicable L/C Issuer, the Borrower also shall submit a Letter of Credit Application and a reimbursement agreement on such L/C Issuer's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Application, any reimbursement agreement, any other Issuer Document or any other agreement submitted by the Borrower to, or entered into by the Borrower with, any L/C Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(ii) If the Borrower so requests in any applicable Letter of Credit Application (or the amendment of an outstanding Letter of Credit), the applicable L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided, that, any such Auto-Extension Letter of Credit shall permit such L/C Issuer to prevent any such extension at least once in each twelve (12)-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve (12)-month period to be agreed upon by the Borrower and such L/C Issuer at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiration date not later than the date permitted pursuant to Section 2.03(d); provided, that, such L/C Issuer shall not (A) permit any such extension if (1) such L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its extended form under the terms hereof (except that the expiration date may be extended to a date that is no more than one (1) year from the then-current expiration date), or (2) it has received notice (which may be in writing or by telephone (if promptly confirmed in writing)) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (or, in the case of any Existing JPMorgan Letter of Credit, on or before the day that is fifteen (15) days before the Non-Extension Notice Date) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension, or (B) be obligated to permit such extension if it has received notice (which may be in writing or by telephone (if promptly confirmed in

writing)) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (or, in the case of any Existing JPMorgan Letter of Credit, on or before the day that is fifteen (15) days before the Non-Extension Notice Date) from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions set forth in Section 4.02 is not then satisfied, and in each such case directing such L/C Issuer not to permit such extension.

(c) Limitations on Amounts, Issuance and Amendment.

(i) A Letter of Credit shall be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal (A) the aggregate amount of the outstanding Letters of Credit issued by each L/C Issuer shall not exceed such L/C Issuer's L/C Commitment, (B) the aggregate L/C Obligations shall not exceed the Letter of Credit Sublimit, (C) the Revolving Exposure of any Revolving Lender shall not exceed such Revolving Lender's Revolving Commitment, and (D) the Total Revolving Credit Exposure shall not exceed the Revolving Facility.

(ii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing the Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is in an initial stated amount less than \$100,000, in the case of a commercial Letter of Credit or \$500,000, in the case of a standby Letter of Credit;

(D) such Letter of Credit is to be denominated in a currency other than Dollars;

(E) any Revolving Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Revolving Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the

Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(F) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(d) Expiration Date. Each Letter of Credit shall have a stated expiration date no later than the earlier of: (i) the date twelve (12) months after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, whether automatic or by amendment, twelve (12) months after the then current expiration date of such Letter of Credit); and (ii) the Letter of Credit Expiration Date; provided, that, it is understood and agreed that (A) any Existing Letter of Credit may have a stated expiration date later than twelve (12) months after the issuance thereof, so long as the stated expiration date is not later than the Letter of Credit Expiration Date, and (B) to the extent agreed by the applicable L/C Issuer in its sole discretion, the foregoing provisions of this Section 2.03(d) shall not apply to any Letter of Credit that has otherwise been Cash Collateralized or backstopped, in each case on terms satisfactory to such L/C Issuer.

(e) Participations.

(i) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any further action on the part of the applicable L/C Issuer or the Lenders, such L/C Issuer hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such L/C Issuer, a participation in such Letter of Credit equal to such Revolving Lender's Applicable Revolving Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.03(e)(i) in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Facility. Each Revolving Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Revolving Lender's Applicable Revolving Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Revolving Lender's Revolving Commitment is amended pursuant to the provisions of this Agreement.

(ii) In consideration and in furtherance of the foregoing, upon receipt of any Non-Reimbursement Notice, each Revolving Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for account of the applicable L/C Issuer, such Revolving Lender's Applicable Revolving Percentage of each L/C Disbursement made by such L/C Issuer not later than 10:00 a.m. on the Business Day specified in such Non-Reimbursement Notice, until such L/C Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason, including after the Revolving Facility Maturity Date. Such

payment shall be made without any offset, abatement, withholding or reduction whatsoever and shall otherwise be made in the same manner as provided in Section 2.02 with respect to Revolving Loans made by such Lender (and Section 2.02 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders pursuant to this Section 2.03(e)(ii)). The Administrative Agent shall promptly pay to the applicable L/C Issuer the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to Section 2.03(f), the Administrative Agent shall distribute such payment to the applicable L/C Issuer or, to the extent that the Revolving Lenders have made payments pursuant to this Section 2.03(e) to reimburse such L/C Issuer, then to such Revolving Lenders and such L/C Issuer as their interests may appear. Any payment made by a Revolving Lender pursuant to this Section 2.03(e) to reimburse an L/C Issuer for any L/C Disbursement (other than, for the avoidance of doubt, any Revolving Loan made by a Revolving Lender pursuant to the first proviso set forth in Section 2.03(f)) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such L/C Disbursement.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of an L/C Issuer any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of Section 2.03(e)(ii), then, without limiting the other provisions of this Agreement, such L/C Issuer shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. A certificate of an L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(e)(iii) shall be conclusive absent manifest error.

(f) Reimbursement. If any L/C Issuer shall make any L/C Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such L/C Issuer in respect of such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 11:00 a.m. on (i) the Business Day that the Borrower receives notice of such L/C Disbursement, if such notice is received prior to 9:00 a.m., or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time; provided, that, the Borrower may, subject to the conditions to borrowing set forth herein (other than the minimums and multiples required for Base Rate Loans pursuant to Section 2.02), request in accordance with Section 2.02 that such payment be financed with a Revolving Borrowing of Base Rate Loans in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Revolving Borrowing of Base Rate Loans. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof (the "Unreimbursed Amount") and such Revolving Lender's Applicable Revolving Percentage thereof (each such notice, a "Non-Reimbursement Notice"). Promptly upon receipt of any Non-Reimbursement Notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Revolving Percentage of the Unreimbursed Amount pursuant to Section 2.03(e)(ii), subject to the amount of the unutilized portion of the Revolving Facility. Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(f) may be given by telephone if promptly confirmed in writing;

provided, that, the lack of such a prompt confirmation shall not affect the conclusiveness or binding effect of such notice.

(g) Obligations Absolute. The Borrower's obligation to reimburse L/C Disbursements as provided in Section 2.03(f) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any Letter of Credit, or any term or provision herein or therein;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in such draft or other document being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the applicable L/C Issuer of any requirement that exists for such L/C Issuer's protection and not the protection of the Borrower or any waiver by the applicable L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the applicable L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other event or circumstance, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.03, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder.

(h) Examination. The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance

with the Borrower's instructions or other irregularity, the Borrower will promptly notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(i) Liability. None of the Administrative Agent, any Lender, any L/C Issuer, or any of their respective Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by any L/C Issuer or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in Section 2.03(g)), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the applicable L/C Issuer; provided, that, the foregoing shall not be construed to excuse an L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are (x) caused by such L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, or (y) determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or bad faith of such L/C Issuer. The parties hereto expressly agree that, in the absence of gross negligence, willful misconduct or bad faith on the part of an L/C Issuer (as finally determined by a court of competent jurisdiction), such L/C Issuer shall be deemed to have exercised care in each such determination, and that:

(i) such L/C Issuer may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such or waive a requirement for its presentation;

(ii) such L/C Issuer may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;

(iii) such L/C Issuer shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iv) this sentence shall establish the standard of care to be exercised by such L/C Issuer when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable Law, any standard of care inconsistent with the foregoing).

Without limiting the foregoing, none of the Administrative Agent, any Lender, any L/C Issuer, or any of their respective Related Parties shall have any liability or responsibility by reason of (A) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person, (B) such L/C Issuer declining to take-up documents and make payment, (C) against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor, (D) following the Borrower's waiver of discrepancies with respect to such documents or request for honor of such



documents, or (E) such L/C Issuer retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to such L/C Issuer.

(j) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued by it (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Borrower for, and each L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where such L/C Issuer or the beneficiary is located, the practice stated in the ISP or the UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(k) Benefits. Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (i) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included such L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such L/C Issuer.

(l) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage a Letter of Credit fee (the "Letter of Credit Fee") (i) for each commercial Letter of Credit equal to the Applicable Rate times the maximum stated amount of such Letter of Credit and (ii) for each standby Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any standby Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (A) payable on the seventh (7<sup>th</sup>) Business Day following the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit and (B) accrued through and including the last day of each calendar quarter in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(m) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers. The Borrower shall pay directly to each L/C Issuer, for its own account, a fronting fee (i) with respect to each commercial Letter of Credit, equal to the rate per annum equal to the percentage separately agreed upon between the Borrower and such L/C Issuer times the maximum stated amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrower and such L/C Issuer, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each

standby Letter of Credit, at the rate per annum equal to the percentage separately agreed upon between the Borrower and such L/C Issuer, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable no later than the tenth (10<sup>th</sup>) Business Day after the end of each March, June, September and December in the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Revolving Facility Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to each L/C Issuer, for its own account, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(n) Disbursement Procedures. Each L/C Issuer shall, within the time allowed by applicable Laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Each L/C Issuer shall promptly after such examination notify the Administrative Agent and the Borrower in writing of such demand for payment if such L/C Issuer has made or will make an L/C Disbursement thereunder; provided, that, any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such L/C Issuer and the Revolving Lenders with respect to any such L/C Disbursement.

(o) Interim Interest. If an L/C Issuer shall make any L/C Disbursement, then, unless the Borrower shall reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to Base Rate Loans; provided, that, if the Borrower fails to reimburse such L/C Disbursement when due pursuant to Section 2.03(f), then Section 2.08(b) shall apply. Interest accrued pursuant to this Section 2.03(o) shall be for account of the applicable L/C Issuer, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to Section 2.03(f) to reimburse such L/C Issuer shall be for account of such Revolving Lender to the extent of such payment.

(p) Replacement of an L/C Issuer. An L/C Issuer may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an L/C Issuer. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer. From and after the effective date of any such replacement, (i) the successor L/C Issuer shall have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter, and (ii) references herein to the term "L/C Issuer" shall be deemed to include such successor or any previous L/C Issuers, or such successor and all previous L/C Issuers, as the context shall require. After the replacement of an L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(q) Cash Collateralization.

(i) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Revolving Lenders (or, if the maturity of the Revolving Loans has been accelerated, Revolving Lenders with L/C Obligations representing at least fifty percent (50%) of the total L/C Obligations) demanding the deposit of Cash Collateral pursuant to this Section 2.03(q), the Borrower shall immediately deposit into an account established and maintained on the books and records of the Administrative Agent an amount in cash equal to the Minimum Collateral Amount; provided, that, the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default described in Section 8.01(f) or Section 8.01(g). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. In addition, if any L/C Obligations remain outstanding after the expiration date specified in Section 2.03(d), the Borrower shall immediately deposit into an account established and maintained on the books and records of the Administrative Agent an amount in cash equal to the Minimum Collateral Amount as collateral for such L/C Obligations.

(ii) The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over any Cash Collateral deposited pursuant to this Section 2.03(q). Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the accounts into which such Cash Collateral is deposited. Cash Collateral deposited pursuant to this Section 2.03(q) shall be applied by the Administrative Agent to reimburse the applicable L/C Issuers for L/C Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Obligations at such time or, if the maturity of the Revolving Loans has been accelerated (but subject to the consent of Revolving Lenders with L/C Obligations representing at least fifty percent (50%) of the total L/C Obligations), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

(r) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of a Subsidiary inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the business of such Subsidiary.

(s) Additional L/C Issuers. Any Lender may become an L/C Issuer upon receipt by the Administrative Agent of a fully executed Notice of Additional L/C Issuer which shall be signed by the Borrower, the Administrative Agent and such Lender. Each Lender that becomes an L/C Issuer pursuant to this Section 2.03(s) shall provide its L/C Commitment in such Notice of Additional L/C Issuer and upon the receipt by the Administrative Agent of the fully executed Notice of Additional L/C Issuer, the defined term L/C Commitment shall be deemed amended to incorporate the L/C Commitment of such new L/C Issuer.

(t) L/C Issuer Reports. Unless otherwise agreed by the Administrative Agent, each L/C Issuer shall: (i) prior to the time that such L/C Issuer amends, renews, increases, or extends a Letter of Credit, notify the Administrative Agent of the date of such amendment, renewal, increase, or extension and the stated amount of the applicable Letter of Credit after giving effect to such amendment, renewal, increase, or extension; (ii) on each Business Day on which such L/C Issuer makes a payment pursuant to a Letter of Credit, notify the Administrative Agent of the date and amount of such payment; (iii) on any Business Day on which the Borrower fails to reimburse a payment made pursuant to a Letter of Credit required to be reimbursed to such L/C Issuer on such day, notify the Administrative Agent of the date of such failure and the amount of such payment; (iv) on any Business Day on which any Letter of Credit issued by such L/C Issuer expires or is cancelled, notify the Administrative Agent of the date of such expiration or cancellation; and (v) for so long as any Letter of Credit issued by such L/C issuer is outstanding, deliver to the Administrative Agent, within five (5) Business Days after the beginning of each calendar month, a report (in form and substance satisfactory to the Administrative Agent) with respect to each Letter of Credit issued by such L/C Issuer.

#### 2.04 Swingline Loans.

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans to the Borrower (each such loan, a "Swingline Loan"). Each such Swingline Loan may be made, subject to the terms and conditions set forth herein, to the Borrower, in Dollars, from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swingline Sublimit; provided, that, (i) after giving effect to any Swingline Loan, (A) the Total Revolving Outstandings shall not exceed the Revolving Facility, (B) the Revolving Exposure of any Revolving Lender shall not exceed such Lender's Revolving Commitment, and (C) the aggregate amount of all Swingline Loans outstanding shall not exceed the Swingline Commitment, (ii) the Borrower shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan, and (iii) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow Swingline Loans under this Section 2.04, prepay Swingline Loans under Section 2.05, and reborrow Swingline Loans under this Section 2.04. Immediately upon the making of a Swingline Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Revolving Lender's Applicable Revolving Percentage times the amount of such Swingline Loan.

(b) Borrowing Procedures. Each Swingline Borrowing shall be made upon the Borrower's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by telephone or a Swingline Loan Notice; provided, that, any telephonic notice must be confirmed promptly by delivery to the Swingline Lender and the Administrative Agent of a Swingline Loan Notice. Each such Swingline Loan Notice must be received by the Swingline Lender and the Administrative Agent not later than 10:00 a.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested date of the Swingline Borrowing (which shall be a Business Day). Promptly after receipt by the Swingline Lender of any Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline

Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Lender) prior to 11:00 a.m. on the date of the proposed Swingline Borrowing (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the proviso to the second sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender may make the amount of its Swingline Loan available to the Borrower at its office by crediting the account of the Borrower on the books of the Swingline Lender in immediately available funds.

(c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make a Revolving Loan that is a Base Rate Loan in an amount equal to such Revolving Lender's Applicable Revolving Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Facility and the conditions set forth in Section 4.02. The Swingline Lender shall furnish the Borrower with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Revolving Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds for the account of the Swingline Lender at the Administrative Agent's Office not later than 10:00 a.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i) (including the failure to satisfy the conditions set forth in Section 4.02), the request for Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swingline Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant

Revolving Borrowing or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, that, each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Loan Notice). No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its Applicable Revolving Percentage thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause (ii) shall survive the Facility Termination Date and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Borrower for interest on the Swingline Loans. Until each Revolving Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Revolving Percentage of any Swingline Loan, interest in respect of such Applicable Revolving Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Borrower shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

2.05 Prepayments.

(a) Optional.

(i) The Borrower may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Term Loans and/or Revolving Loans in whole or in part without premium or penalty (subject to Section 3.05); provided, that, unless otherwise agreed by the Administrative Agent: (A) such notice must be received by the Administrative Agent not later than 10:00 a.m. (1) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans, and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding); and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied to the principal repayment installments thereof as directed by the Borrower (or, if no such direction is provided by the Borrower, such prepayment shall be applied to all then-existing Term Loans on a pro rata basis, and, with respect to each then-existing Term Facility, to the principal repayment installments thereof in inverse order of maturity). Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrower may, upon notice to the Swingline Lender pursuant to delivery to the Swingline Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; provided, that, unless otherwise agreed by the Swingline Lender, (A) such notice must be received by the Swingline Lender and the Administrative Agent not later than 10:00 a.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount 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 shall be due and payable on the date specified therein.

(b) Mandatory.

(i) Dispositions and Involuntary Dispositions. The Borrower shall prepay the Loans as provided in Section 2.05(b)(iii) in an aggregate amount equal to one hundred percent (100%) of the Net Cash Proceeds received by any Loan Party or any Subsidiary from all Dispositions (other than Permitted Transfers) and all Involuntary Dispositions, within three (3) Business Days of the date of such Disposition or such Involuntary Disposition; provided, that: (A) the Borrower shall not be required to prepay the Loans pursuant to this Section 2.05(b)(i) until the Net Cash Proceeds received by the Borrower

and its Subsidiaries in connection with all Dispositions (other than Permitted Transfers) or Involuntary Dispositions in any fiscal year of the Borrower is equal to or exceeds \$10,000,000; and (B) such Net Cash Proceeds shall not be required to be so applied if, at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of such Disposition or such Involuntary Disposition), so long as no Event of Default shall have occurred at the time of such Disposition or such Involuntary Disposition or at the time of such reinvestment, such Loan Party or such Subsidiary reinvests all or any portion of such Net Cash Proceeds in Eligible Assets within one hundred eighty (180) days of the date of such Disposition or such Involuntary Disposition (or to the extent such Loan Party or such Subsidiary commits within such one hundred eighty (180)-day period to make such reinvestment, within one hundred eighty (180) days after such one hundred eighty (180)-day period); provided, further, that, if such Net Cash Proceeds shall have not been so reinvested by the end of such period(s), such Net Cash Proceeds shall be immediately applied to prepay the Loans as provided in Section 2.05(b)(iii).

(ii) Debt Issuance. Promptly upon the receipt by any Loan Party or any Subsidiary of the Net Cash Proceeds of any Debt Issuance, the Borrower shall prepay the Loans as provided in Section 2.05(b)(iii) in an aggregate amount equal to one hundred percent (100%) of such Net Cash Proceeds.

(iii) Application of Payments. Each prepayment required pursuant to Section 2.05(b)(i) or Section 2.05(b)(ii) shall be applied, first, to the principal repayment installments of the then-existing Term A Loans in inverse order of maturity, second, to the outstanding Swingline Loans, and third, to the outstanding Revolving Loans (without a corresponding permanent reduction of the Revolving Facility). Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the relevant Facilities.

(iv) Revolving Outstandings. If for any reason the Total Revolving Outstandings at any time exceed the Revolving Facility at such time, the Borrower shall immediately prepay Revolving Loans, Swingline Loans and Unreimbursed Amounts (together with all accrued but unpaid interest thereon) and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, that, the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(iv) unless, after the prepayment of the Revolving Loans and Swingline Loans, the Total Revolving Outstandings at such time exceed the Revolving Facility at such time.

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.05(b) shall be applied first to Base Rate Loans and then to Eurodollar Rate Loans in direct order of Interest Period maturities.

All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

## 2.06 Termination or Reduction of Commitments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit, or from time to time permanently reduce the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit; provided, that, unless otherwise agreed by the Administrative Agent, (i) any such notice shall be received by the Administrative Agent not later than 10:00 a.m. five (5) Business Days prior



to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, and (iii) the Borrower shall not terminate or reduce (A) the Revolving Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Revolving Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swingline Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swingline Loans would exceed the Swingline Sublimit.

(b) Mandatory.

(i) The aggregate Term A Commitments shall be automatically and permanently reduced to zero upon the Term A Borrowing to occur on the Closing Date. The Revolving Facility shall automatically terminate on the Revolving Facility Maturity Date.

(ii) If after giving effect to any reduction or termination of Revolving Facility under this Section 2.06, the Letter of Credit Sublimit or the Swingline Sublimit at such time exceeds the Revolving Facility at such time, the Letter of Credit Sublimit or the Swingline Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, the Swingline Sublimit or the Revolving Facility under this Section 2.06. Upon any reduction of the Revolving Facility, the Revolving Commitment of each Revolving Lender shall be reduced by such Lender's Applicable Revolving Percentage of such reduction amount. All fees in respect of the Revolving Facility accrued until the effective date of any termination of the Revolving Facility shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) Term A Loans. The Borrower shall repay to the Term A Lenders the outstanding principal amount of the Term A Loans in installments on the last Business Day of each March, June, September and December (commencing on the last Business Day of June 2021) and on the Term A Facility Maturity Date, in each case, in the respective amounts set forth in the table below (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05), unless accelerated sooner pursuant to Section 8.02:

| Payment Dates   | Principal Amortization Payment<br>(% of Principal Amount of Term A Loans<br>Advanced on the Closing Date) |
|-----------------|---|
| June, 2021      | 1.250%  |
| September, 2021 | 1.250%  |
| December, 2021  | 1.250%  |
| March, 2022     | 1.250%  |
| June, 2022      | 1.250%  |

|                               |   |
|-------------------------------|---|
| September, 2022               | 1.250%  |
| December, 2022                | 1.250%  |
| March, 2023                   | 1.250%  |
| June, 2023                    | 1.250%  |
| September, 2023               | 1.250%  |
| December, 2023                | 1.250%  |
| March, 2024                   | 1.250%  |
| June, 2024                    | 1.250%  |
| September, 2024               | 1.250%  |
| December, 2024                | 1.250%  |
| March, 2025                   | 1.250%  |
| June, 2025                    | 1.250%  |
| September, 2025               | 1.250%  |
| December, 2025                | 1.250%  |
| Term A Facility Maturity Date | Outstanding Principal Balance of Term A Loans |

provided, that, the final principal repayment installment of the Term A Loans shall be repaid on the Term A Facility Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Term A Loans outstanding on such date.

(b) Revolving Loans. The Borrower shall repay to the Revolving Lenders on the Revolving Facility Maturity Date the aggregate principal amount of all Revolving Loans outstanding on such date.

(c) Swingline Loans. The Borrower shall repay each Swingline Loan on the earlier to occur of (i) the date ten (10) Business Days after such Swingline Loan is made, and (ii) the Revolving Facility Maturity Date.

2.08 Interest and Default Rate.

(a) Interest. Subject to the provisions of Section 2.08(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 for Eurodollar Rate Loans; (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 for Base Rate Loans; and (iii) each Swingline 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 for Base Rate Loans. Subject to the definition of "Base 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 calculation that is less than zero, such calculation shall be deemed zero for purposes of this Agreement.

(b) Default Rate.

(i) If (A) any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, or (B) an Event of Default pursuant to Section 8.01(f) or Section 8.01(g) exists, all outstanding Obligations 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 any Loan) payable by any Loan Party under any Loan Document is not paid when due (without regard 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 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 outstanding Obligations (including Letter of Credit Fees) shall accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest Payments. Interest on each Loan 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.

## 2.09 Fees.

In addition to certain fees described in Sections 2.03(l) and (m):

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage, a commitment fee (the "Commitment Fee") equal to the Applicable Rate times the actual daily amount by which the Revolving Facility exceeds the sum of (i) the Outstanding Amount of Revolving Loans, plus (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.15. For the avoidance of doubt, the Outstanding Amount of Swingline Loans shall not be counted towards or considered usage of the Revolving Facility for purposes of determining the Commitment Fee. The Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the seventh (7<sup>th</sup>) Business Day following the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The Commitment Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees.

(i) The Borrower shall pay to the Administrative Agent and BofA Securities, for their own respective accounts, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon 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; Retroactive Adjustments of Applicable Rate.

(a) Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) 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 Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided, that, any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), 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.

(b) Financial Statement Adjustments or Restatements. If, as a result of any restatement of or other adjustment to the financial statements of the Borrower and its Subsidiaries or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate, and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing and fees for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the applicable L/C Issuers, as the case may be, promptly on demand by the Administrative Agent (or, after 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, automatically and without further action by the Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This Section 2.10(b) shall not limit the rights of the Administrative Agent, any Lender or any L/C Issuer, as the case may be, under any provision of this Agreement to payment of any Obligations hereunder at the Default Rate or under Article VIII. The Borrower's obligations under this Section 2.10(b) shall survive the termination of the Facility Termination Date.

#### 2.11 Evidence of Debt.

(a) Maintenance of Accounts. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The Administrative Agent shall maintain the Register in accordance with Section 11.06(c). The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register, the Register shall control in the absence of manifest error. Upon the

request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a promissory note in the form of Exhibit I (each, a “Note”), which shall evidence such Lender’s Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Maintenance of Records. In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent’s Clawback.

(a) General. 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, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent’s Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender’s Lending Office. All payments received by the Administrative Agent after 11:00 a.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. 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.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 9:00 a.m. on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans.

If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuers hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the applicable L/C Issuers, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders or the applicable L/C Issuers, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing (other than Swingline Borrowings) shall be made from the Appropriate Lenders, each payment of fees under Section 2.03(l), Section 2.03(m) and Section 2.09 shall be made for account of the Appropriate Lenders, and each termination or reduction of the amount of the Commitments

shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (ii) each Borrowing shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Revolving Loans) or their respective Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrower shall be made for account of the Appropriate Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by the Borrower shall be made for account of the Appropriate Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Appropriate Lenders.

### 2.13 Sharing of Payments by Lenders.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time, to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time, or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time, to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be; provided, that: (1) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and (2) the provisions of this Section 2.13 shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.14, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section 2.13 shall apply). Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Cash Collateral.

(a) Obligation to Cash Collateralize. At any time there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or any L/C Issuer (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the L/C Issuers' Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.15(a)(iv)) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuers and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the applicable L/C Issuers as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (determined in the case of Cash Collateral provided pursuant to Section 2.15(a)(v), after giving effect to Section 2.15(a)(v)) and any Cash Collateral provided by the Defaulting Lender). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest bearing deposit accounts at Bank of America. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))), or (ii) the determination by the Administrative Agent and the applicable L/C Issuers that there exists excess Cash Collateral; provided, that, (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (B) the Person providing Cash Collateral and the applicable L/C Issuers may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.15 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:



(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in (A) the definitions of "Required Lenders" and "Required Revolving Lenders," and (B) Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer or the Swingline Lender hereunder; third, to Cash Collateralize the L/C Issuers' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; fourth, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and (B) Cash Collateralize the L/C Issuers' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuers or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Issuer or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided, that, if (1) such payment is a payment of the principal amount of any Loans or Unreimbursed Amounts in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.15(a)(v). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Fees. No Defaulting Lender shall be entitled to receive any portion of the Commitment Fee payable under Section 2.09(a) for any period

during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any portion of the Commitment Fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Revolving Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) Defaulting Lender Fees. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to the applicable L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Revolving Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Revolving Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 11.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a) (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (A) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure, and (B) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the L/C Issuers agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided, that, no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; provided, further, that, except to the extent otherwise

expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Revolving Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) the L/C Issuers shall not be required to issue, extend, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

### ARTICLE III

#### TAXES, YIELD PROTECTION AND ILLEGALITY

##### 3.01 Taxes.

(a) Defined Terms. For purposes of this Section 3.01, the term "applicable Law" includes FATCA and the term "Lender" includes each L/C Issuer.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of an applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (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 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register, and (C) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 3.01(d)(ii).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders; Tax Documentation.

(i) 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 the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable

request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the 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), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty, and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit J-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the 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 (a “U.S. Tax Compliance Certificate”), and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-2 or Exhibit J-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that, if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the 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 (or originals, as required) 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; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (f)(ii)(D), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient 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 by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that, each Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(g), in no event will the applicable Recipient be required to pay any amount to such Loan Party pursuant to this Section 3.01(g) the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 Section 3.01(g) shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(h) Survival. Each party's obligations under this Section 3.01 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 other Obligations.

### 3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any Credit Extension, 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 through the Administrative Agent, (a) any obligation of such Lender to perform such obligations, to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or to continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans, and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

### 3.03 Inability to Determine Rates.

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B)(1) 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 or in connection with an existing or proposed Base Rate Loan, and (2) the circumstances described in Section 3.03(c)(i) do not apply (in each case with respect to this clause (a)(i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a

determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in Section 3.03(a) (ii), until the Administrative Agent upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in Section 3.03(a)(i), the Administrative Agent, in consultation with the Borrower, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under Section 3.03(a)(i), (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to the Lenders of funding the Impacted Loans, or (iii) 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 applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any Interest Period hereunder or any other tenors of LIBOR, including because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans; provided, that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide LIBOR after such specific date (such specific date, the "Scheduled Unavailability Date"); or

(iii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBOR are no longer representative; or

(iv) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.03, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;



then, in the case of clauses (i) through (iii) above, on a date and time determined by the Administrative Agent (any such date, a “LIBOR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant Interest Payment Date, as applicable, for interest calculated and shall occur within a reasonable period of time after the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, LIBOR will be replaced hereunder and under any Loan Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (any such rate, a “LIBOR Successor Rate”; and any such rate before giving effect to the Related Adjustment, the “Pre-Adjustment Successor Rate”): (x) Term SOFR plus the Related Adjustment; and (y) SOFR plus the Related Adjustment; and in the case of clause (iv) above, the Borrower and Administrative Agent may amend this Agreement solely for the purpose of replacing LIBOR under this Agreement and under any other Loan Document in accordance with the definition of “LIBOR Successor Rate” and such amendment will become effective at 5:00 p.m. (New York City time), on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent shall have notified all Lenders and the Borrower of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to the implementation of a LIBOR Successor Rate pursuant to such clause; provided, that, if the Administrative Agent determines that Term SOFR has become available, is administratively feasible for the Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant Interest Payment Date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate then in effect shall be Term SOFR plus the relevant Related Adjustment. The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of (A) any occurrence of any of the events, periods or circumstances under clauses (i) through (iii) above, (B) a LIBOR Replacement Date, and (C) any LIBOR Successor Rate. Any LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent. Notwithstanding anything else herein, if at any time any LIBOR Successor Rate as so determined would otherwise be less than zero, the LIBOR Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents. In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided, that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective. If the events or circumstances of the type described in Section 3.03(c)(i) through (iii) have occurred with respect to the LIBOR Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of “LIBOR Successor Rate.”

(d) Notwithstanding anything to the contrary herein, (i) after any such determination by the Administrative Agent or receipt by the Administrative Agent of any such notice described under Section 3.03(c)(i) through (iii), as applicable, if the Administrative Agent determines that none of the LIBOR Successor Rates is available on or prior to the applicable LIBOR Replacement Date, (ii) if the events or circumstances described in Section 3.03(c)(iv) have occurred but none of the LIBOR Successor Rates is available, or (iii) if the events or circumstances of the type described in Section 3.03(c)(i) through (iii) have occurred with respect to the LIBOR Successor Rate then in effect and the Administrative Agent determines that none of the LIBOR Successor Rates is available, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing LIBOR or any then current LIBOR Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant Interest Payment Date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then-existing convention for similar Dollar-denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Related Adjustments and any other mathematical or other adjustments to such benchmark giving due consideration to any evolving or then-existing convention for similar Dollar-denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a LIBOR Successor Rate. Any such amendment shall become effective at 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

(e) If, at the end of any Interest Period, relevant Interest Payment Date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with Section 3.03(c) or Section 3.03(d) and the circumstances under Section 3.03(c)(i) or Section 3.03(d)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans, Interest Periods, Interest Payment Dates or payment periods), and (ii) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate, until the LIBOR Successor Rate has been determined in accordance with Section 3.03(c) or Section 3.03(d). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans, Interest Periods, Interest Payment Dates or payment periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (ii)) in the amount specified therein.

3.04 Increased Costs; Reserves on Eurodollar Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(d)) or any L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an L/C Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in Section 3.04(a) or Section 3.04(b) and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, 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, that, the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) 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 or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation; provided, that, the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer'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).

### 3.05 Compensation for Losses.

Upon demand of any Lender (with a copy to the Administrative Agent) 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 continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

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

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

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 the Lenders under this Section 3.05, each 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 market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

### 3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, any L/C Issuer, or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02,

then at the request of the Borrower, such Lender or such L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or such L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or any L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 11.13.

### 3.07 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Facility Termination Date.

## ARTICLE IV

### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

#### 4.01 Conditions of Initial Credit Extension.

The effectiveness of this Agreement and the obligation of each L/C Issuer and each Lender to make its initial Credit Extension hereunder are subject to satisfaction (or waiver) of the following conditions precedent:

(a) Execution of Credit Agreement; Loan Documents. The Administrative Agent shall have received counterparts of this Agreement and each other Loan Document to be executed and delivered on the Closing Date, in each case each executed (i) by a Responsible Officer of the signing Loan Party, and (ii) in the case of this Agreement, by each Lender.

(b) Organization Documents, Resolutions, Etc. The Administrative Agent shall have received the following: (i) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the jurisdiction of its organization and certified by a Responsible Officer of such Loan Party to be true and correct as of the Closing Date; (ii) such certificates of resolutions or other action, incumbency certificates, and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party; (iii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization.

(c) Legal Opinions of Counsel. The Administrative Agent shall have received an opinion or opinions of counsel for the Loan Parties, dated the Closing Date and addressed to the Administrative Agent, the L/C Issuers and the Lenders, in form and substance acceptable to the Administrative Agent.

(d) Financial Statements. The Administrative Agent and the Arrangers shall have received copies of (i) (A) the Audited Financial Statements, and (B) the audited annual Consolidated financial statements of the Borrower and its Subsidiaries for the fiscal years of the Borrower ended April 30, 2018 and April 30, 2019, including, for each such fiscal year of the Borrower, a balance sheet and statements of income, cash flows and stockholder's equity (including, in each case, all footnotes to the foregoing, setting forth in comparative form the corresponding figures as of the end of, and for, the applicable preceding fiscal year of the Borrower), (ii) audited annual Consolidated financial statements of the Closing Date Acquisition Target and its Subsidiaries for the fiscal years of the Closing Date Acquisition Target ended December 31, 2018 and December 31, 2019, to include in each case a balance sheet and statements of income, cash flows and shareholders' equity (including all footnotes to the foregoing, all in reasonable detail and setting forth in comparative form the corresponding figures as of the end of, and for, the applicable preceding fiscal year of the Closing Date Acquisition Target), (iii) unaudited Consolidated financial statements of the Borrower and its Subsidiaries for the fiscal quarters of the Borrower ended July 31, 2020 and October 31, 2020, to include in each case a balance sheet and statements of income and cash flows, all in reasonable detail and setting forth in comparative form the corresponding figures as of the end of, and for the corresponding period in, the applicable preceding fiscal year of the Borrower, (iv) unaudited Consolidated financial statements of the Closing Date Acquisition Target and its Subsidiaries for the fiscal quarters of the Closing Date Acquisition Target ended March 31, 2020, June 30, 2020 and September 30, 2020, to include in each case a balance sheet and statements of income and cash flows, all in reasonable detail and setting forth in comparative form the corresponding figures as of the end of, and for the corresponding period in, the applicable preceding fiscal year of the Closing Date Acquisition Target, and (v) pro forma financial statements of the Borrower and its Subsidiaries as of and for the twelve (12)-month period ended on October 31, 2020, to include a balance sheet and statements of income, cash flows and stockholders' equity, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such other financial statements) (the "Pro Forma Financial Statements").

(e) No Company Material Adverse Effect. Since the date of the Closing Date Acquisition Agreement, there shall not have been a "Company Material Adverse Effect" (as defined in the Closing Date Acquisition Agreement (as in effect on January 11, 2021)).

(f) Personal Property Collateral; Insurance. The Administrative Agent shall have received:

(i) (A) searches of UCC filings in the jurisdiction of organization of each Loan Party and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens, and (B) tax lien and judgment searches;

(ii) searches of ownership of registered and pending Intellectual Property in the United States Copyright Office and the United States Patent and Trademark Office and duly executed notices of grant of security interest in the form required by the Collateral

Documents as are necessary to perfect the Administrative Agent's security interest in such Intellectual Property;

(iii) completed UCC financing statements for each appropriate jurisdiction as is necessary to perfect the Administrative Agent's security interest in the Collateral to the extent that a security interest in such Collateral may be perfected by the filing of a UCC financing statement;

(iv) to the extent required to be delivered pursuant to the terms of the Collateral Documents, stock, equity, share or membership certificates and endorsements of, or recordings of, or notations on, such certificates evidencing Equity Interests pledged pursuant to the terms of the Collateral Documents, together with, where applicable, undated stock or transfer powers duly executed in blank;

(v) to the extent required to be delivered pursuant to the terms 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 to perfect the Administrative Agent's security interest in the Collateral; and

(vi) copies of insurance certificates and endorsements of insurance evidencing liability, casualty, property, terrorism and business interruption insurance meeting the requirements set forth herein or in the Collateral Documents;

provided, that, to the extent any security interest in any Collateral is not or cannot be provided and/or perfected on the Closing Date (other than (1) the granting of a security interest pursuant to the Collateral Documents, (2) the perfection of the security interest in assets with respect to which a Lien may be perfected by the filing of a UCC financing statement and/or the filing of short-form Intellectual Property notices with the United States Patent and Trademark Office or the United States Copyright Office, and (3) the perfection of the security interest in certificated Equity Interests of any Domestic Subsidiary (provided, that, with respect to any such certificates that are held by the Closing Date Acquisition Target or the Closing Date Acquisition Target's existing lenders, such certificates shall only be required to be delivered on the Closing Date to the extent such certificates are received by the Borrower on or prior to the Closing Date after the Borrower's use of commercially reasonable efforts to obtain such certificates)) after the Borrower's use of commercially reasonable efforts to do so, then the grant, provision and/or perfection of a security interest in such Collateral shall not constitute a condition precedent to the availability of the Credit Extensions to be made on the Closing Date, but instead shall be required to be delivered within thirty (30) days after the Closing Date (or such longer period of time as may be agreed by the Administrative Agent in its sole discretion) (the provisions of this proviso being referred to herein as the "Limited Conditionality Provision").

(g) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate signed by the chief financial officer of the Borrower certifying that the Borrower and its Subsidiaries, on a Consolidated basis after giving effect to the Transactions, are Solvent.

(h) Officer's Certificate. The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower certifying that the conditions specified in Sections 4.01(e), (i), (j), and (l) have been satisfied.

(i) Closing Date Acquisition. The Closing Date Acquisition Agreement shall be in full force and effect. The Closing Date Acquisition shall have been consummated, or substantially

concurrently with the funding of the Term A Loans on the Closing Date shall be consummated, in all material respects in accordance with the terms of the Closing Date Acquisition Agreement, without giving effect to any modifications or amendments thereto (which, for the avoidance of doubt, shall include any Schedule Supplement (as defined in the Closing Date Acquisition Agreement (as in effect on January 11, 2021))) or consents or waivers thereto or thereunder by the Borrower or any of its Affiliates that are material and adverse to the Lenders (in their respective capacities as such) or the Arrangers (in their respective capacities as such) without the prior consent of the Arrangers (such consent not to be unreasonably withheld, delayed or conditioned); provided, that, it is understood and agreed that: (i) any reduction of the purchase price in connection with the Closing Date Acquisition shall not be deemed to be material and adverse to the interests of the Lenders and the Arrangers if such reduction of the purchase price shall be allocated to a reduction in the amount of the Term A Facility; (ii) any increase of the purchase price in connection with the Closing Date Acquisition shall not be deemed to be material and adverse to the interests of the Lenders and the Arrangers if such increase of the purchase price is (A) funded with cash on the balance sheet of the Borrower and/or is satisfied by increasing the amount of the Closing Date Equity Contribution, and (B) in an aggregate amount not in excess of \$100,000,000; and (iii) any change to the definition of “Company Material Adverse Effect” shall be deemed material and adverse to the Lenders and the Arrangers.

(j) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in this Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be made on the Closing Date; provided, that, it is understood and agreed that only the Specified Representations shall be true and correct in all material respects (or in all respects if already qualified by materiality) on and as of the Closing Date. The Specified Closing Date Acquisition Agreement Representations shall be true and correct in all material respects (or in all respects if already qualified by materiality) on and as of the Closing Date.

(k) Closing Date Refinancing. The Closing Date Refinancing shall have been, or substantially concurrently with the funding of the Term A Loans on the Closing Date shall be, consummated.

(l) Closing Date Equity Contribution. Prior to, or substantially concurrently with, the funding of the Term A Loans on the Closing Date, the Borrower shall have consummated the Closing Date Equity Contribution.

(m) Loan Notice. The Administrative Agent shall have received a Loan Notice with respect to the Term A Borrowing to be made on the Closing Date and, to the extent any Eurodollar Rate Loans are to be made on the Closing Date, a Funding Indemnity Letter in connection with such Loan Notice.

(n) Due Diligence; PATRIOT Act; Beneficial Ownership. At least five (5) Business Days prior to the Closing Date, (i) the Administrative Agent and each Lender shall have received all documentation and other information about the Loan Parties as has been reasonably requested by the Administrative Agent or such Lender at least ten (10) Business Days prior to the Closing Date that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act, and (ii) if the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Borrower shall have delivered to the Administrative Agent and each Lender requesting the same at least ten (10) Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower.



(o) Payment of Fees and Expenses. All fees required to be paid on the Closing Date, and all reasonable out-of-pocket expenses required to be paid on the Closing Date, in each case shall have been paid to the extent invoiced at least three (3) Business Days (or such shorter period of time as the Borrower may agree) prior to the Closing Date.

Without limiting the generality of the provisions of Section 9.03(c)(vi), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender (or any of its Affiliates) unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### 4.02 Conditions to all Credit Extensions After the Closing Date.

The obligation of each Lender and each L/C Issuer to honor any Request for Credit Extension (other than (x) in connection with the Term A Borrowing on the Closing Date, and (y) a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in this Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) Default. No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Request for Credit Extension. The Administrative Agent and, if applicable, the applicable L/C Issuer or the Swingline Lender, shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than (x) in connection with the Term A Borrowing on the Closing Date and (y) a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders, as of the date made or deemed made, that:

#### 5.01 Existence, Qualification and Power.

Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable and except for the Immaterial Subsidiary, 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.

#### 5.02 Authorization; No Contravention.

(a) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action.

(b) The execution, delivery, and performance by each Loan Party of each Loan Document to which such Person is or is to be a party does not and will not (i) contravene the terms of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than Liens created pursuant to the Loan Documents in favor of the Administrative Agent), or require any payment to be made under (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (iii) violate any Law; except in each case referred to in clause (ii) or (iii) above, to the extent that failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### 5.03 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 Administrative Agent or any Lender of its 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.

#### 5.04 Binding Effect.

Each Loan Document has been duly executed and delivered by each Loan Party that is party thereto. Each Loan Document when so delivered constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights

generally and subject to general principles of equity, and (b) solely with respect to the enforcement of any pledge of the Equity Interests in any Foreign Subsidiary or any pledge of intercompany Indebtedness owed by any Foreign Subsidiary, the effect of foreign Laws, rules and regulations as they relate to the enforcement of any such pledge.

5.05 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 stockholder's 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 liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) Quarterly Financial Statements. The unaudited Consolidated balance sheet of the Borrower and its Subsidiaries dated as of October 31, 2020, and the related Consolidated statements of income and cash flows for the fiscal quarter of the Borrower ended October 31, 2020 (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations and cash flows for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Material Adverse Effect. Since April 30, 2020, 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.

5.06 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened or contemplated, 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.

5.07 No Default.

Neither any Loan Party nor any Subsidiary 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 or the other transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property.

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.

5.09 Environmental Compliance.

(a) Except as could not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect:

(i) (A) None of the properties currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries is listed or formally proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (B) there are no, and to the best knowledge of the Loan Parties and their Subsidiaries never have been any, underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned, leased or operated by any Loan Party or any of its Subsidiaries or, to the best of the knowledge of the Loan Parties, on any property formerly owned, leased or operated by any Loan Party or any of its Subsidiaries; (C) there is no and never has been any asbestos or asbestos-containing material on, at or in any property currently owned, leased or operated by any Loan Party or any of its Subsidiaries; (D) Hazardous Materials have not been released on, at, under or from any property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries or any property by or on behalf, or otherwise arising from the operations, of any Loan Party or any of its Subsidiaries; and (E) no Loan Party or any of its Subsidiaries has become subject to any Environmental Liability or knows of any facts or circumstances that could reasonably be expected to give rise to any Environmental Liability.

(ii) (A) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not 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 of Hazardous Materials at, on, under, or from any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and (B) all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner which could not reasonably be expected to result in liability to any Loan Party or any of its Subsidiaries.

(iii) The Loan Parties and their respective Subsidiaries: (A) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws; (B) hold all Environmental Permits (each of which is in full force and effect) required for any of their current or intended operations or for any property owned, leased, or otherwise operated by any of them; (C) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits; (D) to the extent within the control of the Loan Parties and their respective Subsidiaries, will timely renew and comply with each of their Environmental Permits and any additional Environmental Permits that may be required of any of them without material expense, and timely comply with any current, future or potential Environmental Law without material expense; and (E) are not aware of any requirements proposed for adoption or implementation under any Environmental Law.

#### 5.10 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 filed all federal, state 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 best 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 or Multiemployer Plan; (ii) 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; (iii) 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; (iv) 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 (v) 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) As of the Closing Date, the Borrower is not and will not be using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with

respect to the Borrower's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement.

5.13 Margin Regulations; Investment Company Act.

(a) Margin Regulations. Neither the Borrower nor any Subsidiary is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, 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 7.01 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower or any Subsidiary and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 8.01(e) will be margin stock.

(b) Investment Company Act. None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or 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 Administrative Agent and the 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 written information (other than projected financial information and information of a general economic or industry-specific nature) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender 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), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading. All projected financial information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement, or delivered hereunder or under any other Loan Document, has been prepared in good faith based upon assumptions believed to be reasonable at the time such information was furnished. As of the Closing Date, the information included in any Beneficial Ownership Certification delivered to the Administrative Agent or any Lender, if applicable, is true and correct in all respects.

5.15 Compliance with Laws.

Each Loan Party and each Subsidiary is in compliance 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 (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, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.16 Solvency.

The Borrower and its Subsidiaries, on a Consolidated basis, are Solvent.

5.17 Sanctions Concerns and Anti-Corruption Laws.

(a) Sanctions Concerns. No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority, or (iii) located, organized or resident in a Designated Jurisdiction. The Borrower and its Subsidiaries have conducted their businesses in compliance with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

(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 and other applicable anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.18 Subsidiaries; Equity Interests; Loan Parties.

(a) Subsidiaries, Joint Ventures, Partnerships and Equity Investments. Set forth on Schedule 5.18(a) is a complete and accurate list as of the Closing Date of: (i) all Subsidiaries, joint ventures and partnerships and other equity investments of the Loan Parties; (ii) the number of shares of each class of Equity Interests in each Subsidiary outstanding; (iii) the number and percentage of outstanding shares of each class of Equity Interests owned by the Loan Parties and their Subsidiaries; and (iv) the class or nature of such Equity Interests (i.e. voting, non-voting, preferred, etc.). 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 or any Subsidiary, except as contemplated in connection with the Loan Documents or as set forth on Schedule 5.18(a).

(b) Loan Parties. Set forth on Schedule 5.18(b) is a complete and accurate list as of the Closing Date of each Loan Party's: (i) exact legal name; (ii) any former legal names in the four (4) months prior to the Closing Date, if any; (iii) jurisdiction of its incorporation or organization, as applicable; (iv) address of its chief executive office (and address of its principal place of business if different than its chief executive office address); (v) U.S. federal taxpayer identification number; and (vi) organization identification number, if any.

5.19 Collateral Representations.

(a) Collateral Documents. The provisions of the Collateral Documents are (and upon delivery of Collateral to the Administrative Agent and/or when appropriate filings or other actions required by the applicable Collateral Documents or by applicable law have been filed or taken, will be) effective to create in favor of the Administrative 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 and other actions 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 such Liens.

(b) Intellectual Property. Set forth on Schedule 5.19(b), as of the Closing Date, is a list of all Intellectual Property registered or pending registration with the United States Copyright Office or the United States Patent and Trademark Office (other than Intellectual Property that is expired, abandoned, or lapsed) and owned by each Loan Party as of the Closing Date. Except for such claims and infringements that would not reasonably be expected to have a Material Adverse Effect, no claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property, nor does any Loan Party know of any such claim, and the use of any Intellectual Property by any Loan Party or any of its Subsidiaries or the granting of a right or a license in respect of any Intellectual Property from any Loan Party or any of its Subsidiaries does not, to the best of any Loan Party's knowledge, infringe on the rights of any Person. As of the Closing Date, none of the Intellectual Property owned by any of the Loan Parties or any of their Subsidiaries is subject to any licensing agreement or similar arrangement (other than non-exclusive outbound licenses entered into in the ordinary course of business) except as set forth on Schedule 5.19(b).

(c) Deposit Accounts and Securities Accounts. Set forth on Schedule 5.19(c), as of the Closing Date, is a description of all deposit accounts and all securities accounts of the Loan Parties, including the name of (i) the applicable Loan Party, (ii) in the case of a deposit account, the depository institution and balance (as of January 31, 2021) held in such deposit account and whether such account is an Excluded Account, and (iii) in the case of a securities account, the securities intermediary or issuer and the market value (as of January 31, 2021) held in such securities account, as applicable.

(d) Properties. Set forth on Schedule 5.19(d), as of the Closing Date, is a list of all real property located in the United States that is owned or leased by any Loan Party (in each case, including (i) the name of the Loan Party owning (or leasing) such property, (ii) the property address, and (iii) the city, county, state and zip code which such property is located).

5.20 Affected Financial Institutions.

No Loan Party is an Affected Financial Institution.

5.21 Covered Entities.

No Loan Party is a Covered Entity.

## 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:

6.01 Financial Statements.

The Borrower shall deliver to the Administrative Agent (for further distribution to each Lender), in form and detail satisfactory to the Administrative Agent:

(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 (or, if earlier, fifteen (15) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the



SEC)), commencing with the fiscal year ending April 31, 2021, 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, changes in stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Administrative Agent, 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.

(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 (or, if earlier, five (5) days after the date required to be filed with the SEC, (without giving effect to any extension permitted by the SEC)), commencing with the fiscal quarter of the Borrower ending July 31, 2021, 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, certified by the chief executive officer, chief financial officer, treasurer or controller who is a Responsible Officer of the Borrower as fairly presenting 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) Budget and Projections. As soon as available, but in any event no later than ninety (90) days after the beginning of each fiscal year of the Borrower, projections and a budget for the Borrower and its Subsidiaries on a Consolidated basis (including a balance sheet and related statements of income and cash flows), on a quarterly basis for such fiscal year.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b), but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.01(a) and (b) at the times specified therein.

#### 6.02 Certificates; Other Information.

Each Loan Party shall, and shall cause each of its Subsidiaries to, deliver to the Administrative Agent (for further distribution to each Lender), in form and detail satisfactory to the Administrative Agent:

(a) Compliance Certificate. Concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller which is a Responsible Officer of the Borrower, including (A) a certification that no Default has occurred and is continuing (or, if a Default has occurred and is continuing, describing the nature and status of each such Default and actions that have been taken or are proposed to be taken to cure such Default), (B)(1) a certification of compliance with the financial covenants set forth in Section 7.11, including financial covenant calculations for the period covered by the Compliance Certificate and (2) a calculation of the Available Amount as of the date of such Compliance Certificate, (C) a listing of (1) all applications with the United States Patent and Trademark Office or the United States Copyright Office by any Loan Party, if any, for any Intellectual Property made since the date of the most recent prior Compliance Certificate (or, in the case of the first Compliance Certificate delivered after the

Closing Date pursuant to this Section 6.02(a), the Closing Date), (2) all issuances of registrations or letters on existing applications with the United States Patent and Trademark Office or the United States Copyright Office by any Loan Party, if any, for any Intellectual Property received since the date of the most recent prior Compliance Certificate (or, in the case of the first Compliance Certificate delivered after the Closing Date pursuant to this Section 6.02(a), the Closing Date), and (3) all licenses relating to any Intellectual Property registered with the United States Patent and Trademark Office or the United States Copyright Office entered into by any Loan Party since the date of the most recent prior Compliance Certificate (or, in the case of the first Compliance Certificate delivered after the Closing Date pursuant to this Section 6.02(a), the Closing Date), and (D) concurrently with the delivery of the financial statements referred to in Section 6.01(a), updated evidence of insurance for any insurance coverage of any Loan Party that was renewed, replaced or modified during the period covered by such Compliance Certificate, and (ii) a copy of management's discussion and analysis with respect to such financial statements. Unless the Administrative Agent or a 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.

(b) Audit Reports; Management Letters; Recommendations. Promptly after any request by the Administrative Agent or any Lender, copies of any 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.

(c) Annual Reports; Etc. Promptly after the same are sent or filed, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of any Loan Party, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party 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 the Administrative Agent pursuant hereto.

(d) Debt Securities Statements and Reports. Promptly after the furnishing thereof, 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 governing Indebtedness with in an aggregate principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02.

(e) SEC Notices. Promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary.

(f) Anti-Money-Laundering; Beneficial Ownership Regulation. Promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act.

(g) Beneficial Ownership. To the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, an updated Beneficial Ownership

Certification promptly following any change in the information provided in any Beneficial Ownership Certification delivered to the Administrative Agent or any Lender in relation to the Borrower that would result in a change to the list of beneficial owners identified in such certification.

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

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (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 1.01(a), or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its reasonable request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender, and (ii) the Borrower shall notify the Administrative Agent and each Lender (by e-mail transmission) of the posting of any such documents and, to the extent reasonably requested by the Administrative Agent, provide to the Administrative Agent by e-mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "Platform"), and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, each Arranger, each L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07), (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information," and (iv) the Administrative Agent and any Affiliate thereof and each Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

6.03 Notices.

Each Loan Party shall, and shall cause each of its Subsidiaries to, promptly, but in any event within two (2) Business Days, notify the Administrative Agent (and, upon receipt of any such notice, the Administrative Agent shall notify each Lender) of:

- (a) the occurrence of any Default;
- (b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event;
- (d) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary, including any determination by the Borrower referred to in Section 2.10(b); or
- (e) any (i) occurrence of any Disposition or Involuntary Disposition for which a mandatory prepayment is required pursuant to Section 2.05(b)(i), or (ii) Debt Issuance for which a mandatory prepayment is required pursuant to Section 2.05(b)(ii).

Each notice pursuant to this Section 6.03 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 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations.

Each Loan Party shall, and shall cause each of its Subsidiaries to, pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) 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, (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (other than Permitted Liens), and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; except, in any case, to the extent the failure to pay or discharge the same could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

6.05 Preservation of Existence, Etc.

- (a) Each Loan Party shall, and shall cause each of its Subsidiaries to, preserve, renew and maintain in full force and effect its legal existence and, except with respect to the Immaterial Subsidiary, good standing under the Laws of the jurisdiction of its organization, except in a transaction permitted by Section 7.04 or 7.05.
- (b) Each Loan Party shall, and shall cause each of its Subsidiaries to, take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in 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.

(c) Each Loan Party shall, and shall cause each of its Subsidiaries to, preserve or renew all of its registered Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties.

Each Loan Party shall, and shall cause each of its Subsidiaries to, (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07 Maintenance of Insurance.

(a) Maintenance of Insurance. Each Loan Party shall, and shall cause each of its Subsidiaries to, 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 under similar circumstances by such other Persons.

(b) Evidence of Insurance. Each Loan Party shall, and shall cause each of its Subsidiaries to, (i) cause the Administrative Agent to be named as lenders' loss payable and/or additional insured with respect of any insurance providing liability coverage or coverage in respect of any Collateral, and use commercially reasonable efforts to cause, unless otherwise agreed to by the Administrative Agent, 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 Administrative Agent that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall lapse, terminate or be cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of premiums), and (ii) annually, upon expiration of current insurance coverage, provide, or cause to be provided, to the Administrative Agent, such evidence of insurance as required by the Administrative Agent, including, but not limited to, (A) evidence of such insurance policies (including, as applicable, ACORD Form 28 certificates (or similar form of insurance certificate) and ACORD Form 25 certificates (or similar form of insurance certificate)), and (B) endorsements naming the Administrative Agent as lenders' loss payable and/or additional insured with respect of any such insurance.

6.08 Compliance with Laws.

Each Loan Party shall, and shall cause each of its Subsidiaries to, 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.

6.09 Books and Records.

Each Loan Party shall, and shall cause each of its Subsidiaries to, (a) maintain proper books of record and account, in which full, true and correct (in all material respects) entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be; and (b) maintain such books of record and

account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.

6.10 Inspection Rights.

Each Loan Party shall, and shall cause each of its Subsidiaries to, permit representatives and independent contractors of the Administrative Agent and each Lender 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 (provided, that, one or more representatives of the Borrower shall be invited (with reasonable advanced notice) to attend any such meetings with such independent public accountants), all at the expense of the Borrower and at such reasonable times during normal business hours and no more than once per calendar year, upon reasonable advance notice to the Borrower; provided, that, when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time, and as often as may be desired, during normal business hours and without advance notice; provided, further, that, notwithstanding anything to the contrary herein, neither the Borrower nor any of its Subsidiaries shall be required to disclose, permit the inspection, examination or making of copies of or taking abstracts from, or discuss any document, information or other matter (a) that constitutes non-financial trade secrets or non-financial proprietary information of the Borrower and its Subsidiaries (and/or any such information of any of their respective customers and/or suppliers), (b) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives or agents) is prohibited by applicable Law, (c) that is subject to attorney-client or similar privilege or constitutes attorney work product, or (d) in respect of which the Borrower or such Subsidiary owes confidentiality obligations (to the extent not created in contemplation of the Borrower's or such Subsidiary's obligations under this Section 6.10) to any third party.

6.11 Use of Proceeds.

Each Loan Party shall, and shall cause each of its Subsidiaries to, use the proceeds of (a) the Term A Loans on the Closing Date to pay the Closing Date Acquisition Costs, (b) the Revolving Facility (including Letters of Credit and Swingline Loans) from time to time after the Closing Date to finance working capital and for other general corporate purposes (provided, that, the foregoing provisions of this clause (b) shall not restrict the deemed issuance of the Existing Letters of Credit on the Closing Date, to the extent such Existing Letters of Credit otherwise comply with this Section 6.11), and (c) any Incremental Term Facility for the purposes set forth in the Incremental Term Facility Agreement entered into in connection with the establishment of such Incremental Term Facility; provided, that, in no event shall the proceeds of any Credit Extension be used in contravention of any Law or of any Loan Document.

6.12 Covenant to Guarantee Obligations.

Each Loan Party shall, and shall cause each of its Subsidiaries to, within forty-five (45) days (or, with respect to any Domestic Subsidiary that is a Telerob Immaterial Subsidiary, one hundred twenty (120) days) (or, in each case, such longer period of time as is agreed to by the Administrative Agent in its sole discretion) after the acquisition or formation of any Subsidiary, cause any such Subsidiary that is a Domestic Subsidiary to become a Guarantor hereunder by way of execution of a Joinder Agreement in form and substance satisfactory to the Administrative Agent and, in connection with the foregoing, deliver to the Administrative Agent, with respect to each new Guarantor, substantially the same documentation required pursuant to Sections 4.01(b), (f), and (n), Section 6.13, and, to the extent requested by the Administrative Agent, opinions of counsel to such Person, and such other deliveries reasonably deemed necessary in connection therewith, all in form, content and scope reasonably satisfactory to the Administrative Agent.

6.13 Covenant to Give Security.

Each Loan Party shall:

(a) Equity Interests. Cause (i) one hundred percent (100%) of the issued and outstanding Equity Interests directly owned by such Loan Party in each of its Domestic Subsidiaries, and (ii) sixty-five percent (65%) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and one hundred percent (100%) of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)), in each case, directly owned by such Loan Party in each of its Foreign Subsidiaries, in each case, to be subject at all times to a first priority, perfected Lien in favor of the Administrative 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, to the extent requested by the Administrative Agent, opinions of counsel and any filings and deliveries necessary in connection therewith to perfect the security interests therein, all in form and substance satisfactory to the Administrative Agent.

(b) Other Property. Cause all property of such Loan Party (other than Excluded Property of such Loan Party) to be subject at all times to first priority (subject only to Permitted Liens), perfected Liens in favor of the Administrative Agent, for the benefit of the Secured Parties, to secure the Secured Obligations pursuant to the Collateral Documents or, with respect to any such property acquired subsequent to the Closing Date, such other additional security documents as the Administrative Agent shall reasonably request and, in connection with the foregoing, deliver to the Administrative Agent such other documentation as the Administrative Agent may reasonably request including filings and deliveries necessary to perfect such Liens, Organization Documents, resolutions, and, to the extent requested by the Administrative Agent, favorable opinions of counsel, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(c) Qualifying Control Agreements. To the extent requested by the Administrative Agent with respect to any deposit account or any securities account of such Loan Party, cause such deposit account (other than (i) any deposit account maintained with the Administrative Agent or any Lender, and (ii) any Excluded Account) or such securities account at all times to be subject to a Qualifying Control Agreement (it being understood and agreed that the Loan Parties shall have forty-five (45) days following any such request (or such longer period of time as is agreed by the Administrative Agent in its sole discretion) to provide any such Qualifying Control Agreement).

(d) Assignment of Claims Act. Promptly, upon request by the Administrative Agent, comply with any and all of the requirements of the Assignment of Claims Act (Title 31 Section 3727 and Title 41 Section 15 of the United States Code), and FAR Subpart 32.8 (including FAR 52.232-23) (and comparable Laws of any state) where such statutes and regulations are applicable to any government contracts of any Loan Party, and take all such other action as may be necessary to make the direct assignment to the Administrative Agent of the payments due or to become due under such government contracts, and such further action as may be necessary to facilitate the creation and perfection of the Administrative Agent's security interest in such payments; provided, that, no Loan Party shall be required to take any such action with respect to any government contract with (i) less than \$5,000,000 in remaining value, or (ii) less than six (6) months in remaining duration.

Notwithstanding any provision in any Loan Document to the contrary, in no event shall any Loan Party be required to (x) enter into any Collateral Document governed by the laws of any jurisdiction other

than the United States, any state thereof or the District of Columbia, or (y) take any steps to perfect a security interest created over any Collateral located outside of the United States.

6.14 Further Assurances.

Each Loan Party shall, and shall cause each of its Subsidiaries to, promptly upon request by the Administrative Agent, or any Lender through the Administrative 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 Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) subject any Loan Party's 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 to which any Loan Party is or is to be a party.

6.15 Anti-Corruption Laws; Sanctions.

Each Loan Party shall, and shall cause each of its Subsidiaries to, (a) conduct its business in compliance in all material respects with (i) the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and (ii) all applicable Sanctions, and (b) maintain policies and procedures designed to promote and achieve compliance with (i) the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and (ii) all applicable Sanctions.

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:

7.01 Liens.

Directly or indirectly 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) (i) Liens existing on the Closing Date and listed on Schedule 7.01; and (ii) any extension, renewal or replacement thereof; provided, that, (A) the property covered thereby is not changed, (B) the amount secured or benefited thereby is not increased, (C) the direct or any contingent obligor with respect thereto is not changed, and (D) any extension, renewal or replacement of the obligations secured or benefited thereby is a Permitted Refinancing permitted by Section 7.02(b);



(c) Liens securing Indebtedness permitted under Section 7.02(c); provided, that: (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness together with any accessions thereto and proceeds thereof, and (ii) such Liens attach to such property concurrently with or within one hundred twenty (120) days after the acquisition thereof;

(d) Liens for taxes not yet due and payable or which are being contested in good faith by appropriate proceedings diligently pursued; provided, that, (i) any proceedings commenced for the enforcement of such Liens shall have been stayed or suspended within thirty (30) days of the commencement thereof, and (ii) provision for the payment of all such taxes has been made on the books of such Person to the extent required by GAAP;

(e) mechanic's, processor's, materialman's, carrier's, warehousemen's, landlord's and similar Liens (including statutory and common law landlord's Liens under leases to which any Loan Party or any Subsidiary is a party) arising by operation of Law and arising in the ordinary course of business and securing obligations of such Person that are not overdue for a period of more than ninety (90) days or are being contested in good faith by appropriate proceedings diligently pursued; provided, that, (i) any proceedings commenced for the enforcement of such Liens shall have been stayed or suspended within thirty (30) days of the commencement thereof, and (ii) provision for the payment of such Liens has been made on the books of such Person to the extent required by GAAP;

(f) Liens arising in connection with worker's compensation, unemployment insurance, old age pensions and social security benefits (other than Liens imposed by ERISA) which are not overdue or are being contested in good faith by appropriate proceedings diligently pursued; provided, that, (i) any proceedings commenced for the enforcement of such Liens shall have been stayed or suspended within thirty (30) days of the commencement thereof, and (ii) provision for the payment of such Liens has been made on the books of such Person to the extent required by GAAP;

(g) Liens (i) incurred or deposits made in the ordinary course of business to secure the performance of bids, tenders, statutory obligations, fee and expense arrangements with trustees and fiscal agents (exclusive of obligations incurred in connection with the borrowing of money or the payment of the deferred purchase price of property) and customary deposits granted in the ordinary course of business under operating leases, and (ii) incurred or deposits made securing the performance of surety, indemnity, performance, appeal and release bonds incurred in the ordinary course of business; provided, that, in each case, full provision for the payment of all such obligations has been made on the books of such Person to the extent required by GAAP;

(h) Permitted Real Property Encumbrances;

(i) attachment, judgment or other similar Liens arising in connection with court or arbitration proceedings to the extent not constituting an Event of Default; provided, that, the same are discharged, or that execution or enforcement thereof is stayed pending appeal, within thirty (30) days or, in the case of any stay of execution or enforcement pending appeal, within such lesser time during which such appeal may be taken;

(j) leases or subleases granted to others not interfering in any material respect with the business of the Borrower or any of its Subsidiaries and any interest or title of a lessor under any lease permitted by the Loan Documents;

(k) customary rights of set off, revocation, refund or chargeback under deposit agreements or under the UCC of banks or other financial institutions where the Borrower or any of its Subsidiaries maintains deposits in the ordinary course of business permitted by the Loan Documents;

(l) landlord's Liens created pursuant to any lease entered into by the Borrower or any of its Subsidiaries with a landlord in the ordinary course of business; provided, that, such Liens (i) only encumber assets at the applicable leased property (and do not otherwise encumber other assets of the Borrower and its Subsidiaries), and (ii) are granted solely to secure obligations arising under such lease that are owing by the Borrower or such Subsidiary to the landlord under such lease (and do not, in any event, secure any Indebtedness);

(m) Liens securing (i) the financing of insurance premiums or other financial assurances associated with workers compensation insurance coverage, and (ii) the financing of insurance premiums or other financial assurances associated with other insurance coverage or other financial assurance requirements obtained in the normal course of business; provided, that, the aggregate amount of obligations secured by such Liens, when taken together with the aggregate amount of Indebtedness incurred in reliance on Section 7.02(n), shall not exceed \$20,000,000 at any time outstanding;

(n) Liens securing Indebtedness permitted pursuant to Section 7.02(d); provided, that, (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall not apply to any other property of the Borrower or any Subsidiary, and (iii) such Lien shall secure only those obligations it secures on the date of acquisition;

(o) Liens securing Indebtedness permitted pursuant to Section 7.02(f); provided, that, in each case, such Lien shall not extend to any Collateral or the Equity Interests of the Borrower or any other Loan Party;

(p) Liens in favor of a trustee under customary indenture documentation on cash deposited with such trustee in connection with the repayment of Indebtedness issued pursuant to such indenture, to the extent the repayment of such Indebtedness would have been permitted on the date of creation of such Liens;

(q) licenses (including non-exclusive licenses of Intellectual Property otherwise permitted pursuant to this Agreement) or sublicenses granted to third parties in the ordinary course of business and not interfering in any material respect with the business of the Borrower or any of its Subsidiaries;

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

(s) any interest of title of a lessor under, and Liens arising from UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, any lease permitted pursuant to this Agreement and entered into by the Borrower or any Subsidiary in the ordinary course of business;

(t) Liens arising from precautionary UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions), but only to the extent such filing do not evidence Liens securing Indebtedness;

(u) Liens (i) attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement entered into in connection with any Investment permitted pursuant to Section 7.03, or (ii) constituting an agreement to Dispose of any property in a Disposition permitted pursuant to Section 7.05;

(v) Liens arising out of conditional sale, title retention, consignment, bailment or similar arrangements for the purchase, sale or shipment of goods entered into in the ordinary course of business;

(w) Liens securing Indebtedness permitted pursuant to Section 7.02(p); and

(x) other Liens not permitted by the foregoing clauses of this Section 7.01 securing Indebtedness or other obligations permitted pursuant to this Agreement in an aggregate principal amount at any one time outstanding not to exceed the greater of (i) \$15,000,000, and (ii) an amount equal to one and one-half percent (1.5%) of Consolidated Total Assets (to be determined by reference to the balance sheet of the Borrower most recently delivered pursuant to Section 6.01(a) or (b) (or, for any determination occurring prior to the first delivery of financial statements pursuant to Section 6.01(a) or (b), to be determined by reference to the Pro Forma Financial Statements)).

## 7.02 Indebtedness.

Directly or indirectly create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the Closing Date and listed on Schedule 7.02 (and any Permitted Refinancing thereof);

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations incurred to finance the purchase of fixed assets or to provide all or a portion of the purchase price or cost of construction for an asset, and renewals, replacements, refinancings and extensions thereof; provided, that, (i) the aggregate principal amount of all such Indebtedness shall not exceed \$75,000,000 at any one time outstanding, (ii) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed or cost of construction of the asset, and (iii) no such Indebtedness shall be refinanced, renewed, replaced, restructured or extended for a principal amount in excess of the principal balance outstanding thereon at the time of such renewal, replacement, refinancing, restructuring or extension;

(d) Indebtedness of any Person acquired after the Closing Date in a Permitted Acquisition or other Acquisition permitted pursuant to Section 7.03, in each case to the extent such Indebtedness was existing at the time of such Permitted Acquisition or such other Acquisition; provided, that, (i) such Indebtedness shall not have been incurred in contemplation of such Permitted Acquisition or such other Acquisition, and (ii) the aggregate principal amount of all such Indebtedness outstanding at any one time shall not exceed an amount equal to the greater of (A) \$30,000,000, and (B) an amount equal to three percent (3%) of Consolidated Total Assets (to be determined by reference to the balance sheet of the Borrower most recently delivered pursuant to Section 6.01(a) or (b) (or, for any determination occurring prior to the first delivery of financial statements pursuant to Section 6.01(a) or (b), to be determined by reference to the Pro Forma Financial Statements));

(e) Indebtedness consisting of Earn Out Obligations incurred in connection with Permitted Acquisitions or other Acquisition permitted pursuant to Section 7.03;

(f) Indebtedness of any Subsidiary that is not a Loan Party in an aggregate principal amount at any one time outstanding not to exceed the greater of (i) \$30,000,000, and (ii) an amount equal to three percent (3%) of Consolidated Total Assets (to be determined by reference to the balance sheet of the Borrower most recently delivered pursuant to Section 6.01(a) or (b) (or, for any determination occurring prior to the first delivery of financial statements pursuant to Section 6.01(a) or (b), to be determined by reference to the Pro Forma Financial Statements));

(g) intercompany Indebtedness permitted pursuant to Section 7.03 (“Intercompany Debt”); provided, that, in the case of Indebtedness owing by a Loan Party to any Subsidiary that is not a Loan Party, (i) such Indebtedness shall be subordinated to the Secured Obligations in a manner and to the extent acceptable to the Administrative Agent, (ii) such Indebtedness shall not be prepaid unless no Default exists immediately prior to and after giving effect to such prepayment, and (iii) except as otherwise permitted pursuant to Section 7.14(a)(iii), such Indebtedness shall not be repaid in cash or Cash Equivalents and shall not be renewed, extended, refinanced or replaced;

(h) 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 liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view;” 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;

(i) Indebtedness under Secured Cash Management Agreements;

(j) Permitted Unsecured Debt (and any Permitted Refinancing thereof);

(k) (i) Guarantees with respect to Indebtedness of any Loan Party otherwise permitted pursuant to this Section 7.02, and (ii) Guarantees consisting of a guarantee of any obligation (other than Indebtedness) performable by a Subsidiary;

(l) Indebtedness in respect of workers’ compensation claims, self-insurance obligations, performance bonds, surety, appeal or similar bonds and completion guarantees provided by the Borrower and its Subsidiaries in the ordinary course of business;

(m) accrued or deferred expenses (including salaries, accrued vacation and other compensation) arising in the ordinary course of business;

(n) Indebtedness in respect of premium financing arrangements; provided, that, (i) the aggregate principal amount of such Indebtedness shall not exceed the annual premium amount, and (ii) the aggregate principal amount of such Indebtedness, when taken together with the aggregate amount of obligations secured in reliance on Section 7.01(m), shall not exceed \$20,000,000 at any one time outstanding;

(o) Indebtedness consisting of unsecured Guarantees by the Borrower or any of its Subsidiaries of purchase orders of any Subsidiary in an aggregate principal amount at any one time outstanding not to exceed \$5,000,000;

(p) to the extent constituting Indebtedness, obligations arising in connection with Cash Management Agreements in an aggregate principal amount at any one time outstanding not to exceed \$5,000,000;

(q) Indebtedness consisting of obligations owing under any dealer, customer or supplier incentive, supply, license or similar agreements entered into in the ordinary course of business;

(r) to the extent constituting Indebtedness, customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business; and

(s) Indebtedness not permitted by any of the foregoing clauses of this Section 7.02 in an aggregate principal amount at any one time outstanding not to exceed the greater of (i) \$15,000,000, and (ii) an amount equal to one and one-half percent (1.5%) of Consolidated Total Assets (to be determined by reference to the balance sheet of the Borrower most recently delivered pursuant to Section 6.01(a) or (b) (or, for any determination occurring prior to the first delivery of financial statements pursuant to Section 6.01(a) or (b), to be determined by reference to the Pro Forma Financial Statements)).

### 7.03 Investments.

Directly or indirectly make or hold any Investments, except:

(a) Investments in the form of cash and Cash Equivalents;

(b) Investments existing as of the Closing Date and set forth on Schedule 7.03, as such Investments may be adjusted due to appreciation, repayment of principal, payment of interest, return of capital or similar circumstances;

(c) Investments in any Person that is a Loan Party prior to, or simultaneously with, giving effect to such Investment;

(d) Investments by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party;

(e) (i) receivables owing to any Loan Party or any Subsidiary, or (ii) any receivables and advances to suppliers; in each case, if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(f) (i) loans and advances to officers, directors and employees of the Borrower or any Subsidiary for relocation, travel, entertainment and related expenses, and (ii) loans and advances to employees of the Borrower or any Subsidiary made in the ordinary course of business; provided, that, in the case of clauses (i) and (ii), (A) such loans and advances shall comply with all applicable requirements of Law, and (B) the aggregate principal amount of all such loans and advances shall not exceed \$3,000,000 at any one time outstanding;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers of the Borrower or any Subsidiary and in the settlement of delinquent obligations of, and other disputes with, customers and suppliers of the Borrower or any Subsidiary arising in the ordinary course of business;

(h) Swap Contracts permitted by Section 7.02(h);

(i) (i) Permitted Acquisitions; (ii) so long as such Acquisition is consummated on or prior to the date that is one hundred eighty (180) days after the Closing Date, the Telerob Acquisition; and (iii) so long as such Acquisition is consummated on or prior to the date that is one hundred eighty (180) days after the Closing Date, the Prism Acquisition;

(j) Guarantees permitted by Section 7.02 (other than by reference to this Section 7.03 (or any clause hereof));

(k) Investments in joint ventures or minority Equity Interests (other than any Acquisition); provided, that, the aggregate amount of all such Investments shall not exceed the greater of (i) \$30,000,000, and (ii) an amount equal to three percent (3%) of Consolidated Total Assets (to be determined by reference to the balance sheet of the Borrower most recently delivered pursuant to Section 6.01(a) or (b) (or, for any determination occurring prior to the first delivery of financial statements pursuant to Section 6.01(a) or (b), to be determined by reference to the Pro Forma Financial Statements));

(l) Investments consisting of Permitted Liens, Indebtedness to the extent permitted pursuant to Section 7.02, fundamental changes to the extent permitted pursuant to Section 7.04, and Restricted Payments to the extent permitted pursuant to Section 7.06 (in each case, other than by reference to this Section 7.03 (or any clause hereof));

(m) additional Investments (other than any Acquisition), including, for the avoidance of doubt, Investments in joint ventures or minority Equity Interests (other than any Acquisition), in an aggregate amount for all such Investments not to exceed the Available Amount; provided, that, (i) upon giving Pro Forma Effect to any such Investment, the Loan Parties will be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or (b) (and, if requested by the Administrative Agent or any Lender, the Borrower shall deliver to the Administrative Agent a Pro Forma Compliance Certificate demonstrating compliance with such condition), and (ii) no Default shall exist or would result from giving effect to any such Investment; and

(n) other Investments (other than any Acquisition) not permitted by any of the foregoing clauses of this Section 7.03 (including, for the avoidance of doubt, Investments in joint ventures or minority Equity Interests (other than any Acquisition) not otherwise permitted by any of the foregoing clauses of this Section 7.03); provided, that, (i) upon giving Pro Forma Effect to such Investment, (A) the Loan Parties will be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or (b), and (B) the Consolidated Leverage Ratio will be less than 2.75 to 1.0 (and, if requested by the Administrative Agent or any Lender, the Borrower shall deliver to the Administrative Agent a Pro Forma Compliance Certificate demonstrating compliance with such conditions), and (ii) no Default shall exist or would result from giving effect to any such Investment.

#### 7.04 Fundamental Changes.

Directly or indirectly 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; provided, that, notwithstanding the foregoing

provisions of this Section 7.04, but subject to the terms of Sections 6.12 and 6.13: (a) the Borrower may merge or consolidate with any of its Subsidiaries; provided, that, the Borrower shall be the continuing or surviving Person of such merger or consolidation; (b) any Loan Party (other than the Borrower) may merge or consolidate with any other Loan Party (other than the Borrower); (c) any Subsidiary that is not a Loan Party may merge or consolidate with any Loan Party; provided, that, such Loan Party shall be the continuing or surviving Person of such merger or consolidation; (d) any Subsidiary that is not a Loan Party may merge or consolidate with any other Subsidiary that is not a Loan Party; (e) the Borrower and any Subsidiary may engage in a Disposition permitted pursuant to Section 7.05, an Investment permitted pursuant to Section 7.03, or a Restricted Payment permitted pursuant to Section 7.06 (in each case other than by reference to this Section 7.04 (or any clause hereof)); and (f) any Subsidiary that is not a Loan Party may be dissolved, liquidated or wound up; provided, that, prior to or simultaneously with any such dissolution, liquidation or winding up, all assets of such Subsidiary shall be transferred to a Loan Party or, to the extent required by law or binding contract, a creditor or creditors thereof.

7.05 Dispositions.

Directly or indirectly make any Disposition or enter into any agreement to make any Disposition, except for:

- (a) any Permitted Transfer;
- (b) the Disposition of non-core or non-strategic assets acquired in connection with a Permitted Acquisition or other Investment permitted pursuant to Section 7.03; provided, that, (i) the Net Cash Proceeds of such Disposition are applied to prepay the Loans, if required, pursuant to Section 2.05(b)(i), (ii) no Event of Default has occurred and is continuing both immediately prior to and after giving effect to such Disposition, and (iii) in connection with any such Disposition, the fair market value of such non-core or non-strategic assets (determined as of the date of acquisition thereof by the applicable Loan Party or applicable Subsidiary, as the case may be) so Disposed shall not exceed an amount equal to twenty-five percent (25%) of the purchase price paid for all assets acquired in such Permitted Acquisition or such Investment;
- (c) any Disposition of an Investment in a joint venture or a Non-Wholly Owned Subsidiary, in each case to the extent required by, or made pursuant to, buy/sell arrangements between joint venture or similar parties set forth in the relevant joint venture arrangements and/or similar binding arrangements; and
- (d) any other Disposition; provided, that: (i) the consideration paid in cash or Cash Equivalents in connection with such Disposition shall constitute not less than seventy five percent (75%) of the aggregate consideration to be received in connection therewith, and the total consideration paid in connection therewith shall be paid contemporaneous with consummation of such Disposition and shall be in an amount not less than the fair market value of the assets disposed of; (ii) such Disposition does not involve the sale or other disposition of a minority Equity Interest in any Loan Party; (iii) no Default has occurred and is continuing both immediately prior to and after giving effect to such Disposition; (iv) such Disposition does not involve a sale or other disposition of receivables other than receivables owned by or attributable to other property concurrently being disposed of in a transaction otherwise permitted hereunder; (v) the Net Cash Proceeds of such Disposition are applied to prepay the Loans, if required, pursuant to Section 2.05(b)(i); (vi) upon giving Pro Forma Effect to such Disposition, the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or (b) (and, if requested by the Administrative Agent or any Lender,

the Borrower shall deliver to the Administrative Agent a Pro Forma Compliance Certificate demonstrating compliance with such condition); and (vii) the aggregate Net Cash Proceeds of such Disposition, when taken together with the Net Cash Proceeds received from all other Dispositions made in reliance on this Section 7.05(d) (to the extent not reinvested in Eligible Assets within twelve (12) months of the date of such Disposition) in any fiscal year of the Borrower, shall not exceed an amount equal to ten percent (10%) of Consolidated Total Assets (to be determined by reference to the balance sheet of the Borrower most recently delivered pursuant to Section 6.01(a) or (b) (or, for any determination occurring prior to the first delivery of financial statements pursuant to Section 6.01(a) or (b), to be determined by reference to the Pro Forma Financial Statements)) in such fiscal year.

7.06 Restricted Payments.

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

(a) each Subsidiary may declare and make Restricted Payments to the Borrower and to any Subsidiary that owns Equity Interests of such Subsidiary (and, in the case of a dividend or other distribution by a Non-Wholly Owned Subsidiary of the Borrower, to the Borrower or other Subsidiary and to each other owner of Equity Interests of such Non-Wholly Owned Subsidiary ratably based on their relative ownership interests);

(b) the Borrower and each Subsidiary may declare and make Restricted Payments payable solely in the Qualified Capital Stock of such Person;

(c) the Borrower and each Subsidiary may redeem, repurchase, retire or otherwise acquire Equity Interests to the extent such redemption, repurchase, retirement or other acquisition is deemed to occur upon exercise of stock options if such Equity Interests represent a portion of the exercise price of such options;

(d) so long as no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom, the Borrower may repurchase or redeem Qualified Capital Stock of the Borrower held by officers, directors or employees or former officers, directors or employees (or their transferees, estates or beneficiaries under their estates) of the Borrower or any Subsidiary, upon their death, disability, retirement, severance or termination of employment or service; provided, that, the aggregate cash consideration paid for all such redemptions and repurchases shall not exceed \$2,000,000 in any fiscal year of the Borrower; and

(e) the Borrower or any Subsidiary may make any Restricted Payment; provided, that, (i) no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom, and (ii) upon giving Pro Forma Effect to any such Restricted Payment, (A) the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or (b), and (B) the Consolidated Leverage Ratio is less than 2.75 to 1.0 (and, if requested by the Administrative Agent or any Lender, the Borrower shall deliver to the Administrative Agent a Pro Forma Compliance Certificate demonstrating compliance with such conditions).



7.07 Change in Nature of Business.

Directly or indirectly engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the Closing Date or any business reasonably related, complimentary, ancillary or incidental thereto.

7.08 Transactions with Affiliates.

Directly or indirectly enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) advances of working capital (i) by any Loan Party to any other Loan Party, or (ii) by any Subsidiary that is not a Loan Party to any Loan Party or any other Subsidiary, (b) transfers of cash and assets (i) by any Loan Party to any other Loan Party, or (ii) by any Subsidiary to any Loan Party or any other Subsidiary, (c) intercompany transactions (i) expressly permitted by Section 7.02, Section 7.03, Section 7.04, Section 7.05 or Section 7.06 (in each case, other than by reference to this Section 7.08 (or any clause hereof)), or (ii) solely among the Loan Parties and the Subsidiaries, (d) reasonable and customary officer, director and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and reasonable indemnification and severance arrangements, in each case in the ordinary course of business, and (e) except as otherwise specifically prohibited in this Agreement, other transactions which are entered into in the ordinary course of such Person's business on terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate.

7.09 Burdensome Agreements.

Directly or indirectly enter into, or permit to exist, any Contractual Obligation that (a) encumbers or restricts the ability of any such Person to (i) make Restricted Payments to any Loan Party, (ii) pay any Indebtedness or other obligations owed to any Loan Party, (iii) make loans or advances to any Loan Party, (iv) transfer any of its property to any Loan Party, (v) pledge its property pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, or (vi) act as a Loan Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (a)(i) through (a)(v) above) for (A) this Agreement and the other Loan Documents, (B) any instrument governing Indebtedness assumed in connection with any Permitted Acquisition or other Investment permitted pursuant to Section 7.03, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired, (C) any such encumbrance or restriction consisting of customary non-assignment provisions in leases or licenses restricting leasehold interests or licenses, as applicable, entered into in the ordinary course of business, (D) customary provisions in joint venture agreements and other similar agreements that restrict the transfer of ownership interests in such joint venture or provisions limiting the disposition or distribution of assets or property (other than dividends on a pro rata basis based on ownership percentage), which limitation is applicable only to the assets that are the subject of such agreements, (E) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted pursuant to Section 7.05 pending the consummation of such sale, or (F) any document or instrument governing any Permitted Lien, in each case, to the extent that any such restriction contained therein relates only to the asset or assets subject to such Liens, or (b) requires the grant of any security for any obligation if such property is given as security for the Secured Obligations (except to the extent such grant constitutes a Permitted Lien).

7.10 Use of Proceeds.

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) 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 Covenants.

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the end of any Measurement Period ending as of the end of any fiscal quarter of the Borrower to be greater than 3.00 to 1.0; provided, that, upon the occurrence of a Qualified Acquisition, for each of the four (4) fiscal quarters of the Borrower immediately following the consummation of such Qualified Acquisition (including, for the avoidance of doubt, the fiscal quarter in which such Qualified Acquisition was consummated) (such period of increase, the "Leverage Increase Period"), the ratio set forth above shall be increased to 3.50 to 1.0; provided, further, that, (i) no more than one (1) Leverage Increase Period shall be in effect at any time, (ii) for at least two (2) fiscal quarters of the Borrower immediately following each Leverage Increase Period, the Consolidated Leverage Ratio as of the end of such fiscal quarters shall not be greater than 3.00 to 1.0 prior to giving effect to another Leverage Increase Period, and (iii) each Leverage Increase Period shall only apply with respect to the calculation of the Consolidated Leverage Ratio for purposes of (A) determining compliance with the financial maintenance covenant set forth in this Section 7.11(a) as of the end of any period of four (4) consecutive fiscal quarters of the Borrower ending as of the last day of any fiscal quarter of the Borrower, and (B) determining the permissibility of the consummation of the Qualified Acquisition with respect to which such Leverage Increase Period relates (or, to the extent such Qualified Acquisition is financed with the proceeds of an Incremental Facility or any Permitted Unsecured Debt, for purposes of determining the permissibility of the incurrence of such Incremental Facility or such Permitted Unsecured Debt in connection with the consummation of such Qualified Acquisition).

(b) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any Measurement Period ending as of the end of any fiscal quarter of the Borrower to be less than 1.25 to 1.0.

7.12 Amendments of Organization Documents; Changes in Fiscal Year, Legal Name, State of Organization, or Form of Entity; Accounting Changes.

(a) Amend any of its Organization Documents in any manner that is materially adverse to the Lenders.

(b) Change its fiscal year; provided, that, the Closing Date Acquisition Target may change its fiscal year to match the fiscal year of the Borrower.

(c) Without providing ten (10) days prior written notice to the Administrative Agent (or such shorter period of time as agreed to by the Administrative Agent in its sole discretion), change its legal name, state of organization, or form of organization.

(d) Make any change in accounting policies or reporting practices, except as required by GAAP.

7.13 Sale and Leaseback Transactions.

Directly or indirectly enter into any Sale and Leaseback Transaction.

7.14 Junior Debt Payments.

Make: (a) any Junior Debt Payment except that: (i) a Permitted Refinancing permitted pursuant to Section 7.02(b) or Section 7.02(j) may be consummated; (ii) the Borrower may make Junior Debt Payments to the extent made solely with the Qualified Capital Stock of the Borrower; and (iii) the Borrower or any Subsidiary may make any Junior Debt Payment with the Available Amount; provided, that, (A) no Default shall have occurred and be continuing at the time of such Junior Debt Payment or would result therefrom, and (B) upon giving Pro Forma Effect to such Junior Debt Payment, the Loan Parties would be in compliance with the financial covenants set forth in Section 7.11 as of the most recently ended fiscal quarter of the Borrower for which the Borrower was required to deliver financial statements pursuant to Section 6.01(a) or (b) (and, in connection with any such payment in excess of \$5,000,000, if requested by the Administrative Agent or any Lender, the Borrower shall deliver to the Administrative Agent a Pro Forma Compliance Certificate demonstrating compliance with such condition); or (b) any payment in violation of any subordination and/or intercreditor terms applicable to any Junior Debt.

7.15 Amendment, Etc. of Junior Debt.

Directly or indirectly amend, modify or change in any manner any term or condition of any Junior Debt, in each case in any manner that is adverse in any material respect to the interest of the Lenders.

7.16 Sanctions.

Directly or knowingly indirectly use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension 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 (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swingline Lender, or otherwise) of Sanctions.

7.17 Anti-Corruption Laws.

Directly or knowingly indirectly use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other anti-corruption legislation in other jurisdictions.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.01 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 any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) within three (3) days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or 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 6.01, 6.02, 6.03(a), 6.05(a) (solely with respect to the Borrower), 6.10, 6.11, 6.15 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b)) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier to occur of (i) a Responsible Officer of a Loan Party becoming aware of such failure, and (ii) written notice thereof being provided to the Borrower by the Administrative Agent or any Lender; 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 materially incorrect or materially misleading (or, in each case, if such representation, warranty, certification or statement of fact is already qualified by materiality, incorrect or misleading in any respect) when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise but giving effect to any applicable grace and notice period with respect thereto) 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, or (B) fails to observe or perform (after giving effect to any applicable grace and notice period with respect thereto) 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 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; or (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 is the Defaulting Party (as defined in such Swap Contract), or (B) any Termination Event (as defined in such Swap Contract) under such Swap Contract as to which a Loan Party or any Subsidiary is an Affected Party (as defined in such Swap Contract) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary 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) 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) days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) 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 such Person 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 (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 is rated at least "A" by A.M. Best Company, 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 thirty (30) 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 upon the occurrence of the Facility Termination Date, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports 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 material 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 any 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.

Without limiting the provisions of Article IX, 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 the Administrative Agent (with the approval of requisite Appropriate Lenders (in their sole discretion) as determined in accordance with Section 11.01); 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 requisite Appropriate Lenders or by the Administrative Agent with the approval of the requisite Appropriate Lenders, as required hereunder in Section 11.01.

#### 8.02 Remedies upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent 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 Commitments of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligation shall be terminated;

(b) 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 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;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents or applicable Law or equity;

provided, 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 obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

### 8.03 Application of Funds.

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02) or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Secured Obligations then due hereunder, any amounts received on account of the Secured Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuers) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Disbursements and other Secured Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, L/C Disbursements and Secured Obligations then owing under the Secured Hedge Agreements and the Secured Cash Management Agreements and to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent required by, and not otherwise Cash Collateralized by the Borrower pursuant to, Sections 2.03 and 2.14, in each case ratably among the Administrative Agent, the Lenders, the L/C Issuers, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.03(q) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Secured Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section 8.03.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or the applicable Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE IX

### ADMINISTRATIVE AGENT

#### 9.01 Appointment and Authority.

(a) Appointment. Each of the Lenders and the L/C Issuers hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

9.03 Exculpatory Provisions.

(a) Neither the Administrative Agent nor any Arranger, as applicable, shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, none of the Administrative Agent, any Arranger, or any of their respective Related Parties:

(i) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall have any 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 the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided, that, the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; or



(iii) shall have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any L/C Issuer any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates that is communicated to, or in the possession of, the Administrative Agent, such Arranger or any of their respective Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02, or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or an L/C Issuer.

(c) Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) 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 the Administrative Agent.

#### 9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), 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. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required

thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) Notice. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, and, at all times other than during the existence of an Event of Default, with the Borrower's consent (such consent not to be unreasonably withheld), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided, that, in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) Defaulting Lender. If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, and, at all times other than during the existence of an Event of Default, with the Borrower's consent (such consent not to be unreasonably withheld), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) Effect of Resignation or Removal. With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor

Administrative Agent is appointed), and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above.

Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than as provided in Section 3.01(h) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date (as applicable)), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06(c)). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article IX and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (A) while the retiring or removed Administrative Agent was acting as Administrative Agent, and (B) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (1) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties, and (2) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) L/C Issuer and Swingline Lender. Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as an L/C Issuer and the Swingline Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Revolving Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(f). If Bank of America resigns as the Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Revolving Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as applicable, (ii) the retiring L/C Issuer and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue Letters of Credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

#### 9.07 Non-Reliance on Administrative Agent, Arrangers and Other Lenders.

Each Lender and each L/C Issuer expressly acknowledges that none of the Administrative Agent nor any Arranger has made any representation or warranty to it, and that no act by the Administrative Agent

or any Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or any Arranger to any Lender or any L/C Issuer as to any matter, including whether the Administrative Agent or any Arranger have disclosed material information in their (or their respective Related Parties') possession. Each Lender and each L/C Issuer represents to the Administrative Agent and each Arranger that it has, independently and without reliance upon the Administrative Agent, such Arranger, any other Lender or any of their respective Related Parties, and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and its Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, any other Lender or any of their respective Related Parties, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each L/C Issuer represents and warrants that (a) the Loan Documents set forth the terms of a commercial lending facility, and (b) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or an L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or such L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, an Arranger, a Lender or an L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim; Credit Bidding.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C

Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(l) and (m), 2.09, 2.10(b) and 11.04 allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 2.10(b) and 11.04.

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

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Secured Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, or (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided, that, any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 11.01), and (C) to the extent that Secured Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Secured Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Secured Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Secured Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.10 Collateral and Guaranty Matters.

Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and each of the L/C Issuers irrevocably authorize the Administrative Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 11.01;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(c);

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents; and

(d) to negotiate, execute, deliver and perform any intercreditor agreement and/or any subordination agreement in respect of any Indebtedness permitted to be incurred pursuant to Section 7.02.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10, or to take any other action described above in this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Secured Cash Management Agreements and Secured Hedge Agreements.

Except as otherwise expressly set forth herein, no Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 8.03, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured

Hedge Agreements, except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or the applicable Hedge Bank, as the case may be; provided, that, notwithstanding the foregoing, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements in the case of a Facility Termination Date.

9.12 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments, or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84–14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95–60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90–1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91–38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96–23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84–14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84–14, and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84–14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person

ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any other Loan Document or any documents related hereto or thereto).

## ARTICLE X

### CONTINUING GUARANTY

#### 10.01 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 Secured Obligations (for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided, that, (a) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor, and (b) 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. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any Loan Party under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the illegality, 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.

#### 10.02 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 Administrative Agent, the L/C Issuers and 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.



#### 10.03 Certain Waivers.

Each Guarantor waives, to the fullest extent permitted by law: (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; (f) any defense arising by reason of any change in the corporate existence, structure or ownership of any Loan Party; and (g) 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, to the fullest extent permitted by law, 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.

#### 10.04 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.

#### 10.05 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 (other than contingent indemnification obligations for which no claim has been asserted) and the Commitments and the Facilities are 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.

#### 10.06 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, 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 Section 10.06 shall survive termination of this Guaranty.

10.07 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.

10.08 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).

10.09 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 provide 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 the Administrative Agent, an L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Loan Party, and (c) the Administrative Agent, the L/C Issuers or the Lenders 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.

10.10 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.

10.11 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 10.11 shall remain in full force and effect until the Secured Obligations have been indefeasibly paid and performed in full (other than contingent indemnification obligations for which no claim has been asserted). Each Loan Party intends this Section 10.11 to constitute, and this Section 10.11 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

ARTICLE XI

MISCELLANEOUS

11.01 Amendments, Etc.

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 (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that, no such amendment, waiver or consent shall:

(a) extend or increase any Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default is not considered an extension of or increase in any Commitment of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to any Lender hereunder or under such other Loan Document without the written consent of such Lender entitled to such payment;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Disbursement, or (subject to clause (iv) of the final proviso to this Section 11.01) any fees or other amounts payable to any Lender hereunder or under any other Loan Document without the written consent of such Lender entitled to such amount; provided, that, only the consent of the Required Lenders shall be necessary to amend (i) the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate, or (ii) any financial covenant hereunder (or any defined term used therein), even if the effect of such amendment would be to reduce the rate of interest on any Loan or Letter of Credit or to reduce any fee payable hereunder;

(d) change Section 2.12(f), Section 2.13, Section 8.03 or any other provision hereof relating to the pro rata sharing of payments among the Lenders in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender that is directly and adversely affected thereby;

(e) change (i) any provision of this Section 11.01, or the definition of "Required Lenders," or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder or without the written consent of each Lender, or (ii) the definition of "Required Revolving Lenders" without the written consent of each Revolving Lender;

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

(g) 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 Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(h) (i) subordinate, or enter into any amendment, waiver or consent having the effect of subordinating, the Obligations to any other Indebtedness or other obligation, (ii) subordinate, or enter into any amendment, waiver or consent having the effect of subordinating, the Liens securing the Secured Obligations to Liens securing any other Indebtedness or other obligation, in each case, without the written consent of each Lender; or

(i) release the Borrower or permit the Borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the written consent of each Lender;

provided, further, that, notwithstanding anything herein to the contrary: (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; (v) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (A) any Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender, and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (vi) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein; (vii) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders; (viii) in order to implement any Incremental Facility in accordance with Section 2.02(g), this Agreement and any other Loan Document may be amended as set forth in Section 2.02(g); (ix) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, the Borrower, the other Loan Parties and the relevant lenders providing such additional credit facilities to add one or more additional credit facilities to this Agreement, to permit the extensions of credit from time to time outstanding hereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the Revolving Loans and the accrued interest and fees in respect thereof and to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders; (x) if following the Closing Date, the Administrative Agent and the Borrower shall have jointly identified an inconsistency, obvious error or omission, in each case, of a technical or immaterial nature, in any provision of the Loan Documents, then the Administrative Agent and the Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof; (xi) this Agreement may be amended (or amended and restated) without the consent of any Lender (but with the consent of the Borrower and the

Administrative Agent) if, upon giving effect to such amendment (or such amendment and restatement), such Lender shall no longer be a party to this Agreement (as so amended (or amended and restated)), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligations hereunder and such Lender shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement and the other Loan Documents; (xii) this Agreement or any other Loan Document may be amended as set forth in Section 3.03, including in order to implement any LIBOR Successor Rate and/or any LIBOR Successor Rate Conforming Changes; (xiii) the L/C Commitment of any L/C Issuer may be modified from time to time by agreement between such L/C Issuer and the Borrower and notified to the Administrative Agent.

11.02 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 Section 11.02(b)), 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, as follows:

(i) if to the Borrower or any other Loan Party, the Administrative Agent, Bank of America in its capacity as an L/C Issuer, or the Swingline Lender, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 1.01(a); and

(ii) if to any other Lender (including in such Lender's capacity as an L/C Issuer), to the address, fax number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

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 shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in Section 11.02(b) shall be effective as provided in Section 11.02(b).

(b) Electronic Communications. Notices and other communications to the Administrative Agent, the Lenders, the Swingline Lender and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging and Internet or intranet websites) pursuant to an electronic communications agreement (or such other procedures approved by the Administrative Agent in its sole discretion); provided, that, the foregoing shall not apply to notices to any Lender, the Swingline Lender or any L/C Issuer pursuant to Article II if such Lender, the Swingline Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under Article II by electronic communication. The Administrative Agent, the Swingline Lender, any L/C Issuer or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; provided, that, for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any other Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent such losses, claims, damages, liabilities or expenses 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 Agent Party.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, each L/C Issuer and the Swingline Lender 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. Each Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuers and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other communications may be sent, and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic notices, Loan Notices, Letter of Credit Applications, Notices of Loan Prepayment, and Swingline Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender, any L/C Issuer or the Administrative 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 Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuers; provided, that, the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an L/C Issuer or the Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) 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 hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02, and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, 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.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (limited, in the case of legal counsel, to the reasonable and documented fees, charges and disbursements of one primary counsel to the Administrative Agent and, if reasonably necessary, one local counsel for the Administrative Agent in each relevant jurisdiction and one specialty counsel for the Administrative Agent in each relevant specialty (and, solely in the case of an actual or potential conflict of interest of any of the foregoing counsel, one additional primary, local or specialty counsel, as the case may

be, to the affected persons similarly situated and taken as a whole)) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other 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), (ii) all reasonable and documented out-of-pocket expenses incurred by any L/C Issuer in connection with the issuance, amendment, renewal, reinstatement or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the fees, charges and disbursements of counsel for the Administrative Agent, any Lender, or any L/C Issuer), 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 11.04, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee (provided, that, with respect to the reasonable fees, charges and disbursements of counsel, such indemnification shall be limited to the reasonable and documented out-of-pocket fees, disbursements and other charges of one primary counsel for all Indemnitees, taken as a whole, and, if reasonably necessary, a single local counsel for all Indemnitees, taken as a whole, in each relevant jurisdiction and a single specialty counsel for all Indemnitees, taken as a whole, with respect to each relevant specialty, and in the case of an actual or perceived conflict of interest, one additional primary, local or specialty counsel, as the case may be to the affected Indemnitees similarly situated and taken as a whole)) 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 contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned, leased 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, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; provided, that, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses 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. Without limiting the provisions of Section 3.01(d), this



Section 11.04(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 Section 11.04(a) or Section 11.04(b) to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer, the Swingline Lender or such Related Party, as the case may be, 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 Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); 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), such L/C Issuer or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this Section 11.04(c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, 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, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in Section 11.04(b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section 11.04 shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, any L/C Issuer and the Swingline Lender, the replacement of any Lender, and the Facility Termination Date.

#### 11.05 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, 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 the Administrative Agent, such L/C Issuer 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 (a) 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, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### 11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 11.06(d) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 11.06(b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); provided, that, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in Section 11.06(b)(i)(B) in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned.

(B) In any case not described in Section 11.06(b)(i)(A), the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Facility, or

\$1,000,000, in the case of any assignment in respect of any Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement and the other Loan Documents with respect to the Loans and/or the Commitment assigned, except that this Section 11.06(b)(ii) shall not (A) apply to the Swingline Lender's rights and obligations in respect of Swingline Loans, or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 11.06(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that, the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received written notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Revolving Commitment if such assignment is to a Person that is not a Lender with a Revolving Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender, or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of each L/C Issuer and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, that, the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of one or more natural Persons).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to

the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, any L/C Issuer or any Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this Section 11.06(b)(vi), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.06(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.06(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations 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 and any Lender (with respect to such Lender's interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons, a Defaulting Lender or the Borrower or any of the

Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline Loans) owing to it); provided, that, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participations.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(f) (it being understood that the documentation required under Section 3.01(f) shall be delivered to the Lender who sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b); provided, that, such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under Section 11.06(b), and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided, that, such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a 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 obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note or Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that, no such pledge or assignment shall release such Lender from

any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any Lender assigns all of its Revolving Commitment and Revolving Loans pursuant to Section 11.06(b), such Lender may, (i) upon thirty (30) days' notice to the Administrative Agent, the Borrower and the Lenders, resign as an L/C Issuer, and/or (ii) upon thirty (30) days' notice to the Borrower, resign as the Swingline Lender. In the event of any such resignation as an L/C Issuer or the Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swingline Lender hereunder; provided, that, no failure by the Borrower to appoint any such successor shall affect the resignation of such Lender as an L/C Issuer or the Swingline Lender, as the case may be. If a Lender resigns as an L/C Issuer pursuant to this Section 11.06(f), it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(f)). If Bank of America resigns as the Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swingline Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as the case may be, and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of such retiring L/C Issuer with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality.

(a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates, its auditors and its Related Parties (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), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, in which case the Administrative Agent, such Lender, or such L/C Issuer, as applicable, shall notify the Borrower promptly prior to such disclosure to the extent practicable and not prohibited by Law, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 11.07, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.02(g), or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (B) the provider of any Platform or other

electronic delivery service used by the Administrative Agent, any L/C Issuer and/or the Swingline Lender to deliver Borrower Materials or notices to the Lenders, or (C) the CUSIP Service Bureau or any similar agency in connection with the application, issuance, publishing and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (viii) with the consent of the Borrower, (ix) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 11.07, or (B) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower, or (x) to the extent such Information is independently discovered or developed by a party hereto without utilizing any Information received from the Borrower or violating the terms of this Section 11.07. For purposes of this Section 11.07, “Information” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary; provided, that, in the case of information received from the Borrower or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 11.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

(b) Non-Public Information. Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (i) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information, and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

(c) Press Releases. The Loan Parties and their Affiliates agree that they will not in the future issue any press releases or other public disclosure using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan Documents without the prior written consent of the Administrative Agent, unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

(d) Customary Advertising Material. Without the prior written consent of the Borrower, neither the Administrative Agent nor any Lender shall publish any advertising material relating to the transactions contemplated hereby, including by using the name, product photographs, logo or trademark of the Loan Parties, to the extent such advertising material contains information that is not otherwise publicly available at the time such material is published (it being understood and agreed that neither the Administrative Agent nor any Lender shall be required to obtain the Borrower’s prior written consent to publish customary advertising material relating to the transactions contemplated hereby if such material contains information which is otherwise publicly available at the time such material is published).

#### 11.08 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party 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 such Lender or such L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, such L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender or such L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that, in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15, and pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided, that, the failure to give such notice shall not affect the validity of such setoff and application.

#### 11.09 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, such Person 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.

#### 11.10 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, and any separate letter agreements with respect to fees payable to the Administrative Agent or any L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement 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.

11.11 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 notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder (other than contingent indemnification obligations for which no claim has been asserted) shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 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. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the applicable L/C Issuer or the Swingline Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders.

If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then, in each case, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to one hundred percent (100%) of 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 under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

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

Each party hereto agrees that (a) an assignment required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee, and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided, that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender; provided, further, that, any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this Section 11.13 to the contrary, (a) no Lender that acts as an L/C Issuer may be replaced hereunder at any time it has any Letter of Credit outstanding unless arrangements satisfactory to such Lender (including the furnishing of a backstop letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of Cash Collateral into a Cash Collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to such outstanding Letter of Credit, and (b) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

#### 11.14 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 THE ADMINISTRATIVE AGENT, ANY LENDER, ANY L/C ISSUER, 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 THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER 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 SECTION 11.14(b). 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 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 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 11.15.

#### 11.16 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 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 11.16, 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.

#### 11.17 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, and acknowledges its Affiliates’ understanding, that: (a)(i) the arranging and other services regarding this Agreement provided by the Administrative Agent, each Arranger, each Lender, and their respective Affiliates are arm’s-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, each Arranger, each Lender, 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) the Administrative Agent, each Arranger, each Lender, and each of 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 or any of their respective Affiliates, or any other Person, and (ii) none of the Administrative Agent, any Arranger, any Lender, or any of their respective Affiliates has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, each Arranger, and each Lender may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and none of the Administrative Agent, any Arranger, any Lender, or any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. 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 the Administrative Agent, any Arranger, any 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.

#### 11.18 Electronic Execution.

This Agreement, any other Loan Document, and any other document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement or any other Loan Document (each, a “Communication”), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each Loan Party agrees that any Electronic Signature on or associated with any Communication

shall be valid and binding on such Loan Party to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature will constitute the legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this Section 11.18 may include use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into .pdf), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (each, an “Electronic Copy”), which shall be deemed created in the ordinary course of the such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided, that, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification, and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart.

11.19 USA PATRIOT Act Notice.

Each Lender that is subject to the PATRIOT Act, each L/C Issuer and the Administrative Agent (for itself and not on behalf of any 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 “PATRIOT Act”), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of each such Person and other information that will allow such Lender, such L/C Issuer or the Administrative Agent, as applicable, to identify each such Person in accordance with the PATRIOT Act. The Loan Parties agree to, promptly following a request by the Administrative Agent, any L/C Issuer or any Lender, provide all such other documentation and information that the Administrative Agent, such L/C Issuer or 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 PATRIOT Act and the Beneficial Ownership Regulation.

11.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable, (i) a reduction in full or in part or cancellation of any such liability, (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other

instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document, or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

11.21 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree that, with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States), in the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

11.22 ENTIRE AGREEMENT.

**THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

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

BORROWER:

AEROVIRONMENT, INC.,  
a Delaware corporation

By: /s/Kevin McDonnell

Name: Kevin McDonnell

Title: Senior Vice President and Chief Financial Officer

GUARANTORS:

ARCTURUS UAV, INC.,  
a California corporation

By: /s/Kristy Benson

Name: Kristy Benson

Title: Vice President and Treasurer

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ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A.,  
as the Administrative Agent

By: /s/Taelitha Bonds-Harris  
Name: Taelitha Bonds-Harris  
Title: Assistant Vice President

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LENDERS:

BANK OF AMERICA, N.A.,  
as a Lender, an L/C Issuer, and the Swingline Lender

By: /s/Angel Sutoyo

Name: Angel Sutoyo

Title: Senior Vice President

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JPMORGAN CHASE BANK, N.A.,  
as a Lender and an L/C Issuer (solely with respect to the  
Existing JPMorgan Letters of Credit)

By: /s/Anna C. Araya

Name: Anna C. Araya

Title: Executive Director

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U.S. BANK NATIONAL ASSOCIATION,  
as a Lender

By: /s/G. Scott Lambert

Name: G. Scott Lambert

Title: Vice President

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**EXHIBIT A**

**[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 [*Insert name of Assignor*] (the “Assignor”) and [*Insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, 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 Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, 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 (a) all of the Assignor’s rights and obligations as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto in the amount[s] and equal to the percentage interest[s] identified below of all the outstanding rights and obligations of the Assignor under the respective facilities identified below (including Letters of Credit, Swingline Loans and Guarantees included in such facilities), and (b) 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) 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 transactions 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 (a) above (the rights and obligations sold and assigned pursuant to clauses (a) and (b) above being referred to herein collectively as, the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

- 1. Assignor: \_\_\_\_\_  
[Assignor [is][is not] a Defaulting Lender.]
  
- 2. Assignee: \_\_\_\_\_  
[and is an [Affiliate][Approved Fund] of [*identify Lender*]<sup>1</sup>]
  
- 3. Borrower: AeroVironment, Inc., a Delaware corporation (the “Borrower”)
  
- 4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Credit Agreement

<sup>1</sup> Select as applicable.

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5. Credit Agreement: Credit Agreement, dated as of February [\_\_], 2021, among the Borrower, the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto

6. Assigned Interest:

| Facility Assigned <sup>2</sup> | Aggregate Amount of Commitments/Loans for all Lenders* | Amount of Commitment/Loans Assigned* | Percentage Assigned of Commitments/Loans <sup>3</sup> |
|--------------------------------|--|--------------------------------------|---|
|                                | \$   | \$                                   | %   |
|                                | \$   | \$                                   | %   |
|                                | \$   | \$                                   | %   |

[7. Trade Date: \_\_\_\_\_]4

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[signature pages follow]

- 
- <sup>2</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment and Assumption (e.g. “Revolving Facility”, “Term A Loans”, etc.)
  - \* Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.
  - <sup>3</sup> Set forth, to at least 9 decimals, as a percentage of the Commitments/Loans of all Lenders thereunder.
  - <sup>4</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.
-

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

[NAME OF ASSIGNOR],  
as the Assignor

By:  
Name:  
Title:

[NAME OF ASSIGNEE],  
As the Assignee

By:  
Name:  
Title:

[Consented to and]<sup>5</sup> Accepted:

BANK OF AMERICA, N.A.,  
as the Administrative Agent

By:  
Name:  
Title:

[Consented to:]<sup>6</sup>

[BANK OF AMERICA, N.A.,  
as [the Swingline Lender][[and] the L/C Issuer]

By:  
Name:  
Title:]

[[\_\_\_\_\_] ,  
as an L/C Issuer

By:  
Name:

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<sup>5</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>6</sup> To be added only if the consent of the Borrower and/or other parties (e.g. the L/C Issuer) is required by the terms of the Credit Agreement.

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Title:]

[AEROVIRONMENT, INC.,  
a Delaware corporation

By:

Name:

Title:]

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STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1. Assignor. The Assignor: (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (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 (iv) it is [not] a Defaulting Lender; 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 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 meets the requirements to be an assignee under the terms of the Credit Agreement (subject to such consents, if any, as may be required under the terms of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and the other Loan Documents as a Lender thereunder and, to the extent of the 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 Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the 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 6.01 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 Assigned Interest, (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 Assigned Interest, and (vii) attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the 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 Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

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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 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. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by fax transmission or e-mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. THIS ASSIGNMENT AND ASSUMPTION 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 ASSIGNMENT AND ASSUMPTION AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

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Check for distribution to Public Lenders and Private side Lenders<sup>7</sup>

**EXHIBIT B**

**[FORM OF] COMPLIANCE CERTIFICATE**

Date: \_\_\_\_\_

I, \_\_\_\_\_, [Chief Executive Officer][Chief Financial Officer][Treasurer][Controller] of AeroVironment, Inc., a Delaware corporation (the "Borrower"), hereby certify that, to the best of my knowledge and belief, in my capacity as [Chief Executive Officer][Chief Financial Officer][Treasurer][Controller] and not in my individual capacity, with respect to that certain Credit Agreement, dated as of February [\_\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among the Borrower, the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto:

1. This Compliance Certificate is delivered for the fiscal [year][quarter] of the Borrower ended \_\_\_\_\_, 20\_\_.

*[Use following paragraph 2 for fiscal year-end financial statements:]*

[2. The year-end audited financial statements required by Section 6.01(a) of the Credit Agreement for the fiscal year of the Borrower ended as of the date set forth in paragraph 1, together with the report and opinion of an independent certified public accountant required by such section, have been delivered to the Administrative Agent.]

*[Use following paragraph 2 for fiscal quarter-end financial statements:]*

[2. The unaudited financial statements required by Section 6.01(b) of the Credit Agreement for the fiscal quarter of the Borrower ended as of the date set forth in paragraph 1 have been delivered to the Administrative Agent. The Consolidated financial statements required by Section 6.01(b) of the Credit Agreement fairly present the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.]

3. The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made, a review of the transactions and financial condition of the Borrower and its Subsidiaries during the accounting period covered by the financial statements delivered herewith.

4. A review of the activities of the Loan Borrower and its Subsidiaries during such fiscal period has been made under the supervision of the undersigned with a view to determining

<sup>7</sup> If this box is not checked, this Compliance Certificate will only be posted to Private side Lenders.

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whether during such fiscal period the Borrower and its Subsidiaries performed and observed all their respective obligations under the Loan Documents, and

[select one:]

[to the knowledge of the undersigned, during such fiscal period, no Default has occurred and is continuing.]

[or:]

[to the knowledge of the undersigned, during such fiscal period, the following is a list of each Default that has occurred and is continuing, the nature and status of such Default, and actions that have been taken or are proposed to be taken to cure such Default:]

5. Attached hereto as Schedule 1 are calculations of (a) the financial covenants set forth in Section 7.11 of the Credit Agreement as of the last day of and for the Measurement Period ending on the last day of the period covered by the financial statements delivered herewith, and (b) the Available Amount as of the date of this Compliance Certificate. Such calculations are true, correct and complete on and as of the date of this Compliance Certificate.

6. Attached hereto as Schedule 2 is a listing of (a) all applications with the United States Patent and Trademark Office or the United States Copyright Office by any Loan Party, if any, for any Intellectual Property made since the date of the most recently delivered Compliance Certificate (or, in the case of the first Compliance Certificate delivered after the Closing Date pursuant to Section 6.02(a) of the Credit Agreement, the Closing Date), (b) all issuances of registrations or letters on existing applications with the United States Patent and Trademark Office or the United States Copyright Office by any Loan Party, if any, for any Intellectual Property received since the date of such prior Compliance Certificate (or, in the case of the first Compliance Certificate delivered after the Closing Date pursuant to Section 6.02(a) of the Credit Agreement, the Closing Date), and (c) all licenses relating to any Intellectual Property registered with the United States Patent and Trademark Office or the United States Copyright Office entered into by any Loan Party since the date of such prior Compliance Certificate (or, in the case of the first Compliance Certificate delivered after the Closing Date pursuant to Section 6.02(a) of the Credit Agreement, the Closing Date).<sup>8</sup>

[7. Attached hereto as Schedule 3 is updated evidence of insurance for any insurance coverage of the Loan Parties that was renewed, replaced or modified during the period covered by this Compliance Certificate.<sup>9</sup>]

[7.][8.] Attached hereto as Schedule [3][4] is a copy of management's discussion and analysis with respect to the financial statements delivered herewith.

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<sup>8</sup> If no such updates are applicable, Schedule 2 should reflect "None".

<sup>9</sup> Only required to be included for Compliance Certificates delivered in connection with financial statements delivered pursuant to Section 6.01(a) of the Credit Agreement. If no such updates are applicable, Schedule 3 should reflect "None".

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*[signature page follows]*



IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate as of the date first written above.

AEROVIRONMENT, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

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Schedule 1

Calculation of Financial Covenants and Consolidated Total Leverage Ratio

In the event of conflict between the provisions and formulas set forth in this Schedule 1 and the provisions and formulas set forth in the Credit Agreement, the provisions and formulas of the Credit Agreement shall prevail.

**(I) Section 7.11(a) – Consolidated Leverage Ratio.**

(a) Consolidated Funded Indebtedness

without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:<sup>10</sup>

- (i) all obligations of the Borrower and its Subsidiaries on a Consolidated basis, whether current or long-term, for borrowed money (including the Obligations) and all obligations of the Borrower and its Subsidiaries on a Consolidated basis evidenced by bonds, debentures, notes, loan agreements or other similar instruments: \$ \_\_\_\_\_
- (ii) all purchase money Indebtedness of the Borrower and its Subsidiaries on a Consolidated basis: \$ \_\_\_\_\_
- (iii) the principal portion of all obligations of the Borrower and its Subsidiaries on a Consolidated basis under conditional sale or other title retention agreements relating to property purchased by the Borrower or any Subsidiary thereof (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business): \$ \_\_\_\_\_
- (iv) all obligations of the Borrower and its Subsidiaries on a Consolidated basis arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments: \$ \_\_\_\_\_
- (v) all obligations of the Borrower and its Subsidiaries on a Consolidated basis in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and not past due for more than ninety (90) days after the date on which such trade account payable was created), including any Earn Out Obligations: \$ \_\_\_\_\_
- (vi) all Attributable Indebtedness of the Borrower and its Subsidiaries on a Consolidated basis: \$ \_\_\_\_\_
- (vii) all obligations of the Borrower and its Subsidiaries on a Consolidated basis to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests in the Borrower, its Subsidiaries or any other Person, valued, in

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<sup>10</sup> The amount of any direct obligation arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments shall be the maximum amount available to be drawn thereunder.

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the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends: \$ \_\_\_\_\_

(viii) all Funded Indebtedness of other Persons secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by the Borrower and its Subsidiaries on a Consolidated basis, whether or not the obligations secured thereby have been assumed: \$ \_\_\_\_\_

(ix) all Guarantees provided by the Borrower and its Subsidiaries on a Consolidated basis with respect to Funded Indebtedness of another Person: \$ \_\_\_\_\_

(x) all Funded Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or any of its Subsidiaries is a general partner or joint venturer, except to the extent that such Funded Indebtedness is expressly made non-recourse to the Borrower and its Subsidiaries on a Consolidated basis: \$ \_\_\_\_\_

(xi) Consolidated Funded Indebtedness [Lines (I)(a)(i) + (ii) + (iii) + (iv) + (v) + (vi) + (vii) + (viii) + (ix) + (x)]: \$ \_\_\_\_\_

(b) Consolidated EBITDA

for the Borrower and its Subsidiaries on a Consolidated basis, for the Measurement Period most recently completed, an amount equal to:

(i) Consolidated Net Income for such period: \$ \_\_\_\_\_

the following, without duplication, to the extent deducted in calculating such Consolidated Net Income (or, in the case of amounts pursuant to Line I(b)(x) below, not already included in Consolidated Net Income):

(ii) Consolidated Interest Charges for such period:

(A) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case with respect to such period to the extent treated as interest in accordance with GAAP: \$ \_\_\_\_\_

(B) all interest paid or payable with respect to discontinued operations for such period: \$ \_\_\_\_\_

(C) the portion of rent expense under Capitalized Leases for such period that is treated as interest in accordance with GAAP: \$ \_\_\_\_\_

(D) Consolidated Interest Charges [Lines (I)(b)(ii)(A) + (B) + (C)]: \$ \_\_\_\_\_

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- (iii) the provision for federal, state, local and foreign income taxes paid or payable for such period: \$ \_\_\_\_\_
- (iv) depreciation and amortization expense for such period: \$ \_\_\_\_\_
- (v) any non-cash expenses, losses or charges (other than any non-cash expense, loss or charge relating to write-offs, write-downs or reserves with respect to accounts or inventory) for such period (including any non-cash stock based compensation expense for such period) which do not represent a cash item in such period or any other period: \$ \_\_\_\_\_
- (vi) fees, costs and expenses incurred by the Borrower and its Subsidiaries in such period in connection with the Transactions: \$ \_\_\_\_\_
- (vii) fees, costs and expenses incurred by the Borrower and its Subsidiaries in such period in connection with the negotiation, execution and delivery of any amendments or modifications to the Loan Documents: \$ \_\_\_\_\_
- (viii) restructuring charges or reserves (which shall include retention, severance, systems establishment cost, excess pension charges, contract termination costs, costs related to start up, closure, relocation or consolidation of facilities, costs to relocate employees, consulting fees, one time information technology costs, and one time branding costs): <sup>11</sup> \$ \_\_\_\_\_
- (ix) fees, costs, and expenses incurred in such period in connection with the issuance of Equity Interests or Indebtedness, the consummation of Permitted Acquisitions, and the consummation of other Investments permitted pursuant to Section 7.03 of the Credit Agreement (in each case whether consummated before or after the Closing Date), whether or not such transaction is actually consummated: \$ \_\_\_\_\_
- (x) the amount of net cost savings and synergies related to any Permitted Acquisition or other Investment permitted pursuant to Section 7.03 of the Credit Agreement, but only to the extent that such net cost savings and synergies are reasonably identifiable, factually supportable and projected by the Borrower in good faith to result from actions that have been taken (or, if not yet taken, with respect to actions for which substantial steps have been taken) within twelve (12) months after the consummation of such Permitted Acquisition or such Investment (with the amount of any such net cost savings and synergies to be added to Consolidated EBITDA as so projected until fully realized and calculated on a Pro Forma Basis as though such net cost savings and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions:<sup>12</sup> \$ \_\_\_\_\_

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<sup>11</sup> provided, that, the aggregate amount added back pursuant to this Line (I)(b)(viii) for any period, when taken together with the aggregate amount added back pursuant to Line (I)(b)(x) below for such period, shall not exceed an amount equal to twenty percent (20%) of Consolidated EBITDA (calculated without giving effect to the add backs permitted pursuant to this Line (I)(b)(viii) or Line (I)(b)(x) below) for such period.

<sup>12</sup> provided, that, the aggregate amount added back pursuant to this Line (I)(b)(x) for any period, when taken together with the aggregate amount added back pursuant to Line (I)(b)(viii) above for such period, shall not exceed an amount equal to twenty percent (20%) of Consolidated EBITDA (calculated without giving effect to the add backs permitted pursuant to this Line (I)(b)(x) or Line (I)(b)(viii) above) for such period.

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the following, without duplication, to the extent including in calculating such Consolidated Net Income:

- (xi) any non-cash income or gains for such period: \$ \_\_\_\_\_
- (xii) federal, state, local and foreign income tax credits received in such period: \$ \_\_\_\_\_
- (xiii) Consolidated EBITDA [Line (I)(d)(i) + (ii)(D) + (iii) + (iv) + (v) + (vi) + (vii) + (viii) + (ix) + (x) - (xi) - (xii)]: \$ \_\_\_\_\_
- (c) Consolidated Leverage Ratio [Line (I)(a)(xi) ÷ Line (I)(b)(xiii)]: \_\_\_\_\_ to 1.00
- (d) Maximum Consolidated Leverage Ratio:<sup>13</sup> \_\_\_\_\_ to 1.00
- (e) In compliance? [Yes][No]

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<sup>13</sup> The maximum Consolidated Total Net Leverage Ratio shall not be greater than 3.00 to 1.0, subject to any Leverage Increase Period in effect at such time pursuant to Section 7.11(a) of the Credit Agreement.

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**(II) Section 7.11(b) – Consolidated Fixed Charge Ratio.**

- (a) Consolidated EBITDA (see Line (I)(b)(xiii)): \$ \_\_\_\_\_
- (b) Consolidated Maintenance Capital Expenditures for such period: \$ \_\_\_\_\_
- (c) Consolidated Interest Charges paid in cash
- in each case, for the Borrower and its Subsidiaries on a Consolidated basis, to the extent paid in cash for the Measurement Period:
- (i) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case with respect to such period to the extent treated as interest in accordance with GAAP: \$ \_\_\_\_\_
- (ii) all interest paid or payable with respect to discontinued operations for such period: \$ \_\_\_\_\_
- (iii) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP for such period: \$ \_\_\_\_\_
- (iv) Consolidated Interest Charges paid in cash [Lines (II)(c)(i) + (ii) + (iii)]: \$ \_\_\_\_\_
- (d) Consolidated Scheduled Funded Debt Payments for such period: \$ \_\_\_\_\_
- (e) Consolidated Cash Taxes for such period: \$ \_\_\_\_\_
- (f) Aggregate amount of all Designated Restricted Payments made in such period: \$ \_\_\_\_\_
- (g) Consolidated Fixed Charge Ratio [(Lines (II)(a) – (b)) ÷ (Lines (II)(c)(iv) + (d) + (e) + (f))]:<sup>14</sup> \_\_\_\_\_ to 1.00

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<sup>14</sup> for purposes of calculating the Consolidated Fixed Charge Coverage Ratio: (A) Consolidated Interest Charges shall be calculated as if the Term A Loans had been made on February 1, 2021 (utilizing for any day prior to the Closing Date the interest rate which is in effect on the last day of the fiscal quarter of the Borrower ending April 30, 2021); (B) Consolidated Scheduled Funded Debt Payments shall be calculated as if a quarterly amortization payment on the Term A Facility in the principal amount of \$2,500,000 was due on April 30, 2021; (C)(1) Consolidated Interest Charges with respect to the Obligations for the period ended April 30, 2021 shall be the actual Consolidated Interest Charges with respect to the Obligations for the period of one (1) fiscal quarter then ended (subject to adjustment as provided in clauses (A) and (B) above) multiplied by four (4), and (2) Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period ended April 30, 2021 shall be the actual Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period of one (1) fiscal quarter then ended (subject to adjustment as provided in clause (B) above) multiplied by four (4); (D)(1) Consolidated Interest Charges with respect to the Obligations for the period ended July 31, 2021 shall be the actual Consolidated Interest Charges with respect to the Obligations for the period of two (2) fiscal quarters then ended (subject to adjustment as provided in clauses (A) and (B) above) multiplied by two (2), and (2) Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period ended July 31, 2021 shall be the actual Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period of two (2) fiscal quarters then ended (subject to adjustment as provided in clause (B) above) multiplied by two (2); (E)(1) Consolidated Interest Charges with respect to the Obligations for the period ended October 31, 2021 shall be the actual Consolidated Interest Charges with respect to the Obligations for the period of three (3) fiscal quarters then

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- (h) Minimum Consolidated Fixed Charge Leverage Ratio: 1.25 to 1.00
- (i) In compliance? [Yes][No]
- 

ended (subject to adjustment as provided in clauses (A) and (B) above) multiplied by four-thirds (4/3), and (2) Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period ended October 31, 2021 shall be the actual Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period of three (3) fiscal quarters then ended (subject to adjustment as provided in clause (B) above) multiplied by four-thirds (4/3); and (F)(1) Consolidated Interest Charges with respect to the Obligations for the period ended January 31, 2022 shall be the actual Consolidated Interest Charges with respect to the Obligations for the period of four (4) fiscal quarters then ended (subject to adjustment as provided in clauses (A) and (B) above), and (2) Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period ended January 31, 2022 shall be the actual Consolidated Scheduled Funded Debt Payments with respect to the Obligations for the period of four (4) fiscal quarters then ended (subject to adjustment as provided in clause (B) above).

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**(III) Available Amount.**

- (a) the sum of, without duplication,  
\$30,000,000 \$30,000,000
- (b) an amount, not less than zero in the aggregate, equal to fifty percent (50%) of the cumulative Consolidated Net Income for the period (taken as one accounting period) commencing from the first day of the first full fiscal quarter of the Borrower ending after the Closing Date to the end of the fiscal quarter of the Borrower most recently ended: \$ \_\_\_\_\_
- (c) one hundred percent (100%) of the net cash proceeds received by the Borrower prior to the last day of the period covered by the financial statements delivered herewith from issuances after the Closing Date of Qualified Capital Stock of the Borrower (solely to the extent such net cash proceeds are Not Otherwise Applied): \$ \_\_\_\_\_
- (d) the amount of any Investment made following the Closing Date in reliance on the Available Amount to the extent that such amount is returned in cash prior to the last day of the period covered by the financial statements delivered herewith from the return of, or a return on, principal of such Investment (other than a sale to a Loan Party or a Subsidiary), or from a dividend or interest received with respect to such Investment: \$ \_\_\_\_\_
- (e) the amount by which Indebtedness of the Borrower or any of its Subsidiaries is reduced on the Borrower's Consolidated balance sheet prior to the last day of the period covered by the financial statements delivered herewith upon the conversion or exchange of such Indebtedness for Qualified Capital Stock of the Borrower (less the amount of any cash or the fair market value of other property distributed by the Borrower or any Subsidiary upon such conversion or exchange, other than in connection with a restructuring): \$ \_\_\_\_\_
- (f) the cumulative aggregate amount of all Investments made in reliance on the Available Amount pursuant to Section 7.03(m) of the Credit Agreement: \$ \_\_\_\_\_
- (g) the cumulative aggregate amount of all Junior Debt Payments made in reliance on the Available Amount pursuant to Section 7.14(a)(iii) of the Credit Agreement: \$ \_\_\_\_\_
- (h) Available Amount [(Lines (III)(a) + (b) + (c) + (d) + (e)) – (Lines III(f) + (g))]
-

Schedule 2

Intellectual Property

Schedule 3

Insurance

Schedule 4

Management's Discussion and Analysis

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**EXHIBIT C**

**[FORM OF] JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is by and between \_\_\_\_\_, a \_\_\_\_\_ (the "New Subsidiary"), and Bank of America, N.A., in its capacity as the Administrative Agent under that certain Credit Agreement, dated as of February [\_\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), by and among the AeroVironment, Inc., a Delaware corporation, the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

The Loan Parties are required by Section 6.12 of the Credit Agreement to cause the New Subsidiary to become a Guarantor. Accordingly, the New Subsidiary hereby agrees as follows with the Administrative Agent, for the benefit of the Secured Parties:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Credit Agreement and a "Guarantor" for all purposes of the Credit Agreement, and shall have all of the obligations of a Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions applicable to the Guarantors contained in the Credit Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary hereby jointly and severally together with the other Guarantors, guarantees to each Secured Party, as provided in Article X of the Credit Agreement, the 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 Secured Obligations strictly in accordance with the terms thereof.

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

3. The New Subsidiary hereby represents and warrants to the Administrative Agent, for the benefit of the Secured Parties, that:

(a) Set forth on Schedule 1 attached hereto is complete and accurate list as of the date hereof of (i) each Subsidiary, joint venture and partnership and other equity investments of the New Subsidiary, (ii) the number of shares of each class of Equity

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Interests in each such Subsidiary outstanding, (iii) the number and percentage of outstanding shares of each class of Equity Interests of such Subsidiary owned by the New Subsidiary and its Subsidiaries, and (iv) the class or nature of such Equity Interests (i.e. voting, non-voting, preferred, etc.).

(b) Set forth on Schedule 2 attached hereto is a complete and accurate list as of the date hereof of the New Subsidiary's (i) exact legal name, (ii) any former legal names in the four (4) months prior to the Closing Date, (iii) jurisdictions in which such Loan Party is qualified to do business, (iv) address of its chief executive office address (and address of its principal place of business address if different than its chief executive office), (v) U.S. federal taxpayer identification number, and (vi) organization identification number.

(c) Set forth on Schedule 3 attached hereto is a list of all Intellectual Property registered or pending registration with the United States Copyright Office or the United States Patent and Trademark Office and owned by the New Subsidiary as of the date hereof. As of the date hereof, none of the Intellectual Property owned by the New Subsidiary or any of its Subsidiaries is subject to any licensing agreement or similar arrangement (other than non-exclusive outbound licenses entered into in the ordinary course of business) except as set forth on Schedule 3 attached hereto.

(d) Set forth on Schedule 4 attached hereto, as of the date hereof, is a description of all deposit accounts and securities accounts of the New Subsidiary, including (i) in the case of a deposit account, the name of the depository institution and balance (as of the date hereof), held in such deposit account and whether such account is an Excluded Account, and (ii) in the case of a securities account, the name of the securities intermediary or issuer and the aggregate market value (as of the date hereof) held in such securities account.

(e) Set forth on Schedule 5 attached hereto is a list of all real property located in the United States that is owned or leased by the New Subsidiary as of the date hereof (in each case, including (i) the number of buildings located on such property, (ii) the property address, and (iii) the city, county, state and zip code which such property is located.

(f) Set forth on Schedule 6 attached hereto is a list of all Commercial Tort Claims (as defined in the Security Agreement) initiated by or in favor of the New Subsidiary seeking damages in excess of \$1,000,000 as of the date hereof.

(g) Set forth on Schedule 7 attached hereto is a list of all Instruments, Documents or Tangible Chattel Paper (each as defined in the Security Agreement) of the New Subsidiary required to be pledged and delivered to the Administrative Agent pursuant to Section 4(a) of the Security Agreement.

(h) Except as set forth on Schedule 8 attached hereto, the New Subsidiary has not (i) been party to a merger, consolidation or other change in structure, (ii) used any

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tradename, or (iii) changed its legal name, in each case, in the five (5) years prior to the date hereof.

4. The address of the New Subsidiary for purposes of all notices and other communications is the address designated for all Loan Parties on Schedule 1.01(a) to the Credit Agreement or such other address as the New Subsidiary may from time to time notify the Administrative Agent in writing.

5. The New Subsidiary hereby waives acceptance by the Administrative Agent and the other Secured Parties of the guaranty by the New Subsidiary under Article X of the Credit Agreement upon the execution of this Agreement by the New Subsidiary.

6. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement 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. Subject to Section 11.18 of the Credit Agreement, this Agreement may be in the form of an Electronic Record and may be executed using Electronic Signatures, including facsimile and .pdf, and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record.

7. THIS AGREEMENT 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 AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

*[signature pages follow]*

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IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by an authorized officer, and the Administrative Agent has caused the same to be accepted by an authorized officer, in each case, as of the day and year first written above.

[NEW SUBSIDIARY]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and accepted:

BANK OF AMERICA, N.A.,  
as the Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

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Schedule 1

Subsidiaries, Joint Ventures, Partnerships and Other Equity Investments

Schedule 2

New Subsidiary Information

Schedule 3

Intellectual Property

Schedule 4

Deposit Accounts and Securities Accounts

Schedule 5

Real Properties

Schedule 6

Commercial Tort Claims

Schedule 7

Instruments, Documents and Tangible Chattel Paper

Schedule 8

Merger, Consolidation, Change in Structure;  
Tradenames; Change in Legal Name

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**EXHIBIT D**

**[FORM OF] LOAN NOTICE**

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as the Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of February [\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

The Borrower hereby requests (select one):

A [Revolving Borrowing][Term A Borrowing][Incremental Term Borrowing]

A [conversion][continuation] of [Revolving Loans][Term A Loans][Incremental Term Loans]

1. On: \_\_\_\_\_ (a Business Day)
2. In the principal amount of: \$\_\_\_\_\_
3. Comprised of: [Base Rate Loans][Eurodollar Rate Loans]
4. For Eurodollar Rate Loans: with an Interest Period of \_\_\_\_\_

[With respect to such Borrowing, the Borrower hereby represents and warrants that [(a) such request complies with the requirements of Section 2.01[(b)][(c)] of the Credit Agreement, and (b)] each of the conditions specified in Sections 4.02(a) and (b) of the Credit Agreement have been satisfied on and as of the date of such Borrowing.]<sup>15</sup>

*[signature page follows]*

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<sup>15</sup> Bracketed language not required to be included for the Term A Borrowing to occur on the Closing Date.

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IN WITNESS WHEREOF, the undersigned has caused this Loan Notice to be executed by a duly authorized officer as of the date first written above.

AEROVIRONMENT, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

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**EXHIBIT E**

**[FORM OF] NOTICE OF LOAN PREPAYMENT**

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as the [Administrative Agent][ Swingline Lender]

[Cc: Bank of America, N.A., as the Administrative Agent]

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of February [\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

The Borrower hereby notifies [the Administrative Agent][and the Swingline Lender] that on \_\_\_\_\_, pursuant to the terms of Section 2.05 of the Credit Agreement, the Borrower intends to prepay/repay the Loans as more specifically set forth below:

- Voluntary prepayment of [Revolving Loans][Term A Loans][Incremental Term Loans] in the following amount(s):
  - Eurodollar Rate Loans: \$ \_\_\_\_\_  
Applicable Interest Period: \_\_\_\_\_
  - Base Rate Loans: \$ \_\_\_\_\_
- Voluntary prepayment of Swingline Loans in the following amount(s): \$

*[signature page follows]*

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IN WITNESS WHEREOF, the undersigned has caused this Notice of Loan Prepayment to be executed by a duly authorized officer as of the date first written above.

AEROVIRONMENT, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

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**EXHIBIT F**

**[FORM OF] SECURED PARTY DESIGNATION NOTICE**

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as the Administrative Agent

Ladies and Gentlemen:

THIS SECURED PARTY DESIGNATION NOTICE is made by \_\_\_\_\_, a \_\_\_\_\_ (the "Designor"), to Bank of America, N.A., as the Administrative Agent under that certain Credit Agreement referenced below. All capitalized terms not defined herein shall have the meaning ascribed to them in the Credit Agreement.

**WITNESSETH:**

WHEREAS, AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto, have entered into that certain Credit Agreement, dated as of February [\_\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement") pursuant to which certain loans and financial accommodations have been made to the Borrower;

WHEREAS, in connection with the Credit Agreement, a Lender or an Affiliate of a Lender is permitted to designate its [Cash Management Agreement][Swap Contract] as a ["Secured Cash Management Agreement"]["Secured Hedge Agreement"] under the Credit Agreement and the Collateral Documents;

WHEREAS, the Credit Agreement requires that the Designor deliver this Secured Party Designation Notice to the Administrative Agent; and

WHEREAS, the Designor has agreed to execute and deliver this Secured Party Designation Notice.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Designation. The Designor hereby designates the [Cash Management Agreement][Swap Contract] described on Schedule 1 hereto to be a ["Secured Cash Management Agreement"]["Secured Hedge Agreement"] and hereby represents and warrants to the Administrative Agent that such [Cash Management Agreement][Swap Contract] satisfies all the requirements under the Loan Documents to be so designated. By executing and delivering this Secured Party Designation Notice, the Designor, as provided in the Credit Agreement, hereby agrees to be bound by all of the provisions of the Loan Documents which are applicable to it as a provider of a [Secured Cash Management Agreement][Secured Hedge Agreement] and hereby (a) confirms that it has received a copy of the Loan Documents and such other documents and

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information as it has deemed appropriate to make its own decision to enter into this Secured Party Designation Notice, (b) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto (including the provisions of Section 9.01 of the Credit Agreement), and (c) agrees that it will be bound by the provisions of the Loan Documents and will perform in accordance with its terms all the obligations which by the terms of the Loan Documents are required to be performed by it as a provider of a [Cash Management Agreement][Swap Contract]. Without limiting the foregoing, the Designor agrees to indemnify the Administrative Agent as contemplated by Section 11.04(c) of the Credit Agreement.

**2. GOVERNING LAW. THIS SECURED PARTY DESIGNATION NOTICE 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 SECURED PARTY DESIGNATION NOTICE AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

3. This Secured Party Designation Notice 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. Delivery of an executed counterpart of a signature page of this Secured Party Designation Notice by fax transmission or e-mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Secured Party Designation Notice. Subject to Section 11.18 of the Credit Agreement, this Secured Party Designation Notice may be in the form of an Electronic Record and may be executed using Electronic Signatures, including facsimile and .pdf, and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record

*[signature pages follow]*

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IN WITNESS WHEREOF, the undersigned have caused this Secured Party Designation Notice to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

[DESIGNOR]

By: \_\_\_\_\_  
Name:  
Title:

BANK OF AMERICA, N.A.,  
as the Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

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Schedule 1

[Cash Management Agreement][Swap Contract]

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**EXHIBIT G**

**[FORM OF] SOLVENCY CERTIFICATE**

\_\_\_\_, 2021

This Solvency Certificate (this "Solvency Certificate") is being executed and delivered pursuant to Section 4.01(g) of that certain Credit Agreement, dated as of February [ ], 2021 (the "Credit Agreement"), by and among AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Credit Agreement.

I, [ ], the chief financial officer of the Borrower, solely in such capacity and not in an individual capacity, hereby certify that I am the chief financial officer of the Borrower and that I am familiar with the businesses and assets of the Borrower and its Subsidiaries, I have made such other investigations and inquiries as I have deemed appropriate and I am duly authorized to execute this Solvency Certificate on behalf of the Borrower pursuant to the Credit Agreement.

I further certify, solely in my capacity as chief financial officer of the Borrower and not in my individual capacity, as of the date hereof and after giving effect to the Transactions, that (a) the fair value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of the Borrower and its Subsidiaries, on a consolidated basis, (b) the present fair salable value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, is not less than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries, on a consolidated basis, on its debts as they become absolute and matured, (c) the Borrower and its Subsidiaries, on a consolidated basis, do not intend to, and do not believe that they will, incur debts or liabilities beyond the ability of the Borrower and its Subsidiaries, on a consolidated basis, to pay such debts and liabilities as they mature, (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which the property of the Borrower and its Subsidiaries, on a consolidated basis, would constitute an unreasonably small capital, and (e) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. For purposes hereof, 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.

*[Remainder of page intentionally left blank]*

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IN WITNESS WHEREOF, I have executed this Solvency Certificate on the date first written above.

AEROVIRONMENT, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title: Chief Financial Officer

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**EXHIBIT H**

**[FORM OF] SWINGLINE LOAN NOTICE**

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as the Swingline Lender

Cc: Bank of America, N.A., as the Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of February [\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

The Borrower hereby requests a Swingline Loan:

1. On: \_\_\_\_\_ (a Business Day)
2. In the amount of: \$\_\_\_\_\_

With respect to such Swingline Borrowing, the Borrower hereby represents and warrants that (a) such request complies with the requirements of Section 2.04(a) of the Credit Agreement, and (b) the conditions set forth in Sections 4.02(a) and (b) of the Credit Agreement have been satisfied on and as of the date of date of such Swingline Borrowing.

*[signature page follows]*

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IN WITNESS WHEREOF, the undersigned has caused this Swingline Loan Notice to be executed by a duly authorized officer as of the date first written above.

AEROVIRONMENT, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

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**EXHIBIT I**

**[FORM OF] NOTE**

FOR VALUE RECEIVED, the undersigned hereby promises to pay to \_\_\_\_\_ or its registered assigns (the "Lender"), in accordance with the provisions of the Credit Agreement (as defined below), the principal amount of each Loan from time to time made by the Lender to the undersigned under that certain Credit Agreement, dated as of February [\_\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among AeroVironment, Inc., a Delaware corporation, the Guarantors party thereto, the Lenders (as such term is defined in the Credit Agreement) from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

The undersigned promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. [Except as set forth in Section 2.04(f) of the Credit Agreement with respect to Swingline Loans, all][All] payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more Event of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. Each Loan made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

The undersigned, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE 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 NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

*[signature page follows]*

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IN WITNESS WHEREOF, the undersigned has caused this Note to be duly executed and delivered by its officer thereunto duly authorized.

AEROVIRONMENT, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

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**EXHIBIT J-1**

**[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement, dated as of February [\_\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

Pursuant to the provisions of Section 3.01(f) of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN, as applicable). By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (b) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_



**EXHIBIT J-2**

**[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement, dated as of February [\_\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

Pursuant to the provisions of Section 3.01(f) of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN, as applicable). By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (b) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_



**EXHIBIT J-3**

**[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement, dated as of February [\_\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

Pursuant to the provisions of Section 3.01(f) of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN-E (or W-8BEN, as applicable); or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN, as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender, and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_\_\_



**EXHIBIT J-4**

**[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement, dated as of February [\_\_\_], 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among AeroVironment, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto.

Pursuant to the provisions of Section 3.01(f) of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN-E (or W-8BEN, as applicable); or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN, as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (ii) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 20\_\_\_\_

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Pursuant to Item 601(b)(10)(iv) of Regulation S-K, certain information contained in this document, marked by brackets as [\*\*], has been omitted because it is both (i) not material and (ii) would likely cause competitive harm to the registrant if publically disclosed.

The representations and warranties contained in this agreement were made for the purposes of allocating contractual risk between the parties and not as a means of establishing facts and are qualified by information in disclosure schedules that the parties exchanged in connection with the signing of this agreement. Moreover, the representations and warranties were made only as of the date of execution of this agreement and information concerning the subject matter of the representations and warranties may change after the date of this agreement. Only parties to this agreement have a right to enforce the agreement. Accordingly, third parties, including current securityholders and prospective investors, should not rely on the representations and warranties in this agreement.

## SECURITY AND PLEDGE AGREEMENT

THIS SECURITY AND PLEDGE AGREEMENT (this “Agreement”) is entered into as of February 19, 2021 among AEROVIRONMENT, INC., a Delaware corporation (the “Borrower”), the other parties identified as “Obligors” on the signature pages hereto, and such other parties that may become Obligors after the date hereof (together with the Borrower, individually an “Obligor”, and collectively the “Obligors”), and BANK OF AMERICA, N.A., as the Administrative Agent for the Secured Parties.

### RECITALS

WHEREAS, pursuant to that certain Credit Agreement, dated as of the date hereof (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among the Borrower, the Guarantors party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as the Administrative Agent, the Swingline Lender, and an L/C Issuer, and the other L/C Issuers party thereto, the Lenders have agreed to make Loans and the L/C Issuers have agreed to issue Letters of Credit, in each case, upon the terms and subject to the conditions set forth therein; and

WHEREAS, this Agreement is required by the terms of the Credit Agreement.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

(a) Capitalized terms used and not otherwise defined herein shall have the meanings provided in the Credit Agreement.

(b) The following terms shall have the meanings set forth in the UCC: Accession, Account, Adverse Claim, As-Extracted Collateral, Chattel Paper, Commercial Tort Claim, Consumer Goods, Deposit Account, Document, Electronic Chattel Paper, Equipment, Farm Products, Financial Asset, Fixtures, General Intangible, Goods, Instrument, Inventory, Investment Company Security, Investment Property, Letter-of-Credit Right, Manufactured Home, Money, Payment Intangible, Proceeds, Securities Account, Securities Entitlement, Securities Intermediary, Security, Software, Supporting Obligation, and Tangible Chattel Paper.

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(c) As used herein, the following terms shall have the meanings set forth below:

“Collateral” has the meaning provided in Section 2.

“Copyright License” means any agreement, whether written or oral, providing for the grant by or to an Obligor of any right under any Copyright.

“Copyrights” means (i) all copyrights registered in the United States in all Works, now existing or hereafter created or acquired, all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, or any state thereof or political subdivision thereof, and (ii) all renewals thereof.

“Patent License” means any agreement, whether written or oral, providing for the grant by or to an Obligor of any right under any Patent, including any right to manufacture, use or sell any invention covered by a Patent.

“Patents” means (i) all letters patent of the United States, or any state thereof or political subdivision thereof, and all reissues and extensions thereof, and (ii) all applications for letters patent of the United States and all divisions, continuations and continuations-in-part thereof.

“Pledged Equity” means, with respect to each Obligor, (i) one hundred percent (100%) of the issued and outstanding Equity Interests directly owned by such Obligor in each of its Domestic Subsidiaries, and (ii) sixty-five percent (65%) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and one hundred percent (100%) of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)), in each case, directly owned by such Obligor in each of its Foreign Subsidiaries, including the Equity Interests of the Subsidiaries owned by such Obligor as set forth on Schedule 1(b), in each case together with the certificates (or other agreements or instruments), if any, representing such Equity Interests, and all options and other rights, contractual or otherwise, with respect thereto, including the following:

(A) all shares, securities, membership interests and other Equity Interests or other property representing a dividend or distribution on or in respect or any of the Pledged Equity, or representing a distribution or return of capital upon or in respect of the Pledged Equity, or resulting from a stock split, revision, reclassification or other exchange therefor, and any other dividends, distributions, subscriptions, warrants, cash, securities, instruments, rights, options or other property issued to or received or receivable by the holder of, or otherwise in respect of, the Pledged Equity; and

(B) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Equity Interests of the successor Person formed by or resulting from such consolidation or merger, to the extent that such successor Person is a direct Subsidiary of an Obligor.

“Trademark License” means any agreement, whether written or oral, providing for the grant by or to an Obligor of any right to use any Trademark.

“Trademarks” means (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or

acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or otherwise, and (ii) all renewals thereof.

“Work” means any work that is subject to copyright protection pursuant to Title 17 of the United States Code.

2. Grant of Security Interest in the Collateral. To secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Secured Obligations, each Obligor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right to set off against, any and all right, title and interest of such Obligor in and to all of the following, whether now owned or existing or owned, acquired, or arising hereafter (collectively, the “Collateral”): (a) all Accounts; (b) all Chattel Paper; (c) those certain Commercial Tort Claims identified on Schedule 2(c); (d) all Copyrights; (e) all Copyright Licenses; (f) all Deposit Accounts; (g) all Documents; (h) all Equipment; (i) all Fixtures; (j) all General Intangibles; (k) all Goods; (l) all Instruments; (m) all Inventory; (n) all Investment Property; (o) all Letter-of-Credit Rights; (p) all Money; (q) all Patents; (r) all Patent Licenses; (s) all Payment Intangibles; (t) all Pledged Equity; (u) all Software; (v) all Supporting Obligations; (w) all Trademarks; (x) all Trademark Licenses; and (y) all Accessions and all Proceeds of any and all of the foregoing.

Notwithstanding anything to the contrary contained herein, the security interests granted under this Agreement shall not extend to, and the defined term “Collateral” shall not include, any Excluded Property.

The Obligors and the Administrative Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest created hereby in the Collateral (i) constitutes continuing collateral security for all of the Secured Obligations, whether now existing or hereafter arising, and (ii) is not and shall not be construed as an assignment of any Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks or Trademark Licenses.

3. Representations and Warranties. Each Obligor hereby represents and warrants to the Administrative Agent, for the benefit of the Secured Parties, that:

(a) Ownership. Such Obligor is the legal and beneficial owner of its Collateral and has the right to pledge, sell, assign or transfer the same. There exists no Adverse Claim with respect to the Pledged Equity of such Obligor.

(b) Security Interest/Priority. This Agreement creates a valid security interest in favor of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral of such Obligor and, when properly perfected by filing of a UCC financing statement, shall constitute a valid, perfected, first priority (subject to Permitted Liens) security interest in such Collateral (including all uncertificated Pledged Equity consisting of partnership or limited liability company interests that do not constitute Securities), to the extent such security interest can be perfected by filing a financing statement under the UCC, free and clear of all Liens other than Permitted Liens. The taking of possession by the Administrative Agent of the certificated securities (if any) evidencing the Pledged Equity (delivered in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank), and any Instrument, Document, Tangible Chattel Paper or Money constituting Collateral of such Obligor will perfect and establish the first priority (subject to Permitted Liens) of the Administrative Agent’s security interest in all the Pledged Equity evidenced by such certificated securities and such Instruments,

Documents, Tangible Chattel Paper and Money, subject to, in the case of any pledge of (i) the Pledged Equity of such Obligor in any Foreign Subsidiary or (ii) intercompany Indebtedness owed by any Foreign Subsidiary to such Obligor, the effect of foreign Laws, rules, and regulations as they relate to the enforcement of any such pledge. With respect to any Collateral of such Obligor consisting of a Deposit Account, Securities Entitlement or held in a Securities Account, upon execution and delivery by such Obligor, the applicable depository bank or Securities Intermediary and the Administrative Agent of an agreement granting control (within the meaning of the UCC) to the Administrative Agent over such Collateral, the Administrative Agent shall have a valid and perfected, first priority (subject to Permitted Liens) security interest in such Collateral.

(c) Types of Collateral. None of the Collateral of such Obligor consists of, or is the Accessions or the Proceeds of, As-Extracted Collateral, Consumer Goods, Farm Products, Manufactured Homes, or standing timber.

(d) Accounts. (i) Each Account of such Obligor that constitutes Collateral and the papers and documents relating thereto are genuine and in all material respects accurate and what they purport to be, (ii) each such Account arises out of (A) a bona fide sale of goods sold and delivered by such Obligor (or is in the process of being delivered), or (B) services theretofore actually rendered by such Obligor to, the account debtor named therein, (iii) no such Account is evidenced by any Instrument or Chattel Paper unless, to the extent required under Section 4(a), such Instrument or Chattel Paper has been endorsed over and delivered to, or submitted to the control of, the Administrative Agent, (iv) no surety bond was required or given in connection with any such Account or the contracts or purchase orders out of which they arose, and (v) the right to receive payment under each such Account is assignable.

(e) Equipment and Inventory. With respect to any Equipment and/or Inventory of such Obligor with a value in excess of \$5,000,000, such Obligor has exclusive possession and control of such Equipment and such Inventory except for (i) Equipment leased by such Obligor as a lessee, or (ii) Equipment or Inventory in transit with common carriers. No Inventory of such Obligor with a value in excess of \$1,000,000 is held by a Person other than an Obligor pursuant to consignment, sale or return, sale on approval or similar arrangement.

(f) Authorization of Pledged Equity. All Pledged Equity being pledged by such Obligor is duly authorized and validly issued, is fully paid and, to the extent applicable, non-assessable and is not subject to the preemptive rights of any Person.

(g) No Other Equity Interests, Instruments, etc. As of the Closing Date, (i) such Obligor does not own any certificated Equity Interests in any Subsidiary that are required to be pledged and delivered to the Administrative Agent hereunder except as set forth on Schedule 1(b), and (ii) such Obligor does not hold any Instruments, Documents or Tangible Chattel Paper required to be pledged and delivered to the Administrative Agent pursuant to Section 4(a)(i) other than as set forth on Schedule 3(g). All such certificated securities, Instruments, Documents and Tangible Chattel Paper have been delivered to the Administrative Agent.

(h) Partnership and Limited Liability Company Interests. Except as previously disclosed to the Administrative Agent, none of the Collateral of such Obligor consisting of an interest in a partnership or a limited liability company (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article 8 of the UCC, (iii) is an Investment Company Security, (iv) is held in a Securities Account, or (v) constitutes a Security or a Financial Asset.



(i) Contracts; Agreements; Licenses. Such Obligor has no material contracts, agreements or licenses which are non-assignable by their terms, or as a matter of law, or which prevent the granting of a security interest therein pursuant to terms which are not rendered ineffective pursuant to the UCC.

(j) Mergers, Etc. Other than (i) the Closing Date Acquisition and (ii) as set forth on Schedule 3(j), such Obligor has not been party to a merger, consolidation or other change in structure or used any tradename in the five (5) years preceding the date of this Agreement.

(k) Consents, etc. There are no restrictions in any Organization Document of such Obligor governing any Pledged Equity or any other document related thereto which would limit or restrict (i) the grant of a Lien pursuant to this Agreement on such Pledged Equity, (ii) the perfection of such Lien, or (iii) the exercise of remedies in respect of such perfected Lien in the Pledged Equity as contemplated by this Agreement. Except for (A) the filing or recording of UCC financing statements, (B) the filing of appropriate notices with the United States Patent and Trademark Office and the United States Copyright Office, (C) obtaining control to perfect the Liens created by this Agreement (to the extent required under Section 4(a)), (D) such actions as may be required by Laws affecting the offering and sale of securities, (E) such actions as may be required by applicable foreign Laws affecting the pledge of the Pledged Equity of Foreign Subsidiaries, and (F) consents, authorizations, filings or other actions which have been obtained or made, no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority and no consent of any other Person (including any stockholder, member or creditor of such Obligor), is required for (1) the grant by such Obligor of the security interest in the Collateral granted hereby or for the execution, delivery or performance of this Agreement by such Obligor, (2) the perfection of such security interest (to the extent such security interest can be perfected by filing under the UCC, the granting of control (to the extent required under Section 4(a)) or by filing an appropriate notice with the United States Patent and Trademark Office or the United States Copyright Office), or (3) the exercise by the Administrative Agent or the Secured Parties of the rights and remedies provided for in this Agreement.

(l) Commercial Tort Claims. As of the Closing Date, such Obligor does not have any Commercial Tort Claims seeking damages in excess of \$500,000 other than those listed on Schedule 2(c).

(m) Copyrights, Patents and Trademarks.

(i) To the best of such Obligor's knowledge, each Copyright, Patent and Trademark of such Obligor that is material to the business of such Obligor and which constitutes Collateral is valid, subsisting, unexpired, enforceable and has not been abandoned.

(ii) To the best of such Obligor's knowledge, no holding, decision or judgment has been rendered by any Governmental Authority that would limit, cancel or question the validity of any Copyright, Patent or Trademark of such Obligor that is material to the business of such Obligor, and which constitutes Collateral, in any material respect.

(iii) To the best of such Obligor's knowledge, no action or proceeding is pending (A) seeking to limit, cancel or question the validity of any Copyright, Patent or Trademark of such Obligor that is material to the business of such Obligor and which

constitutes Collateral, in any material respect or (B) that could reasonably be expected to have a material adverse effect on the value of any Copyright, Patent or Trademark of such Obligor that is material to the business of such Obligor and which constitutes Collateral.

(iv) To the best of such Obligor's knowledge, all applications pertaining to the Copyrights, Patents and Trademarks of such Obligor that are material to the business of such Obligor and which constitute Collateral have been duly and properly filed, and all registrations or letters pertaining to such Copyrights, Patents and Trademarks have been duly and properly filed and issued.

(v) Such Obligor has not made any assignment or agreement in conflict with the security interest in the Copyrights, Patents or Trademarks of such Obligor constituting Collateral hereunder.

4. Covenants. Each Obligor covenants that on and after the Closing Date and until the Facility Termination Date, such Obligor shall:

(a) Instruments/Chattel Paper/Pledged Equity/Control.

(i) (A) If any amount in excess of \$1,000,000 payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Tangible Chattel Paper, or if any property constituting Collateral with a value in excess of \$1,000,000 shall be stored or shipped subject to a Document, in either case, ensure that such Instrument, Tangible Chattel Paper or Document is either in the possession of such Obligor at all times or, if requested by the Administrative Agent to perfect its security interest in such Collateral, is delivered to the Administrative Agent duly endorsed in a manner reasonably satisfactory to the Administrative Agent, and (B) ensure that any Collateral consisting of Tangible Chattel Paper is marked with a legend reasonably acceptable to the Administrative Agent indicating the Administrative Agent's security interest in such Tangible Chattel Paper.

(ii) Deliver to the Administrative Agent, promptly upon the receipt thereof, all certificates and instruments constituting Pledged Equity (other than certificates constituting Pledged Equity issued by the Turkish Subsidiary for so long as such certificates are needed in connection with any transfer thereof permitted by the Credit Agreement), and, prior to such delivery, hold, all such certificates constituting Pledged Equity in trust for the benefit of the Administrative Agent pursuant hereto (it being understood that all such certificates representing Pledged Equity shall be delivered in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, substantially in the form provided in Exhibit 4(a)(ii)).

(iii) Execute and deliver all agreements, assignments, instruments or other documents as reasonably requested by the Administrative Agent for the purpose of obtaining and maintaining control with respect to any Collateral consisting of (A) Deposit Accounts, (B) Securities Accounts, (C) Investment Property, (D) Letter-of-Credit Rights, and (E) Electronic Chattel Paper.

(b) Filing of Financing Statements, Notices, etc. Execute and deliver to the Administrative Agent such agreements, assignments or instruments (including affidavits, notices,

reaffirmations and amendments and restatements of existing documents, as the Administrative Agent may reasonably request) and do all such other things as the Administrative Agent may reasonably deem necessary or appropriate (i) to assure the Administrative Agent of the creation, perfection and priority of the security interests created hereunder, including (A) such instruments as the Administrative Agent may from time to time reasonably request in order to perfect and maintain the security interests granted hereunder in accordance with the UCC, (B) with regard to Copyrights, a Notice of Grant of Security Interest in Copyrights in the form of Exhibit 4(b)(i)(B), (C) with regard to Patents, a Notice of Grant of Security Interest in Patents in the form of Exhibit 4(b)(i)(C), and (D) with regard to Trademarks, a Notice of Grant of Security Interest in Trademarks in the form of Exhibit 4(b)(i)(D), (ii) to consummate the transactions contemplated hereby, and (iii) to otherwise protect and assure the Administrative Agent of its rights and interests hereunder; provided, that, such Obligor shall not be required to (x) enter into any Collateral Document governed by the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia, or (y) take any steps to perfect a security interest created over any Collateral located outside of the United States, and, in furtherance of the foregoing, such Obligor hereby (1) irrevocably makes, constitutes and appoints the Administrative Agent, its nominee or any other person whom the Administrative Agent may designate, as such Obligor's attorney in fact with full power and for the limited purpose to sign in the name of such Obligor any financing statements, or amendments and supplements to financing statements, renewal financing statements, notices or any similar documents which in the Administrative Agent's reasonable discretion would be necessary or appropriate in order to perfect and maintain perfection of the security interests granted hereunder, such power, being coupled with an interest, being and remaining irrevocable until the Facility Termination Date, and (2) agrees that, to the extent effective under applicable Law, a carbon, photographic or other reproduction of this Agreement or any such financing statement is sufficient for filing as a financing statement by the Administrative Agent without notice thereof to such Obligor wherever the Administrative Agent may in its sole discretion desire to file the same.

(c) Collateral Held by Warehouseman, Bailee, etc. If any Collateral of such Obligor with a book value in excess of \$1,000,000 is at any time in the possession or control of a warehouseman, bailee or any agent or processor and the Administrative Agent so requests, (i) notify such Person in writing of the Administrative Agent's security interest therein, (ii) instruct such Person to hold all such Collateral for the Administrative Agent's account and subject to the Administrative Agent's instructions, and (iii) use commercially reasonable efforts to obtain a written acknowledgment from such Person that it is holding such Collateral for the benefit of the Administrative Agent.

(d) Treatment of Accounts. Not grant or extend the time for payment of any Account of such Obligor, or compromise or settle any Account of such Obligor for less than the full amount thereof, or release any person or property, in whole or in part, from payment thereof, or allow any credit or discount thereon, other than as normal and customary in the ordinary course of such Obligor's business.

(e) Commercial Tort Claims. (i) Promptly forward to the Administrative Agent an updated Schedule 2(c) listing any and all Commercial Tort Claims initiated by or in favor of such Obligor seeking damages in excess of \$1,000,000, and (ii) execute and deliver such statements, documents and notices and do and cause to be done all such things as may be required by the Administrative Agent, or required by Law to create, preserve, perfect and maintain the Administrative Agent's security interest in any Commercial Tort Claims initiated by or in favor of such Obligor seeking damages in excess of \$1,000,000.

(f) Books and Records. Upon the written request of the Administrative Agent, mark its books and records (and shall cause the issuer of the Pledged Equity of such Obligor to mark its books and records) to reflect the security interest granted pursuant to this Agreement.

(g) Nature of Collateral. At all times maintain the Collateral of such Obligor as personal property and not affix any such Collateral to any real property in a manner which would change its nature from personal property to real property or a Fixture to real property, unless the Administrative Agent shall have a perfected Lien on such Fixture or real property.

(h) Issuance or Acquisition of Equity Interests in Partnerships or Limited Liability Companies. Not, without executing and delivering, or causing to be executed and delivered, to the Administrative Agent such agreements, documents and instruments as the Administrative Agent may reasonably require, issue or acquire any Pledged Equity consisting of an interest in a partnership or a limited liability company that (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article 8 of the UCC, (iii) is an Investment Company Security, (iv) is held in a Securities Account, or (v) constitutes a Security or a Financial Asset.

(i) Intellectual Property.

(i) (A) Not do any act or knowingly omit to do any act whereby any material Copyright of such Obligor may become invalidated or injected into the public domain, (B) notify the Administrative Agent promptly if it knows that any material Copyright of such Obligor may become injected into the public domain or of any materially adverse determination or development (including the institution of, or any such determination or development in, any court or tribunal in the United States) regarding such Obligor's ownership of any such Copyright or its validity, (C) take all reasonable and necessary steps as it shall reasonably deem appropriate under the circumstances, to maintain and pursue each application (and to obtain the relevant registration) of each material Copyright owned by such Obligor and to maintain each registration of each material Copyright owned by such Obligor including filing of for renewal where necessary, and (D) promptly notify the Administrative Agent of any material infringement of any material Copyright of such Obligor of which it becomes aware and take such actions as it shall reasonably deem appropriate under the circumstances to protect such material Copyright, including, where appropriate, the bringing of suit for infringement, seeking injunctive relief and seeking to recover any and all damages for such infringement.

(ii) Not make any assignment or agreement in conflict with the security interest in the Copyrights of such Obligor hereunder (except as permitted by the Credit Agreement).

(iii) (A) Continue to use each material Trademark of such Obligor on each and every trademark class of goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain such Trademark in full force free from any claim of abandonment for non-use, (B) maintain as in the past the quality of products and services offered under such Trademark, (C) employ such Trademark with the appropriate notice of registration, if applicable, (D) not adopt or use any mark in the United States that is confusingly similar or a colorable imitation of such Trademark unless the Administrative Agent, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such mark pursuant to this Agreement, and (E) not

(and not permit any licensee or sublicensee thereof to) do any act or omit to do any act whereby any such material Trademark shall become invalidated.

(iv) Not do any act, or omit to do any act, whereby any material Patent of such Obligor may become abandoned or dedicated to the public.

(v) Notify the Administrative Agent promptly if it knows that any application or registration relating to any material Patent or Trademark of such Obligor could reasonably be expected to become abandoned or dedicated to the public, or of any materially adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office) regarding such Obligor's ownership of any material Patent or Trademark or its right to register the same or to keep and maintain the same.

(vi) Take all reasonable and necessary steps, including in any proceeding before the United States Patent and Trademark Office, or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of each material Patent and Trademark, in each case, of such Obligor, including filing of applications for renewal, affidavits of use and affidavits of incontestability.

(vii) Promptly notify the Administrative Agent after it learns that any material Patent or Trademark included in the Collateral of such Obligor is infringed, misappropriated or diluted by a third party in any material respect and (A) promptly sue for infringement, misappropriation or dilution, seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution, or (B) take such other actions, if any, as it shall reasonably deem appropriate under the circumstances to protect such Patent or Trademark.

(viii) Not make any assignment or agreement in conflict with the security interest in the Patents or Trademarks of such Obligor hereunder (except as permitted by the Credit Agreement).

Notwithstanding the foregoing, such Obligor may, in its reasonable business judgment, fail to maintain, pursue, preserve or protect any Copyright, Patent or Trademark which is not material to its business.

5. Authorization to File Financing Statements. Each Obligor hereby authorizes the Administrative Agent to prepare and file such financing statements (including continuation statements) or amendments thereof or supplements thereto or other instruments as the Administrative Agent may from time to time deem reasonably necessary or appropriate in order to perfect and maintain the security interests granted hereunder in accordance with the UCC (including authorization to describe the Collateral as "all personal property", "all assets" or words of similar meaning).

6. Advances. (i) Upon the occurrence of an Event of Default and during the continuation thereof or (ii) on failure of any Obligor to perform any of the covenants and agreements contained herein or in any other Loan Document and upon prior written notice to the Obligors if, with respect to this clause (ii), the Administrative Agent reasonably determines that the taking of a particular action is required prior to the expiration of any applicable cure period(s) in order to prevent an impairment of its rights in and to any Collateral, then, in either case, the Administrative Agent may, at its sole option and in its sole discretion, perform the same and in so doing may expend such sums as the Administrative Agent may

reasonably deem advisable in the performance thereof, including the payment of any insurance premiums, the payment of any taxes, a payment to obtain a release of a Lien or potential Lien, expenditures made in defending against any adverse claim and all other expenditures that the Administrative Agent may make for the protection of the security hereof or that may be compelled to make by operation of law. All such sums and amounts so expended shall be repayable by the Obligors on a joint and several basis promptly upon timely notice thereof and demand therefor, shall constitute additional Secured Obligations and shall bear interest from the date said amounts are expended at the Default Rate. No such performance of any covenant or agreement by the Administrative Agent on behalf of any Obligor, and no such advance or expenditure therefor, shall relieve the Obligors of any Default or Event of Default. The Administrative Agent may make any payment hereby authorized in accordance with any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien, title or claim except to the extent such payment is being contested in good faith by an Obligor in appropriate proceedings and against which adequate reserves are being maintained in accordance with GAAP.

7. Remedies.

(a) General Remedies. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have, in addition to the rights and remedies provided herein, in the Loan Documents, in any other documents relating to the Secured Obligations, or by law (including levy of attachment, garnishment and the rights and remedies set forth in the UCC of the jurisdiction applicable to the affected Collateral), the rights and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights and remedies are asserted and regardless of whether the UCC applies to the affected Collateral) and, further, the Administrative Agent may, with or without judicial process or the aid and assistance of others, (i) enter on any premises on which any of the Collateral may be located and, without resistance or interference by the Obligors, take possession of the Collateral, (ii) dispose of any Collateral on any such premises, (iii) require the Obligors to assemble and make available to the Administrative Agent at the expense of the Obligors any Collateral at any place and time designated by the Administrative Agent that is reasonably convenient to both parties, (iv) remove any Collateral from any such premises for the purpose of effecting sale or other disposition thereof, and/or (v) without demand and without advertisement, notice, hearing or process of law, all of which each of the Obligors hereby waives to the fullest extent permitted by law, at any place and time or times, sell and deliver any or all Collateral held by or for it at public or private sale (which in the case of a private sale of Pledged Equity, shall be to a restricted group of purchasers who will be obligated to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof), at any exchange or broker's board or elsewhere, by one or more contracts, in one or more parcels, for Money, upon credit or otherwise, at such prices and upon such terms as the Administrative Agent deems advisable, in its sole discretion (subject to any and all mandatory legal requirements). Each Obligor acknowledges that any private sale referenced above may be at prices and on terms less favorable to the seller than the prices and other terms that might have been obtained at a public sale and, notwithstanding the foregoing, agrees that such private sale shall be deemed to have been made in a commercially reasonable manner and, in the case of a sale of Pledged Equity, that the Administrative Agent shall have no obligation to delay sale of any such Pledged Equity for the period of time necessary to permit the issuer of such securities to register such Pledged Equity for public sale under the Securities Act. Neither the Administrative Agent's compliance with applicable law nor its disclaimer of warranties relating to the Collateral shall be considered to adversely affect the commercial reasonableness of any sale. In addition to all other sums due the Administrative Agent and the Secured Parties with respect to the Secured

Obligations, the Obligors shall pay the Administrative Agent and each of the Secured Parties all documented out-of-pocket costs and expenses incurred by the Administrative Agent or any such Secured Party, in enforcing its remedies hereunder including attorneys' fees and court costs, in obtaining or liquidating the Collateral, in enforcing payment of the Secured Obligations, or in the prosecution or defense of any action or proceeding by or against the Administrative Agent or the Secured Parties or the Obligors concerning any matter arising out of or connected with this Security Agreement, any Collateral or the Secured Obligations, including any of the foregoing arising in, arising under or related to a case under the Debtor Relief Laws. To the extent the rights of notice cannot be legally waived hereunder, each Obligor agrees that any requirement of reasonable notice shall be met if such notice, specifying the place of any public sale or the time after which any private sale is to be made, is personally served on or mailed, postage prepaid, to the Borrower in accordance with the notice provisions of Section 11.02 of the Credit Agreement at least ten (10) days before the time of sale or other event giving rise to the requirement of such notice. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the times and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Obligor further acknowledges and agrees that any offer to sell any Pledged Equity which has been (A) publicly advertised on a bona fide basis in a newspaper or other publication of general circulation in the financial community of New York, New York (to the extent that such offer may be advertised without prior registration under the Securities Act), or (B) made privately in the manner described above shall be deemed to involve a "public sale" under the UCC, notwithstanding that such sale may not constitute a "public offering" under the Securities Act, and the Administrative Agent may, in such event, bid for the purchase of such Pledged Equity. The Administrative Agent shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. To the extent permitted by law, any Secured Party may be a purchaser at any such sale. To the extent permitted by applicable law, each of the Obligors hereby waives all of its rights of redemption with respect to any such sale. Subject to the provisions of applicable law, the Administrative Agent may adjourn or postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, to the extent permitted by law, be made at the time and place to which the sale was adjourned or postponed, or the Administrative Agent may further adjourn or postpone such sale by announcement made at such time and place.

(b) Remedies relating to Accounts. Upon the occurrence and during the continuance of an Event of Default, whether or not the Administrative Agent has exercised any or all of its rights and remedies hereunder, (i) each Obligor will promptly upon request of the Administrative Agent instruct all account debtors to remit all payments in respect of Accounts to a mailing location selected by the Administrative Agent, and (ii) the Administrative Agent shall have the right to enforce any Obligor's rights against its customers and account debtors, and the Administrative Agent or its designee may notify (or require any Obligor to notify) any Obligor's customers and account debtors that the Accounts of such Obligor have been assigned to the Administrative Agent or of the Administrative Agent's security interest therein, and may (either in its own name or in the name of an Obligor or both) demand, collect (including by way of a lockbox arrangement), receive, take receipt for, sell, sue for, compound, settle, compromise and give acquittance for any and all amounts due or to become due on any Account, and, in the Administrative Agent's discretion, file any claim or take any other action or proceeding to protect and realize upon the security interest of the Secured Parties in the Accounts. Each Obligor acknowledges and agrees that the Proceeds of its Accounts remitted to or on behalf of the Administrative Agent in accordance with the provisions hereof shall be solely for the Administrative Agent's own convenience and that such Obligor shall not have any right, title or interest in such Accounts or in any such other amounts except as expressly provided herein. The

Administrative Agent and the Secured Parties shall have no liability or responsibility to any Obligor for acceptance of a check, draft or other order for payment of money bearing the legend "payment in full" or words of similar import or any other restrictive legend or endorsement or be responsible for determining the correctness of any remittance. Furthermore, upon the occurrence and during the continuance of an Event of Default, (A) the Administrative Agent shall have the right, but not the obligation, to make test verifications of the Accounts in any manner and through any medium that it reasonably considers advisable, and the Obligors shall furnish all such assistance and information as the Administrative Agent may require in connection with such test verifications, (B) upon the Administrative Agent's request and at the expense of the Obligors, the Obligors shall cause independent public accountants or others reasonably satisfactory to the Administrative Agent to furnish to the Administrative Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts, and (C) the Administrative Agent in its own name or in the name of others may communicate with account debtors on the Accounts to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Accounts.

(c) Deposit Accounts. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may prevent withdrawals or other dispositions of funds in Deposit Accounts maintained with the Administrative Agent.

(d) Access. In addition to the rights and remedies hereunder, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have the right to enter and remain upon the various premises of the Obligors without cost or charge to the Administrative Agent, and use the same, together with materials, supplies, books and records of the Obligors for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral, whether by foreclosure, auction or otherwise. In addition, the Administrative Agent may remove Collateral, or any part thereof, from such premises and/or any records with respect thereto, in order to effectively collect or liquidate such Collateral.

(e) Nonexclusive Nature of Remedies. Failure by the Administrative Agent or the Secured Parties to exercise any right, remedy or option under this Agreement, any other Loan Document, any other document relating to the Secured Obligations, or as provided by law, or any delay by the Administrative Agent or the Secured Parties in exercising the same, shall not operate as a waiver of any such right, remedy or option. No waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated, which in the case of the Administrative Agent or the Secured Parties shall only be granted as provided herein. To the extent permitted by law, neither the Administrative Agent, the Secured Parties, nor any party acting as attorney for the Administrative Agent or the Secured Parties, shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct hereunder, as determined by a court of competent jurisdiction by final and non-appealable judgment. The rights and remedies of the Administrative Agent and the Secured Parties under this Agreement shall be cumulative and not exclusive of any other right or remedy that the Administrative Agent or the Secured Parties may have.

(f) Retention of Collateral. In addition to the rights and remedies hereunder, the Administrative Agent may, in compliance with Sections 9-620 and 9-621 of the UCC or otherwise complying with the requirements of applicable law of the relevant jurisdiction, accept or retain all or any portion of the Collateral in satisfaction of the Secured Obligations. Unless and until the Administrative Agent shall have provided such notices, however, the Administrative



Agent shall not be deemed to have accepted or retained any Collateral in satisfaction of any Secured Obligations for any reason.

(g) Deficiency. In the event that the proceeds of any sale, collection or realization are insufficient to pay all amounts to which the Administrative Agent or the Secured Parties are legally entitled, the Obligors shall be jointly and severally liable for the deficiency, together with interest thereon at the Default Rate, together with the costs of collection and the fees, charges and disbursements of counsel. Any surplus remaining after the full payment and satisfaction of the Secured Obligations shall be returned to the Obligors or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto.

8. Rights of the Administrative Agent.

(a) Power of Attorney. In addition to other powers of attorney contained herein, each Obligor hereby designates and appoints the Administrative Agent, on behalf of the Secured Parties, and each of its designees or agents, as attorney-in-fact of such Obligor, irrevocably and with power of substitution, with authority to take any or all of the following actions upon the occurrence and during the continuance of an Event of Default:

(i) to demand, collect, settle, compromise, adjust and give discharges and releases, all as the Administrative Agent may reasonably deem appropriate;

(ii) to commence and prosecute any actions at any court for the purposes of collecting any of the Collateral and enforcing any other right in respect thereof;

(iii) to defend, settle or compromise any action, suit or proceeding brought and, in connection therewith, give such discharge or release as the Administrative Agent may reasonably deem appropriate;

(iv) to receive, open and dispose of mail addressed to an Obligor and endorse checks, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to the Collateral of such Obligor on behalf of and in the name of such Obligor, or securing, or relating to such Collateral;

(v) to sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any Collateral or the goods or services which have given rise thereto, as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes;

(vi) to adjust and settle claims under any insurance policy relating thereto;

(vii) to execute and deliver all assignments, conveyances, statements, financing statements, renewal financing statements, security and pledge agreements, affidavits, notices and other agreements, instruments and documents that the Administrative Agent may deem necessary in order to perfect and maintain the security interests and liens granted in this Agreement and in order to fully consummate all of the transactions contemplated therein;

(viii) to institute any foreclosure proceedings that the Administrative Agent may reasonably deem appropriate;

(ix) to sign and endorse any drafts, assignments, proxies, stock powers, verifications, notices and other documents relating to the Collateral;

(x) to exchange any of the Pledged Equity or other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Pledged Equity with any committee, depository, transfer agent, registrar or other designated agency upon such terms as the Administrative Agent may reasonably deem appropriate;

(xi) to vote for a shareholder resolution, or to sign an instrument in writing, sanctioning the transfer of any or all of the Pledged Equity into the name of the Administrative Agent or one or more of the Secured Parties or into the name of any transferee to whom the Pledged Equity or any part thereof may be sold pursuant to Section 7;

(xii) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral;

(xiii) to direct any parties liable for any payment in connection with any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct;

(xiv) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral; and

(xv) to do and perform all such other acts and things as the Administrative Agent may reasonably deem appropriate or convenient in connection with the Collateral.

This power of attorney is a power coupled with an interest and shall be irrevocable until the Facility Termination Date. The Administrative Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Administrative Agent in this Agreement, and shall not be liable for any failure to do so or any delay in doing so. The Administrative Agent shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. This power of attorney is conferred on the Administrative Agent solely to protect, preserve and realize upon its security interest in the Collateral.

(b) Assignment by the Administrative Agent. The Administrative Agent may from time to time assign the Secured Obligations to a successor Administrative Agent appointed in accordance with the Credit Agreement, and such successor shall be entitled to all of the rights and remedies of the Administrative Agent under this Agreement in relation thereto.

(c) The Administrative Agent's Duty of Care. Other than the exercise of reasonable care to assure the safe custody of the Collateral while being held by the Administrative Agent hereunder, the Administrative Agent shall have no duty or liability to preserve rights pertaining thereto, it being understood and agreed that the Obligors shall be responsible for preservation of all rights in the Collateral, and the Administrative Agent shall be relieved of all responsibility for the Collateral upon surrendering it or tendering the surrender of it to the Obligors. The

Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Administrative Agent accords its own property, which shall be no less than the treatment employed by a reasonable and prudent agent in the industry, it being understood that the Administrative Agent shall not have responsibility for taking any necessary steps to preserve rights against any parties with respect to any of the Collateral. In the event of a public or private sale of Collateral pursuant to Section 7, the Administrative Agent shall have no responsibility for (i) ascertaining or taking action with respect to any matters relating to any Collateral, whether or not the Administrative Agent has or is deemed to have knowledge of such matters, or (ii) taking any steps to clean, repair or otherwise prepare the Collateral for sale.

(d) Liability with Respect to Accounts. Anything herein to the contrary notwithstanding, each Obligor shall remain liable under each of the Accounts, as applicable, to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to each such Account. Neither the Administrative Agent nor any Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Administrative Agent or any Secured Party of any payment relating to such Account pursuant hereto, nor shall the Administrative Agent or any Secured Party be obligated in any manner to perform any of the obligations of an Obligor under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(e) Voting and Payment Rights in Respect of the Pledged Equity.

(i) So long as no Event of Default shall exist, each Obligor may (A) exercise any and all voting and other consensual rights pertaining to the Pledged Equity of such Obligor or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Credit Agreement, and (B) receive and retain any and all dividends (other than stock dividends and other dividends constituting Collateral which are addressed hereinabove), principal or interest paid in respect of the Pledged Equity to the extent they are allowed under the Credit Agreement.

(ii) Upon the occurrence of an Event of Default and during the continuance thereof, (A) all rights of an Obligor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 8(e)(i)(A) shall cease and all such rights shall thereupon become vested in the Administrative Agent which shall then have the sole right to exercise such voting and other consensual rights, (B) all rights of an Obligor to receive the dividends, principal and interest payments which it would otherwise be authorized to receive and retain pursuant to Section 8(e)(i)(B) shall cease and all such rights shall thereupon be vested in the Administrative Agent which shall then have the sole right to receive and hold as Collateral such dividends, principal and interest payments, and (C) all dividends, principal and interest payments which are received by an Obligor contrary to the provisions of clause (e)(ii)(B) above shall be received in trust for the benefit of the Administrative Agent, shall be segregated from other property or funds of such Obligor, and shall be forthwith paid over to the Administrative Agent as Collateral in the exact form received, to be held by the

Administrative Agent as Collateral and as further collateral security for the Secured Obligations.

(f) Substitution of Pledged Equity. The Administrative Agent may release any of the Pledged Equity from this Agreement or may substitute any of the Pledged Equity for other Pledged Equity without altering, varying or diminishing in any way the force, effect, lien, pledge or security interest of this Agreement as to any Pledged Equity not expressly released or substituted, and this Agreement shall continue as a first priority lien on all Pledged Equity not expressly released or substituted.

9. Application of Proceeds. Upon the acceleration of the Obligations pursuant to Section 8.02 of the Credit Agreement, any payments in respect of the Secured Obligations and any proceeds of the Collateral, when received by the Administrative Agent or any Secured Party in Money, will be applied in reduction of the Secured Obligations in the order set forth in Section 8.03 of the Credit Agreement.

10. Continuing Agreement.

(a) This Agreement shall remain in full force and effect until the Facility Termination Date, at which time this Agreement and the Liens granted hereunder shall be automatically terminated and the Administrative Agent shall, upon the request and at the expense of the Obligors, forthwith release all of its liens and security interests hereunder and shall execute and deliver all UCC termination statements and/or other documents reasonably requested by the Obligors evidencing such termination.

(b) This Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any Secured Party as a preference, fraudulent conveyance or otherwise under any Debtor Relief Law, all as though such payment had not been made; provided, that, in the event payment of all or any part of the Secured Obligations is rescinded or must be restored or returned, all costs and expenses (including any legal fees and disbursements) incurred by the Administrative Agent or any Secured Party in defending and enforcing such reinstatement shall be deemed to be included as a part of the Secured Obligations.

11. Amendments, Waivers, Modifications, etc. This Agreement and the provisions hereof may not be amended, waived, modified, changed, discharged or terminated except as set forth in Section 11.01 of the Credit Agreement; provided, that, (a) any update or revision to Schedule 2(c) delivered by any Obligor in accordance with the terms hereof shall not constitute an amendment for purposes of this Section 11 or Section 11.01 of the Credit Agreement, and (b) any update to the schedules hereto pursuant to a Joinder Agreement (as contemplated by Section 21) shall not constitute an amendment for purposes of this Section 11 or Section 11.01 of the Credit Agreement.

12. Successors in Interest. This Agreement shall be binding upon each Obligor, its successors and assigns and shall inure, together with the rights and remedies of the Administrative Agent and the Secured Parties hereunder, to the benefit of the Administrative Agent and the Secured Parties and their successors and permitted assigns.

13. Notices. All notices required or permitted to be given under this Agreement shall be in conformance with Section 11.02 of the Credit Agreement.

14. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement 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. Subject to Section 11.18 of the Credit Agreement, this Agreement may be in the form of an Electronic Record and may be executed using Electronic Signatures, including facsimile and .pdf, and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record.

15. Headings. The headings of the sections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

16. Governing Law; Submission to Jurisdiction; Venue; Waiver of Jury Trial. The terms of Sections 11.14 and 11.15 of the Credit Agreement with respect to governing law, submission to jurisdiction, waiver of venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

17. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

18. Entirety. This Agreement, the other Loan Documents and the other documents relating to the Secured Obligations represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Loan Documents, any other documents relating to the Secured Obligations, or the transactions contemplated herein and therein.

19. Survival. All representations and warranties of the Obligors hereunder shall survive the execution and delivery of this Agreement, the other Loan Documents and the other documents relating to the Secured Obligations, the delivery of the Notes and the extension of credit thereunder or in connection therewith.

20. Other Security. To the extent that any of the Secured Obligations are now or hereafter secured by property other than the Collateral (including real property and securities owned by an Obligor), or by a guarantee, endorsement or property of any other Person, then the Administrative Agent shall have the right to proceed against such other property, guarantee or endorsement upon the occurrence and during the continuance of an Event of Default, and the Administrative Agent shall have the right, in its sole discretion, to determine which rights, security, liens, security interests or remedies the Administrative Agent shall at any time pursue, relinquish, subordinate, modify or take with respect thereto, without in any way modifying or affecting any of them or the Secured Obligations or any of the rights of the Administrative Agent or the Secured Parties under this Agreement, under any of the other Loan Documents or under any other document relating to the Secured Obligations.

21. Joinder. At any time after the date of this Agreement, one or more additional Persons may become party hereto by executing and delivering to the Administrative Agent a Joinder Agreement. Immediately upon such execution and delivery of such Joinder Agreement (and without any further action), each such additional Person will become a party to this Agreement as an “Obligor” and have all of the rights and obligations of an Obligor hereunder and this Agreement and the schedules hereto shall be deemed amended by such Joinder Agreement.

22. Rights of Required Lenders. All rights of the Administrative Agent hereunder, if not exercised by the Administrative Agent, may be exercised by the Required Lenders.

23. Consent of Issuers of Pledged Equity. Each issuer of Pledged Equity party to this Agreement hereby acknowledges, consents and agrees to the grant of the security interests in such Pledged Equity by the applicable Obligors pursuant to this Agreement, together with all rights accompanying such security interest as provided by this Agreement and applicable law, notwithstanding any anti-assignment provisions in any operating agreement, limited partnership agreement or similar organizational or governance documents of such issuer.

*[Signature Pages Follow]*

Each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

OBLIGORS:

AEROVIRONMENT, INC.,  
a Delaware corporation

By: /s/Kevin McDonnell  
Name: Kevin McDonnell  
Title: Senior Vice President and Chief Executive Officer

ARCTURUS UAV, INC.,  
a California corporation

By: /s/Kristy Benson  
Name: Kristy Benson  
Title: Vice President and Treasurer

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Accepted and agreed to as of the date first above written.

BANK OF AMERICA, N.A.,  
as the Administrative Agent

By: /s/Taelitha Bonds-Harris  
Name: Taelitha Bonds-Harris  
Title: Assistant Vice President

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Pursuant to Item 601(b)(10)(iv) of Regulation S-K, certain information contained in this document, marked by brackets as [\*\*], has been omitted because it is both (i) not material and (ii) would likely cause competitive harm to the registrant if publically disclosed.

SCHEDULE 1(b)

PLEGGED EQUITY

| Obligor             | Issuer   | Jurisdiction of Organization | Number of shares of each class of Equity Interests outstanding | Percentage of Equity Interest Owned | Class or nature of such Equity Interests | Certificate Number   | Percent Pledged |
|---------------------|--|------------------------------|--|-------------------------------------|--|----------------------|-----------------|
| AeroVironment, Inc. | Altoy Savunma Sanayi ve Havacilik Anonim Sirketi | Turkey                       | 3,000 shares   | 85%                                 | Voting                                   | Various <sup>1</sup> | 65%             |
| AeroVironment, Inc. | Arcturus UAV, Inc.                               | California                   | 110,000 shares of Common Stock                                 | 100%                                | Voting                                   | TBD                  | 100%            |
| AeroVironment, Inc. | AeroVironment, Inc.                              | Afghanistan                  | NA   | 100%                                | Voting                                   | Uncertificated       | 65%             |

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<sup>1</sup> [\*\*]

SCHEDULE 2(c)

COMMERCIAL TORT CLAIMS

None.

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SCHEDULE 3(g)

INSTRUMENTS; DOCUMENTS; TANGIBLE CHATTEL PAPER

None.

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SCHEDULE 3(j)

MERGERS, CONSOLIDATIONS, CHANGE IN STRUCTURE OR USE OF TRADENAMES

1. On October 1, 2018 Arcturus UAV, LLC converted from a California limited liability company to a California corporation with the name Arcturus UAV, Inc.
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EXHIBIT 4(a)(ii)

[FORM OF] IRREVOCABLE STOCK POWER

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to \_\_\_\_\_ the following Equity Interests of \_\_\_\_\_, a \_\_\_\_\_ [corporation][limited liability company]:

No. of [Shares][Units]

Certificate Number

and irrevocably appoints \_\_\_\_\_ its agent and attorney-in-fact to transfer all or any part of such Equity Interests and to take all necessary and appropriate action to effect any such transfer. The agent and attorney-in-fact may substitute and appoint one or more persons to act for him.

[OBLIGOR]

By: \_\_\_\_\_  
Name:  
Title:

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EXHIBIT 4(b)(i)(B)

[FORM OF] NOTICE OF GRANT OF SECURITY INTEREST IN COPYRIGHTS

United States Copyright Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security and Pledge Agreement dated as of February 19, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Agreement") by and among the Obligors from time to time party thereto (each an "Obligor" and collectively, the "Obligors") and Bank of America, N.A., as the Administrative Agent (the "Administrative Agent") for the Secured Parties referenced therein, the undersigned Obligor has granted to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right to set off against, any and all right, title and interest of such Obligor in and to the copyrights and copyright applications shown on Schedule 1.

*[signature pages follow]*

---

The undersigned Obligor and the Administrative Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the foregoing copyrights and copyright applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any copyright or copyright application.

Very truly yours,

[OBLIGOR]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Accepted:

BANK OF AMERICA, N.A.,  
as the Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

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EXHIBIT 4(b)(i)(C)

[FORM OF] NOTICE

OF

GRANT OF SECURITY INTEREST

IN PATENTS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security and Pledge Agreement dated as of February 19, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Agreement") by and among the Obligors from time to time party thereto (each a "Obligor" and collectively, the "Obligors") and Bank of America, N.A., as the Administrative Agent (the "Administrative Agent") for the Secured Parties referenced therein, the undersigned Obligor has granted to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right to set off against, any and all right, title and interest of such Obligor in and to the patents and patent applications shown on Schedule 1.

*[signature pages follow]*

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The undersigned Obligor and the Administrative Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the foregoing patents and patent applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any patent or patent application.

Very truly yours,

[OBLIGOR]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Accepted:

BANK OF AMERICA, N.A.,  
as the Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

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EXHIBIT 4(b)(i)(D)

[FORM OF] NOTICE

OF

GRANT OF SECURITY INTEREST

IN TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security and Pledge Agreement dated as of February 19, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Agreement") by and among the Obligors from time to time party thereto (each a "Obligor" and collectively, the "Obligors") and Bank of America, N.A., as the Administrative Agent (the "Administrative Agent") for the Secured Parties referenced therein, the undersigned Obligor has granted to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right to set off against, any and all right, title and interest of such Obligor in and to the trademarks and trademark applications shown on Schedule 1.

*[signature pages follow]*

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The undersigned Obligor and the Administrative Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the foregoing trademarks and trademark applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any trademark or trademark application.

Very truly yours,

[OBLIGOR]

By: \_\_\_\_\_

Name:

Title:

Acknowledged and Accepted:

BANK OF AMERICA, N.A.,  
as the Administrative Agent

By: \_\_\_\_\_

Name:

Title:

---

CERTAIN IMMATERIAL PROVISIONS OF THIS DOCUMENT THAT WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED (INDICATED BY AN ASTERISK [\*\*\*) HAVE BEEN OMITTED PURSUANT TO ITEM 601(b)(2) OF REGULATION S-K. A COPY OF THE UNREDACTED DOCUMENT WILL BE FURNISHED TO THE SECURITIES AND EXCHANGE COMMISSION UPON REQUEST.

**AMENDMENT NO. 14 TO  
THE DESIGN AND DEVELOPMENT AGREEMENT (STEP 2)**

This Amendment No. 13 to the Design and Development Agreement (Step2) (“**Amendment**”) is entered into as of the date of last signature below by and between HAPSMobile Inc. and AeroVironment, Inc. to amend the Design and Development Agreement (Step2) made as of December 27, 2017 (as amended by Amendment No.1 as of March 30, 2018, Amendment No.2 as of June 25, 2018, Amendment No.3 as of August 28, 2018, Amendment No.4 as of December 5, 2018, Amendment No.5 as of March 19, 2019, Amendment No.6 as of March 29, 2019, Amendment No.7 as of April 24, 2019, Amendment No.8 as of June 20, 2019 and Amendment No.9 as of December 2, 2019, Amendment No. 10 as of January 24, Amendment No.11 as of April 30, 2020, Amendment No.12 as of September 21, 2020, and Amendment No.13 as of October 28, 2020 between HAPSMobile and AV) (collectively, the “**DDA**”).

**Background**

The Parties hereby agree to amend the total fees of Design and Development for Step 2 due to the phased strategic extension of the project term of performance and the change to the Statement of Work as set forth herein (the “**Change**”).

Therefore, to formalize and reflect the Change, the Parties hereby agree with the amendments to the DDA as follows:

**Amendments**

1. Attachment A (DELIVERABLES) to the DDA (as amended by the Amendments No.1, 2, 3, 4, 6, 7, 8, 11, 12 and 13) is hereby deleted in its entirety and replaced with the attached new attachment herein, Attachment A, entitled (DELIVELABLES).
2. Attachment C-2, entitled “Statement of Work (SOW) for Phased Strategic Performance Extension” to the DDA (as amended by the Amendments No.5, 7, 9, 11, 12 and 13) is hereby added to Attachment C and C-1.
3. Attachment E-1 (Flight Test Site Requirement Description) to the DDA (as amended by the Amendments No.7, 9 11 and 12) is hereby deleted in its entirety and replaced with the attached new attachment herein, Attachment E-1, entitled (Flight Test Site Requirement Description).
4. Attachment F (INVOICE AND INCURRED COSTS DOCUMENTATION) to the DDA (as amended by the Amendments No.1, 5, 7, 9, 11, 12 and 13) is hereby deleted in its entirety and replaced with the attached new attachment herein, Attachment F, entitled (INVOICE AND INCURRED COSTS DOCUMENTATION).

5. Attachment H (PROJECT MILESTONE) to the DDA (as amended by the Amendments No.2, 4, 5, 6, 7, 11, 12 and 13) is hereby deleted in its entirety and replaced with the attached new attachment herein, Attachment H, entitled (PROJECT MILESTONE).

6. All other terms and conditions not specifically modified or amended herein remain in full force and effect as provided for in the DDA and its Attachments, including Amendments 1 through 13. Capitalized terms, unless otherwise defined herein, shall have the meaning set forth in the DDA. This Amendment may only be modified or amended by a written document executed by the parties hereto.

IN WITNESS WHEREOF the Parties hereto have signed and executed this Amendment on the date(s) below.

SIGNED for and on behalf of  
HAPSMobile Inc.

SIGNED for and on behalf of  
AeroVironment, Inc.

By: /s/Junichi Miyakawa

Name: Junichi Miyakawa

Title: President & CEO

Date: 2021-01-07

By: /s/ Trace Stevenson

Name: Trace Stevenson

Title: Vice President Emerging Business and Deputy GM

Date: 2021-01-11

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[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

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**ATTACHMENT A**

**DELIVERABLES**

(This Attachment A is revised in its entirety by the Amendment No. 14 to the DDA)

**1. Hardware Deliverables**

**1.1 Aircraft Deliverables**

| <b>Deliverables Name</b> | <b>Deliverable Description</b>     | <b>Relevant WBS</b> | <b>Milestone No.</b> | <b>Estimated Completion Date</b> |
|--------------------------|------------------------------------|---------------------|----------------------|----------------------------------|
| Hawk30 Prototype [***]   | Stratospheric solar aircraft [***] | 2.3.2.3             | [***]                | [***]                            |
| Hawk30 Prototype [***]   | Stratospheric solar aircraft [***] | 2.3.2.6             | [***]                | [***]                            |

\*1. [\*\*\*].

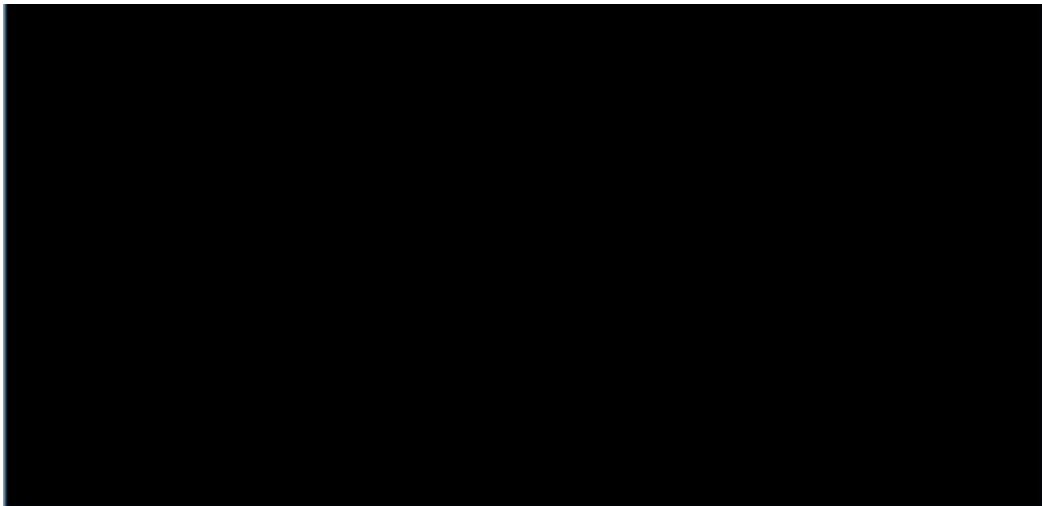
\*2. [\*\*\*].

\*3. [\*\*\*].

The current physical solar array implementation plan is as follows:

Hawk30 Prototype [\*\*\*] will have [\*\*\*].

Hawk30 Prototype [\*\*\*] will have [\*\*\*].



**1.2 Ground Control System**

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

██████ = [\*\*\*]

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| <b>Deliverables Name</b>                    | <b>Deliverable Description</b>                             | <b>Relevant WBS</b> | <b>Milestone No.</b> | <b>Estimated Completion Date</b> |
|---|--|---------------------|----------------------|----------------------------------|
| Ground Control Stations and Misc. Equipment | Ground Control Station [***] of the Hawk30 Prototype [***] | 2.2.6               | [***]                | [***]                            |
| Hawk30 Prototype Operating Manuals          | Technical Data Package                                     | 1.2.4.1             | [***]                | [***]                            |
| Hawk30 Prototype Training Manuals           | Technical Data Package                                     | 1.2.4.2             | [***]                | [***]                            |

\*1 [\*\*\*].

### 1.3 Motor Development

| <b>Deliverables Name</b> | <b>Deliverable Description</b>                                 | <b>Relevant WBS</b> | <b>Milestone No.</b> | <b>Estimated Completion Date</b> |
|--------------------------|--|---------------------|----------------------|----------------------------------|
| [***]                    | [***] Project Data Memo  | 2.2.1               | [***]                | [***]                            |
| [***]                    | [***]  | 2.2.1               | [***]                | [***]                            |
| [***]                    | Technical data package of In-house Motor First Article ([***]) | 2.2.1               | [***]                | [***]                            |
| [***]                    | [***]  | 2.2.1               | [***]                | [***]                            |

### 1.4 Real Estate Deliverables

| <b>Deliverables Name</b>                    | <b>Deliverable Description</b>                             | <b>Relevant WBS</b> | <b>Milestone No.</b> | <b>Estimated Completion Date</b> |
|---|--|---------------------|----------------------|----------------------------------|
| Hanger at SA Flight Test Site               | Newly constructed hanger facility in SA, NM                | 2.3.3               | [***]                | [***]                            |
| [***] for the Hanger at SA Flight Test Site | [***] addition to the hanger facility in SA, NM for [***]. | 2.3.3               | [***]                | [***]                            |

\*2 [\*\*\*].

### 2. Document Deliverables

| <b>Deliverables Name</b>                           | <b>Deliverable Description</b>                | <b>Relevant WBS</b> | <b>Milestone No.</b> | <b>Estimated Completion Date</b> |
|--|---|---------------------|----------------------|----------------------------------|
| CDR & Component Engineering Technical Data Package | Technical Data Package. RFPs, RFIs, and RFQs. | 2.2                 | [***]                | [***]                            |
| Update Component Engineering                       | Technical Data Package                        | 2.2                 | [***]                | [***]                            |



|   |  |         |       |       |
|---|--|---------|-------|-------|
| Fab & Test First Wing Panel               | Technical Data Package.<br>Recorded measurement data<br>aerodynamic test data.     | 2.2.3.1 | [***] | [***] |
| Functional Test Reports                   | Acceptance test reports for components<br>and assemblies                           | 2.3     | [***] | [***] |
| Initial Integrated Test Reports<br>([***) | Initial Acceptance test reports for<br>aircraft & Ground Control Station           | 2.3.2.3 | [***] | [***] |
| Integrated Test Reports<br>([***)         | Acceptance test reports for aircraft &<br>Ground Control Station                   | 2.3.2.3 | [***] | [***] |
| Integrated Test Reports<br>([***)         | Acceptance test reports for aircraft   | 2.3.2.6 | [***] | [***] |
| [***)                                     | Acceptance inspection and close-out<br>reports                                     | 2.3.2.8 | [***] | [***] |
| [***)                                     | Final key drawing, asset list and utility<br>explanatory for Flight Range facility | 2.3.3   | [***] | [***] |
| [***)                                     | [***)  | N/A     | [***] | [***] |
| [***)                                     | [***)  | N/A     | [***] | [***] |

\*\*[\*\*\*].

As used in this Attachment A, and as limited by Section 4.8 in the IPLA, “Technical Data Package” means:

1. [\*\*\*]
2. [\*\*\*]
3. System specifications
4. System description documents
5. System performance data
6. [\*\*\*]
7. [\*\*\*].

“Technical Data Package” transfer could be in various forms, for example:

1. Agile database export in PDX file which will include PDF files for assembly drawings, DOC for procedures and test plans, and EXE files for executable code.
2. Specifications, descriptions, Program Data Memos, test data in a ZIP file which can include a combination of DOC, XLS, and other data formats.

**Exhibit A**

Source Code to be Provided by AV to HAPSMobile

1. Software and Firmware Tabular View



7

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

██████ = [\*\*\*]

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**Attachment C-2**

**Statement of Work (SOW) for Phased Strategic Performance Extension of term  
January 2021 until March 2021**

This specific Attachment sets forth the unique added task by implementation of the Amendment #14.

**Scope**

**Purpose**

[\*\*\*].

**Background and Approach**

**Background:**

[\*\*\*].

**Approach:**

[\*\*\*].

**Assumptions**

[\*\*\*]:

- [\*\*\*].
- [\*\*\*].
- [\*\*\*].

1. [\*\*\*]

**Objective:** [\*\*\*].

**Initial Condition:** [\*\*\*].

**Approach:**

**Process**

[\*\*\*].



**Liaison Briefing**

- [\*\*\*]
  - [\*\*\*]:
    - [\*\*\*],
    - [\*\*\*]
- [\*\*\*]
- [\*\*\*].
  - [\*\*\*].
  - [\*\*\*]:
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]
    - [\*\*\*]

**External Review**

- [\*\*\*].
- [\*\*\*].

**Deliverables**

- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
  - [\*\*\*];
    - [\*\*\*].
    - [\*\*\*]
  - [\*\*\*];
    - [\*\*\*].
    - [\*\*\*].
    - [\*\*\*].
    - [\*\*\*].
- [\*\*\*]:
  - [\*\*\*].
  - [\*\*\*].

**ATTACHMENT E-1**

**Flight Test Site Requirement Description**

**(This Attachment E-1 is revised in its entirety by the Amendment No.14 to the DDA)**

Following facility, utility, service and related availability will be provided at SA, NM.

Subcontractor names of AV are listed, but it is anticipated for the convenience of SA operation only.

**1. Product Purchasing**

HAPSMobile will own following object procured from [\*\*\*]:

- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]

**2. Service Provisioning**

**2-1. AV's subcontractor name: Spaceport America**

**2-1-1. Lease & Services ( Flight services PoP [\*\*\*])**

- [\*\*\*]
- [\*\*\*].
- Details on what is being provided:
  - o Summary: [\*\*\*].
  - o Summary: [\*\*\*].

**2-1-2. Other Service**

- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]

**2-2. AV's subcontractor name: [\*\*\*]**

**2-2-1. Labor/Material Services: [\*\*\*]**

- PoP [\*\*\*]
- Details on what is being provided:
  - o Summary: [\*\*\*].
  - o Summary: [\*\*\*].

2-2-2. Other Service

- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]

**2-3. AV's subcontractor name:** [\*\*\*]

2-3-1. Labor Services

- Target COA submission date is [\*\*\*].
- Details on what is being provided:
  - o Summary: [\*\*\*].

2-3-2. Other Service

- [\*\*\*]
- [\*\*\*]

**2-4. AV's subcontractor name:** [\*\*\*]

- 2-4-1. Labor Moving Services Details on what is being provided:
  - o [\*\*\*]
  - o [\*\*\*]
  - o [\*\*\*]
  - o [\*\*\*]

**2-5. AV's subcontractor name:** [\*\*\*]

2-5-1. [\*\*\*]

- Rental service: [\*\*\*]

2-5-2. Details on what is being provided:

- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]

[\*\*\*]

**2-6. AV's subcontractor name:** [\*\*\*]

2-6-1. [\*\*\*]

**2-7. AV's subcontractor name:** [\*\*\*]

2-7-1. Labor Service

- Unloading of the aircraft at SA Labor

## ATTACHMENT F

### INVOICE AND INCURRED COSTS DOCUMENTATION

(This Attachment F is revised in its entirety by the Amendment No. 14 to the DDA)

#### PRICING AND PAYMENT SCHEDULE

##### 1. Payment for Work Step2

##### 1.1 Total Contract Value

The total amount of Design and Development Fees payable for Step 2 is Not-to-Exceed USD \$178,883,012 based on Best Efforts. The Contract Value may be modified by the Parties as a result of Change Control or by any other amendment to the Agreement (the current contract value at any time under this Agreement shall be the "Contract Value"). The Parties agree to account for payment of USD \$5,988,678 already made by SoftBank to AV as payment for the consideration of Step 2 Bridge Contract as partial payment for commencing Step 2. The Parties shall pay to AV the remaining balance of USD \$172,894,334, consists from USD \$69,800,624 as Initial Contract Value and incremental amount by Amendment No.1, USD \$17,226,306 as additional cost by Amendment No.5, USD \$38,675,443 as additional cost by Amendment No.7, USD \$14,557,250 as additional cost by Amendment No. 9, USD \$17,531,644 as additional cost by Amendment No.11, USD \$1,603,067 as additional cost by Amendment No.12, USD \$6,000,000 as additional cost by Amendment No.13, and further additional funding of USD \$7,500,000 by Amendment No. 14 subject to the phased strategic extension of the project term of performance activity done in [\*\*\*], in accordance with Exhibit A to this Attachment F Project Funds Status Report accompanied by a combined Milestone & Monthly Invoice approach as detailed further in this Attachment F. Each Milestone payment shall be payable after completion of the applicable Milestone according to Completion criteria on Attachment H.

##### 1.2 Contract Value Growing Transition

The Initial Contract Value may be modified by the Parties as a result of Change Control or by any other amendment to the Agreement (the current contract value at any time under this Agreement shall be the "Contract Value"). Each Party recognizes the total Project Cost has grown as follows;

- a. SoftBank and AV concluded Step 2 Bridge Contract for preliminary development activity for Step2, and payment of USD \$5,988,678 was made to AV by SoftBank;
- b. SoftBank, HM, and AV agree to account for payment of USD \$5,988,678 already made by SoftBank to AV as defined as above as partial payment ("Taken-Over Value") for commencing Step 2. HAPSMobile;
- c. Initial contract value for DDA was USD \$65,011,481 ("Initial Value"), and USD \$71,000,159 in case including Taken-Over Value;
- d. USD \$4,789,143 was added to Initial value by the execution of the Amendment No.1 and total value was modified to USD \$69,800,624 ("Amendment 1 Value"), and USD \$75,789,302 in case including Taken-Over Value;



- e. USD \$17,226,306 was added to Amendment 1 Value by the execution of the Amendment No.5 and total value was modified to USD \$87,026,930 (“Amendment 5 Value”), and USD \$93,015.608 in case including Taken-Over Value;
- f. USD \$38,675,443 was added to Amendment 5 Value by the execution of the Amendment No.7 and total value was modified to USD \$125,702,373, and USD \$ 131,691,051 in case including Taken-Over Value;
- g. USD \$14,557,250 was added to Amendment 7 Value by the execution of the Amendment No.9 and total value was modified to USD \$140,259,623, and USD \$ 146,248,301 in case including Taken-Over Value;
- h. USD \$17,531,644 was added to Amendment 9 Value by the execution of the Amendment No.11 and total value was modified to USD \$157,791,267, and USD \$ 163,779,945 in case including Taken-Over Value;
- i. USD \$1,603,067 was added to Amendment 11 Value by the execution of the Amendment 12 and total value was modified to USD \$159,394,334, and USD\$165,383,012 in case including Taken-Over Value;
- j. USD \$6,000,000 was added to Amendment 12 Value by the execution of the Amendment 13 and total value was modified to USD \$165,394,334, and USD\$171,383,012 in case including Taken-Over Value;
- k. USD \$7,500,000 as further incremental funding and caused by the change in Deliverables as defined in Attachment A and F herein and milestone changes as defined in detail in Attachment H herein subject to strategic period of performance extension work done in [\*\*\*]; and the contract value reaches USD \$172,894,334, in case including Taken-Over Value then USD\$178,883,012.

### **1.3 Work Order Issuance Schedule**

HAPSMobile agrees to issue five (5) scheduled separate Orders and may issue four (4) optional separate Orders (“Optional Orders”) to AV for authorization of Work. The Orders shall be issued as follows:

- a. initial Order [\*\*\*];
- b. second Order [\*\*\*];
- c. the third Order [\*\*\*];
- d. the fourth Order [\*\*\*];
- e. the fifth Order [\*\*\*];
- f. and six more optional Orders will be defined further more in detail in 4.1 herein. Each Order will be issued pursuant to the terms and conditions of this Agreement including the attachments thereto. Work performed under the Orders will be in support of the entire Statement of Work based on best effort, up to the value funded on the Order.

### **1.4 Milestone Target Budget Values & Forecast Revisions**

Exhibit A (Project Funds Status Report) to this Attachment F assigns Initial Target Budget values for each of the 11 Milestones identified in Attachment H.

AV will provide updates and revisions to the Initial Target Budget values for each Milestone and revised and updated forecasts for such Milestones to HAPSMobile on a monthly basis. Milestone values are subject to Change Control based on updated forecasts of program resource requirements to complete the Work required under this Agreement, including the SOW(Attachment C). Milestone values will be based on the AV labor projected spend plan forecasted for each AV fiscal month.

### **1.5 Milestone Invoicing & Payment**

Upon AV's written notification to HAPSMobile of AV's completion of a Milestone, AV will provide an invoice for all AV labor Incurred Costs and [\*\*\*]% fee. Invoices will include all program labor expenses incurred by AV up through the date of the Milestone acceptance, less any labor already paid for in prior Milestone invoices. Milestones completed before the 15<sup>th</sup> of the calendar month will be based on actuals from the prior AV fiscal month end. Milestones completed after the 15<sup>th</sup> of the calendar month will be invoiced upon completion of that fiscal month. [\*\*\*].

[\*\*\*].

Notwithstanding the foregoing provisions of this section 1.5, Milestone invoiced amount especially for Milestone 5 [\*\*\*], and Milestone 7 ([\*\*\*)] shall be paid in respect of each valid invoice no later than, but not be obliged to pay before April 15, 2020. All Milestone payments thereafter will be restored to its original NET 15 payment.

Notwithstanding the foregoing provisions contained in the body of DDA or Attachment F herein, SA readiness related AV labor, material, and subcontracting fee will be invoiced by AV and compensated by HAPSMobile by three (3) instrument basis together with the milestone invoiced amount for Milestone 6 ([\*\*\*]), 8 ([\*\*\*)] and the [\*\*\*]invoice to be sent by AV on 4/15/2021 and to be paid no later than 4/25/2021. If Milestones [\*\*\*] and/or [\*\*\*] are not achieved by [\*\*\*] in any reason, AV will invoice the applicable instrumental equivalent amount costs (excluding [\*\*\*]instrument value on April 2021) are to be paid within 30 calendar days of invoice submittal.

At the timing of "[\*\*\*]" scheduled [\*\*\*], HAPSMobile may [\*\*\*] together with other [\*\*\*]. In such a case, both parties will negotiate in good faith.

### **1.6 Non-Milestone Invoicing & Payment (Monthly Invoices)**

Program expenses for material, subcontract and other direct costs will be invoiced by AV to HAPSMobile on a monthly basis based on actual Incurred Cost and [\*\*\*]% fee. Invoices to be submitted within 4 Business Days after each calendar month end. HAPSMobile agrees to pay each such invoice within the same calendar month. Invoices for material related Cost will be provided with applicable level of detailed description for HAPSMobile's book keeping purpose.

Notwithstanding the foregoing provisions of this section 1.6, for the Monthly Invoice for November of 2019 through March 2020, HAPSMobile shall make payment in respect of each valid Monthly Invoice no later than, but not be obliged to pay before, ninety (90) calendar days of the end of the calendar month in which the relevant invoice was received by HAPSMobile All non-milestone payments thereafter will be restored to its original NET 30 calendar days payment.

## 1.7 Currency

All payments under this Agreement shall be made in United States dollars.

## 1.8 Excess Incurred Costs

- a. In the event that AV identifies a projected increase in Incurred Costs by AV for the performance of its obligations under the Agreement as identified in the Monthly Status Report, in excess of the Not-to-Exceed Value of the Order as identified in Article 2.3 then the Parties agree the excess of the amount and continue to proceed the Project subject to the process set forth in the Section 4 of this ATTACHMENT F, HAPSMobile may,
- (1) agree to authorize AV to incur the excess costs and provide a modification to increase the Contract Value, provided however that both Parties shall follow the Change Control set forth in Article 2.4 of the Agreement or Amendment of Agreement set forth in Article 13. Should HAPSMobile authorize additional spending, all of AV's Incurred Costs must be paid to AV with the applicable [\*\*\*]% fee;
  - (2) agree in accordance with the Change Control or Amendment of Agreement to reduce the Scope of Agreement so that AV's performance of the Scope of Agreement will be projected to fall within the amount of the then current Contract Value; or
  - (3) Terminate the Agreement for convenience as contemplated by Article 12.3 of the Agreement and pay AV all Termination Liability as defined in paragraph 1.7 of this attachment.

## 1.9 Unutilized Consideration

In the event of a projected cost underrun as identified in a Monthly Status Report, any amounts from the Order which remain after completion of the Scope of Agreement may be reimbursed or, if authorized by HAPSMobile separately and specifically, utilized for AV's risk reduction or additional scope to be defined through written mutual agreement subject to the terms of this Agreement. To avoid confusion, the total amount as identified in paragraph 1 of this Attachment and any portion thereof, to the extent that it is utilized, must be utilized only for matters or items within the Scope of Agreement and any additional scope as agreed. Incurred Costs shall be inclusive of any applicable consumption, value added tax or any other applicable sales/use tax. For the avoidance of doubt, the Incurred Costs shall be exclusive of any and all import duties.

## 1.10 Termination Liability

AV's Termination Liability (defined as: all of AV's Step 2 Incurred Costs incurred prior to the date of the ramp down period specified in Article 12.5 of the Agreement plus the applicable [\*\*\*]% fee, less all payments received by AV from HAPSMobile under this Agreement, plus all material, subcontract, other direct costs including open commitments and other wind down costs outstanding as of the start of the ramp down period, plus 60 days of AV labor costs incurred during the ramp down period) will be billed to HAPSMobile 30 days after the end of ramp down period and Termination Liability shall not exceed then current Contract Value but AV labor cost may be compensated exceeding then current Contract Value based upon actual Work performed. Schedule delays may occur and be resolved subject to Article 3.2 of the Agreement.

## 2. Fee Assumptions

### 2.1 Exclusion

1. Range Fees for the High Altitude and Endurance Flight Tests shall be borne by, and be the sole responsibility of, HAPSMobile. AV and HAPSMobile will mutually consult to set up an appropriate implementation plan for High Altitude and Endurance Flight Tests minimizing such Range Fees in accordance with Attachment C and D.
  - a. As of [\*\*\*], AV and HM have agreed to continue flight test operations at Spaceport America, New Mexico after concluding flights at NASA AFRC. The flight test site preparation is led by AV and the flight test site preparation and ongoing operational costs are included as part of Amendment No. 11.
  - b. Notwithstanding the terms and conditions defined in this Section 2.1-1 above, for the task of flight range acquisition and maintaining will be a part of AV's obligation and contained in its Scope of Work relating to Spaceport America, New Mexico.
2. Payload Integration is based on the Loon payload [\*\*\*], any changes to Payload Supplier and/or integration will be subject change control process.
3. Labor, shipping and other costs are not included, however is inclusive of labor for obtaining the clearance and permission under EAR or related export regulations for delivery of [\*\*\*] and GCS at other than the Spaceport America flight test location. Any changes to the final delivery location will be subject to change control process.

### 3. Change Control & Agreement Amendments Payment Schedule

HAPSMobile agrees to pay to AV all additional Incurred Costs resulting from any fee adjustments for the Work pursuant to any Change Control per Attachment G or any other amendments to the Agreement, but in any case subject to the terms set forth in Section 1.9 in this ATTACHMENT F. After being provided with a request or providing a Change Control Proposal as provided on Attachment G or any other amendment to the Agreement. AV will provide HAPSMobile with a Change Assessment (as contemplated by Attachment G) or a similar assessment or other proposed amendments to the Agreement with estimated additional or reduced Incurred Costs plus the applicable fee for the applicable Change Control Proposal or other proposed Agreement amendment along with the costs estimation documentation. In the event of a projected increase in Incurred Costs by AV in performance of the Agreement pursuant to Change Control Proposal or other proposed Agreement amendment would result in a total Contract Value that exceeds the then-current Contract Value, HAPSMobile will agree to authorize AV to incur the excess costs (thus increasing the Contract Value) or the Parties will agree in the Change Control (or pursuant to any other Agreement amendment) to reduce the Scope of Agreement so that AV's performance of the Scope of Agreement will fall within the then-current Contract Value. Any increase in Contract Value that exceeds causes the value of this Agreement to exceed the Initial Contract Value shall require approval by HAPSMobile's board of directors.

The tables below provide the basis for calculating the additional Fees applicable for Change Controls and other Agreement amendments as a result of a Change or other Agreement amendment that may be required from time to time in accordance with relevant clauses of the Agreement.

| <u>Cost Element</u> | <u>Description</u> |
|---------------------|--------------------|
| Labor               | [***]              |

|  |       |
|--|-------|
| Labor Total Cost w/[***]% Fee                    | [***] |
| Material Total Cost w/[***]% Fee                 | [***] |
| Subcontract Total Cost w/[***]% Fee              | [***] |
| Other Direct Costs (ODC) Total Cost w/[***]% Fee | [***] |

#### 4. Remaining Work Orders

##### 4.1 Order Schedule

The Fifth Work Order and the following Optional Orders will be organized as follows;

| Name                    | Covered SoW | Covered Milestone | WO value (USD) | WO due date |
|-------------------------|-------------|-------------------|----------------|-------------|
| The fifth Work Order    | [***]       | [***]             | [***]          | [***]       |
| The sixth Work Order    | [***]       | [***]             | [***]          | [***]       |
| The Seventh Work Order  | [***]       | [***]             | [***]          | [***]       |
| The Eighth Work Order   | [***]       | [***]             | [***]          | [***]       |
| The Ninth Work Order    | [***]       | [***]             | [***]          | [***]       |
| The Tenth Work Order    | [***]       | [***]             | [***]          | [***]       |
| The Eleventh Work Order | [***]       | [***]             | [***]          | [***]       |

| Definition             | Meaning   | Decision Due Date |
|------------------------|---|-------------------|
| [***]                  | [***]   | [***]             |
| Flight Location Change | <p>Additional tasks associated with;</p> <ul style="list-style-type: none"> <li>a) a change from the original flight location, Lanai, to an alternate site, SÁ in New Mexico</li> <li>b) detailed flight test planning of [***] to be tested and related planning optimization of other flight test campaign.</li> </ul> <p>In case either Party may request changes to the conditions defined in Attachments A, C, D, E, F or H relating the task herein defined, then follows the procedures defined in Clause 2.4 in DDA or Attachment G ("Change Control").</p> | [***]             |

|                                 |       |       |
|---------------------------------|-------|-------|
| Milestone [***]                 | [***] | [***] |
| Strategic Performance Extension | [***] | [***] |
| [***]                           | [***] | [***] |
| [***]                           | [***] | [***] |
| [***]                           | [***] | [***] |

**4.2 Effect of No Issuance of Optional Order**

In case HM does not issue the Optional Order before or on the due date, AV may suspend the entrance of the equivalent Milestone and covered Works until AV receives the Optional Order. In the event of Optional Work Orders are not exercised, AV will transfer all assets to HAPSMobile.

**Exhibit A – Project Funds Status Report**

**Exhibit B – Monthly Status Report (Example)**

**Exhibit C – Milestone Invoice (Example)**



## Exhibit A to Attachment F – Project Funds Status Report

### 1. Estimate at Completion on Dec.10,2017

#### Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: Dec 10th, 2017

Target Milestone Values (Baseline Values)

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |        |        |

**Assumptions:**

Values to be billed based on actual costs  
 Values to be adjusted to reflect latest revised spend plan on a Quarterly Basis

#### Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: Dec 10th, 2017

Target Milestone Values (Baseline Values)

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |        |        |

**Assumptions:**

Values to be billed based on actual costs  
 Values to be adjusted to reflect latest revised spend plan on a Quarterly Basis

Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

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**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: Dec 10th, 2017

**Target Milestone Values (Baseline Values)**

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|
| <b>Milestone</b>                 |        |        |        |        |        |        |        |
| <b>Step 2</b>                    |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |
| <b>Total</b>                     |        |        |        |        |        |        |        |
| <b>Total Cumulative</b>          |        |        |        |        |        |        |        |

**Assumptions:**

Values to be billed based on actual costs

Values to be adjusted to reflect latest revised spend plan on a Quarterly Basis

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

[\*\*\*] = [\*\*\*]

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2. Estimate at Completion on Dec.10,2018

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: January 10, 2019

**Target Milestone Values (Baseline Values)**

| Phase                                     | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|---|--------|--------|--------|--------|--------|--------|--------|
| Milestone                                 |        |        |        |        |        |        |        |
| Step 2                                    |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor                    |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor                    |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor                    |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor                    |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor                    |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor                    |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor                    |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor                    |        |        |        |        |        |        |        |
| 9 - Remaining Labor for 01/26/20 - 2/4/20 |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC)          |        |        |        |        |        |        |        |
| Total                                     |        |        |        |        |        |        |        |
| Total Cumulative                          |        |        |        |        |        |        |        |

**Assumptions:**

Milestone 1 in [redacted] & Milestone 2 in [redacted] invoices will be adjusted to account for advanced payment of [redacted] in January 2018  
 Values to be billed based on actual costs + [redacted] fee.  
 Values to be adjusted to reflect latest revised spend plan on a Monthly Basis

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: January 10, 2019

**Target Milestone Values (Baseline Values)**

| Phase                                     | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|---|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                                 |        |        |        |        |        |        |        |        |        |        |        |
| Step 2                                    |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor                    |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor                    |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor                    |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor                    |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor                    |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor                    |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor                    |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor                    |        |        |        |        |        |        |        |        |        |        |        |
| 9 - Remaining Labor for 01/26/20 - 2/4/20 |        |        |        |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC)          |        |        |        |        |        |        |        |        |        |        |        |
| Total                                     |        |        |        |        |        |        |        |        |        |        |        |
| Total Cumulative                          |        |        |        |        |        |        |        |        |        |        |        |

**Assumptions:**

Milestone 1 in [redacted] & Milestone 2 in [redacted] invoices will be adjusted to account for advanced payment of [redacted] in January 2018  
 Values to be billed based on actual costs + [redacted] fee.  
 Values to be adjusted to reflect latest revised spend plan on a Monthly Basis

Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.  
 [redacted] = [redacted]

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: January 10, 2019

**Target Milestone Values (Baseline Values)**

| Phase                                     | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|---|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                                 |        |        |        |        |        |        |        |        |        |
| Step 2                                    |        |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor                    |        |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor                    |        |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor                    |        |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor                    |        |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor                    |        |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor                    |        |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor                    |        |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor                    |        |        |        |        |        |        |        |        |        |
| 9 - Remaining Labor for 01/26/20 - 2/4/20 |        |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC)          |        |        |        |        |        |        |        |        |        |
| Total                                     |        |        |        |        |        |        |        |        |        |
| Total Cumulative                          |        |        |        |        |        |        |        |        |        |

**Assumptions:**

Milestone 1 in [redacted] & Milestone 2 in [redacted] invoices will be adjusted to account for advanced payment of [redacted] in January 2018

Values to be billed based on actual costs + [redacted] fee.

Values to be adjusted to reflect latest revised spend plan on a Monthly Basis

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

[redacted] = [\*\*\*]





4. Estimate at Completion on September 2019

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: October 21, 2019

Target Milestone Values (Baseline Values)

| Phase                            | Bridger | Bridger | Bridger | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|---------|---------|---------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |         |         |         |        |        |        |        |        |        |        |        |
| Step 2                           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 9 AV Labor           |         |         |         |        |        |        |        |        |        |        |        |
| Milestone - 10 AV Labor          |         |         |         |        |        |        |        |        |        |        |        |
|                                  |         |         |         |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, Subf, ODC) |         |         |         |        |        |        |        |        |        |        |        |
| Total                            |         |         |         |        |        |        |        |        |        |        |        |
| Total Cumulative                 |         |         |         |        |        |        |        |        |        |        |        |

**Assumptions:**

Milestone 1 in [redacted] & Milestone 2 in [redacted] invoices will be adjusted to account for advanced payment of [redacted] January 2018.  
 Values to be billed based on actual costs + [redacted] fee.  
 Values to be adjusted to reflect latest revised spend plan on a Monthly basis.

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: October 21, 2019

Target Milestone Values (Baseline Values)

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 9 AV Labor           |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 10 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
|                                  |        |        |        |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, Subf, ODC) |        |        |        |        |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |        |        |        |        |

**Assumptions:**

Milestone 1 in [redacted] & Milestone 2 in [redacted] invoices will be adjusted to account for advanced payment of [redacted] January 2018.  
 Values to be billed based on actual costs + [redacted] fee.  
 Values to be adjusted to reflect latest revised spend plan on a Monthly basis.

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

[redacted] = [\*\*\*]

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: October 21, 2019

**Target Milestone Values (Baseline Values)**

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 9 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 10 AV Labor          |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |        |

**Assumptions:**

Milestone 1 in [redacted] & Milestone 2 in [redacted] invoices will be adjusted to account for advanced payment of [redacted] in January 2019.

Values to be billed based on actual costs + [redacted] fee.

Values to be adjusted to reflect latest revised spend plan on a Monthly Basis.

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: October 21, 2019

**Target Milestone Values (Baseline Values)**

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 9 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 10 AV Labor          |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |        |

**Assumptions:**

Milestone 1 in [redacted] & Milestone 2 in [redacted] invoices will be adjusted to account for advanced payment of [redacted] in January 2019.

Values to be billed based on actual costs + [redacted] fee.

Values to be adjusted to reflect latest revised spend plan on a Monthly Basis.

5. Estimate at Completion on April 2020

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: April 6, 2020

**Target Milestone Values (Baseline Values)**

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 9 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 10 AV Labor          |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |        |



Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: September 08, 2020

Target Milestone Values (Baseline Values)

| Phase                           | Step 1 | Step 2 | Step 3 | Step 2 | Step 3 | Step 2 | Step 3 | Step 2 | Step 3 | Step 2 | Step 3 |
|---------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                       |        |        |        |        |        |        |        |        |        |        |        |
| Step 2                          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 9 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor      |        |        |        |        |        |        |        |        |        |        |        |
| SIC Invoice Payment #1          |        |        |        |        |        |        |        |        |        |        |        |
| SIC Invoice Payment #2          |        |        |        |        |        |        |        |        |        |        |        |
| SIC Invoice Payment #3          |        |        |        |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, Sub, ODC) |        |        |        |        |        |        |        |        |        |        |        |
| Total                           |        |        |        |        |        |        |        |        |        |        |        |
| Total Cumulative                |        |        |        |        |        |        |        |        |        |        |        |

Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: September 08, 2020

Target Milestone Values (Baseline Values)

| Phase                           | Step 1 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|---------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                       |        |        |        |        |        |        |        |        |        |        |        |
| Step 2                          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| Milestone - 9 AV Labor          |        |        |        |        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor      |        |        |        |        |        |        |        |        |        |        |        |
| SIC Invoice Payment #1          |        |        |        |        |        |        |        |        |        |        |        |
| SIC Invoice Payment #2          |        |        |        |        |        |        |        |        |        |        |        |
| SIC Invoice Payment #3          |        |        |        |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, Sub, ODC) |        |        |        |        |        |        |        |        |        |        |        |
| Total                           |        |        |        |        |        |        |        |        |        |        |        |
| Total Cumulative                |        |        |        |        |        |        |        |        |        |        |        |

Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: September 08, 2020

Target Milestone Values (Baseline Values)

| Phase                           | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|---------------------------------|--------|--------|--------|--------|--------|--------|
| Milestone                       |        |        |        |        |        |        |
| Step 2                          |        |        |        |        |        |        |
| Milestone - 1 AV Labor          |        |        |        |        |        |        |
| Milestone - 2 AV Labor          |        |        |        |        |        |        |
| Milestone - 3 AV Labor          |        |        |        |        |        |        |
| Milestone - 4 AV Labor          |        |        |        |        |        |        |
| Milestone - 5 AV Labor          |        |        |        |        |        |        |
| Milestone - 6 AV Labor          |        |        |        |        |        |        |
| Milestone - 7 AV Labor          |        |        |        |        |        |        |
| Milestone - 8 AV Labor          |        |        |        |        |        |        |
| Milestone - 9 AV Labor          |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor      |        |        |        |        |        |        |
| SIC Invoice Payment #1          |        |        |        |        |        |        |
| SIC Invoice Payment #2          |        |        |        |        |        |        |
| SIC Invoice Payment #3          |        |        |        |        |        |        |
| Monthly Invoice (Mat, Sub, ODC) |        |        |        |        |        |        |
| Total                           |        |        |        |        |        |        |
| Total Cumulative                |        |        |        |        |        |        |

\*\*\* Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

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7. Estimate at Completion on October 2020

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**  
 Date Prepared: October 1, 2020  
 Target Milestone Values (Baseline Values)

| Phase                            | Bridge     | Bridge | Bridge | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|------------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        | [Redacted] |        |        |        |        |        |        |        |
| Step 2                           |            |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |            |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |            |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |            |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |            |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |            |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |            |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |            |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |            |        |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |            |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |            |        |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |            |        |        |        |        |        |        |        |
| SC Invoice Payment #1            |            |        |        |        |        |        |        |        |
| SC Invoice Payment #2            |            |        |        |        |        |        |        |        |
| SC Invoice Payment #3            |            |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |            |        |        |        |        |        |        |        |
| Total                            |            |        |        |        |        |        |        |        |
| Total Cumulative                 |            |        |        |        |        |        |        |        |

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**  
 Date Prepared: October 3, 2020  
 Target Milestone Values (Baseline Values)

| Phase                            | Step 2     | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|------------|--------|--------|--------|--------|--------|--------|
| Milestone                        | [Redacted] |        |        |        |        |        |        |
| Step 2                           |            |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |            |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |            |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |            |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |            |        |        |        |        |        |        |
| SC Invoice Payment #1            |            |        |        |        |        |        |        |
| SC Invoice Payment #2            |            |        |        |        |        |        |        |
| SC Invoice Payment #3            |            |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |            |        |        |        |        |        |        |
| Total                            |            |        |        |        |        |        |        |
| Total Cumulative                 |            |        |        |        |        |        |        |

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**  
 Date Prepared: October 1, 2020  
 Target Milestone Values (Baseline Values)

| Phase                            | Step 2     | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|------------|--------|--------|--------|--------|--------|--------|
| Milestone                        | [Redacted] |        |        |        |        |        |        |
| Step 2                           |            |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |            |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |            |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |            |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |            |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |            |        |        |        |        |        |        |
| SC Invoice Payment #1            |            |        |        |        |        |        |        |
| SC Invoice Payment #2            |            |        |        |        |        |        |        |
| SC Invoice Payment #3            |            |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |            |        |        |        |        |        |        |
| Total                            |            |        |        |        |        |        |        |
| Total Cumulative                 |            |        |        |        |        |        |        |

\*\*\* Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

[Redacted] = [Redacted]



Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: October 1, 2020

Target Milestone Values (Baseline Values)

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |        |        |        |
| SIC Invoice Payment #1           |        |        |        |        |        |        |        |
| SIC Invoice Payment #2           |        |        |        |        |        |        |        |
| SIC Invoice Payment #3           |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |

Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: October 1, 2020

Target Milestone Values (Baseline Values)

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |        |        |        |
| SIC Invoice Payment #1           |        |        |        |        |        |        |        |
| SIC Invoice Payment #2           |        |        |        |        |        |        |        |
| SIC Invoice Payment #3           |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |

Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: October 1, 2020

Target Milestone Values (Baseline Values)

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |
| Step 2                           |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |
| SIC Invoice Payment #1           |        |        |        |        |
| SIC Invoice Payment #2           |        |        |        |        |
| SIC Invoice Payment #3           |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |
| Total                            |        |        |        |        |
| Total Cumulative                 |        |        |        |        |

\*\*\* Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

= [\*\*\*]

## 8. Estimate at Completion on December 2020

### Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: December 21, 2020

Target Milestone Values (Baseline Values)

| Phase                            | Bridge | Bridge | Bridge | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |        |        |        |        |
| Milestone - 11 AV Labor          |        |        |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |        |        |        |        |
| G.C. Invoice Payment #1          |        |        |        |        |        |        |        |        |
| G.C. Invoice Payment #2          |        |        |        |        |        |        |        |        |
| G.C. Invoice Payment #3          |        |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, Subt, ODC) |        |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |        |

### Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: December 21, 2020

Target Milestone Values (Baseline Values)

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |        |        |        |
| Milestone - 11 AV Labor          |        |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |        |        |        |
| G.C. Invoice Payment #1          |        |        |        |        |        |        |        |
| G.C. Invoice Payment #2          |        |        |        |        |        |        |        |
| G.C. Invoice Payment #3          |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, Subt, ODC) |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |

### Exhibit A to Attachment F: Project Funds Status Report (Milestones)

Date Prepared: December 21, 2020

Target Milestone Values (Baseline Values)

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |        |        |        |
| Step 2                           |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |        |        |        |
| Milestone - 11 AV Labor          |        |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |        |        |        |
| G.C. Invoice Payment #1          |        |        |        |        |        |        |        |
| G.C. Invoice Payment #2          |        |        |        |        |        |        |        |
| G.C. Invoice Payment #3          |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, Subt, ODC) |        |        |        |        |        |        |        |
| Total                            |        |        |        |        |        |        |        |
| Total Cumulative                 |        |        |        |        |        |        |        |

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: December 21, 2020

**Target Milestone Values (Baseline Values)**

| Phase                            | Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 6 | Step 7 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|
| <b>Milestone</b>                 |        |        |        |        |        |        |        |
| <b>Step 2</b>                    |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |        |        |        |
| Milestone - 13 AV Labor          |        |        |        |        |        |        |        |
| SIC Invoice Payment #1           |        |        |        |        |        |        |        |
| SIC Invoice Payment #2           |        |        |        |        |        |        |        |
| SIC Invoice Payment #3           |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |
| <b>Total</b>                     |        |        |        |        |        |        |        |
| <b>Total Cumulative</b>          |        |        |        |        |        |        |        |

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: December 21, 2020

**Target Milestone Values (Baseline Values)**

| Phase                            | Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 6 | Step 7 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|
| <b>Milestone</b>                 |        |        |        |        |        |        |        |
| <b>Step 2</b>                    |        |        |        |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |        |        |        |
| Milestone - 13 AV Labor          |        |        |        |        |        |        |        |
| SIC Invoice Payment #1           |        |        |        |        |        |        |        |
| SIC Invoice Payment #2           |        |        |        |        |        |        |        |
| SIC Invoice Payment #3           |        |        |        |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |        |        |        |
| <b>Total</b>                     |        |        |        |        |        |        |        |
| <b>Total Cumulative</b>          |        |        |        |        |        |        |        |

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: December 21, 2020

**Target Milestone Values (Baseline Values)**

| Phase                            | Step 1 | Step 2 | Step 3 |
|----------------------------------|--------|--------|--------|
| <b>Milestone</b>                 |        |        |        |
| <b>Step 2</b>                    |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |
| Milestone - 13 AV Labor          |        |        |        |
| SIC Invoice Payment #1           |        |        |        |
| SIC Invoice Payment #2           |        |        |        |
| SIC Invoice Payment #3           |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |
| <b>Total</b>                     |        |        |        |
| <b>Total Cumulative</b>          |        |        |        |

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

[\*\*\*]

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: December 21, 2020

**Target Milestone Values (Baseline Values)**

| Phase                            | Step 2 | Step 2 | Step 2 | Step 2 |
|----------------------------------|--------|--------|--------|--------|
| Milestone                        |        |        |        |        |
| Step 2                           |        |        |        |        |
| Milestone - 1 AV Labor           |        |        |        |        |
| Milestone - 2 AV Labor           |        |        |        |        |
| Milestone - 3 AV Labor           |        |        |        |        |
| Milestone - 4 AV Labor           |        |        |        |        |
| Milestone - 5 AV Labor           |        |        |        |        |
| Milestone - 6 AV Labor           |        |        |        |        |
| Milestone - 7 AV Labor           |        |        |        |        |
| Milestone - 8 AV Labor           |        |        |        |        |
| ***Milestone - 9 AV Labor        |        |        |        |        |
| ***Milestone - 10 AV Labor       |        |        |        |        |
| Milestone - 12 AV Labor          |        |        |        |        |
| Milestone - 13 AV Labor          |        |        |        |        |
| SIC Invoice Payment #1           |        |        |        |        |
| SIC Invoice Payment #2           |        |        |        |        |
| SIC Invoice Payment #3           |        |        |        |        |
| Monthly Invoice (Mat, SubK, ODC) |        |        |        |        |
| Total                            |        |        |        |        |
| Total Cumulative                 |        |        |        |        |

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

[\*\*\*] = [\*\*\*]

---

**Exhibit B to Attachment F – Monthly Status Report (Example)**



**AeroVironment Inc.**  
980 Enchanted Way  
Simi Valley, California 93065 – U.S.A.  
Telephone 1(805) 581-2187 – FAX 1(805) 584-6922

Approvals:

35

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

---

**REVISION HISTORY**

| REV | EDIT DATE  | AUTHOR | DESCRIPTION |
|-----|------------|--------|-------------|
| A   | MM/DD/YYYY |        |             |
|     |            |        |             |
|     |            |        |             |
|     |            |        |             |
|     |            |        |             |
|     |            |        |             |
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|     |            |        |             |
|     |            |        |             |
|     |            |        |             |
|     |            |        |             |
|     |            |        |             |

\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.



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**INTRODUCTION**

<<HIGH LEVEL PROGRAM OVERVIEW>>

<<STOPLIGHT CHART>>

|  |                               |  |   |  |
|--|-------------------------------|--|---|--|
|     | <p>PROCEED WITH CERTAINTY</p> | <p><b>Project Title: Step 2 HALO</b><br/> <b>Customer: JV</b><br/> <b>PjM / PM/ Business Area: CIS</b></p> | <p>Date: <b>XX/XX/XXXX</b><br/>         Charge Code: <b>5XXXX</b></p> | <div style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;">Customer logo</div> |
| <p><b>Program/Project Description: &lt;&lt;Enter Program Description&gt;&gt;</b></p> |                               |  |   |  |

| Key Performance Indicators [KPI's] | Month (1) | Month (2) | Month (3) | Month (4) | Month (5) | Month (6) | Comments |
|------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|----------|
| Technical Performance              |           |           |           |           |           |           |          |
| Quality                            |           |           |           |           |           |           |          |
| Schedule                           |           |           |           |           |           |           |          |
| Cost                               |           |           |           |           |           |           |          |
| Supply Chain                       |           |           |           |           |           |           |          |

|          |          |          |                                     |          |  |
|----------|----------|----------|-------------------------------------|----------|--|
| <b>G</b> | On track | <b>Y</b> | Off track, mitigation plan in place | <b>R</b> | Off track, no mitigation plan, help needed |
|----------|----------|----------|-------------------------------------|----------|--|

**TECHNICAL ACCOMPLISHMENTS**

What efforts were started this period?

<<Description of work started and performed during the reporting month>>

- Task 5
- Task 6
- Task 7
- Task ...X

What efforts were completed this period?

<<Description of work completed and performed during the reporting month>>

- Task 1
- Task 2
- Task 3
- Task 4

Key Subcontract Status:

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

█ = [\*\*\*]

Subcontractor A:

Subcontractor B:

Subcontractor C:

**SCHEDULE UPDATE**

Integrated Master Schedule Update <<EXAMPLE>>



Milestone Status Update

**REFERENCE TO ATTACHMENT H**

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

■ = [\*\*\*]



**SPEND PLAN**

Spend Plan Update

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**  
 Date Prepared: March 4, 2019  
 Target Milestone Values (Baseline Values)

| Phase  | Bridges    | Bridges | Bridges | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |  |
|--|------------|---------|---------|--------|--------|--------|--------|--------|--------|--------|--------|--|
| Milestone  | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| <b>Step 2</b>  | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 1 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 2 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 3 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 4 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 5 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 6 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 7 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 8 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 9 AV Labor                                     | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Milestone - 10 AV Labor                                    | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| 11 - Remaining Labor for Monthly Invoice (Mat, Subit, ODC) | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Total  | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |
| Total Cumulative   | [Redacted] |         |         |        |        |        |        |        |        |        |        |  |

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**  
 Date Prepared: March 4, 2019  
 Target Milestone Values (Baseline Values)

| Phase  | Step 2     | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |  |
|--|------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--|
| Milestone  | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| <b>Step 2</b>  | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 1 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 2 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 3 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 4 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 5 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 6 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 7 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 8 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 9 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 10 AV Labor                                    | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| 11 - Remaining Labor for Monthly Invoice (Mat, Subit, ODC) | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Total  | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Total Cumulative   | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |

**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**  
 Date Prepared: March 4, 2019  
 Target Milestone Values (Baseline Values)

| Phase  | Step 2     | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 | Step 2 |  |
|--|------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--|
| Milestone  | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| <b>Step 2</b>  | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 1 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 2 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 3 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 4 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 5 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 6 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 7 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 8 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 9 AV Labor                                     | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Milestone - 10 AV Labor                                    | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| 11 - Remaining Labor for Monthly Invoice (Mat, Subit, ODC) | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Total  | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |
| Total Cumulative   | [Redacted] |        |        |        |        |        |        |        |        |        |        |  |

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

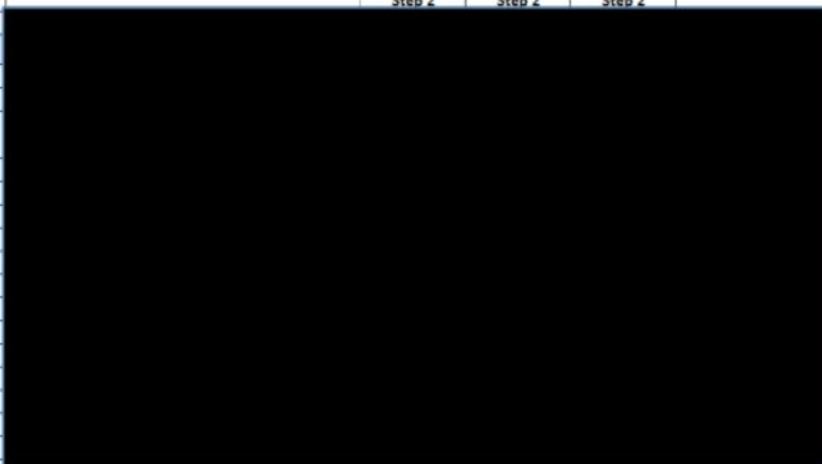
[Redacted] = [\*\*\*]



**Exhibit A to Attachment F: Project Funds Status Report (Milestones)**

Date Prepared: March 4, 2019

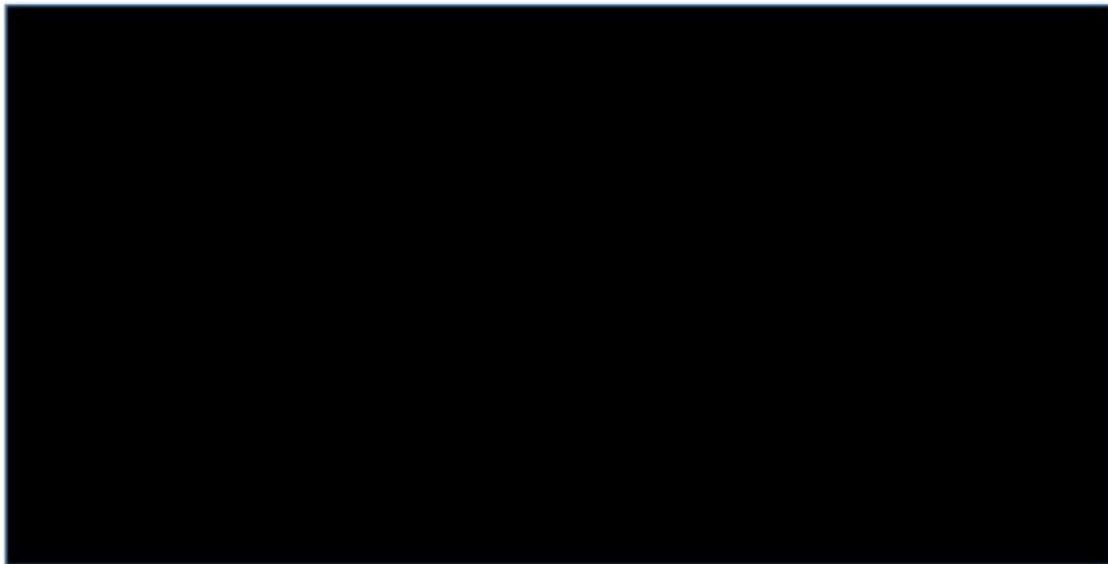
Target Milestone Values (Baseline Values)

| Phase                            | Step 2   | Step 2 | Step 2 |
|----------------------------------|--|--------|--------|
| Milestone                        |  |        |        |
| Step 2                           |  |        |        |
| Milestone - 1 AV Labor           |  |        |        |
| Milestone - 2 AV Labor           |  |        |        |
| Milestone - 3 AV Labor           |  |        |        |
| Milestone - 4 AV Labor           |  |        |        |
| Milestone - 5 AV Labor           |  |        |        |
| Milestone - 6 AV Labor           |  |        |        |
| Milestone - 7 AV Labor           |  |        |        |
| Milestone - 8 AV Labor           |  |        |        |
| Milestone - 9 AV Labor           |  |        |        |
| Milestone - 10 AV Labor          |  |        |        |
| 11 - Remaining Labor for         |  |        |        |
| Monthly Invoice (Mat, SubK, ODC) |  |        |        |
| Total                            |  |        |        |
| Total Cumulative                 |  |        |        |

**COST PERFORMANCE REPORT**

Cost Performance Update


**Cost Performance**



**SCHEDULE PERFORMANCE REPORT**

<<Schedule Performance Report>>

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

 = [\*\*\*]



- Critical Path Analysis
- Schedule Performance Index (if applicable)
- Near term upcoming milestones (30 – 60 days )
  - o Milestone 1 =
  - o Milestone 2 =
  - o Milestone X =

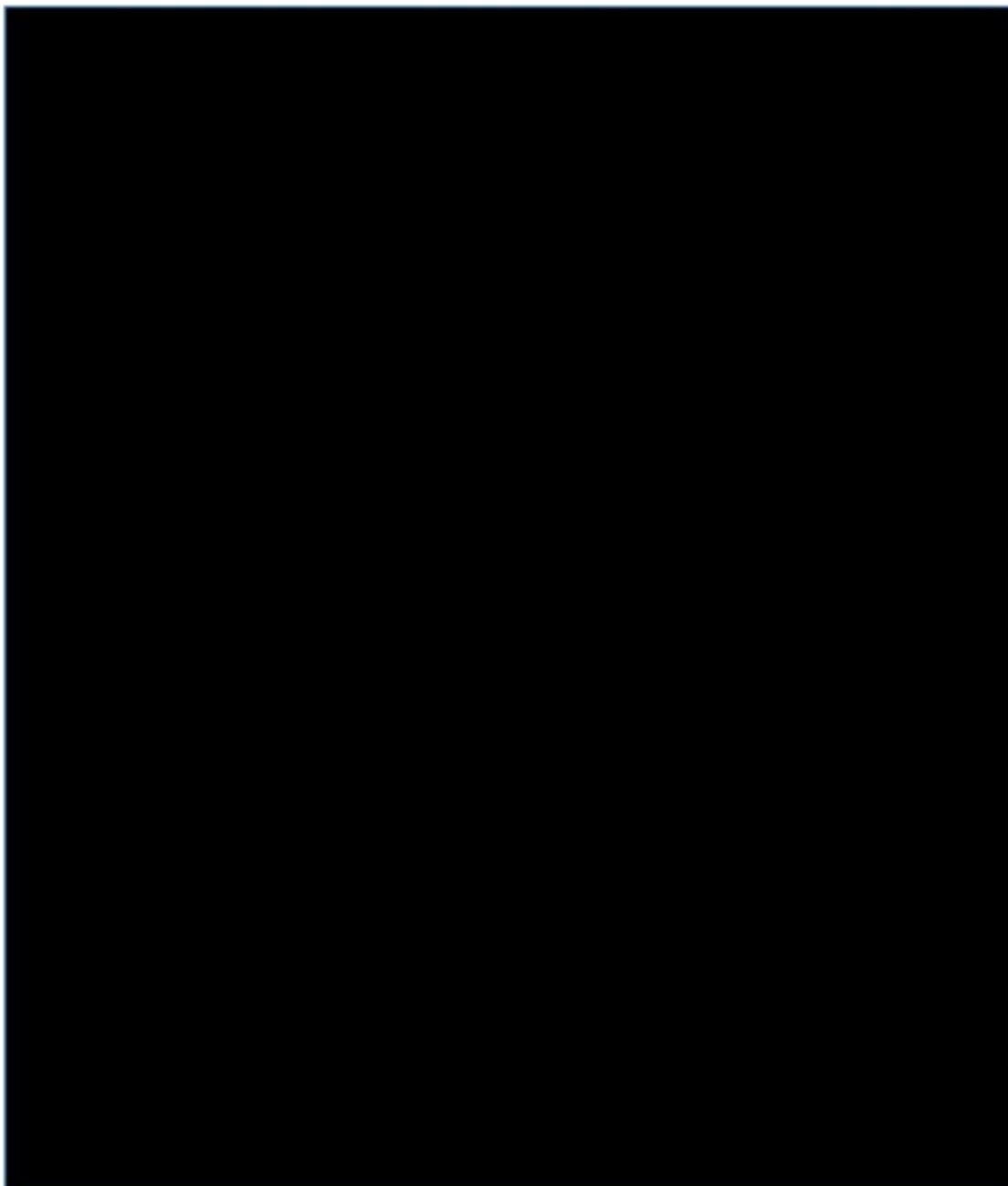
42

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

██████ = [\*\*\*]

---

**MONTHLY INVOICE – (NON-LABOR)**

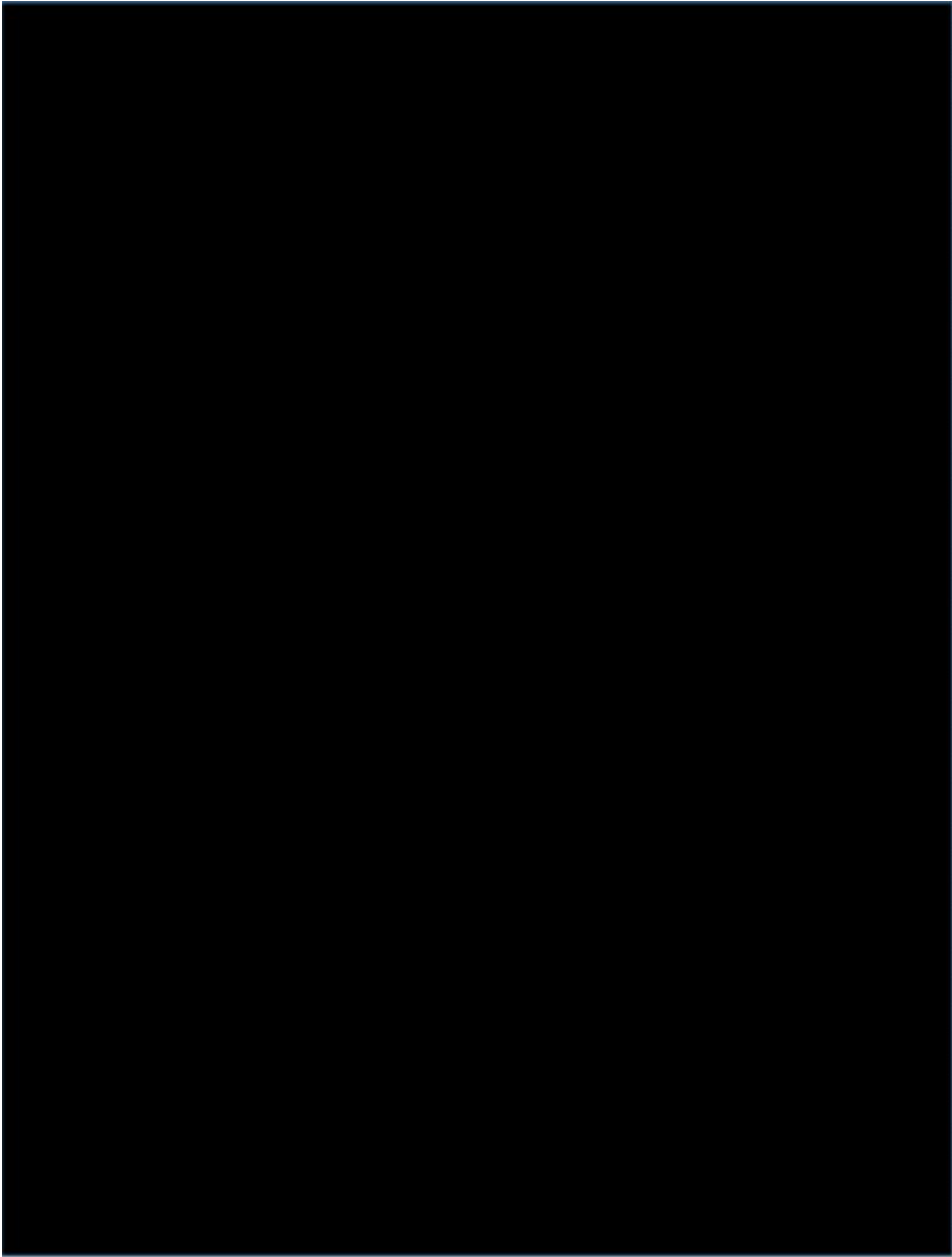


**Exhibit C to Attachment F**

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.

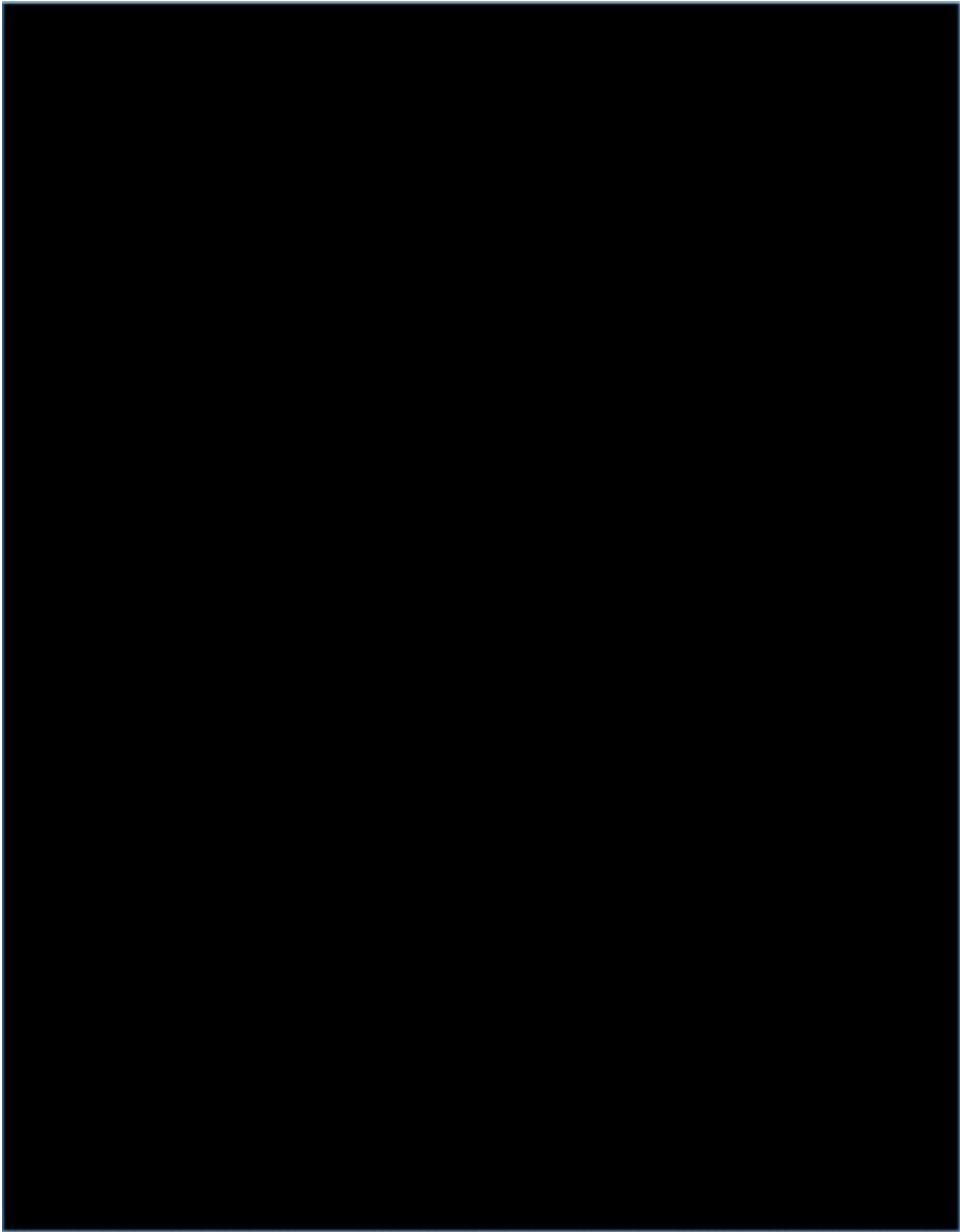
██████ = [\*\*\*]





[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.  
[REDACTED] = [\*\*\*]

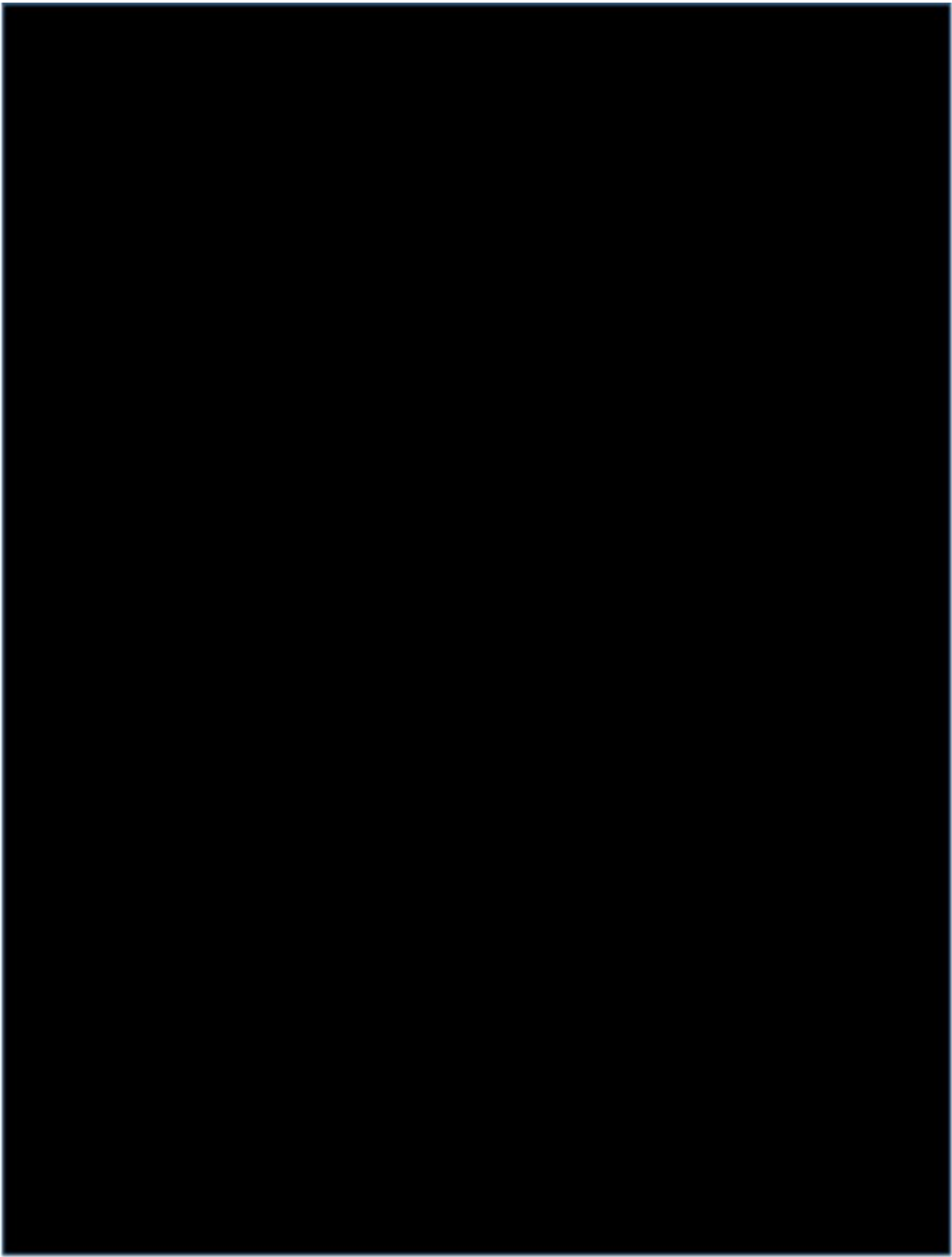
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\*\*\* Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.  
= \*\*\*







\*\*\* Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.  
= \*\*\*



**ATTACHMENT H**

**PROJECT MILESTONE**

(This Attachment H is revised in its entirety by the Amendment No. 13 to the DDA)

| # | Milestone | Criteria | Date |
|---|-----------|----------|------|
| 1 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |
| 2 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |
| 3 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |
| 4 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |
| 5 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |
| 6 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |
| 7 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |
| 8 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |
| 9 | ***       |          | ***  |
|   | ***       |          | ***  |
|   | ***       | ***      | ***  |



|    |       |       |
|----|-------|-------|
| 10 | [***] | [***] |
|    | [***] | [***] |
|    | [***] | [***] |
| 11 | [***] | [***] |
|    | [***] | [***] |
|    | [***] | [***] |
| 12 | [***] | [***] |
|    | [***] | [***] |
|    | [***] | [***] |
| 13 | [***] | [***] |
|    | [***] | [***] |
|    | [***] | [***] |

[\*\*\*] Information has been omitted pursuant to Item 601(b)(2) of Regulation S-K.



Pursuant to Item 601(b)(10)(iv) of Regulation S-K, certain information contained in this document, marked by brackets as [\*\*], has been omitted because it is both (i) not material and (ii) would likely cause competitive harm to the registrant if publically disclosed. In addition, pursuant to Item 601(a)(6) of Regulation S-K, certain personally identifiable information contained in this document, marked by brackets as [\*\*\*], has been omitted.

Schedules (or similar attachments) to this Exhibit have been omitted in accordance with Items 601(a)(5) and/or 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission on a confidential basis upon request.

The representations and warranties contained in this agreement were made for the purposes of allocating contractual risk between the parties and not as a means of establishing facts and are qualified by information in disclosure schedules that the parties exchanged in connection with the signing of this agreement. Moreover, the representations and warranties were made only as of the date of execution of this agreement and information concerning the subject matter of the representations and warranties may change after the date of this agreement. Only parties to this agreement have a right to enforce the agreement. Accordingly, third parties, including current securityholders and prospective investors, should not rely on the representations and warranties in this agreement.

\*\*\*\*\*

Executed under Notarial Deed on December 3, 2020, by the parties hereto; the Registrant agrees to furnish supplementally a copy of the executed Notarial Deed to the Securities and Exchange Commission upon request.

---

**SHARE PURCHASE AGREEMENT**

**between**

**AEROVIRONMENT, INC**

**UNMANNED SYSTEMS INVESTMENTS GMBH**

**NORBERT GEBBEKEN  
THOMAS BIEHNE  
ADAM JAROH**

---

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| <b>Appendix 1.1(c)</b> | Existing Employment Agreements of Shareholders  |
| <b>Appendix 1.1(d)</b> | Copy of the R&W Insurance Policy  |
| <b>Appendix 3.3</b>    | Transaction Payments Statement  |
| <b>Appendix 3.11</b>   | Lockman Repayment Agreement   |
| <b>Appendix 12</b>     | Seller and Shareholder Non-Competition Agreement                                      |
| <b>Appendix 13.1.1</b> | Shareholder Resolution of the Seller approving the sale and assignment of the Shares  |
| <b>Appendix 13.1.2</b> | Shareholder Resolution of the Company approving the sale and assignment of the Shares |

**\*Schedules (or similar attachments) to this Exhibit have been omitted in accordance with Items 601(a)(5) and/or 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission on a confidential basis upon request.**

Pursuant to Item 601(a)(6) of Regulation S-K, certain personally identifiable information contained in this document, marked by brackets as [\*\*\*], has been omitted.

## SHARE PURCHASE AGREEMENT

### BETWEEN:

- (1) **AEROVIRONMENT, INC.**, a corporation incorporated under the laws of the State of Delaware, USA, with principal offices at 900 Innovators, Simi Valley, CA 93065, USA (the “**Purchaser**”);
- (2) **UNMANNED SYSTEMS INVESTMENTS GMBH** a limited liability company incorporated under the laws of Germany, registered in the commercial register (*Handelsregister*) at the local court (*Amtsgericht*) of Stuttgart under HRB 757871, whose registered office is at Vogelsangstraße 8, 73760 Ostfildern, Germany (the “**Seller**”);
- (3) Norbert Gebbeken [\*\*\*];
- (4) Thomas Biehne [\*\*\*];
- (5) Adam Jaroh [\*\*\*];

Norbert Gebbeken, Thomas Biehne and Adam Jaroh together the “**Shareholders**” and each of them a “**Shareholder**”. The Purchaser and the Seller are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

- (A) The Seller owns all of the Shares (*Geschäftsanteile*) of the Company, the Shareholders are the only shareholders of the Seller, and Norbert Gebbeken and Thomas Biehne are the only managing directors of the Company;
- (B) The Company is in the business of developing, manufacturing and selling equipment and systems for the handling of dangerous tasks from a safe distance (the “**Line of Business**”);
- (C) The Parties and the Shareholders desire to enter into this Agreement pursuant to which the Seller proposes to sell to the Purchaser, and the Purchaser proposes to purchase from the Seller, all of the Shares on the terms and subject to the conditions set forth herein (the “**Acquisition**”).

## 1. CONSTRUCTION; DEFINITIONS

### 1.1 Definitions

The following terms, as used herein, have the following meanings:

“**Affiliate**” of any specified Person means any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person.

“**Anti-Corruption Laws**” means the national and directly effective legislation of any jurisdiction which governs the conduct of companies or individuals in relation to corruption, including the provisions of the 30<sup>th</sup> Section (§§ 331 ff.) of the German Penal Code (*Strafgesetzbuch*) and all other German Laws against corruption or corruptive practices, the Foreign Corrupt Practices Act (FCPA) of the USA and all US Laws against domestic corruption or corruptive practices, and all anti-corruption Laws applicable in any other jurisdiction or which would be applicable if such jurisdiction had implemented the United Nations Convention against Corruption of 31 October 2003.



“**Antitrust Laws**” means the national and directly effective legislation of any jurisdiction which governs the conduct of companies or individuals in relation to restrictive or other anti-competitive agreements or practices (including cartels, pricing, resale pricing, market sharing, bid rigging, terms of trading, purchase or supply and joint ventures), dominant or monopoly market positions (whether held individually or collectively) and the control of acquisitions or mergers.

“**Applicable Jurisdiction**” means Germany, the European Union, the United States or any other jurisdiction which is applicable to the matter to which the term relates in each case.

“**Applicable Laws**” means all Laws which are applicable to the matter to which the term relates in each case.

“**AWV**” means the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*).

“**Balance Sheets**” means the unaudited consolidated balance sheet of the Company, the audited balance sheet of the Company and the unaudited balance sheet of the Subsidiary, each as of December 31, 2019, and the unaudited balance sheets of the Company and of the Subsidiary as of the Locked Box Date, all as included in the Financial Statements, and “**Balance Sheet**” means each of them.

“**BBodSchG**” means the German Federal Soil Protection Act (*Bundes-Bodenschutzgesetz*).

“**BGB**” means the German Civil Code (*Bürgerliches Gesetzbuch*).

“**Business**” means the business operations of the Company Group conducted in the scope and manner as of the date hereof.

“**Business Day**” means any day except Saturday, Sunday or any day on which banks are generally not open for business in Frankfurt am Main or New York.

“**Change of Control Payments**” means the aggregate amount payable on any legal ground whatsoever as a result of the transactions contemplated by this Agreement (including, “success fees” or bonuses, or severance payments, and any Taxes which may be payable in relation thereto) by a Group Company to or for the benefit of current or former Officers and Directors or employees of a Group Company or to any other party, in each case to the extent not paid prior to the Locked Box Date.

“**Claim**” means (i) a claim for indemnification by an Indemnified Party under Clause 10, (ii) a claim by the Purchaser for breach of a Seller Warranty or a claim by the Seller for breach of a Purchaser Warranty and (iii) a Leakage Claim.

“**Claims Period**” means the period during which a Claim can be made according to the provisions of this Agreement.

“**Closing**” means the consummation (*Vollzug*) of the transactions contemplated by this Agreement as set forth in Sub-Clause 8.1.

“**Closing Events**” means the occurring of the actions to be taken at the Closing which are listed in Clauses 8.2 (Seller Closing Deliveries) and 8.3 (Purchaser Closing Deliveries).

“**Closing Date**” means the date on which the Closing occurs.

“**Closing Protocol**” means a closing protocol in the form as attached as Appendix 1.1(a) in authenticated form (*öffentlich beglaubigt*) executed by each of the Seller and the Purchaser by which the Seller and the Purchaser confirm that the Closing has occurred, including a confirmation of the due fulfilment or waiver, as the case may be, of all conditions to Closing, the due performance or waiver, as the case may be, of all the obligations of the Seller and the Purchaser under Clauses 8.2 and 8.3 and effectiveness of the assignment and transfer of the Shares to Purchaser;

“**Company**” means **telerob Gesellschaft für Fernhantierungstechnik mbH**, a company under German law, registered in the commercial register of the Local Court (*Amtsgericht*) in Stuttgart under registration number HRB 726381 with registered offices at Vogelsangstr. 8, 73760 Ostfildern, Germany.

“**Company Group**” means the Company and the Subsidiary.

“**Company Intellectual Property**” means any Intellectual Property that is owned by or licensed to a Group Company, including the Company Software and Company Registered Intellectual Property.

“**Company Licensed Software**” means all Software (other than Company Proprietary Software) used by a Group Company.

“**Company Proprietary Software**” means all Software owned by a Group Company.

“**Company Registered Intellectual Property**” means all of the Registered Intellectual Property owned by, filed in the name of, or licensed to a Group Company.

“**Company Software**” means the Company Licensed Software and the Company Proprietary Software.

“**Confidential Information**” means any data or information of a Group Company (including trade secrets) that is relevant to the operation of a Group Company’s business and not generally known to the public or competitors.

“**Control**” means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

“**COVID-19 Pandemic**” means the current pandemic with the SARS-CoV-2 virus including any furtherance thereto including a “second” or further “waves” or any other ongoing health emergency relating to that virus.

“**Customer**” means each customer that made an agreement with a Group Company at any time since January 1, 2018 and each customer that paid a Group Company in the aggregate more than € 100,000 during the 12-month period ended on the Locked Box Date.

“**Employment Agreement**” means any employment contract, consulting agreement, termination or severance agreement, salary continuation agreement, change of control agreement, non-compete agreement or any other agreement regarding the terms and conditions of employment or payment of compensation, or of a consulting or independent contractor relationship in respect to any current or former officer, employee, consultant or independent contractor.

“**Environmental Laws**” means any and all treaties, Laws, consent agreements, orders on consent, or guidance documents in effect on or prior to the Closing Date of any applicable Governmental Entity or other executive, legislative, judicial, regulatory, or administrative agency, board, tribunal, or authority or any associated judicial or administrative decision that relate in any manner to health, the environment, pollution, the emission, discharge, release, treatment, storage, disposal, management, or response to Materials of Environmental Concern, a community’s right to know, or worker protection.

“**Environmental Permits**” means all Licenses, identification numbers, applications, consents, variances, notices of intent, and exemptions necessary for the ownership, use and/or operation of any Leased Real Property to comply with Environmental Laws.

“**Environmental Response**” means

- (a) any action necessary to comply with and ensure compliance with Environmental Laws; and/or

- (b) taking all actions to protect against and/or respond to, remove, remediate, investigate or monitor the release or threatened release of Materials of Environmental Concern at, on, in, about, under, within or near the air, soil, surface water, groundwater, or soil vapour,

including a clean-up (*Sanierung*) within the meaning of Section 2 (7) BBodSchG, protective containment measures (*Schutz- und Beschränkungsmaßnahmen*) pursuant to Section 2 (8) BBodSchG and measures to eliminate, reduce or otherwise remedy an imminent endangerment of health or life (*Maßnahmen zur Abwehr von unmittelbaren Gefahren für Leib und Leben*).

“**Environmental Responsibility**” means any claim, demand, litigation, proceeding, action, cause of action, suit, loss, judgment, cost, expense (including attorneys’ and experts’ fees), damage, punitive damage, fine, penalty, liability, criminal liability, strict liability, governmental or private investigation, notification of status of being potentially responsible for Environmental Response, consent or administrative order, agreement, or decree, Lien, personal injury or death of any person, or property damage, (including diminution in value) whether threatened, sought, brought or imposed, that is related to:

- (a) any violation, potential violation of, actual or potential liability under, or non-compliance with, any Environmental Law,
- (b) improper use or treatment of wetlands or other protected land or wildlife,
- (c) noise,
- (d) radioactive materials (including naturally occurring radioactive materials),
- (e) explosives,
- (f) pollution, contamination, preservation, protection, decontamination, or clean-up of, or Environmental Response to, the air, surface water, groundwater, soil or protected lands,
- (g) the generation, handling, discharge, release, threatened release, treatment, storage, disposal or transportation of Materials of Environmental Concern,
- (h) exposure of persons or property to Materials of Environmental Concern and the effects thereof, (i) the release or threatened release (into the indoor or outdoor environment), generation, extraction, mining, beneficiating, manufacture, processing, distribution in commerce, use, transfer, transportation, treatment, storage, or disposal of, or Environmental Response to, Materials of Environmental Concern,
- (j) injury to, death of or threat to the health or safety of, any person or persons caused directly or indirectly by Materials of Environmental Concern,
- (k) damage or destruction to real or personal property caused directly or indirectly by Materials of Environmental Concern or the release or threatened release of any Materials of Environmental Concern,
- (l) community right-to-know and other disclosure laws relating to Materials of Environmental Concern or Environmental Laws, or
- (m) maintaining, disclosing, or reporting information to Governmental Entities or any other third person under any Environmental Law. Further, the term, “Environmental Responsibility,” also includes any liability incurred in connection with any investigation to determine whether Environmental Response is required or for breach or violation of any requirements of Environmental Laws, monitoring or responding to efforts to require Environmental Response, and any claim based upon any asserted or actual breach or violation of any Environmental Law.

“Euro”, “EUR” and “€” means the lawful currency of the member states of the European Union that have adopted the single currency.

“Financial Statements” means all of the following and each of them:

- (a) the unaudited consolidated annual accounts (*Konzernbilanz, Konzern-Gewinn- und Verlustrechnung, Konzernkapitalflussrechnung*) of the Company Group as of December 31, 2019;
- (b) the audited annual accounts (*Jahresabschluss*) of the Company as of December 31, 2019;
- (c) for the Subsidiary, the unaudited balance sheet as of December 31, 2019, and statements of income and cash flows for the 12-month period then ended;
- (d) the consolidated interim accounts (*Konzernzwischenbilanz, Konzern-Zwischengewinn- und Verlustrechnung, Konzernzwischenkapitalflussrechnung*) of the Company Group prepared under Locked Box Date Accounts Principles but without notes (*Anhang*) to such accounts;
- (e) the interim accounts of the Company prepared under Locked Box Date Accounts Principles and reviewed in accordance with International Standards on Review Engagements No 2400/2410; and
- (f) for the Subsidiary, the unaudited balance sheet as of the Locked Box Date and statements of income and cash flows for the period beginning on January 1, 2020 and ending on the Locked Box Date (the financial statements as defined in lit. (d), (e) and (f) together the “**Locked Box Accounts**”).

For the avoidance of doubt, the Locked Box Accounts shall reflect as a liability or provision any Taxes of the Group Companies with respect to any Tax period or portion thereof ending on or before the Lockbox Date (or for any Tax period beginning before and ending after the Lockbox Date to the extent allocable to the portion of such period beginning before and ending on the Lockbox Date), or which Taxes relate to an event or transaction occurring on or before the Lockbox Date; unpaid Taxes of any Person (other than a Group Company) for which any Group Company, the Purchaser or its Affiliates is or becomes liable; and unpaid Taxes of any Person (other than a Group Company) as a transferee or successor, by contract, or otherwise, which Taxes relate to an event or transaction occurring on or before the Lockbox Date.

“**Fundamental Seller Warranties**” means the Seller Warranties given under Clauses 1 (Organisation), 2 (Capital Share), 3 (Subsidiaries), 32 (Authorisation), and 34 (Ownership of Equity) of Schedule 1.

“**GAAP**” means (i) with respect to a Group Company which is subject to German law the accounting rules under HGB and the German principles of proper accounting (*Grundsätze ordnungsmäßiger Buchführung*); (ii) with respect to a Group Company which is subject to other than German law, those generally accepted accounting principles of the country to the laws of which it is subject; in the case of both (i) and (ii) as of the point in time of the accounts to which the term relates in each case.

“**Governmental Entity**” means any federal, state, local, district government of the Applicable Jurisdiction, any political subdivision thereof, or any court, administrative or regulatory agency, department, institute, instrumentality, body or commission or other governmental authority or agency (whether executive, legislative or judicial).

“**Group Company**” means a company, regardless of its legal form, of the Company Group.

“**Group Debt**” means all indebtedness of the Group Companies with respect to borrowed money, including loans (including, for the avoidance of doubt, the Lockman Outstanding), deferred consideration, debts, any

liabilities under acceptances, credit cards, monies due under capitalized leases or financial leases (but excluding operating leases) as defined in GAAP, or for the deferred purchase price of property or services for which the Group Companies are liable, contingently or otherwise as obligor, guarantor, or otherwise, or in respect of which a Group Company otherwise assures against loss, including but not limited to bank debt, bank fees, Seller debt (including declared but unpaid dividends) and vendor debt, including, in each case above, any interest accrued thereon and prepayment or similar penalties and expenses which would be payable if such liability were paid in full as of the Closing Date. For the avoidance of doubt, pension liabilities are not included in Group Debt.

“**Group Revenues**” means the revenues from operations (*Umsatzerlöse*) of the Company Group within the meaning of Section 275 para. 2 no. 1 HGB. In the event that any products or services of the Company should be sold to customers through the Purchaser or an Affiliate of the Purchaser other than a Group Company (also in case the Subsidiary should be merged into the Purchaser or such Affiliate) (a “**selling AV entity**”), the amount of the relevant revenues shall be calculated for purposes of determining Group Revenues by the amount payable by the customer to such selling AV entity in application of the bookkeeping rules which would apply if the sale had been made by the Company itself.

“**Group US Military Orders**” means the funded value of production or delivery orders issued and not cancelled (i) during the Earn Out Period; or (ii) resulting from a bid on the U.S. Air Force Solicitation after the Signing Date until the end of the Earn Out Period; in all cases to a Group Company by the Department of Defense of the U.S. Government or any of its agencies (the “**DoD**”) or by a higher-tier contractor with which any of the Group Companies has entered into a subcontract and the ultimate end user under such subcontract is the DoD, in each case irrespective of the time of delivery or payment therefor but reduced by (i) sales taxes and (ii) custom duties, where funded means the contracting officer has issued contractually binding documents making funds available on the contract for performance during the Earn Out Period. The last sentence of the definition of Group Revenues shall apply *mutatis mutandis*.

“**Hazardous Materials**” means any waste, pollutant, contaminant, hazardous substance, toxic, ignitable, reactive or corrosive substance, hazardous waste, special waste, industrial substance, by-product, process intermediate product or waste, asbestos or asbestos-containing materials, polychlorinated biphenyls, lead-based paint, mould that would require remediation under Environmental Laws, radon, petroleum or petroleum-derived substance or waste, chemical liquids or solids, liquid or gaseous products, or any constituent of any such substance or waste, the management, use, handling or disposal of which is in any way governed by or subject to any applicable Environmental Law, including dangerous substances as defined in Article 2 (1) and (2) of the European Community Council Directive 67/548 EEC.

“**HGB**” means the German Commercial Code (*Handelsgesetzbuch*).

“**Indemnified Party**” means a Purchaser Indemnified Party or a Seller Indemnified Party, as applicable.

“**Intellectual Property**” means any or all of the following and all intellectual property and proprietary rights, registered or unregistered, arising out of or associated therewith:

- (a) all patents and applications therefor and all reissues, divisions, renewals, extensions, re-examinations, revisions, provisionals, continuations and continuations-in-part thereof, and other patent rights;
- (b) all inventions (whether patentable or not and whether or not reduced to practice), invention disclosures, improvements, mask works, trade secrets, proprietary information, confidential business information (including ideas, research and development, know-how, technology, technical data and customer lists, inventor notebooks, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, software, specifications, customer and supplier lists, pricing and cost information, business and marketing

plans and proposals), and all documentation relating to any of the foregoing throughout the world;

- (c) all works of authorship (whether copyrightable or not), all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) all industrial designs and any registrations and applications therefor throughout the world;
- (e) all internet uniform resource locators, domain names, trade names, logos, slogans, designs, trade dress, common law trademarks and service marks, trademark and service mark and trade dress registrations and applications therefor throughout the world;
- (f) all databases and data collections and all rights therein throughout the world;
- (g) all moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world.

“**Knowledge**” with respect to the Company Group and the Seller means

- (a) all facts that are positively known (*positive Kenntnis*) by any Officer or Director of a Group Company or of the Seller or by any Shareholder or by those additional individuals listed on Appendix 1.1(b), on the date hereof with respect to the matters at hand; and
- (b) all facts that any of the foregoing Persons should have known on the date hereof with respect to the matters at hand if such Person had made due inquiry and exercised reasonable diligence.

“**Labour Laws**” means all labour law rules (*arbeitsrechtliche Normen*) and all Laws and contracts, works council agreements (*Betriebsvereinbarungen*), collective labour agreements (*Tarifvereinbarungen*) or collective bargaining agreements governing or concerning the legal relations between employer and employees, works constitution (*Betriebsverfassung*), labour relations, unions and collective bargaining, conditions of employment, employment discrimination and harassment, wages, hours or occupational safety and health.

“**Laws**” means all statutes, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, injunctions, writs, awards and decrees of, or issued by, any Governmental Entity, including Anti-Corruption Laws, Environmental Laws and Labour Laws.

“**Leakage**” means: (a) any dividend (in cash or in kind) or distribution declared, paid or made (whether actual or deemed) by any Group Company to, or at the direction of, the Seller or any Seller Connected Person; (b) any payments made by any Group Company (or future benefits granted) to (or assets transferred to, or liabilities assumed, indemnified, guaranteed, secured or incurred for the benefit of) the Seller or any Seller Connected Person except for the payment of fixed salary and bonus for 2019 and 2020 up to the agreed maximum amount to each of the Shareholders in his respective capacity as managing director of the Company or President of the Subsidiary as provided for in the relevant existing employment agreement attached in Appendix 1.1(c); (c) any payments made or agreed to be made by any Group Company to, or at the direction of or for the benefit of, the Seller or any Seller Connected Person, in respect of any equity securities of any Group Company being issued, redeemed, purchased or repaid, or any other return of capital; (d) the waiver or discount by any Group Company of any amount or obligation owed to any Group Company by the Seller or any Seller Connected Person; (e) the transfer by any Group Company to the Seller or any Seller Connected Person of any assets to the extent that such transfer is at less than fair market value; (f) the payment, or incurrence of any payment obligation therefor, of any bonus or discretionary payment by any Group Company to the Officers or Directors or employees of any Group Company other than (x) in the Ordinary Course and not in excess of €50,000 in the aggregate to any Person other than the Seller or a Seller Connected Person or (y) to the extent otherwise included in the definition of Change of Control Payments; (g) any increase in the compensation or other benefits payable or provided to any Seller Connected Person

in its capacity (if applicable) as an Officer or Director or employee of a Group Company; (h) any costs incurred by the Company in connection with the negotiation and implementation of the Lockman Repayment Agreement; (i) any agreement or arrangement made or entered into by any Group Company to do or give effect to any matter referred to in (a) to (h) above; or (k) any Taxes which arise by reference to any of the matters in subparagraphs (a) to (i) above, it being understood that with regard to any Tax benefits which arise by reference to any of the matters in subparagraphs (a) to (i) above, Sub-Clause 9.1.1 sentence 3 ii applies *mutatis mutandis*.

“**Leased Real Property**” means the parcels of real property or parts thereof of which a Group Company is the lessee (together with all fixtures and improvements thereon).

“**Legal Dispute**” means any action, suit, arbitration or proceeding between or among the Parties and their respective Affiliates arising in connection with any disagreement, dispute, controversy or claim arising out of or relating to this Agreement or any related document.

“**Licenses**” means all notifications, licenses, permits (including environmental, construction and operation permits), qualifications, franchises, certificates, approvals, exemptions, classifications, registrations and other similar documents and authorisations issued by any Governmental Entity, and applications therefor.

“**Liens**” mean all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances of any nature whatsoever.

“**Locked Box Date**” means September 30, 2020.

“**Locked Box Date Accounts Principles**” means all rules and principles of GAAP applicable to consolidated or not consolidated, as the case may be, annual accounts (*Konzernjahresabschluss* or *Jahresabschluss*) applied *mutatis mutandis* (*entsprechend angewendet*) to interim accounts as of the Locked Box Date, provided that (i) the period covered shall be the period from January 1, 2020 to the Locked Box Date, and (ii) such accounts shall, unless indicated otherwise, include notes (*Anhang*) to the accounts but no report on the situation of the Company (*Lagebericht*).

“**Lockman**” means Lockman Electronic Holdings Ltd. of Wimborne, Dorset, United Kingdom.

“**Lockman Loan Agreement**” means the Loan Agreement between the Company as borrower and Lockman as lender dated October 6, 2016 as it may have been amended or novated subsequently.

“**Lockman Outstanding**” means an amount of 7,810,705.58 Euros owed by the Company under the Lockman Loan Agreement.

“**Material Adverse Effect**” means any state of facts, change, event, effect or occurrence (when taken together with all other states of fact, changes, events, effects or occurrences) that is or may be reasonably likely to be materially adverse to the financial condition, results of operations, prospects, properties, assets or liabilities (including contingent liabilities) of a Group Company, or the real or personal property of a Group Company taken as a whole with the exception of such due to (i) any change of laws after the date hereof, (ii) general market developments that comparably affect other companies in the Business of the Company Group and (iii) actions or omissions by the Purchaser. A Material Adverse Effect shall also include any state of facts, change, event or occurrence that shall have occurred or been threatened that (when taken together with all other states of facts, changes, events, effects or occurrences that have occurred or been threatened) is or could be reasonably likely to prevent or materially delay the performance by the Seller of its obligations hereunder or the consummation of the transactions contemplated hereby. Facts, changes, events, effects or occurrences arising out of, related to or resulting from the COVID-19 Pandemic do not constitute a Material Adverse Effect; that includes general market and economic developments resulting out of or related to the COVID-19 Pandemic. However, any of the circumstances described in Sentences 1 and 2 shall only be considered a Material Adverse Effect if it causes or is likely to cause a loss (including lost earnings; for the avoidance of doubt, the result of a bid on the U.S. Air Force Solicitation shall not be relevant

Pursuant to Item 601(b)(10)(iv) of Regulation S-K, certain information contained in this document, marked by brackets as [\*\*], has been omitted because it is both (i) not material and (ii) would likely cause competitive harm to the registrant if publically disclosed.

for calculating lost earnings) or damage (including claims, liabilities, obligations, costs, expenses, penalties, fines and judgments) to the Company Group of [\*\*] or more.

“**Materials of Environmental Concern**” means:

- (a) substances, materials, or wastes that are classified or regulated under any applicable Environmental Law;
- (b) those substances, materials, or wastes included within statutory and/or regulatory definitions or listings designated as hazardous substance, special waste, hazardous waste, extremely hazardous substance, solid waste, medical waste, regulated substance, Hazardous Materials, toxic substances, or air contaminant or any similar term of any language under any Environmental Law; and/or
- (c) any substance, material, or waste which is or contains:
  - (i) petroleum, oil or any fraction thereof,
  - (ii) explosives, or
  - (iii) radioactive materials (including naturally occurring radioactive materials).

“**Notary**” means the notary officiating in the recording of the deed of which this Agreement is a part and any notary associated with him for common practice (*Verbindung zur gemeinsamen Berufsausübung*) and any notary deputy (*Notarvertreter*) or official notary administrator (*Notariatsverwalter*) of any of them.

“**Officer or Director**” means any member of a supervisory board, management board or board of directors, managing director (such as *Geschäftsführer*) and holder of comparable offices under any relevant jurisdiction. For the avoidance of doubt, an authorized signatory (*Prokurist*) is not an Officer or Director.

“**Ordinary Course**” means the ordinary and normal course of business of the Group Companies consistent with past practice during the 24 month period preceding the point in time to which the term relates in each case (if not otherwise determinable, the date hereof shall be that point in time).

“**Permitted Liens**” means any of the following, but for a right securing payment obligations only to the extent it secures payment obligations not yet due and payable or reflected in the Financial Statements:

- (a) Liens for Taxes;
- (b) statutory Liens of landlords;
- (c) Liens of carriers, warehousemen, mechanics, materialmen and repairmen incurred in the Ordinary Course;
- (d) customary retention of title rights (*Eigentumsvorbehaltsrechte*) of suppliers;
- (e) Liens held by Lockman on assets and receivables of the Company Group and the Shares securing obligations of the Company under the Lockman Loan Agreement.

“**Person**” means any individual, legal person (*juristische Person*), corporation, partnership, joint venture, limited liability company, trust, unincorporated organisation or Governmental Entity.

“**Purchaser Ancillary Documents**” means any certificate, agreement, document or other instrument, other than this Agreement, to be executed and delivered by the Purchaser in connection with the transactions contemplated hereby.



**“Purchaser Indemnified Parties”** means the Purchaser and its Affiliates (including the Company Group for the time period after the Closing Date), each of their respective Officers and Directors, employees, agents and representatives and each of the heirs, executors, successors and assigns of any of the foregoing.

**“Purchaser Warranties”** means the warranties given by the Purchaser in Clause 5.1 and Schedule 2.

**“R&W Insurance Policy”** means that certain insurance policy to be issued by the R&W Insurer pursuant to the letter from the R&W Insurer dated 2 December, 2020, a copy of which is enclosed as Appendix 1.1.(d).

**“R&W Insurer”** means Beazley Furlonge Limited, London, England, and any other insurer under the R&W Insurance Policy (together with their respective successors and assigns).

**“Receivables”** means the accounts receivable of the Company Group as of the Locked Box Date.

**“Registered Intellectual Property”** means any and all:

- (a) patents and patent applications (including provisional applications);
- (b) registered trademarks and service marks, applications to register trademarks and service marks, and trade dress; intent-to-use applications, or other registrations or applications related to trademarks and service marks and trade dress;
- (c) registered copyrights and applications for copyright registration;
- (d) domain name registrations;
- (e) registered mask works and applications for mask work registration; and
- (f) any other Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded with any federal, state or local Governmental Entity or other public body.

**“Release”** means, with respect to any Hazardous Material, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into any surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air.

**“Retention Amount”** means € 440,000.

**“Seller Ancillary Documents”** means any certificate, agreement, document or other instrument, other than this Agreement, to be executed and delivered by the Seller or any Affiliate of the Seller in connection with the transactions contemplated hereby.

**“Seller Connected Person”** means any Affiliate of the Seller (other than a Group Company), any shareholder of the Seller and with respect to any such shareholder any relative (*Angehöriger*) within the meaning of Section 15 of the German Tax Act (*Abgabenordnung*) or related person (*nahestehende Person*) within the meaning of Section 1 para. 2 of the German Foreign Tax Act (*Außensteuergesetz*).

**“Seller Indemnified Parties”** means the Seller and its Affiliates, each of their representatives and each of the heirs, executors, successors and assigns of any of the foregoing.

**“Seller Warranties”** means the warranties given by the Seller in Clause 4.1 and Schedule 1.

**“Shares”** means all existing shares (*Geschäftsanteile*) of the Company including the share no. 13 in the nominal amount of EUR 36,000.

**“Signing Date”** means the date of signing of this Agreement.

**“Software”** means all computer software programs, databases and Internet websites, together with any error corrections, updates, modifications, replacements or enhancements thereto, in both machine-readable form

and human-readable form, including all comments and any procedural code and all documentation related thereto.

“**Subsidiary**” means **Telerob USA Inc.**, a company under the laws of the State of Delaware, USA, with principal offices at 8206 Edinboro Rd., Erie, Pennsylvania 16509, USA.

“**Supplier**” means any supplier that the Company Group has paid in the aggregate more than € 50,000 during the 12-month period ended on the Locked Box Date.

“**Tax Return**” means any report, return, declaration or other information required to be supplied to a Governmental Entity in connection with Taxes, including estimated returns, amended returns, information statements and reports of every kind with respect to Taxes.

“**Taxes**” means all taxes, assessments, charges, duties, fees, levies and other governmental charges (including interest, penalties or additions associated therewith), including income, franchise, capital share, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, unclaimed property escheat, disability, transfer, sales, use, excise, license, occupation, registration, stamp, premium, environmental, customs duties, alternative or add-on minimum, estimated, gross receipts, value-added and all other taxes of any kind imposed by any Governmental Entity, including any tax within the meaning of Section 3 of the German Tax Code (*Abgabenordnung*) and including any contractual or statutory (secondary) liabilities for such Taxes.

“**Taxing Authority**” means any Governmental Entity having or exercising authority to assess, impose or otherwise make decisions with respect to Taxes including tax authorities (*Finanzbehörden*) within the meaning of Section 6 of the German Tax Act (*Abgabenordnung*) and comparable authorities of any other jurisdiction.

“**Transaction Expenses**” means the legal, accounting, financial advisory and other third party advisory or consulting fees and expenses incurred by any Group Company in connection with the transactions contemplated by this Agreement, including amounts paid or payable to the law firm of Stahl & Kessler, and not paid prior to the Locked Box Date. Transaction Expenses shall not include amounts included as Change of Control Payments.

“**Transaction Payments**” means:

- (a) the Change of Control Payments; and
- (b) the Transaction Expenses.

“**U.S. Air Force Solicitation**” means solicitation number FA8051-20-R-3001 under the United States Air Force’s Large EOD Robot Program.

“**U.S. Government Contract**” means any agreement, including an individual task order, delivery order, purchase order or blanket purchase agreement, between a Group Company and any Governmental Entity subject to, or who has promulgated, any U.S. federal, state or local Laws (a “**U.S. Governmental Entity**”), as well as any subcontract or other arrangement by which (i) a Group Company has agreed to provide goods or services to a prime contractor, to a U.S. Governmental Entity or to a higher-tier subcontractor where the U.S. Governmental Entity is a direct or indirect customer; or (ii) a subcontractor or vendor has agreed to provide goods or services to a Group Company, where, in either event, such goods or services ultimately will benefit or be used by a Governmental Entity, including any closed contract or subcontract as to which the right of a U.S. Governmental Entity or a higher-tier contractor to review, audit or investigate has not expired.

## **1.2 Construction**

1.2.1 Unless the context of this Agreement clearly requires otherwise:

- a) references to the plural include the singular, and references to the singular include the plural (including in defined terms),
- b) references to any gender include the other genders;
- c) the words “include,” “includes” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”;
- d) the terms “hereof”, “herein”, “hereunder”, “hereto” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement;
- e) the terms “day” and “days” mean and refer to calendar day(s);
- f) references to a time of Day shall be construed as a reference to Frankfurt am Main, Germany, time and all periods of time (namely, a day, month and year) shall be calculated by reference to Frankfurt am Main, Germany time;
- g) the terms “year” and “years” mean and refer to calendar year(s);
- h) references to any type of company or participation (*Gesellschafts- oder Beteiligungsformen*), proceedings, authorities or other bodies, rights, institutions (*Einrichtungen*), legal provisions or legal relationships or concepts (each a “**Legal Term**”) under German law shall comprise any corresponding (*funktionsgleich*) Legal Term under other than German law to the extent that such foreign law is applicable to the relevant facts and circumstances and to the extent that no such corresponding Legal Term exists under such foreign law, the Legal Term whose effect and function is closest to the German Legal Term shall be used instead;
- i) where a German term has been inserted in italics it alone (and not the English term to which it relates) shall be authoritative for the purpose of the interpretation of the relevant English term in this Agreement; and
- j) any express obligation or liability of a Party to cause, ensure or procure (*stehen dafür ein*) the performance of any obligation by any other Person shall not be reduced, discharged or otherwise adversely affected by any act, omission, matter or thing which would have discharged or affected the liability of that Party had it been a principal obligor or by anything done or omitted by any Person which, but for this provision, might operate or exonerate or discharge that Party or otherwise reduce or extinguish its liability under this Agreement

1.2.2 Unless otherwise set forth herein, references in this Agreement to

- a) any document, instrument or agreement (including this Agreement):
  - (i) includes and incorporates all exhibits, schedules and other attachments thereto;
  - (ii) includes all documents, instruments or agreements issued or executed in replacement thereof; and
  - (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time; and
- b) a particular Law means such Law as amended, modified, supplemented or succeeded, from time to time and in effect at any given time.

1.2.3 All Clause, Sub-Clause, Appendix and Schedule references herein are to Clauses, Sub-Clauses, Appendices and Schedules of this Agreement, unless otherwise specified.

- 1.2.4 A reference to a Disclosure Schedule is a reference to the particular paragraph of Schedule 1.
- 1.2.5 The table of contents and all headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.2.6 This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

**1.2 Other Definitions**

Each of the following terms is defined in the Sub-Clause set forth opposite such term:

| <b>Term</b>                               | <b>Reference</b>          |
|---|---------------------------|
| <b>Acquisition</b>                        | Recitals                  |
| <b>Affiliate Loans</b>                    | 24.1 of Schedule 1        |
| <b>Agreement</b>                          | Preamble                  |
| <b>AWV Section 58 Clearance</b>           | 6.6.3                     |
| <b>AWV Notification</b>                   | 6.6.3                     |
| <b>AWV Section 60 Confirmation</b>        | 6.6.3                     |
| <b>AWV Section 55 Commencement Notice</b> | 7.1.1a)(ii)               |
| <b>AWV Section 61 Commencement Notice</b> | 7.1.1b)(iii)              |
| <b>BMWi</b>                               | 6.6.3                     |
| <b>Business</b>                           | Recitals                  |
| <b>Claim Notice</b>                       | 10.3.7                    |
| <b>Closing Payment Shares</b>             | 3.1                       |
| <b>Company Contracts</b>                  | 12.1 of Schedule 1        |
| <b>Company Security Policies</b>          | 12.7(o)(ii) of Schedule 1 |
| <b>Current U.S. Government Contracts</b>  | 12.7(a) of Schedule 1     |
| <b>Discount Condition</b>                 | 3.11                      |
| <b>Discounted Lockman Outstanding</b>     | 3.11                      |
| <b>Earn Out / Earn Outs</b>               | 3.10.3                    |
| <b>Earn Out First Year</b>                | 3.10.1                    |
| <b>Earn Out II</b>                        | 3.11                      |
| <b>Earn Out Period</b>                    | 3.10.4                    |
| <b>Earn Out Second Year</b>               | 3.10.2                    |
| <b>Earn Out Third Year</b>                | 3.10.3                    |
| <b>Earn Out Year</b>                      | 3.10.4                    |
| <b>Earnout Determination</b>              | 3.10.9                    |
| <b>Earnout Determination Date</b>         | 3.10.9                    |
| <b>Earnout Review Period</b>              | 3.10.10                   |
| <b>Employee Organisation</b>              | 15.1(a) of Schedule 1     |
| <b>Escrow Amount</b>                      | 3.2                       |
| <b>Escrow Fund</b>                        | 3.2                       |
| <b>Expiration Date</b>                    | 8.6a)                     |
| <b>FAR</b>                                | 12.7(c) of Schedule 1     |
| <b>First Earn Out Year</b>                | 3.10.4                    |

| Term                              | Reference             |
|-----------------------------------|-----------------------|
| Indemnifying Party                | 10.3.1                |
| Insurance Contracts               | 16.1 of Schedule 1    |
| Leakage Claim                     | 3.6.2                 |
| Legal Proceeding                  | 10.1 of Schedule 1    |
| Legal Term                        | 1.2.1i)               |
| Lockman Payoff Letter             | 7.1.1g)               |
| Lockman Repayment Agreement       | 3.11                  |
| Non-Competition Agreement         | 12                    |
| Notified Leakage                  | 3.3a)                 |
| Objection Notice                  | 3.9.2                 |
| Parties                           | Preamble              |
| Party                             | Preamble              |
| Purchase Price                    | 3.1                   |
| Purchaser                         | Preamble              |
| Purchaser Losses                  | 10.1.2                |
| Second Earn Out Year              | 3.10.4                |
| Seller                            | Preamble              |
| Seller Losses                     | 10.2.2                |
| Seller R&W Insurance Contribution | 14.12                 |
| Shareholder                       | Preamble              |
| Third Earn Out Year               | 3.10.4                |
| Transaction Payments Statement    | 3.3                   |
| U.S. Government Contract Bids     | 12.7(a) of Schedule 1 |
| Warranty                          | 27.1 of Schedule 1    |

## 2. PURCHASE AND SALE, TRANSFER OF SHARES

### 2.1 Agreement to Sell and Transfer the Shares

- 2.1.1 Subject to the terms and conditions of this Agreement, the Seller hereby sells (*verkauft*) and, subject to Sub-Clause 2.1.2 (*aufschiebend bedingt*), assigns (*tritt ab*) the Shares to the Purchaser; the Purchaser hereby accepts such sale and assignment of the Shares.
- 2.1.2 The Parties agree that the assignment (*Abtretung*) of the Shares shall be subject to (*aufschiebend bedingt*) the making of the full payments provided for in Clauses 3.4 (Payment of the Closing Payment Shares) and 3.5 (Payment of other amounts payable at Closing).
- 2.1.3 The Shares are sold with all rights that attach, or may in the future attach, to them (including the right to receive all dividends and distributions (*Gewinnbezugsrecht*) declared, made or paid on or after the Closing).
- 2.1.4 The Seller irrevocably waives and each Shareholder agrees to procure the waiver of any and all rights of pre-emption or other restrictions on transfer which may exist in respect of the Shares or any of them under the constitutional documents of the Company (or other equivalent document of the Company) or otherwise and undertakes to take all steps necessary to ensure that any rights of pre-emption or other restrictions on transfer over any of the Shares are waived.

### 3. PURCHASE PRICE

#### 3.1 Purchase Price

The aggregate cash amount to be paid for the Shares by the Purchaser at Closing (the “**Closing Payment Shares**”) shall be an amount equal to:

- a) Thirty seven million four hundred fifty five thousand three hundred ninety eight Euros and eleven cents (€37,455,398.11), (the “**Purchase Price**”);
- b) minus the Notified Leakage, if any;
- c) minus the Escrow Amount,
- d) minus the aggregate amount of all Transaction Payments,
- e) minus the Seller R&W Insurance Contribution.

Any rights of the Purchaser to set off or withhold payment of the Closing Payment Shares are hereby expressly waived and excluded except for claims which are undisputed or have been awarded by a final and binding (*rechtskräftig*) court decision.

#### 3.2 Escrow

3.2.1 On the Closing Date, the Purchaser shall pay three million euros (€3,000,000) in cash (the “**Escrow Amount**”) to a notary trust account (*Notaranderkonto*) of the Notary set up and notified to the Parties by the Notary to be held in trust by him for the Seller and the Purchaser and to be distributed in accordance with the terms of this Agreement. The Escrow Amount, as adjusted from time to time, together with any interest earned thereon and minus any negative interest charged by the relevant bank, shall be referred to as the “**Escrow Fund**”.

3.2.2 The Notary is hereby irrevocably instructed by the Seller and the Purchaser to disburse any funds out of the Escrow Fund only (i) upon concurrent (*übereinstimmende*) written instructions of the Seller and the Purchaser; or (ii) upon an order contained in a final and binding judgement or court settlement (*rechtskräftiges Urteil oder rechtskräftiger gerichtlicher Vergleich*) of a German court.

3.2.3 The Parties shall be under obligation to provide a written instruction to the Notary for disbursement as per Clause 3.2.2 (i) as follows, in each case up to the amount remaining in the Escrow Fund at the relevant time:

- a) for disbursement to the Purchaser in the event and to the extent the Purchaser has claimed a Claim in accordance with Clause 3.9.1 which is objectively well founded (*begründet*);
- b) for disbursement to the Seller after the date falling 30 (thirty) months following the Closing Date upon written demand of the Seller unless and not to the extent that the Purchaser has claimed a Claim in accordance with Clause 3.9.1 which is objectively well founded (*begründet*).

Should a Party be in breach of its obligation under this Clause 3.2.3, it shall pay default interest to the other Party upon the amount for which it was under obligation to provide the instruction at a rate of 5% p.a., in case of Clause 3.2.3 a) from the day the Claim has been raised, in case of Clause 3.2.3 b) from the date falling 30 (thirty) months following the Closing, and in both cases at this rate also as from the day the claim for disbursement is pending (*rechtshängig*) in a German court, provided and to the extent that the claiming Party obtains a final and binding judgement of a German court granting it its Claim.

Pursuant to Item 601(a)(6) of Regulation S-K, certain personally identifiable information contained in this document, marked by brackets as [\*\*\*], has been omitted.

3.2.4 The duties and obligations and the rights of the Notary in respect of the Escrow Fund shall be determined by applicable statutory law (in particular, §§ 57 et seqq. German Notarization Act (*BeurkG*)). The Notary shall ensure that the Escrow Fund is maintained as a separate bank account identified to the account-managing bank as a trust account (*Anderkonto*) and that no third parties shall be entitled to grant, make or claim any rights or encumbrances to or over the Escrow Fund, save only under the general terms and conditions (*Allgemeine Geschäftsbedingungen*) for trust accounts (*Anderkonten*) of the account-managing bank to the extent they arise in relation to the Escrow Fund itself. The Notary may in good faith rely on any notice, instruction, certificate, statement, request, consent, agreement or other instrument which he believes to be genuine and to have been signed by an authorized person in accordance with this Agreement. The Notary may in good faith rely upon the representation authority of any person purporting to be an authorized representative of any Party, and shall be under no obligation to verify such representation authority.

### 3.3 Closing Date Statements

The Seller shall cause the Company to deliver to Purchaser, not less than two (2) Business Days prior to the Closing Date,

- a) a certificate signed by one or several managing directors of the Company, which sets forth the amount of Leakage incurred or anticipated to be incurred in the period from (but not including) the Locked Box Date until and including the Closing Date (the “**Notified Leakage**”);
- b) a statement (the “**Transaction Payments Statement**”) substantially in the form of Appendix 3.3, signed by one or several managing directors of the Company, which sets forth, by payee, the Transaction Payments.

Attached to the Transaction Payments Statement shall be documents which confirm that upon payment of the respective amounts specified in such Transaction Payments Statement, each Person that is to be paid in accordance with such Transaction Payments Statement shall have been paid in full for all Transaction Payments. Attached to the Transaction Payments Statement shall also be a copy of the Lockman Payoff Letter in case it must be delivered in accordance with Sub-Clause 8.2a); for the avoidance of doubt, the Lockman Outstanding is not a Transaction Payment.

### 3.4 Payment of the Closing Payment Shares

3.4.1 On the Closing Date, the Purchaser shall pay to the Seller the Closing Payment Shares to the following bank account free of costs or fees by irrevocable transfer with same day value:

[\*\*\*]

3.4.2 Upon such payment, the Purchaser shall be fully released and discharged of any obligation with respect to the payment of the Closing Payment Shares.

3.4.3 The Purchaser shall not have any right of set-off or retention or deduction right with respect to its payment obligations pursuant to this Clause 3.4.

### **3.5 Payment of other amounts payable at Closing**

On the Closing Date, the Purchaser shall pay, on behalf of the relevant Group Company, in one or several payments, to such account or accounts as specified in the Transaction Payments Statement

- a) the Lockman Outstanding;
- b) pursuant to the Transaction Payments Statement, the aggregate amount of the Transaction Payments.

### **3.6 Locked Box**

- 3.6.1 The Seller hereby warrants and guarantees to the Purchaser that as from the Locked Box Date until and including the Signing Date no Leakage has occurred and that as from the Signing Date until and including the Closing Date, unless otherwise provided in this Agreement, no Leakage will occur without Purchaser's prior written consent.
- 3.6.2 In case of breach of any of the guarantees pursuant to Section 3.6.1, the Seller shall indemnify the Purchaser on an after tax EUR for EUR basis in respect of the amount received for such relevant breach by the Seller or a Seller Connected Person or otherwise incurred for the benefit of the Seller or a Seller Connected Person (unless, in each case, such Leakage constitutes Notified Leakage and has been taken into account for the calculation of the amount payable by the Purchaser to the Seller in accordance with Clause 3.1) and, if applicable to such Leakage, shall terminate, cancel and rescind any and all agreements or commitments that constitute Leakage (any claim for indemnification hereunder a "**Leakage Claim**").
- 3.6.3 Without prejudice to Section 3.3a), the Seller shall promptly notify the Purchaser in writing if it becomes aware of a payment or transaction or any other occurrence that constitutes or will constitute, if made, Leakage.
- 3.6.4 The Seller shall assure that each Group Company provides to the Purchaser any documentation and information in relation to a Leakage Claim and reasonable and prompt access to the employees, accounts and the premises owned or occupied by the Group Companies for the purpose of evaluating and considering any such claim.
- 3.6.5 The provisions in Clauses 3.6.1 to 3.6.4 (inclusive) shall not in any respect be extinguished or affected by Closing but, for the avoidance of doubt, no claim may be brought in respect of these provisions unless and until Closing has occurred.

### **3.7 Purchase Price Adjustment**

Any payment made by the Seller as a consequence of any Leakage (including a deduction made pursuant to Clause 3.1b) or under the indemnification provisions in Clause 10.1 shall be considered as an adjustment to the price paid by the Purchaser for the Shares.

### **3.8 Seller and Shareholder Release, Discharge of Officers and Directors**

- 3.8.1 In consideration for the agreement and covenants of the Purchaser set forth in this Agreement, the Seller and the Shareholders hereby knowingly, voluntarily and unconditionally releases and forever discharges from and for, and covenants not to sue the Purchaser, any Group Company, or their respective predecessors, successors, parents, subsidiaries or other Affiliates, or any of their respective current and former Officers or Directors, employees, agents, or representatives for or with respect to, any and all claims, causes of action, demands, suits, debts, obligations, liabilities, damages, losses, costs, and expenses (including attorneys' fees) of every kind or nature whatsoever, known or unknown, actual or potential, suspected or unsuspected, fixed or



contingent, that the Seller or a Shareholder has or may have, now or in the future, arising out of, relating to, or resulting from any act of commission or omission, errors, negligence, strict liability, breach of contract, tort, violations of Law, matter or cause whatsoever from the beginning of time to the Closing Date; provided, however, that such release shall not cover:

- a) any claims against the Purchaser or any of its Affiliates (other than a Group Company) unrelated in any way to a Group Company; or
- b) any claims against the Purchaser arising under or in connection with this Agreement, any Seller Ancillary Document or any Purchaser Ancillary Document.

3.8.2 The Purchaser declares that as of the date hereof, it has no knowledge of any facts or circumstances that could give cause to refuse the discharge (*Entlastung*) of the managing directors (*Geschäftsführer*) for the business year 2020 and the Purchaser is obliged to grant such discharge in the ordinary course unless he becomes aware of such facts or circumstances after the date hereof.

### 3.9 Claims Under Escrow

3.9.1 The Purchaser shall have the option of claiming all or any part of any Claim – subject to limitations in this agreement – arising from (i) the breach of a Fundamental Seller Warranty or (ii) from the breach of any Seller Warranty to the extent it is not covered by the R&W Insurance by notifying the Seller that the Purchaser is claiming the amount of such Claim (or the Purchaser’s good faith estimate of such amount if unliquidated, pending the final determination thereof) against the Escrow Fund. Any such claim against the Escrow Fund shall be made at the latest on the day following 30 (thirty) months following the Closing Date by delivery of written notice to the Seller, stating the nature of and basis for such claim with reasonable specificity (including the applicable provision of this Agreement).

3.9.2 If the Seller objects to the amount of all or part of any claim by the Purchaser against the Escrow Fund, then the Seller shall, within 30 days of receipt of such claim, provide written notice (an “**Objection Notice**”) to the Purchaser setting forth the Seller’s objections.

3.9.3 If the Seller sends the Purchaser an Objection Notice, then within 15 Business Days after receipt of an Objection Notice, the Purchaser and the Seller shall work in good faith to reconcile and resolve the differences. If the Parties cannot mutually resolve such differences during such 15 Business Days period, either the Purchaser or the Seller may proceed in accordance with Sub-Clause 10.3 to determine the amount of the Claim payable to the Purchaser, provided that this provision shall not affect the right of a Party to commence legal proceedings in order to interrupt any barring by the statute of limitations (*Verjährung*).

3.9.4 Notwithstanding anything in this Sub-Clause 3.9 to the contrary, the Purchaser shall also be entitled to assert any Claim directly against the Seller without making such Claim against the Escrow Amount.

### 3.10 Earn-Out I – Performance of Company Group

3.10.1 The Purchaser shall pay an additional purchase price in the amount of €2,000,000.00 (two million Euros) (the “**Earn Out First Year**”) to the Seller if the Group Revenues in the First Earn Out Year exceed an amount of €34,500,000 (Euro thirtyfour million fivehundred thousand).

3.10.2 The Purchaser shall pay a further additional purchase price in the amount of €2,000,000.00 (two million Euros) (the “**Earn Out Second Year**”) to the Seller if the Group Revenues in the Second Earn Out Year exceed an amount of €37,500,000 (Euro thirtyseven million fivehundred thousand).

3.10.3 The Purchaser shall pay a further additional purchase price in the amount of €2,000,000.00 (two million Euros) (the “**Earn Out Third Year**”); together with the Earn Out First Year and the Earn Out Second Year the “**Earn Outs**” and each of them an “**Earn Out**”) to the Seller if the aggregate Group US Military Orders during the Earn Out Period exceed an amount of US\$30,000,000 (US Dollar thirty million).

Should the conditions under which the Earn Out Third Year becomes due pursuant to the preceding paragraph not have been met, the Purchaser shall pay a reduced further additional purchase price in the amount of €1,000,000.00 (one million Euros) if AEROVIRONMENT, INC. or the Company has been awarded the contract offered by the U.S. Air Force Solicitation for an award value of at least US\$10 million (whether funded or not) and the awarding has not been cancelled within the Earnout Period, and in such case such reduced amount shall be deemed the “Earn Out Third Year” within the meaning of this Agreement.

3.10.4 In this Agreement, the following terms have the following meanings: “**First Earn Out Year**” means the 12 month period starting on the first day of the calendar month following the Closing Date. “**Second Earn Out Year**” means the 12 month period following the First Earn Out Year. “**Third Earn Out Year**” means the 12 month period following the Second Earn Out Year. “**Earn Out Year**” means each such twelve month period. “**Earn Out Period**” means the period from the beginning of the First Earn Out Year until the end of the Third Earn Out Year.

3.10.5 For the avoidance of doubt, if no Earn Out should become due with respect to any calendar year, an Earn Out with respect to any of the other calendar years shall nevertheless become due if the relevant condition should be met.

3.10.6 For the duration of the Earn Out Period, the Purchaser shall refrain from exercising its rights as a shareholder of the Company in a way which can be reasonably expected to have the effect of reducing Group Revenues or Group US Military Orders which otherwise would have been achieved unless the relevant action is reasonable for the parent of a group of companies comprising, among others, the Company Group, provided that no such action shall be deemed “reasonable” within the meaning of this sentence if it should be taken with the express purpose of achieving such reduction..

3.10.7 If Purchaser transfers control over the Group Companies to a third party during the Earn Out Period, the full amount of any Earn Out relating to a period subsequent to or current during such transfer (i.e. the Earn Out Third Year in any such case, plus the Earn Out First Year and the Earn Out Second Year if the transfer occurs within the First Earn Out Year, and plus the Earn Out Second Year if the transfer occurs within the Second Earn Out Year) shall become due for payment to Seller immediately upon such transfer. If Purchaser merges the Company with another entity of the Purchaser group, the full amount of any Earn Out relating to a period subsequent to or current during the date of effectiveness of such merger shall become due for payment to Seller immediately upon such transfer unless such merger leaves the Company Group as a distinct business unit with its own bookkeeping, provided that such bookkeeping allows for unambiguous determination of revenues for each Group Company business. For the avoidance of doubt, a merger of the Subsidiary into the Purchaser or an Affiliate of the Purchaser shall not affect the conditions for the becoming due of an Earn Out.

3.10.8 If during the Earn Out Period any Shareholder (i) is removed as a Director or Officer of the relevant Group Company without cause for which he is responsible, or (ii) terminates his employment as a Director or Officer with cause for which the Purchaser or the Group Company is responsible, an amount of 50 % of any Earn Out allocable to such Shareholder and relating to a period subsequent to or current during the date of effectiveness of such removing or termination, as the case may be, shall become due for payment to Seller immediately. For purposes of the

preceding sentence, (i) “Earn Out allocable to such Shareholder” shall mean a percentage of such Earn Out which is 45% for Norbert Gebbeken, 35% for Thomas Biehne and 20% for Adam Jaroh; and (ii) “cause” shall mean an “important cause” (*aus wichtigem Grund*) within the meaning of Section 314 BGB provided that for the removing of a Director or Officer of a Group Company Group it shall be deemed cause if the Company Group has achieved less than 65% of the Group Revenues threshold defined in Clause 3.10.1 or 3.10.2.

- 3.10.9 For purposes of the Earn Outs, the Group Revenues and the Group US Military Orders shall be determined by the Purchaser at the latest six months after the end of each Earn Out Year and such determination (the “**Earnout Determination**”) shall be notified to the Seller in writing. The date when the Seller shall have received the Earnout Determination is referred to in this Agreement as the “**Earnout Determination Date**”.
- 3.10.10 The Seller shall within 30 Business Days after the Earnout Determination Date (the “**Earnout Review Period**”) notify the Purchaser that it either
- a) approves the Earnout Determination; or
  - b) disagrees with the Earnout Determination, explaining in reasonable detail the matter it disagrees with, the reasons for that disagreement and its ensuing calculation of the relevant Earn Out criterion.
- 3.10.11 If the Seller notifies its approval or does not notify disapproval within the Earnout Review Period, the Earnout Determination shall become final and binding on the Parties.
- 3.10.12 If the Seller notifies disapproval within the Earnout Review Period, the Parties shall use all reasonable endeavours to resolve the matters in dispute. Any agreement being reached shall be expressed in a joint confirmation containing the agreed Earnout Determination which shall be signed by both Parties and which shall be final and binding on the Parties.
- 3.10.13 If no agreement as per Sub-Clause 3.10.12 should have been reached within 20 Business Days after the end of the Earnout Review Period, the matters in dispute shall be finally decided by an arbitrating expert who — if the Parties do not come to an agreement on such expert — shall be appointed upon the request of either Party by the president of the *Institut der Wirtschaftsprüfer in Deutschland e.V.* (the Institute of Chartered Accountants in Germany) in Düsseldorf. In his decision, the arbitrating expert shall not be allowed to make a decision for a matter in dispute which is outside the range defined by the positions taken by the Parties at the time of initiation of the arbitrating expert procedure. The Earnout Determination shall become final and binding for the Parties in the form determined in the decision of the arbitrating expert.
- 3.10.14 Any Earn Out shall be paid within ten (10) Business Days after the Earnout Determination Date, but in the event of a dispute with regard to the Earnout Determination within twenty (20) Business Days after the Earnout Determination has become final and binding either by agreement or by the decision of the arbitrating expert.

### **3.11 Earn Out II – Lockman Outstanding**

The Company entered into the agreement with Lockman attached to this Agreement in a copy as Appendix 3.11 (the “**Lockman Repayment Agreement**”) providing for an option to repay the Lockman Outstanding at a discounted amount of EUR 6,900,000 (the “**Discounted Lockman Outstanding**”) in full settlement of the Lockman Outstanding. According to its terms, the Lockman Repayment Agreement terminates automatically if the repayment has not been received on the Repayment Account on or prior to the Longstop Date (as both terms are defined in the Lockman Repayment Agreement). In the event the Closing Date is expected to occur on a date which makes it reasonably possible to make the repayment under Clause 3.5a) before the

Lockman Repayment Agreement has terminated (the Longstop Date must be at least two Business Days after the Closing Date), the Transaction Payments Statement will include a statement to the effect that the Discounted Lockman Outstanding is to be paid under Clause 3.5a) instead of the Lockman Outstanding and the payment due by the Purchaser under Clause 3.5a) shall be equal to the Discounted Lockman Outstanding. The Purchaser shall pay an additional purchase price to the Seller ("**Earn Out II**") equal to the difference between the Lockman Outstanding and the Discounted Lockman Outstanding if (i) the payment under Clause 3.5a) in accordance with the provisions hereof has validly fully settled the obligation of repayment of principal under the Lockman Loan Agreement or (ii) if the condition as per (i) has not been met for a reason for which the Purchaser is at fault (*es verschuldet hat*).

### **3.12 Value Added Tax**

The Purchase Price, the Transaction Payments and the Earn-Outs are net amounts, i.e. plus German value added tax (*Umsatzsteuer*) or any comparable foreign sales tax if any. However, the Parties share the common view and will treat the Acquisition correspondingly in their respective Tax Returns that no German value added tax will accrue for the sale and the transfer of the Shares provided for in this Agreement since the sale and transfer of the Shares are not subject to value added tax in Germany (*nicht umsatzsteuerbar*) and/or are exempt from value added tax (*umsatzsteuerfrei*). The Seller shall not make use of any possibility to waive any exemption from value added tax applicable to the sale and transfer or otherwise treat the Acquisition as subject to value added tax. The Parties shall cooperate in good faith so as to ensure that their value added tax qualification of the sale and the transfer of the Shares, as set forth in this Clause 3.11, prevails. Should VAT be triggered as a result of non-compliance by the Seller with its obligation not to waive any VAT exemption or otherwise opt for the transaction contemplated in this agreement being subject to VAT, the Purchase Price, the Transaction Payments and the Earn-Outs shall be understood as a gross price inclusive of VAT.

## **4. WARRANTIES OF THE SELLER**

### **4.1 Warranties**

The Seller hereby guarantees to the Purchaser, by way of an independent promise of guarantee pursuant to Section 311 (1) BGB (*selbständiges Garantieversprechen*) that each Seller Warranty is true and accurate in all respects on the date of this Agreement and shall continue to remain true and accurate in all up to and including the Closing Date as if they had been repeated immediately before Closing by reference to the facts and circumstances then existing at Closing and on the basis that any reference in the Seller Warranties, whether express or implied, to the date of this Agreement is substituted by a reference to the Closing Date, if not expressly otherwise provided for in the Seller Warranties. The content and scope of the Seller Warranties (which shall not constitute guarantees as to the quality or durability pursuant to Secs. 443, 444 BGB) and the Seller's liability arising thereunder shall be exclusively defined by the provisions of this Agreement and shall, in particular, be subject to the limitations set forth in Clauses 4.4, 10 and 11, which shall be an integral part of the Seller Warranties.

### **4.2 Warranties not Affected by Completion**

The Seller Warranties shall not in any respect be extinguished or affected by Closing.

### **4.3 Separate and Independent Warranty**

Each of the Seller Warranties shall be construed as a separate and independent guarantee and (except where this Agreement provides otherwise), shall not be limited or restricted in its scope

by reference to, or inference from any other term of another Seller Warranty or any term of this Agreement.

#### **4.4 Seller's Liability in Case of a Breach of Seller's Warranties**

- 4.4.1 In the event of any breach of any of the Seller's warranties, the Purchaser shall first give the Seller the opportunity to remedy the breach (*Naturalherstellung*) within a reasonable period of time, at least three (3) months after receipt of a notice; if such remediation fails or Seller chooses not to remediate, the Seller shall pay to the Purchaser monetary damages (*Schadenersatz in Geld*), subject to the limitations set forth in this Sub-Clause 4.4 and Clauses 10 and 11 which shall apply to claims to monetary damages arising out of or in connection with the breach of a Seller warranty. The Purchaser shall without undue delay, at latest thirty (30) days after gaining knowledge of a breach of any Seller's warranty, notify the Seller hereof, setting out the circumstances and facts giving rise to his claim and an estimate of his claim.
- 4.4.2 If a third party asserts any claim against a Purchaser Indemnified Party which may result in any liability of the Seller for a breach of a Seller's warranty, the Indemnification Procedures set forth in Sub-Clause 10.3 shall apply *mutatis mutandis*.
- 4.4.3 All disclosures made by Disclosure Schedules in Schedule 1 against any of the Sellers Warranties falling below any materiality thresholds or containing any additional information which is not required to be disclosed according to the terms of the respective Sellers Warranty shall not be construed to broaden or expand the scope of the respective Sellers Warranty or change the materiality standards implied by the respective Sellers Warranty in whatsoever form.

### **5. WARRANTIES OF THE PURCHASER**

#### **5.1 Warranties**

The Purchaser hereby guarantees to the Seller, by way of an independent promise of guarantee pursuant to Section 311 (1) of the German Civil Code (*selbständiges Garantieverprechen*) that each Purchaser Warranty is true and accurate in all respects on the date of this Agreement and shall continue to remain true and accurate in all up to and including the Closing Date as if they had been repeated immediately before Closing by reference to the facts and circumstances then existing at Closing and on the basis that any reference in the Purchaser Warranties, whether express or implied, to the date of this Agreement is substituted by a reference to the Closing Date.

#### **5.2 Warranties not Affected by Completion**

The Purchaser Warranties shall not in any respect be extinguished or affected by Closing.

#### **5.3 Separate and Independent Warranty**

Each of the Purchaser Warranties shall be construed as a separate and independent guarantee and (except where this Agreement provides otherwise), shall not be limited or restricted in its scope by reference to, or inference from any other term of another Purchaser Warranty or any term of this Agreement.

#### **5.4 Purchaser's Liability in Case of a Breach of Purchaser's Warranties**

Sub-Clause 4.4 shall apply to the Purchaser Warranties *mutatis mutandis*.

## **6. BETWEEN SIGNING AND CLOSING**

### **6.1 Conduct of Business by the Company Group**

6.1.1 For the period commencing on the date hereof and ending on the Closing Date, the Seller will cause each Group Company to, except as expressly required hereby and except as (i) otherwise consented to in advance in writing by the Purchaser or (ii) required by law or any order of any governmental authority:

- a) conduct its businesses in the Ordinary Course and not engage in any new line of business or enter into any agreement, transaction or activity or make any commitment with respect to a Group Company, except those in the Ordinary Course and not otherwise prohibited under this Sub-Clause 6.1;
- b) preserve intact the goodwill and business organization of each Group Company, keep the Officers and Directors and the employees of each Group Company available to the Purchaser and preserve the relationships and goodwill of each Group Company with customers, distributors, suppliers, employees and other Persons having business relations with a Group Company;
- c) maintain its existence and good standing in its jurisdiction of organization and in each jurisdiction in which the ownership or leasing of its property or the conduct of its business requires such qualification;
- d) duly and timely file or cause to be filed all Tax Returns required to be filed with any Governmental Entity and promptly pay or cause to be paid when due all Taxes, assessments and governmental charges, including interest and penalties levied or assessed, unless diligently contested in good faith by appropriate proceedings;
- e) maintain in existing condition and repair (ordinary wear and tear excepted), consistent with past practices, all buildings, offices, shops and other structures located on the premises of any Group Company, and all equipment, fixtures and other tangible personal property located on such premises, provided that any extraordinary wear and tear shall not be considered as a breach of this obligation if it occurs in the Ordinary Course and is not caused by grossly negligent or willful acts of directors, officers or employees of any Group Company;
- f) not increase or decrease the registered capital, issue new shares or otherwise amend or modify the Articles of Association (*Satzung*) of the Company or take any equivalent action with respect to the Subsidiary;
- g) not authorize for issuance or issue and deliver any additional shares of its capital share or securities convertible into or exchangeable for shares of its capital share, or issue or grant any right, option or other commitment for the issuance of shares of its capital share, or split, combine or reclassify any shares of its capital share;
- h) not amend or modify its constitutional documents;
- i) not declare any dividend, pay or set aside for payment any dividend or other distribution or make any payment to any related parties other than the payment of salaries in the Ordinary Course;
- j) not do or allow to be done anything that would result in Leakage;
- k) not create any subsidiary, acquire any capital share or other equity securities of any corporation or acquire any equity or ownership interest in any business or entity;

- l) not dispose of or permit to lapse any right to the use of any patent, trademark, trade name, service mark, license or copyright of a Group Company (including any of the Company Intellectual Property), or dispose of or disclose to any Person, any trade secret, formula, process, technology or know-how of a Group Company not heretofore a matter of public knowledge;
- m) not
  - (i) sell or transfer any material asset, other than finished goods or other current assets sold in the Ordinary Course;
  - (ii) create, incur or assume any indebtedness secured by any asset of a Group Company;
  - (iii) grant, create, incur or suffer to exist any Lien on any asset of a Group Company other than Permitted Liens;
  - (iv) incur any liability or obligation (absolute, accrued or contingent) (including the guaranty of a liability or obligation of any other Person), except in the Ordinary Course;
  - (v) write-off any guaranteed check, note or account receivable, except in the Ordinary Course;
  - (vi) write-down the value of any asset or investment on the books or records of a Group Company, except for depreciation and amortization in the Ordinary Course, provided that any extraordinary write-down shall not be considered as a breach of this obligation if it occurs in good faith and is not caused by grossly negligent or willful acts of directors, officers or employees of any Group Company;
  - (vii) cancel any debt or waive any claim or right;
  - (viii) make any commitment for any capital expenditure to be made on or following the date hereof in excess of €50,000.00 in the case of any single expenditure or €150,000.00 in the case of all capital expenditures; or
  - (ix) enter into any material contract or agreement without the written consent of the Purchaser.
- n) not increase in any manner the base compensation of, or enter into any new bonus or incentive agreement or arrangement with, any of its employees, Officers or Directors or consultants, except in the Ordinary Course; provided, however, that no action described in this Sub-Clause 6.1.1n) shall be taken with respect to:
  - (i) Officer or Director of a Group Company; or
  - (ii) any Person whose annualized compensation is €50,000 or more or whose annual compensation for the 12-month period following the date hereof is expected to be €50,000 or more;
- o) not pay or agree to pay any additional pension, retirement allowance or other employee benefit under any Company Benefit Plan to any of its employees or consultants, whether past or present, except in the Ordinary Course; provided, however, that neither no Group Company shall take any action described in this Sub-Clause 6.1.1o) with respect to:
  - (i) any Officer or Director of a Group Company; or

- (ii) any Person whose annualized compensation is €50,000 or more or whose annual compensation for the 12-month period following the date hereof is expected to be €50,000 or more;
- p) not adopt, amend or terminate any Company Benefit Plan or increase the benefits provided under any Company Benefit Plan (unless foreseen for in such a Plan), or promise or commit to undertake any of the foregoing in the future;
- q) not enter into a works council agreement (*Betriebsvereinbarung*), collective labour agreement (*Tarifvertrag*) or other collective bargaining agreement;
- r) not amend or terminate any existing Employment Agreement or enter into any new Employment Agreement if the aggregate of annual salary and other benefits under such agreement exceeds € 60,000, provided that the planned employment of an electronic developer with a annual salary of € 80,000 is accepted by Purchaser;
- s) maintain supplies and inventory at levels that are in the Ordinary Course;
- t) continue to extend customers credit, collect accounts receivable and pay accounts payable and similar obligations in the Ordinary Course;
- u) perform in all material respects all of its obligations under, and not default or suffer to exist any event or condition that with notice or lapse of time or both could constitute a material default under, any Company Contract (except those being contested in good faith) and not enter into, assume or amend any contract or commitment that is or would be a Company Contract other than in the Ordinary Course;
- v) not pay, discharge or satisfy any claim, liability or obligation (absolute, contingent or otherwise) other than the payment, discharge or satisfaction in the Ordinary Course of claims, liabilities and obligations reflected or reserved against in the Balance Sheets or incurred in the Ordinary Course;
- w) maintain in full force and effect and in the same amounts policies of insurance comparable in amount and scope of coverage to that now maintained by or on behalf of the relevant Group Company;
- x) continue to maintain its books and records in accordance with GAAP;
- y) continue its cash management practices in the Ordinary Course;
- z) not make or change any election relating to Taxes, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to a Group Company, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to a Group Company, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax, if such election, adoption, change, amendment, agreement, settlement, surrender, consent or other action would have the effect of increasing the Tax liability of the Purchaser or a Group Company for any period ending after the Locked Box Date or decreasing any Tax attribute of a Group Company existing on the Locked Box Date; and
- aa) not authorize, or commit or agree to take, any of the foregoing actions that are prohibited by this Sub-Clause 6.1.

6.1.2 In connection with the continued operation of each Group Company during the period commencing on the date hereof and ending on the Closing Date, the Seller shall confer, and shall cause the Company to confer, in good faith on a regular and frequent basis with the Purchaser



regarding operational matters and the general status of on-going operations of the Company Group. The Seller hereby acknowledges that the Purchaser does not and shall not waive any right it may have hereunder as a result of such consultations unless the Purchaser expressly agrees with such operational measures in writing.

6.1.3 The Seller shall not, and shall cause each Group Company not to, take any action that would, or that could reasonably be expected to, result in any warranty of the Seller set forth herein to become untrue.

## **6.2 Inspection and Access to Information**

During the period commencing on the date hereof and ending on the Closing Date, the Seller will, and will cause each Group Company and their respective Officers and Directors, employees, auditors and agents to:

- a) provide – within the limits of applicable laws such as Data Protection Laws – the Purchaser and its accountants, investment bankers, counsel, environmental consultants and other authorised representatives full access, during reasonable hours and under reasonable circumstances, to any and all of its premises, employees (including executive officers), properties, contracts, commitments, books, records and other information (including Tax Returns filed and those in preparation); and
- b) furnish – within the limits of applicable laws such as Data Protection Laws – to the Purchaser and its authorised representatives, promptly upon request, any and all financial, technical and operating data and other information pertaining to a Group Company and otherwise fully cooperate with the conduct of due diligence by the Purchaser and its representatives, including permission to collect samples of soil, water or other substances which such representatives may reasonably request permission to collect and analyse.

## **6.3 Notices of Certain Events**

6.3.1 During the period commencing on the date hereof and ending on the Closing Date, the Seller shall promptly notify the Purchaser of:

- a) any change or event that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect on or otherwise result in any Seller Warranty being inaccurate in any material respect;
- b) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated hereby;
- c) any notice or other communication from any Governmental Entity in connection with the transactions contemplated hereby;
- d) any action, suit, claim, investigation or proceeding commenced or, to the Knowledge of the Company Group, threatened against, relating to or involving or otherwise affecting a Group Company that, if pending on the date hereof, would have been required to have been disclosed pursuant to Disclosure Schedule 10 or that relates to the consummation of the transactions contemplated hereby; and
- e) (i) the damage or destruction by fire or other casualty of any material asset or material part thereof of a Group Company or (ii) any asset or part thereof becoming the subject of any proceeding (or, to the Knowledge of the Company Group, any threatened proceeding) for the taking thereof or of any right relating thereto by condemnation, eminent domain or other similar governmental action.

6.3.2 The Seller hereby acknowledges that the Purchaser does not and shall not waive any right it may have hereunder as a result of such notifications.

6.3.3 During the period according to Sub-Clause 6.3.1, the Purchaser shall promptly notify the Seller of any developments regarding the AWW Notification Process (see Clause 6.6.3), especially notices received from BMWi.

#### **6.4 Interim Unaudited Financials**

6.4.1 During the period commencing on the date hereof and ending on the Closing Date, as promptly as practicable following each end of a calendar month subsequent to the end of the most recent fiscal year for a Group Company and prior to the Closing Date, the Seller shall cause the Company Group to deliver to the Purchaser periodic unaudited financial reports in the form that it customarily prepares for its internal purposes concerning the Company Group and, if available, unaudited statements of the financial position of the Company Group as of the last day of each accounting period and statements of income and changes in financial position of such entity for the period then ended.

6.4.2 The Seller covenants that such unaudited interim statements:

- a) shall present fairly – within the limits inherent to such financial reports – the financial condition of the applicable Group Company and the related results of its operations for the respective periods then ended, and
- b) shall be prepared on a basis consistent with prior interim periods.

#### **6.5 No Solicitation of Transactions**

6.5.1 During the period commencing on the date hereof and ending on the Closing Date, the Seller and the Shareholders will not, and will cause each Group Company not to, directly or indirectly, through any Officer or Director, manager or agent of any of them or otherwise, initiate, solicit or encourage (including by way of furnishing non-public information or assistance), or enter into negotiations or discussions of any type, directly or indirectly, or enter into a confidentiality agreement, letter of intent or purchase agreement, merger agreement or other similar agreement with any Person other than the Purchaser with respect to a sale of all or any substantial portion of the assets of a Group Company, or a merger, consolidation, business combination, sale of all or any substantial portion of the capital share of a Group Company, or the liquidation or similar extraordinary transaction with respect to a Group Company.

6.5.2 The Seller shall notify the Purchaser orally (within five (5) Business Day) and in writing (as promptly as practicable, but not earlier than orally) of all relevant terms of any inquiry or proposal by a third party to do any of the foregoing that the Seller or the Company or any of its respective Affiliates or any of their respective Officers or Directors, partners, managers, employees, investment bankers, financial advisors, attorneys, accountants or other representatives may receive after the date hereof relating to any of such matters. In the event such inquiry or proposal is in writing, the Seller shall deliver to the Purchaser a copy of such inquiry or proposal together with such written notice.

#### **6.6 Reasonable Efforts; Further Assurances; Cooperation**

6.6.1 During the period commencing on the date hereof and ending on the Closing Date, and subject to the other provisions hereof, each Party shall each use its reasonable efforts to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under Applicable Law to obtain all regulatory approvals and to satisfy all conditions to its obligations hereunder and to cause the transactions contemplated herein to be effected as soon as practicable,

but in any event on or prior to the Expiration Date, in accordance with the terms hereof and shall cooperate fully with each other Party and its officers, directors, employees, agents, counsel, accountants and other designees in connection with any step required to be taken as a part of its obligations hereunder, including the following:

- 6.6.2 During the period commencing on the date hereof and ending on the Closing Date, each Party promptly shall make all filings and submissions and shall take all other actions necessary, proper or advisable under Applicable Laws to obtain any required approval of any Governmental Entity with jurisdiction over the transactions contemplated hereby (except that the Purchaser shall have no obligation to take or consent to the taking of any action required by any such Governmental Entity that could materially adversely affect a Group Company or the transactions contemplated by this Agreement or the Purchaser Ancillary Documents). Each Party and the Shareholders shall furnish all information and documents required for any application or other filing to be made pursuant to any Applicable Law in connection with the transactions contemplated hereby or as contemplated in Clause 6.6.3 below.
- 6.6.3 Without in any way limiting the foregoing contained in this Sub-Clause 6.6, promptly after execution and delivery of this Agreement, the Purchaser shall notify the German Federal Ministry for the Economy and Energy (*Bundesministerium für Wirtschaft und Energie*) (“**BMWi**”) of the signing of this Agreement in the form and with the substance required for such notifications under Section 55 para 3 AWV and (as a precaution) under Section 60 para 3 AWV (the “**AWV Notification**”). The Purchaser shall at the same time request issuance of a certificate of non-objection (*Unbedenklichkeitsbescheinigung*) under Section 58 AWV (“**AWV Section 58 Clearance**”) and, as a precaution, confirmation that the acquisition of the Shares is not subject to review under Section 60 AWV (“**AWV Section 60 Confirmation**”). Any steps in that regard taken after the date hereof shall be taken in prior consultation with the Seller and require the consent of the Seller not to be unreasonably withheld. The Purchaser may not withdraw any filings without the express written prior consent of the Seller.

For the avoidance of doubt, each of AWV Section 58 Clearance and AWV Section 60 Confirmation and any substitute therefor under Clauses 7.1.1a) and 7.1.1b) shall be deemed in existence only if not subject to or accompanied by orders of BMWi or any other Governmental Entity which the Purchaser has not, in its free discretion, decided to accept by waiving the relevant closing condition under Clauses 7.1.1a) and 7.1.1b). In the event the Purchaser should have decided to accept such orders, the Purchaser shall as from Closing use its rights as shareholder of the Company to cause the Company Group to comply with such orders. In case BMWi rescinds the relevant clearance due to the non-conformation of the Purchaser or a Group Company to any such orders in the time period after the Closing Date, the Purchaser shall not have any rights to rescind this agreement or to unwind this agreement in any way.

The Parties agree that the Purchaser shall be under obligation to accept orders of BMWi or any other Governmental Entity (i.e. that in the following cases it shall not be in Purchaser’s free discretion whether to accept or not within the meaning of the preceding paragraph) which do not involve more than the following obligations (“**Permitted Orders**”):

- (i) keeping the products currently produced and developed by the Company Group outside the scope of application of the U.S. International Traffic in Arms Regulations,
- (ii) ensuring the security of supply of German state entities (federal or regional – *Bundes- oder Landesstellen*) with these products, unless the terms of the relevant supplies entail additional costs or liability risks of the Company Group in comparison to such supplies in the past exceeding EUR 2 Mio., and

(iii) maintaining a production site in Germany for a period of up to five (5) years from the Closing Date.

The Purchaser shall furthermore consider any other orders than Permitted Orders in good faith provided that, for the avoidance of doubt, the Purchaser remains free in its decision whether or not to accept them.

The Parties furthermore agree that in case the BMWi or any other Governmental Entity request the conclusion of a mitigation agreement with the Purchaser or the Company instead of issuing orders, the Purchaser shall accept terms of such a mitigation agreement corresponding to the Permitted Orders.

- 6.6.4 During the period commencing on the date hereof and ending on the Closing Date, in the event any claim, action, suit, investigation or other proceeding by any Governmental Entity or other Person is commenced that questions the validity or legality of the Acquisition or any other transaction contemplated hereby or seeks damages in connection therewith, the Parties shall:
- a) cooperate and use all commercially reasonable efforts to defend against such claim, action, suit, investigation or other proceeding,
  - b) in the event an injunction or other order is issued in any such action, suit or other proceeding, use all commercially reasonable efforts to have such injunction or other order lifted, and
  - c) cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated hereby.
- 6.6.5 During the period commencing on the date hereof and ending on the Closing Date, the Seller shall cause the Company Group to give all notices to third parties and use its reasonable efforts (in consultation with the Purchaser) to obtain all third-party consents:
- a) necessary, proper or advisable to consummate the transactions contemplated hereby;
  - b) required to be given or obtained;
  - c) required to avoid a breach of or default under any Company Contract in connection with the consummation of the transactions contemplated hereby;
  - d) required to prevent a Material Adverse Effect occurring prior to, on or following the Closing Date.
- 6.6.6 During the period commencing on the date hereof and ending on the Closing Date, the Seller, on the one hand, and the Purchaser, on the other hand, shall give prompt notice to the other Party of:
- a) the occurrence, or failure to occur, of any event, the occurrence or failure of which would be likely to cause any warranty of the Seller, any Shareholder or the Purchaser, as the case may be, contained herein to be untrue or inaccurate at any time from the date hereof to the Closing Date or that will or may result in the failure to satisfy any condition specified in Clause 7; and
  - b) any failure of the Seller, any Shareholder or the Purchaser, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by any of them hereunder.
- 6.6.7 The Seller and the Purchaser hereby acknowledge that the Purchaser or the Seller – as the case may be – do not and shall not waive any right they may have hereunder as a result of such notifications.

6.6.8 The Seller shall cause the Group Companies to do all things required to be done by a Group Company pursuant to this Agreement.

## 6.7 Supplements to Disclosure Schedules

6.7.1 From time to time up to the Closing, the Seller shall promptly supplement or amend the Disclosure Schedules that it has delivered with respect to any matter first existing or occurring following the date hereof that:

- a) if existing or occurring at or prior to the date hereof, would have been required to be set forth or described in the Disclosure Schedules, or
- b) is necessary to correct any information in the Disclosure Schedules that has been rendered inaccurate thereby.

6.7.2 No supplement or amendment to any Disclosure Schedule shall have any effect for the purpose of determining satisfaction of the conditions set forth in Sub-Clause 7.1 or the obligations of the Seller under Sub-Clause 10.1 or the liability of the Seller for breach of any of the Seller Warranties.

## 7. CONDITIONS TO CLOSING

### 7.1 Conditions to Obligations of the Purchaser

7.1.1 The obligations of the Purchaser to consummate the transactions contemplated hereby shall be subject to the fulfilment at or prior to the Closing of each of the following additional conditions:

- a) Clearance under Sections 55-62 AWV. Clearance under Sections 55-62 AWV (cross-sectoral review of acquisitions of undertakings – *sektorübergreifende Prüfung von Unternehmerwerben*) has been achieved by the occurrence of one of the following conditions in (i) through (iii):
  - (i) AWV Section 58 Clearance has been received by the Purchaser;
  - (ii) in the event (i) has not occurred, AWV Section 58 Clearance is deemed granted pursuant to Section 58 para. 2 AWV because the two month period after receipt by BMWi of the request for AWV Section 58 Clearance has expired without the Purchaser having received notice of the commencement of review (*Eröffnung des Prüfverfahrens*) (“**AWV Section 55 Commencement Notice**”);
  - (iii) in the event AWV Section 55 Commencement Notice has been received by the Purchaser within such two month period, (x) the time period until which BMWi can issue prohibition or orders under Section 59 AWV has expired without any such prohibition or order (other than Permitted Orders) having been issued or (y) BMWi has confirmed to the Purchaser in writing that no such prohibition or orders (other than Permitted Orders) will be issued.
- b) Clearance under Sections 60-62 AWV. Clearance under Sections 60-62 AWV (sector specific review of acquisitions of undertakings – *sektorspezifische Prüfung von Unternehmerwerben*) has been achieved by the occurrence of one of the following conditions in (i) through (iv):
  - (i) AWV Section 60 Confirmation has been received by the Purchaser;
  - (ii) in the event (i) has not occurred, the Purchaser has received notification by BMWi that the acquisition of the Shares has been released (*freigegeben*) under Section 61 AWV;

- (iii) in the event (ii) has not occurred, the three month period after AWV Notification pursuant to Section 61 AWV has expired without the Purchaser having received notice of the commencement of review (*Eröffnung des Prüfverfahrens*) (“**AWV Section 61 Commencement Notice**”);
- (iv) in the event AWV Section 61 Commencement Notice has been received by the Purchaser within such three month period, the time period until which BMWi can issue prohibition or orders (other than Permitted Orders) under Section 62 AWV has expired without any such prohibition or order (other than Permitted Orders) having been issued.

- c) Injunction. There shall be no effective injunction, writ or preliminary restraining order or any order of any nature issued by a Governmental Entity of competent jurisdiction to the effect that the Acquisition may not be consummated as provided herein, no proceeding or lawsuit shall have been commenced by any Governmental Entity for the purpose of obtaining any such injunction, writ or preliminary restraining order and no written notice shall have been received from any Governmental Entity indicating an intent to restrain, prevent, materially delay or restructure the transactions contemplated hereby.
- d) Warranties. The Fundamental Seller’s Warranties and the Seller’s Warranties in Clauses 5, 7, 10, 11, 16, 17, 18, 19, 20, 21, 23, 25, 26 and 35 shall have been true and correct and complete in all material respects as of the date hereof and shall be true and correct and complete in all material respects as of the Closing Date as though made on and as of the Closing Date, provided that “**material**” for the purposes of this clause 7.1.1d) shall mean a breach which has an aggregate negative impact on the Company Group of more than EUR 6,500,000 and has not been cured prior to the Closing.
- e) Performance of Obligations of the Seller and the Company. The Seller and the Company shall have performed in all material respects all covenants and agreements required to be performed by each of them hereunder at or prior to the Closing.
- f) No Material Adverse Effect. Between the date hereof and the Closing Date, there shall not have occurred any Material Adverse Effect that has not been cured prior to the Closing.
- g) Lockman Outstanding; Release of Liens. In the event the Closing Date is expected to occur on a date which does not make it reasonably possible to make the repayment under Clause 3.5a) before the Lockman Repayment Agreement has terminated, the Seller shall have delivered to the Purchaser a payoff letter from Lockman (“**Lockman Payoff Letter**”) confirming that if the Lockman Outstanding is paid to Lockman on the Closing Date, all obligations of the Company under or in connection with the Lockman Loan Agreement will have been settled in full and that all Liens affecting the shares of the Company, any real or personal property of a Group Company including receivables assigned as security are being released, all substantially equivalent to the terms of Clause 3 of the Lockman Repayment Agreement.
- h) Transaction Payments Statement. The Seller shall have delivered to the Purchaser the Transaction Payments Statement at least two (2) Business Days prior to the Closing Date.

7.1.2 The Purchaser may waive (in its absolute discretion) any of the conditions in Clause 7.1.1 with the exception of the conditions in Clauses 7.1.1a) and 7.1.1b) by written notice to the Seller.

## **7.2 Conditions to Obligations of the Seller**

7.2.1 The obligations of the Seller to consummate the transactions contemplated hereby shall be subject to the fulfilment at or prior to the Closing of each of the following additional conditions:

- a) Injunction. There shall be no effective injunction, writ or preliminary restraining order or any order of any nature issued by a Governmental Entity of competent jurisdiction to the effect that the Acquisition may not be consummated as provided herein, no proceeding or lawsuit shall have been commenced by any Governmental Entity for the purpose of obtaining any such injunction, writ or preliminary restraining order and no written notice shall have been received from any Governmental Entity indicating an intent to restrain, prevent, materially delay or restructure the transactions contemplated hereby.
- b) Warranties. The warranties of the Purchaser contained in Clause 5 shall have been true and correct in all material respects as of the date hereof and shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except that those warranties that by their terms are qualified by materiality shall be true and correct in all respects.
- c) Performance of Obligations by the Purchaser. The Purchaser shall have performed in all material respects all covenants and agreements required to be performed by it hereunder on or prior to the Closing Date.
- d) Ancillary Documents. The Purchaser shall have delivered, or caused to be delivered, to the Seller the documents listed in Sub-Clause 8.3.

7.2.2 The Seller may waive (in its absolute discretion) any of the conditions in Clause 7.2.1 by notice to the Purchaser.

## **8. CLOSING**

### **8.1 Closing**

8.1.1 The Closing shall occur at 3 p.m. Central European Time on the third (3rd) Business Day following the satisfaction or waiver of the conditions set forth in Clause 7 that are contemplated to be satisfied prior to the Closing, or on such other date as the Parties may agree.

8.1.2 The Closing shall take place at the offices of King & Spalding LLP at Taunustor 1, 60310 Frankfurt am Main or at such other place as the Parties may agree.

### **8.2 Seller Closing Deliveries**

At the Closing, the Seller shall deliver, or cause to be delivered, to the Purchaser the following:

- a) In the event of Clause 7.1.1g), the Lockman Payoff Letter;
- b) all other documents required to be entered into by a Group Company or the Seller pursuant hereto.

### **8.3 Purchaser Closing Deliveries and Payments**

8.3.1 At the Closing, the Purchaser shall have delivered, or cause to be delivered, to the Seller all documents required to be entered into or delivered by the Purchaser at or prior to the Closing pursuant hereto.

8.3.2 When all deliveries as per Clause 8.2 have been effected or waived by the Purchaser and all deliveries as per Clause 8.3.1 – if any – have been effected or waived by the Seller, the Purchaser shall make the payments provided for in Clauses 3.4 (Payment of the Purchase Price) and 3.5

(Payment of other amounts payable at Closing) and 3.2 (Payment of Escrow Amount). The Seller shall cause all banks to which such payments are to be made to give notice of the receipt of such payments to the Purchaser by telecopy transmission.

#### **8.4 Closing Protocol and registrations**

8.4.1 When all payments to be made pursuant to Clause 8.3.2 have been received on the respective bank accounts, the Seller and the Purchaser shall execute the Closing Protocol. For the avoidance of doubt, the time when all such payments have been made is the time when the transfer of the Shares becomes effective (Clause 2.1.2).

8.4.2 The acting notary is hereby instructed to take the following actions after receiving a certified copy of the executed Closing Protocol or upon receiving concurring instructions to that effect from Seller and Purchaser:

- a) to submit an amended list of shareholders of the Company to the commercial register;
- b) to attach the Closing Protocol to the deed in which this Agreement is recorded; and
- c) to provide copies of each of the foregoing documents to the Parties.

#### **8.5 Waiver of Closing Events**

8.5.1 The Purchaser may waive the occurrence of each of the Closing Events referred to in Clause 8.2.

8.5.2 The Seller may waive the occurrence of each of the Closing Events referred to in Clause 8.3.

8.5.3 When a Party waives the occurrence of a Closing Event, the relevant action shall no longer be a Closing Event but such waiver does not affect the obligation of the other Party to promptly take the relevant action unless expressly released from having to do so by the waiving Party.

#### **8.6 Termination**

This Agreement may be terminated by declaring rescission (*Rücktritt vom Vertrag*):

- a) by written notice from the Seller to the Purchaser, in the event the Purchaser
  - (i) fails to perform in any material respect any of its agreements contained herein required to be performed by it at or prior to the Closing; or
  - (ii) materially breaches any of the Purchaser Warranties provided that for purposes of this subclause 8.6b)(ii) "material" shall have the meaning defined in Clause 7.1.1d),  
in the cases of both (i) and (ii) provided that such failure or breach is not cured within twenty (20) days following the Seller having notified the Purchaser of its intent to terminate this Agreement pursuant to this Sub-Clause 8.6a);
- b) by written notice from the Purchaser to the Seller:
  - (i) in the event the Seller or a Shareholder fails to perform in any material respect any of their agreements contained herein required to be performed by them at or prior to the Closing; or
  - (ii) materially breaches any of the Seller Warranties mentioned in Clause 7.1.1d) provided that for purposes of this subclause 8.6b)(ii) "material" shall have the meaning defined in Clause 7.1.1d),



in the cases of both (i) and (ii) provided that such failure or breach is not cured within twenty (20) days following the Purchaser having notified the Seller of its intent to terminate this Agreement pursuant to this Sub-Clause 8.6b); or

- c) by written notice by the Seller to the Purchaser or the Purchaser to the Seller, as the case may be, in the event the Closing has not occurred on or prior to the date falling six months following the date hereof (the “**Expiration Date**”) for any reason other than delay or non-performance of the Party seeking such termination.

For the avoidance of doubt, no termination of this Agreement is possible after the Closing.

## **8.7 Effect of Termination**

In the event of termination of this Agreement pursuant to Clause 8.6, this Agreement shall be of no further effect and there shall be no further liability on the part of any Party or its partners, Officers or Directors, except for obligations under Sub-Clause 14.1 (Public Announcements), Sub-Clause 14.3 (Notices), Sub-Clause 14.7 (Governing Law), Sub-Clause 14.8 (Dispute Resolution) and Sub-Clause 14.12 (Transaction Costs) and this Sub-Clause 8.7, all of which shall survive the Termination Date, provided that the costs of notarisation of this Agreement and of all declarations made in connection therewith and the costs of the data room services shall be borne as follows:

- a) by the Purchaser in the event of termination pursuant to Clause 8.6a);
- b) by the Seller in the case of termination pursuant to Clause 8.6b);
- c) the costs of the data room services by the Purchaser and the other costs by the Seller and the Purchaser at 50% each in the event of termination pursuant to Clause 8.6c) unless any Party should be at fault for the non-occurring of the Closing (*es schuldhaft verursacht haben*) in which case such Party shall bear such costs.

Notwithstanding the foregoing, nothing contained herein shall relieve any Party from liability for any breach hereof.

## **9. TAX MATTERS**

9.1.1 Tax Periods Ending on or Before the Locked Box Date. The Purchaser shall prepare or cause to be prepared and file or cause to be filed all Tax Returns of the Group Companies for all periods ending on or prior to the Locked Box Date which are filed after the Closing Date. The Purchaser shall be reimbursed by the Seller for Taxes of the Group Companies with respect to all taxable periods ending on or before the Closing Date within fifteen (15) days after payment by the Purchaser or a Group Company of such Taxes. The preceding claim for reimbursement does not apply to the extent that

- i. such Taxes were reflected as a liability in the Financial Statements as of the Locked Box Date;
- ii. the Purchaser or the respective Group Company is, as the result of an adjustment or payment giving rise to such Taxes, entitled to any benefits by refund, reduction or set-off of Taxes in periods after the Locked Box Date (e.g. in the case of a lengthening of amortization or depreciation periods or higher depreciation allowances) provided that such future Tax benefits shall be considered only to the extent relating to a period of five (5) years following the Locked Box Date and shall be discounted using a discount rate of 1.5 % p.a. as of the Locked Box Date;

- iii. the Taxes result from any change in the accounting or taxation principles or practices of the Purchaser or the respective Group Company introduced after the Locked Box Date unless such change is required by mandatory law;
- iv. the Taxes result from any restructuring or reorganisation of the respective Group Company or the Business introduced after the Locked Box Date which has retroactive Tax effect unless such restructuring or reorganisation is required by mandatory law;
- v. Purchaser or the respective Group Company have a corresponding enforceable receivable or enforceable civil law claim against any third party for reimbursement; or
- vi. Purchaser was already reimbursed for such Taxes by another payment of the Seller pursuant to this Agreement.

The Parties agree that if the Purchaser raises claims against the Seller according to Clause 9.1.1 Sentence 2, and those claims could have been raised by the Purchaser according to Clause 10.1.1 b) or Clause 13 of Schedule 1, then Clause 11.2.4 a) shall apply meaning that the Claim under Clause 9.1.1 Sentence 2 could not be raised under the conditions in Clause 11.2.4a).

9.1.2 Tax Periods Beginning Before and Ending After the Locked Box Date. The Purchaser shall prepare or cause to be prepared and file or cause to be filed any Tax Returns of each Group Company for Tax periods which begin before the Closing Date and end after the Closing Date. The Purchaser shall be reimbursed by the Seller an amount equal to the portion of such Taxes which relates to the portion of such Taxable period ending on the Locked Box Date within fifteen (15) days after payment by the Purchaser or a Group Company of such Taxes. The limitations pursuant to Sub-Clause 9.1.1 sentence 3 apply *mutatis mutandis*. For purposes of this Sub-Clause 9.1.2, in the case of any Taxes that are imposed on a periodic basis and are payable for a Taxable period that includes (but does not end on) the Locked Box Date, the portion of such Tax that relates to the portion of such Taxable period ending on the Locked Box Date shall

- a) in the case of any Taxes other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction the numerator of which is the number of days in the Taxable period ending on the Locked Box Date and the denominator of which is the number of days in the entire Taxable period, and
- b) in the case of any Tax based upon or related to income or receipts, be deemed equal to the amount which would be payable if the relevant Taxable period ended on the Locked Box Date.

Any credits relating to a Taxable period that begins before and ends after the Locked Box Date shall be taken into account as though the relevant Taxable period ended on the Locked Box Date. All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with prior practice of the Company Group.

9.1.3 Preparation of Tax Returns. The Purchaser shall provide the Seller with copies of any Tax Returns to be filed by the Purchaser pursuant to Sub-Clauses 9.1.1 and 9.1.2 at least thirty (30) days prior to the due date thereof (giving effect to any extensions thereto). All such Tax Returns to be prepared pursuant to Sub-Clauses 9.1.1 and 9.1.2 shall be prepared in a manner consistent in all material respects with past practices of the relevant Group Company, except as otherwise required by applicable Tax law. The Seller shall have the right to review and comment on such Tax Returns prior to the filing of such Tax Returns. Except as otherwise required by applicable Tax law the Purchaser shall not file any such Tax Returns without prior written consent of the Seller which may not be unreasonably withheld, conditioned or delayed.

9.1.4 Cooperation on Tax Matters. Each Group Company, the Seller and the Purchaser shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Sub-Clause and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Parties agree:

- a) to retain, or to procure that the respective Group Company retains all books and records with respect to Tax matters pertinent to a Group Company relating to any Taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by the Purchaser, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any Taxing Authority, and
- b) to give the respective other Party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if either Party so requests, the other Party shall allow to take possession of such books and records.

The Purchaser and the Seller agree, upon request, to use their reasonable efforts to obtain any certificate or other document from any Governmental Entity or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the transactions contemplated hereby).

In particular, Purchaser shall procure that the Seller is informed in a timely manner, but in any event within ten (10) days, of all Tax assessments (*Steuerbescheide*) and announcements of Tax audits (*Betriebsprüfungen*) which may give rise to a claim of Purchaser regarding Taxes under this Agreement or to a claim of the Seller for a Tax refund under this Agreement. Purchaser shall procure that the Seller is provided with all relevant documents and other information reasonably required by all Seller to this extent and that the Seller shall at his request be given the opportunity to instruct, at its own expense, counsel, accountants or auditors in relation to such Tax audits and to participate in meetings with Tax authorities in relation to such Tax audits, however, taking duly into account Purchaser's interests.

At Seller's costs and expense Purchaser shall take such action as the Seller may reasonably require by written notice to Purchaser to avoid, dispute, resist, appeal or otherwise defend against any claim for Taxes for which the Seller may be liable under this Agreement or to collect any claim for refund of Taxes. Purchaser shall procure that any such defence will be controlled by the Seller and that the Seller will be provided with all relevant documents, other information and assistance reasonably required by Seller for the defence. Purchaser shall be given the opportunity to participate in the defence at its own expense with their own counsel. No concession shall be made by the Seller, and no claim for Taxes shall be acknowledged or settled towards the Tax authorities, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed.

9.1.5 Tax Sharing Agreements. Any tax sharing agreement between the Seller and any entity other than a Group Company on the one hand and a Group Company on the other hand shall be terminated as of the Closing Date and shall have no further effect for any taxable year (whether the current year, a future year, or a past year).

9.1.6 Costs. Each Party shall bear its own expenses and costs in connection with the Sub-Clauses 9.1.1 to 9.1.5.

## 10. INDEMNIFICATION

### 10.1 Indemnification Obligations of the Seller

10.1.1 The Seller shall indemnify, defend and hold harmless the Purchaser Indemnified Parties from, against, and in respect of, any and all claims, liabilities, obligations, damages, losses, costs, expenses, penalties, fines and judgments whenever arising or incurred (including amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses), provided they fall within the meaning of damage (*Schaden*) as defined in Sections 249, 252 BGB:

- a) arising out of or relating to any breach of any covenant, agreement or undertaking made by the Seller or a Shareholder in this Agreement or the Seller Ancillary Documents other than those for which specific remedies have been agreed upon in this Agreement in Clause 4 (Warranties of the Seller), Clause 5 (Warranties of the Purchaser), Clause 10.1.1b) or in the Non-Competition Agreement;
- b) for:
  - (i) any Taxes of a Group Company with respect to any Tax period or portion thereof ending on or before the Locked Box Date (or for any Tax period beginning before and ending after the Locked Box Date to the extent allocable (determined in a manner consistent with Sub-Clause 9.1.2 to the portion of such period beginning before and ending on the Locked Box Date), or Taxes which relate to an event or transaction occurring on or before the Locked Box Date, except to the extent such Taxes were reflected as a liability in the Financial Statements as of the Locked Box Date,
  - (ii) the unpaid Taxes of any Person (other than the Group Companies) for which a Group Company, the Purchaser or its Affiliates is or becomes liable, which Taxes relate to an event or transaction occurring on or before the Locked Box Date, and
  - (iii) the unpaid Taxes of any Person (other than the Group Companies) as a transferee or successor, by contract, or otherwise, which Taxes relate to an event or transaction occurring on or before the Locked Box Date;

it being understood that the limitations pursuant to Sub-Clause 9.1.1 sentence 3 and Sub-Clause 9.1.4 apply *mutatis mutandis*;

- c) any claim by the Seller or other holder of equity securities in a Group Company as a result of the transactions contemplated by this Agreement, other than any claims:
  - (i) relating to the Purchaser's failure to pay any portion of the Purchase Price pursuant to this Agreement,
  - (ii) against the Purchaser or any of its Affiliates (other than a Group Company) unrelated in any way to a Group Company; or
  - (iii) against the Purchaser arising under this Agreement or any Purchaser Ancillary Document; or
  - (iv) arising out of any Seller Ancillary Documents;
- d) with respect to any amounts comprised in Transaction Payments to the extent not paid on or prior to the Closing Date except to the extent such Transaction Payments were reflected as a liability, write-off or provision in the Financial Statements as of the Locked Box Date;

- e) to the extent not covered by the provision (*Rückstellung*) set up in this respect in the interim accounts of the Company as of the Locked Box Date mentioned under lit. (e) of the definition of Financial Statements, any amount payable by the Company and not yet paid until the Locked Box Date under the agreements made between the Company and Tawazun Economic Council, Abu Dhabi or with respect to the bank guarantee issued by National Bank of Abu Dhabi in favour of Tawazun Economic Council dated October 19, 2015, in all cases to the extent relating to orders received and confirmed by the Company prior to the Closing Date. The Parties agree that they will cause the Company to seek a confirmation from Tawazun Economic Council that no such obligations of the Company are asserted which would fall under this Clause 10.1.1e) sufficiently in time before expiry of the relevant limitation period provided for in Clause 11.1.1.

10.1.2 The claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments of the Purchaser Indemnified Parties described in this Sub-Clause 10.1 as to which the Purchaser Indemnified Parties are entitled to indemnification are collectively referred to as “**Purchaser Losses**”. For the avoidance of doubt, in calculating the amount of any Purchaser Loss the proceeds actually received by the relevant Purchaser Indemnified Party or any of its Affiliates under the R&W Insurance Policy with respect to such Purchaser Loss shall be deducted therefrom.

## **10.2 Indemnification Obligations of the Purchaser; Tax Refunds**

10.2.1 The Purchaser shall indemnify and hold harmless the Seller Indemnified Parties from, against and in respect of any and all claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments whenever arising or incurred (including amounts paid in settlement, costs of investigation and reasonable attorneys’ fees and expenses arising out of or relating to:

- a) any breach or inaccuracy of any of the Purchaser Warranties or warranty made by the Purchaser in any Purchaser Ancillary Document; or
- b) any breach of any covenant, agreement or undertaking made by the Purchaser in this Agreement or in any Purchaser Ancillary Document.

10.2.2 The claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments of the Seller Indemnified Parties described in this Sub-Clause 10.2 as to which the Seller Indemnified Parties are entitled to indemnification are collectively referred to as “**Seller Losses**”.

10.2.3 Purchaser shall reimburse to Seller for any repayment of any Tax (including but not limited to by way of set-off or deduction) received by any Group Company which relates to any time period ending on or prior to the Locked Box Date or with respect to Seller's portion of any such time period (“**Tax Refunds**”), except to the extent such Tax Refunds were reflected as a current receivable in the Financial Statements as of the Locked Box Date and further subject to application *mutatis mutandis* of the other exceptions in the last sentence of Clause 9.1.1. Purchaser shall, and shall procure that the relevant Group Company will, as soon as reasonably practicable, at the latest within fifteen (15) days after the receipt of the respective notification from the Governmental Authority, notify Seller in writing of the receipt of any Tax Refunds and shall compensate the Seller within the next fifteen (15) days after notification.

## **10.3 Indemnification Procedure**

10.3.1 Promptly following receipt by an Indemnified Party of notice by a third party (including any Governmental Entity) of any complaint or the commencement of any audit, investigation, action

or proceeding with respect to which such Indemnified Party may be entitled to receive payment from the other Party for any Purchaser Loss or Seller Loss (as the case may be), such Indemnified Party shall notify the Purchaser or the Seller, as the case may be (the “**Indemnifying Party**”), promptly following the Indemnified Party’s receipt of such complaint or notice of the commencement of such audit, investigation, action or proceeding; provided, however, that the failure to so notify the Indemnifying Party shall relieve the Indemnifying Party from liability hereunder with respect to such claim only if, and only to the extent that, such failure to so notify the Indemnifying Party results in the forfeiture by the Indemnifying Party of rights and defences otherwise available to the Indemnifying Party with respect to such claim.

- 10.3.2 The Indemnifying Party shall have the right, upon written notice delivered to the Indemnified Party within 25 days thereafter assuming full responsibility for any Purchaser Losses or Seller Losses (as the case may be) resulting from such audit, investigation, action or proceeding, to assume the defence of such audit, investigation, action or proceeding, to the extent such audit, investigation, action or proceeding involves solely monetary damages, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the fees and disbursements of such counsel; provided, however, that an Indemnifying Party will not be entitled to assume the defence of any audit, investigation, action or proceeding if:
- a) such claim could reasonably result in criminal liability of, or any other than only payment verdict against, the Indemnified Party; or
  - b) such claim is made by a customer or supplier of a Group Company; or
  - c) the Indemnified Party reasonably believes that the interests of the Indemnifying Party and the Indemnified Party with respect to such claim are in conflict with one another, and as a result, the Indemnifying Party could not adequately represent the interests of the Indemnified Party in such claim; or
  - d) any insurer, including the insurer under the R&W Insurance Policy, requires, as a condition to an Indemnified Party’s eligibility to recover insurance proceeds on account of such Third Party Claim, that such insurer control the matter.
- 10.3.3 In the event, however, that the Indemnifying Party declines or fails to assume, or is not permitted to assume, the defence of the audit, investigation, action or proceeding on the terms provided above or to employ counsel reasonably satisfactory to the Indemnified Party, in either case within such 25 day period, or if the Indemnifying Party is not entitled to assume the defence of the audit, investigation, action or proceeding in accordance with the preceding sentence, then such Indemnified Party may employ counsel to represent or defend it in any such audit, investigation, action or proceeding and the Indemnifying Party shall pay the reasonable fees and disbursements of such counsel for the Indemnified Party as incurred provided, however, that the Indemnifying Party shall not be required to pay the fees and disbursements of more than one counsel for all Indemnified Parties in any jurisdiction in any single audit, investigation, action or proceeding.
- 10.3.4 In any audit, investigation, action or proceeding for which indemnification is being sought hereunder, the Indemnified Party or the Indemnifying Party, whichever is not assuming the defence of such action, shall have the right to participate in such matter and to retain its own counsel at such party’s own expense.
- 10.3.5 The Indemnifying Party or the Indemnified Party (as the case may be) shall at all times use reasonable efforts to keep the Indemnifying Party or the Indemnified Party (as the case may be)

reasonably appraised of the status of the defence of any matter the defence of which it is maintaining and to cooperate in good faith with each other with respect to the defence of any such matter.

- 10.3.6 No Indemnified Party may settle or compromise any audit, investigation, action or proceeding or consent to the entry of any judgment with respect to which indemnification is being sought hereunder without the prior written consent of the Indemnifying Party unless (i) the Indemnifying Party fails to assume, or is not permitted to assume and maintain the defence of such claim pursuant to Sub-Clause 10.3.1 or (ii) such settlement, compromise or consent includes an unconditional release of the Indemnifying Party and its officers, directors, managers, employees and Affiliates from all liability arising out of such claim. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent:
- a) includes an unconditional release of the Indemnified Party and its officers, directors, managers, employees and Affiliates from all liability arising out of such claim;
  - b) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of the Indemnified Party; and
  - c) does not contain any obligation other than for the payment of money or any term that in any manner affects, restrains or interferes with the business of the Indemnified Party or any of the Indemnified Party's Affiliates.

If at any time the Indemnifying Party notifies the Indemnified Party in writing that the Indemnifying Party and the third party wish to settle or compromise a third party claim for a certain amount and the Indemnified Party declines to do so (or fails to comply with such wish within ten (10) calendar days of such written notification), any liability by the Indemnifying Party towards the Indemnified Party in connection with such third party claim shall be capped at the aforementioned certain amount.

- 10.3.7 In the event an Indemnified Party claims a right to payment pursuant to this Agreement, such Indemnified Party shall send written notice of such claim to the appropriate Indemnifying Party (a "**Claim Notice**"). The Claim Notice shall specify the basis for such claim. The failure by any Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party with respect to any claim made pursuant to this Sub-Clause 10.3.
- 10.3.8 The Indemnifying Party shall be obliged to notify the Indemnified Party within thirty (30) days following its receipt of the Claim Notice in the event the Indemnifying Party disputes its liability to the Indemnified Party under this Clause 10 or the amount thereof. If the Indemnifying Party fails to so notify the Indemnified Party and the Indemnified Party thereafter satisfies an underlying third party claim or otherwise takes any relevant action before receiving further notifications from the Indemnifying Party, the Indemnifying Party may not object to the Indemnified Party as a defence any facts or circumstances that would have adversely affected the merits of the claim raised in the Claim Notice of which it could have informed the Indemnified Party within the thirty day period in Sentence 1. After issuance of a Claim Notice, the Indemnified Party and the Indemnifying Party shall establish the merits and amount of the relevant claim (by mutual agreement, litigation, arbitration or otherwise) and, within five (5) Business Days following the final determination of the merits and amount of such claim, the Indemnifying Party shall pay to the Indemnified Party in immediately available funds in an amount equal to such claim as determined hereunder.

10.3.9 Any indemnification obligation of the Seller pursuant to this Clause 10.3 shall be satisfied first from the Escrow Fund in pursuance of the rules provided for in Clause 3.9 and in the Escrow Agreement and, if the Escrow Fund is insufficient or has been fully distributed, by the Seller.

## **11. LIMITS ON LIABILITY**

### **11.1 Limitation Periods**

11.1.1 All Claims shall become time-barred (*verjähren*) on the date which is twenty-seven (27) months after the Closing Date, except for (i) Claims based on a breach of Fundamental Seller Warranties or in relation to specific performance claims (*Erfüllungsansprüche*) to transfer title to the Shares, which shall become time-barred (*verjährt*) sixty-six (66) months after the Closing Date; and (ii) Claims relating to Taxes which shall become time-barred (*verjährt*) six months after the relevant tax assessment notice (*Steuerbescheid*) has become final and conclusive in terms of form and contents (*formell und materiell bestandskräftig*).

11.1.2 The expiry period for any Claims shall be tolled (*gehemmt*) pursuant to Section 209 BGB by a Claim Notice, provided that the Indemnified Party commences judicial proceedings within twelve (12) months after the issuance of the Claim Notice. Section 203 BGB shall not apply, unless the Parties agree in writing that the expiry period shall be suspended (*gehemmt*) on the basis of pending settlement negotiations.

### **11.2 Liability Limits**

11.2.1 The total aggregate amount of the liability of the Seller in respect of all and any Claims shall be limited to an amount equal to (i) the Purchase Price for Fundamental Seller Warranties and Leakage Claims; (ii) €3,000,000 for Claims subject to Clauses IV C, D, E of the R&W Insurance Policy; (iii) €6,500,000 for Claims subject to Clause IV G of the R&W Insurance Policy (Corrupt Practices); (iv) €5,000,000 above the amount covered by the R&W Insurance Policy for Claims based on a breach of the Seller Warranties in Section 18 of Schedule 1 (Intellectual Property) and (v) €440,000 for any other Claims under Seller Warranties and under the indemnity in Clause 10.1.1e) (obligations under the Tawazun Economic Council agreements) and Claims under Seller Warranties subject to Clauses IV A, B, H and I of the R&W Insurance Policy.

11.2.2 Any Purchaser Indemnified Party shall only have Claims under Seller Warranties if and to the extent an individual Claim exceeds an amount of €15,000 in each case (*de-minimis*-amount) or the aggregate of individual Claims which are lower than such amount exceeds an amount of €60,000.

11.2.3 No Double Relief, Access to Records

- a) Compensation for any Claim with respect to the same matter or the same set of facts can only be recovered once, regardless of whether they arise under one or several provisions under this Agreement (no double-dip).
- b) The Purchaser shall give all such reasonable assistance to the Seller and the Shareholders and access to all such information and documents in its possession or control as reasonably required in order to remedy the Claim and/or determine the Claim, as applicable.

11.2.4 The Seller shall not be liable for any Claim under or in connection with this Agreement if and to the extent that:

- a) the amount of the Claim is recoverable from a third party (including the R&W Insurer or any other insurance providers);



- b) Purchaser, Purchaser's affiliates or – following the Closing Date – the Company Group have participated in causing such Claim within the meaning of Section 254 (1) BGB or have failed to comply with their obligation to mitigate damages pursuant to Section 254 (2) BGB;
- c) the relevant action or omission triggering the Claim was carried out at the direction, request or with the prior written consent of the Purchaser or was explicitly provided for in this Agreement;
- d) the Claim results or is increased (in that case limited to the increase) from the passing of, or any change in, after the Closing Date, any applicable law or administrative practice or order of any Governmental Entity;
- e) the procedures set forth in Sub-Clause 4.4 and Clause 10 were not observed by Purchaser if and to the extent damages were caused or increased by such non-compliance;
- f) it is reduced by any present or future advantage or benefit, including tax benefits, arising out of or in connection with the relevant matter giving raise to the Claim;
- h) the relevant amount is reflected as a write-off, liability or provision in the consolidated balance sheet of the Company as of the Locked Box Date.

11.2.5 Any failure of any Purchaser Indemnified Party to comply with any notification obligation shall release the Seller from its indemnification obligations only if, and only to the extent that, such failure to so notify the Seller results in the forfeiture by the Seller of rights and defences otherwise available to the Seller with respect to such claim.

11.2.6 For the avoidance of doubt no provision herein shall prohibit any Purchaser Indemnified Party from recovery of amounts under the R&W Insurance Policy.

### 11.3 Investigations

The respective warranties of the Parties contained in this Agreement or in any certificate or other document delivered by any Party prior to the Closing Date and the rights to indemnification set forth in Clause 10 shall not be deemed waived or otherwise affected by any investigation made, or knowledge acquired, by a Party to this Agreement, provided that the liability limitations of the Seller in Clause 11.2.1 shall remain unaffected.

### 11.4 Exclusion of further Remedies

The remedies provided for in this Agreement (including in Sub-Clause 4.4) and recovery under the R&W Insurance Policy shall be the sole remedies available to a Purchaser Indemnified Party with respect to Claims or otherwise as regards claims of a purchaser for defects of the purchased object (*Rechte des Käufers bei Mängeln der verkauften Sache*). To the extent permitted by law any further claims and remedies of a Purchaser Indemnified Party relating to defects of the purchased object (*Mängel der verkauften Sache*) irrespective of which nature, amount or legal basis, are hereby expressly waived and excluded, in particular, without limitation, claims for pre-contractual fault (Section 311 (2) and (3) and Section 241 (2) BGB), breach of contract (*Pflichtverletzung aus dem Schuldverhältnis*), frustration of contract (*Störung der Geschäftsgrundlage*), claims arising from statutory warranty provisions (*gesetzliche Gewährleistungsbestimmungen*) and any other claims to terminate this Agreement (*zurücktreten vom Vertrag*), to reduce the Purchase Price (*Kaufpreis mindern*) or to rescind this Agreement (*anfechten*), or for other reasons to cause the termination, invalidity or unwinding (*Rückabwicklung*) of this Agreement, a change of its content or a reimbursement or reduction of the Purchase Price.

### **11.5 No Limitation for Intentional Breach**

The limitations and exclusions of Seller's liability under this Agreement set forth in this Clause 11 shall not apply (i) to any intentional (*vorsätzlich*) breach of any of the Sellers' obligations under this Agreement or (ii) in the event of fraud, wilful default or wilful concealment on behalf of the Seller or its advisers and representatives. Sections 123 and 826 BGB shall not be affected.

### **12. NON-COMPETITION AGREEMENT**

The Parties and the Shareholders hereby enter into the non-competition agreement included in this Deed as Appendix 12 (the "**Non-Competition Agreement**").

### **13. APPROVAL DECISIONS**

13.1.1 The Shareholders made a shareholder resolution of the Seller, attached as Appendix 13.1.1 for documentary purposes only, that the sale and assignment of the Shares by the Seller to the Purchaser in accordance with this Agreement is approved.

13.1.2 The Seller in its capacity as the only shareholder of the Company made a shareholder resolution of the Company, attached as Appendix 13.1.2 for documentary purposes only, that the sale and assignment of the Shares by the Seller to the Purchaser in accordance with this Agreement is approved.

### **14. MISCELLANEOUS PROVISIONS**

#### **14.1 Shareholder Guarantee**

The Shareholders hereby guarantee as if they were the debtor themselves (*verbürgen sich selbstschuldnerisch für*) all obligations of the Seller arising out of or in connection with this Agreement.

#### **14.2 Public Announcements**

Subject to its legal obligations, the Seller shall (and shall cause the Company Group to) consult with the Purchaser regarding the timing and content of all announcements regarding this Agreement or the transactions contemplated hereby to the financial community, Governmental Entities, employees, customers, suppliers or the general public and shall use reasonable efforts to agree upon the text of any such announcement prior to its release.

#### **14.3 Notices**

All notices, communications and deliveries required or made hereunder must be made in writing, signed by or on behalf of the Party or Shareholder making the same (unless notarisation or any other specific form is required by mandatory law) and shall be delivered personally or by telecopy transmission (including transmission of PDF documents by e-mail) or by a national overnight courier service or by registered or certified mail (return receipt requested) (with postage and other fees prepaid) as follows:

**To the Purchaser:**

Melissa Brown, Esq.  
AEROVIRONMENT, Inc.  
900 Innovators Way  
Simi Valley, CA 93065  
USA  
[BrownM@avinc.com](mailto:BrownM@avinc.com)

Pursuant to Item 601(a)(6) of Regulation S-K, certain personally identifiable information contained in this document, marked by brackets as [\*\*\*], has been omitted.

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|--|--|
| <b>with a copy to:</b>   | Michael Prinz zu Löwenstein, Esq.<br>King & Spalding LLP<br>Taunustor 1<br>60310 Frankfurt am Main<br>Germany<br><a href="mailto:mloewenstein@kslaw.com">mloewenstein@kslaw.com</a>                          |
| <b>To the Seller:</b>  | Norbert Gebbeken<br>Unmanned Systems Investments<br>GmbHVogelsangstraße 8<br>73760 Ostfildern<br><a href="mailto:Gebbeken.usi@gmail.com">Gebbeken.usi@gmail.com</a>  |
| <b>with a copy to:</b>   | Dr. Timo Huesmann, Esq.<br>Stahl & Kessler Rechtsanwälte Partnerschaft<br>mbBRichard-Wagner-Straße 10<br>70184 Stuttgart<br><a href="mailto:timo.huesmann@sk-stuttgart.de">timo.huesmann@sk-stuttgart.de</a> |
| <b>To the Shareholders:</b>                                      | Norbert Gebbeken<br>[***]<br><br>Thomas Biehne<br>[***]<br><br>Adam Jaroh<br>[***]   |
| <b>with a copy to:</b>   | Dr. Timo Huesmann, Esq.<br>Stahl & Kessler Rechtsanwälte Partnerschaft<br>mbBRichard-Wagner-Straße 10<br>70184 Stuttgart<br><a href="mailto:timo.huesmann@sk-stuttgart.de">timo.huesmann@sk-stuttgart.de</a> |
| <b>To the Notary (for purposes of the notary trust account):</b> | Dr. Klaus K. Fischer, LL.M.<br>Göring, Schmiegelt & Fischer<br>Neue Mainzer Str. 75<br>60311 Frankfurt am Main<br><a href="mailto:k.fischer@gsf-law.de">k.fischer@gsf-law.de</a>                             |

or to such other representative or at such other address of a Party or Shareholder as such Party or Shareholder may furnish to the other Parties and to the Shareholders in writing. Any such notice, communication or delivery shall be deemed given or made (a) on the date of delivery, if delivered in person, or (b) upon transmission by facsimile, (c) on the first Business Day following timely delivery to an international overnight courier service or (d) on the actual date of receipt following it being mailed by surface or air mail.

#### **14.4 Schedules and Appendices**

The Schedules and Appendices are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein and/or in the Reference Deed.

#### **14.5 Assignment; Successors in Interest**

14.5.1 No assignment or transfer by any Party of such Party's rights and obligations hereunder shall be made except with the prior written consent of the other Party; provided that the Purchaser shall, without the obligation to obtain the prior written consent of any other Party, be entitled to assign this Agreement or all or any part of its rights or obligations (with the exception of any payment obligation) hereunder to one or more Affiliates of the Purchaser, provided that the Purchaser shall be obliged to re-assign any previously assigned rights and obligations to the Purchaser at the moment the Purchaser loses control over such Affiliate.

14.5.2 This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns, and any reference to a Party shall also be a reference to the successors and permitted assigns thereof.

#### **14.6 Captions**

The titles, captions and table of contents contained herein are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

#### **14.7 Governing Law**

It is the mutual understanding of the Parties that this Agreement shall be governed by and construed and enforced in accordance with the laws of Germany.

#### **14.8 Dispute Resolution**

All disputes out or in connection with the present contract shall be subject to the exclusive jurisdiction of the courts in Frankfurt am Main, Germany.

#### **14.9 Amendments**

Any amendment, supplementation (*Ergänzung*) or suspension (*Aufhebung*) of this Agreement, including this provision, shall be valid only if agreed in writing (*Schriftform*), except where a stricter form (e.g. notarisation) is required under mandatory law.

#### **14.10 Severability**

If any provision of this Agreement should be or become wholly or partially void (*nichtig*), ineffective (*unwirksam*) or unenforceable (*undurchsetzbar*), the validity, effectiveness and enforceability of the other provisions of this Agreement shall not be affected thereby. Any such void, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the void, ineffective or unenforceable provision as it regards subject-matter, extent (*Maß*), time, place and scope (*Geltungsbereich*). The aforesaid shall apply *mutatis mutandis* to any gap (*Lücke*) in this Agreement.

#### **14.11 Cooperation Following the Closing**

Following the Closing, each Party shall deliver to the other Parties such further information and documents and shall execute and deliver to the other Parties such further instruments and agreements as any other Party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other Party the benefits hereof.

#### **14.12 Transaction Costs**

Except as provided above or as otherwise expressly provided herein each Party and the Shareholders shall pay its own fees, costs and expenses incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its financial advisors, accountants and counsel.

The Purchaser shall bear the brokerage commission due to BNP Paribas Securities Corp.. The Seller shall solely be responsible for the fees and expenses of any other broker set forth on Disclosure Schedule 28.

The costs of notarisation of this Agreement and of the Escrow Fund shall be borne by the Purchaser. The costs of the providing of the data room services by Datasite shall be borne by the Seller and, to the extent already paid by Purchaser, shall be reimbursed by the Seller to the Purchaser.

All premiums, broker commissions, underwriting commissions, Taxes, and other fees and expenses payable with respect to the R&W Insurance Policy or in accordance with the terms of the R&W Insurance Policy shall be borne by Seller at 50% (the “**Seller R&W Insurance Contribution**”) and by the Purchaser for the remainder. The Seller R&W Insurance Contribution will be paid by deduction from the purchase price payment pursuant to Clause 3.1e).

#### **14.13 Language**

The language of this Agreement is English and all documents, notices, waivers and all other written communication or otherwise between the Parties in connection with this Agreement shall be in English. If this Agreement is translated into another language, the English language text shall prevail, provided that the rule in Sub-Clause 1.2.1i) shall not be affected.

#### **14.14 Data Room**

At or prior to the date hereof, each Party has been provided by Datasite with a data storage device containing all contents of the data room until the date of the closing thereof and with a certificate of Datasite confirming such date and the fact that the device contains all such contents. A warranty stating that certain documents have been made available, provided or delivered to the Purchaser shall mean that the documents in question have been included in the data room.

A further copy of the data storage device shall, for a period of five years, be deposited with the Notary; upon request of either Party the Notary will provide such Party with a copy of that device. The Notary shall not be liable for the conservation, preservation and/or content of such data storage device. After elapse of the said five year period the Notary shall be entitled to destroy the device.

## SCHEDULE 1 - SELLER WARRANTIES

### 1. ORGANISATION

- 1.1 Each Group Company is a corporation or limited liability company, as applicable, duly formed and validly existing under the laws of the jurisdiction of incorporation or organisation, as applicable, set forth on Disclosure Schedule 3 and each has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted.
- 1.2 Each Group Company is duly qualified or registered as a foreign corporation or limited liability company, as applicable, to transact business under the Laws of each jurisdiction where the character of its activities or the location of the properties owned or leased by it requires such qualification or registration.
- 1.3 The Seller has heretofore made available to the Purchaser true, correct and complete copies of the constitutional documents of each Group Company as currently in effect and the corporate or limited liability company, as applicable, record books with respect to actions taken by its shareholders, board of directors, members or managers, as applicable.
- 1.4 Disclosure Schedule 1 contains a true, correct and complete list of the jurisdictions in which the Subsidiary is qualified or registered to do business as a foreign corporation.

### 2. CAPITAL SHARE

- 2.1 Disclosure Schedule 2.1 accurately and completely sets forth the capital structure of each Group Company including the number of shares of capital share, units or other equity interests which are authorised and which are issued and outstanding.
- 2.2 All of the issued and outstanding shares of capital share, units or other equity interests of each Group Company:
- (a) are duly authorised, validly issued, fully paid and non-assessable,
  - (b) are held of record by the Persons and in the amounts set forth on Disclosure Schedule 2.1, and
  - (c) were not issued or acquired by the holders thereof in violation of any Law, agreement or the pre-emptive rights of any Person.
- 2.3 Except as set forth on Disclosure Schedule 2.1, no shares of capital share, units or other equity interests of a Group Company are reserved for issuance or are held as treasury shares, and
- (a) there are no outstanding options, warrants, rights, calls, commitments, conversion rights, rights of exchange, subscriptions, claims of any character, agreements, obligations, convertible or exchangeable securities or other plans or commitments, contingent or otherwise, relating to the capital share of a Group Company;
  - (b) there are no outstanding contracts or other agreements of a Group Company, the Seller or any other Person to purchase, redeem or otherwise acquire any outstanding shares of capital share, units or other equity interests of a Group Company, or securities or obligations of any kind convertible into any shares of the capital share, units or other equity interests of a Group Company;
  - (c) there are no dividends which have accrued or been declared but are unpaid on the capital share, units or other equity interests of a Group Company;

- (d) there are no outstanding or authorised share appreciation, phantom share, share plans or similar rights with respect to a Group Company; and
- (e) there are no voting agreements or other agreements relating to the management of a Group Company. Except as set forth on Disclosure Schedule 2.1, no Group Company has ever purchased, redeemed or otherwise acquired any shares of capital share, units or other equity interests of a Group Company.

2.4 The merger into the Company of the former telerob Gesellschaft für Fernhantierungstechnik mbH (HRB 214151 of the Commercial Register at the Local Court (*Amtsgericht*) in Stuttgart) was valid and effective and does not give rise to any rights or claims of former shareholders of such merged entity.

2.5 Other than the Seller, no other Person is the record holder of any capital share, units or other equity interests in the Company. Since October 6, 2016, no prior offer, issue, redemption, call, purchase, sale, transfer, negotiation or other transaction of any nature or kind with respect to any capital share (including options, warrants or debt convertible into shares, options or warrants) of a Group Company or any entity that has been merged into a Group Company has given rise to any claim or action by any Person that is enforceable against a Group Company, the Seller, or the Purchaser, and to the knowledge of the Seller and the Shareholders, no fact or circumstance exists that could give rise to any such right, claim or action. A list of all redemptions or transfers of shares of capital share, units or other equity interests of a Group Company since incorporation is set forth on Disclosure Schedule 2.1.

### 3. SUBSIDIARIES

Except as set forth on Disclosure Schedule 3, no Group Company has since October 6, 2016, owned, nor does it currently own, directly or indirectly, any capital share or other equities, securities or interests in any other corporation or in any limited liability company, partnership, joint venture or other entity or otherwise Control any other such entity. Other than the Company, no other Person is the record holder of any capital share, units or other equity interests in the Subsidiary.

### 4. REAL PROPERTY

4.1 No Group Company is the owner of any real property or is holding any rights assimilated to real property (*grundstücksgleiche Rechte*).

4.2 Disclosure Schedule 4.2 sets forth a true and correct legal description of the Leased Real Property.

4.3 Each relevant Group Company, as listed on Disclosure Schedule 4.2, has a valid leasehold interest in the Leased Real Property, and the leases granting such interests are in full force and effect.

4.4 No portion of the Leased Real Property, or any building or improvement located thereon, materially violates any Law for which compliance a Group Company is responsible, including – but subject to the above limitation – those Laws relating to zoning, building, land use, environmental, health and safety, fire, air, sanitation and noise control.

Except for the Permitted Liens, to the Knowledge of the Seller and the Shareholders, no Leased Real Property is subject to:

- (a) any decree or order of any Governmental Entity (or, to the Knowledge of the Seller and each Group Company, threatened or proposed order) or
  - (b) any rights of way, building use restrictions, exceptions, variances, reservations or limitations of any nature whatsoever.
- 4.5 Except as set forth in Disclosure Schedule 4.5, the improvements and fixtures on the Leased Real Property are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, are adequate and suitable for the purposes for which they are presently being used. Except as set forth in Disclosure Schedule 4.5, to Sellers Knowledge, none of the buildings and improvements owned or utilized by a Group Company is constructed of, or contains as a component part thereof, any material that, either in its present form or as such material could reasonably be expected to change through aging and normal use and service, releases any substance, whether gaseous, liquid or solid, which is or may be, either in a single dose or through repeated and prolonged exposure, injurious or hazardous to the health of any individual who may from time to time be in or about such buildings or improvements. There is no condemnation, expropriation or similar proceeding pending or, to the Knowledge of the Seller and the Shareholders, threatened against any of the Leased Real Property or any improvement thereon.
- 4.6 The Leased Real Property constitutes all of the real property utilized by the Company Group in the operation of the Business.
5. **TITLE TO ASSETS; RELATED MATTERS**
- 5.1 Except as set forth on Disclosure Schedule 5, the Group Companies have good and marketable title to all of their respective property and assets, free and clear of all Liens except Permitted Liens.
- 5.2 All equipment and other items of tangible personal property and assets of the Group Companies:
- (a) are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted;
  - (b) were acquired and are usable in the Ordinary Course and materially conform to all Applicable Laws.
- 5.3 The Seller and each Group Company has no Knowledge of any material defect or problem with any of such equipment, tangible personal property or assets, other than ordinary wear and tear.
- 5.4 Except as set forth on Disclosure Schedule 5, since December 31, 2019, no Group Company has sold, transferred or disposed of any assets, other than sales of inventory in the Ordinary Course.
- 5.5 Disclosure Schedule 5 sets forth a true, correct and complete list and general description of each item of tangible personal property of each Group Company (including leased personal property) having a book value of more than €10,000 or, if not recognized in the balance sheet, aggregate lease or rent payments remaining outstanding from the Locked Box Date until the term of the lease or rental agreement of more than €10,000.
6. **INVENTORY AND PRODUCTS**
- 6.1 The Group Companies' inventory (both as of the date hereof and on the Closing Date)
- (a) is sufficient for the operation of the Business in the Ordinary Course,
  - (b) consists of items that are good and merchantable within normal trade tolerances,



- (c) is of a quality and quantity presently usable or saleable in the Ordinary Course (subject to applicable reserves),
- (d) is valued on the books and records of a Group Company, as applicable, at the lower of cost or market value with the cost determined under the moving average cost (*gleitender Durchschnitt*) method consistent with past practice, and
- (e) is subject to reserves determined in accordance with GAAP consistently applied, specifically including reserves for obsolescence and excess inventory. No previously sold inventory is subject to returns in excess of those historically experienced by the Group Companies.

6.2 The products manufactured or sold by the Group Companies in the Business until the Closing Date:

- (a) are, and have been, in material compliance with all Applicable Laws;
- (b) do not and will not give rise to any recall obligation of a Group Company or to product liability or personal injury claim of any third party;
- (c) are, and at all relevant times have been, fit for ordinary purposes for which they are intended to be used and conform in all material respect to any promises or affirmations of fact made with respect to such products.

6.3 There is no design defect with respect to any of such products, and each of such products contains adequate warnings, presented in a reasonably prominent manner, in accordance with Applicable Law and current industry practice with respect to its contents and use.

## 7. FINANCIAL STATEMENTS

7.1 The Financial Statements are attached as Disclosure Schedule 7.

7.2 Except as expressly noted on Disclosure Schedule 7, the Financial Statements have been prepared in accordance with GAAP from the books and records of the Group Companies, and such books and records have been maintained on a basis consistent with GAAP.

7.3 Each balance sheet included in the Financial Statements (including the related notes and schedules, if any) fairly presents the financial position of each Company and its Subsidiaries or the relevant Group Company, as applicable, as of the date of such balance sheet, and each statement of income and cash flows included in the Financial Statements (including any related notes and schedules, if any) fairly presents the results of operations and changes in cash flows of each Company and its Subsidiaries or the relevant Group Company, as applicable, for the periods set forth therein, in each case in accordance with GAAP (except as expressly noted therein or as disclosed on Disclosure Schedule 7) and in each case to the extent the relevant facts were known or could have been known using the diligence of a proper merchant at the time the relevant balance sheet or statement of income and cash flows, as the case may be, were prepared.

7.4 Since December 31, 2019, there has been no change in any accounting (or tax accounting) policy, practice or procedure of a Group Company.

7.5 The Group Companies maintain accurate books and records reflecting each of their assets and liabilities and maintain proper and adequate internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of annual financial statements for external purposes in accordance with GAAP.

**8. NO UNDISCLOSED LIABILITIES**

Except as disclosed on Disclosure Schedule 8, no Group Company has any liability or obligation (whether absolute, accrued, contingent or otherwise) that is not adequately reflected or provided for in the Financial Statements in accordance with GAAP, except liabilities and obligations that have been incurred since the date of the relevant Financial Statement in the Ordinary Course, and no Group Company owes any Group Debt other than the Lockman Outstanding.

**9. ABSENCE OF CERTAIN CHANGES**

Since December 31, 2019 and except as set forth on Disclosure Schedule 9, there has not been:

- (a) any Material Adverse Effect,
- (b) any damage, destruction, loss or casualty to property or assets of a Group Company with a value in excess of € 10.000,00, whether or not covered by insurance.

**10. LEGAL PROCEEDINGS**

**10.1** Except as set forth on Disclosure Schedule 10, there is no suit, action, claim, arbitration, proceeding or investigation pending or, to the Knowledge of the Seller and each Group Company, threatened against, relating to or involving a Group Company or its respective real or personal property before any Governmental Entity or arbitrator (a “**Legal Proceeding**”).

**10.2** None of the Legal Proceedings set forth on Disclosure Schedule 10, if finally determined adversely, is reasonably likely, individually or in the aggregate, to have a Material Adverse Effect. No Group Company is subject to any judgment, decree, injunction, rule or order of any court or arbitration panel except those shown in Disclosure Schedule 10 and except those that have been fully settled.

**11. COMPLIANCE WITH LAW**

**11.1** Each Group Company is (and has been at all times since October 6, 2016, and to the Knowledge of Seller during the past five (5) years) in material compliance with all Applicable Laws (including Applicable Laws relating to corruption, environmental matters and the safety and health of employees).

**11.2** To the Knowledge of the Seller and each Group Company each reseller who was or is engaged in selling products of the Company Group in any jurisdiction is (and has been since October 6, 2016, and to the Knowledge of Seller during the past five (5) years) in compliance with all Anti-Corruption Laws.

**11.3** Except as set forth on Disclosure Schedule 11, since October 6, 2016, and to the Knowledge of Seller during the past five (5) years:

- (a) no Group Company has been charged with, nor received any written notice that it is under investigation with respect to, and, to the Knowledge of the Seller and each Group Company, no Group Company is otherwise now under investigation with respect to, any violation of any Applicable Law or other requirement of a Governmental Entity,
- (b) no Group Company is a party to, or bound by, any order, judgment, decree, injunction, rule or award of any Governmental Entity or arbitrator and
- (c) each Group Company has filed all reports and has all Licenses required to be filed with any Governmental Entity on or prior to the date hereof.

**11.4** No Group Company or any of its Officers or Directors is debarred or suspended from doing business with any Governmental Entity.

- 11.5 Each Group Company and their agents and to the Knowledge of the Seller and each Group Company each reseller engaged in the selling of products of the Company Group in any jurisdiction are (and have been at all times since October 6, 2016, and to the Knowledge of Seller during the past five (5) years) in compliance with all Applicable Laws related to (i) participation in unsanctioned foreign boycotts and (ii) the import and export of goods, equipment, materials, software, technology, and services, including the following:
- (a) all applicable provisions of the German Foreign Trade Act (*Außenwirtschaftsgesetz*), Foreign Trade Ordinance (*Außenwirtschaftsverordnung*), War Arms Control Act (*Kriegswaffenkontrollgesetz*) and other legislation concerning arms (*Waffengesetze*);
  - (b) all applicable directly effective provisions of European Union legislation including those relating to customs duties, foreign trade, sanctions, anti-dumping, arms embargos and arms control, including Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items;
  - (c) all applicable export controls compliance requirements contained in the Export Control Reform Act (50 U.S.C. § 4801) and the Export Administration Regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security (15 C.F.R. Parts 730-774) and the Arms Export Control Act (22 U.S.C. § 2778) and the International Traffic in Arms Regulations administered by the U.S. Department of State (22 C.F.R. Parts 120-130), the antiboycott regulations administered by the U.S. Department of Commerce's Office of Antiboycott Compliance (15 C.F.R. Part 760), and the antiboycott provisions of the Internal Revenue Code administered by the U.S. Department of the Treasury's Internal Revenue Service (26 U.S.C. § 999);
  - (d) all applicable economic sanctions authorities administered by the U.S. Department of the Treasury's office of Foreign Assets Control, including but not limited to regulations located at 31 C.F.R. Chapter V and economic sanctions promulgated pursuant to the International Emergency Economic Powers Act and the Trading With The Enemy Act, and economic sanctions authorities administered by the U.S. Department of State's Office of Economic Sanctions Policy and Implementation;
  - (e) all applicable customs and import compliance requirements contained in the Tariff Act of 1930, as amended, and related authorities administered or enforced by the U.S. Department of Commerce, U.S. International Trade Commission, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement; and
  - (f) all applicable certification, permitting, valuation, classification, reporting, and recordkeeping requirements concerning the importation of products.

## 12. COMPANY CONTRACTS

- 12.1 Disclosure Schedule 12 sets forth a true, correct and complete list of the following contracts to which a Group Company is a party, by which a Group Company or any property of any thereof is subject, or by which a Group Company is otherwise bound, whether oral or written (the "**Company Contracts**") (other than the Employment Agreements set forth on Disclosure Schedule 14 and the insurance policies set forth on Disclosure Schedule 16) to the extent any obligation by any party thereto (including warranty obligations) is outstanding as of the date hereof regardless of whether due or not yet due:

- (a) all bonds, debentures, notes, loans, credit or loan agreements or loan commitments, mortgages, indentures, guarantees or other contracts relating to the borrowing of money or binding upon any properties or assets (real, personal or mixed, tangible or intangible) of a Group Company;
- (b) all leases relating to the Leased Real Property or other leases or licenses involving any properties or assets (whether real, personal or mixed, tangible or intangible);
- (c) all contracts and agreements that (i) limit or restrict the Group Companies or any of their Officers or Directors, employees, the Seller or other equity holders, agents or representatives (in their capacity as such) from engaging in any business or other activity in any jurisdiction; (ii) create or purport to create any exclusive or preferential relationship or arrangement; (iii) otherwise restrict or limit the ability of the Group Companies to operate or expand the Business; or (iv) impose, or purport to impose, any obligations or restrictions on Affiliates of the Company;
- (d) all confidentiality agreements;
- (e) all contracts and agreements for capital expenditures or the acquisition or construction of fixed assets requiring the payment by a Group Company of an amount in excess of €20,000.00 in each case;
- (f) all contracts and agreements that provide for an increased payment or benefit, or accelerated vesting, upon the execution hereof, or the Closing, or in connection with the transactions contemplated hereby;
- (g) all contracts and agreements granting any Person a Lien on all or any part of any asset other than Permitted Liens;
- (h) all contracts and agreements for the cleanup, abatement or other actions in connection with any Hazardous Materials, the remediation of any existing environmental condition or relating to the performance of any environmental audit or study;
- (i) all contracts and agreements granting to any Person an option or a first refusal, first-offer or similar preferential right to purchase or acquire any assets;
- (j) all contracts and agreements with any agent, distributor or representative that is not terminable without penalty on thirty (30) days' or less notice;
- (k) all contracts and agreements for the granting or receiving of a license, sublicense or franchise or under which any Person is obligated to pay or has the right to receive a royalty, license fee, franchise fee or similar payment;
- (l) all contracts, licenses and agreements to which a Group Company is a party
  - (i) with respect to Company Intellectual Property licensed or transferred to any third party (other than end-user licenses in the Ordinary Course) or
  - (ii) pursuant to which a third party has licensed or transferred any Company Intellectual Property to a Group Company;
- (m) all contracts and agreements providing for the indemnification or holding harmless of any Officer or Director, employee or other Person;
- (n) all joint venture or partnership contracts and all other contracts providing for the sharing of any profits;

- (o) all contracts or agreements entered into involving the sale or purchase of assets or capital share of any Person, other than in the Ordinary Course, or a merger, consolidation, business combination or similar transaction;
- (p) all customer contracts and agreements (excluding work orders and purchase orders individually providing revenue to a Group Company of an amount (net of VAT or sales tax) of less than €100,000) for the provision of goods or services by a Group Company;
- (q) all supply contracts and agreements (excluding work orders and purchase orders individually requiring a Group Company to spend an amount (net of VAT or sales tax) of less than € 100,000) for the provision of goods or services for a Group Company;
- (r) all outstanding powers of attorney empowering any Person to act on behalf of a Group Company;
- (s) all U.S. Government Contracts; and
- (t) all existing contracts and agreements (other than those described in sub-clauses (a) through (r) of this paragraph 12.1 of the Schedule)
  - (i) involving an annual commitment or annual payment to or from a Group Company of more than €100,000 (net of VAT or sales tax) individually or
  - (ii) that is material to the Company Group, individually or in the aggregate.

- 12.2 True, correct and complete copies of all Company Contracts have been made available to the Purchaser.
- 12.3 The Company Contracts are legal, valid, binding and enforceable in accordance with their respective terms with respect to a Group Company, as applicable, and each other party to such Company Contracts.
- 12.4 There is no existing material default or breach of a Group Company, as applicable, under any Company Contract (or event or condition that, with notice or lapse of time or both could constitute a default or breach) and, to the Knowledge of the Seller and each Group Company, there is no such default or breach (or event or condition that, with notice or lapse of time or both, could constitute a default or breach) with respect to any third party to any Company Contract.
- 12.5 No Group Company is participating in any discussions or negotiations regarding modification of or amendment to any Company Contract or entry in any new material contract applicable to a Group Company or the real or personal property of a Group Company outside the Ordinary Course.
- 12.6 Disclosure Schedule 12 identifies with an asterisk each Company Contract set forth therein that requires the consent of or notice to the other party thereto to avoid any breach, default or violation of such contract, agreement or other instrument in connection with the transactions contemplated hereby.
- 12.7 With respect to the U.S. Government Contracts:
  - (a) U.S. Government Contracts and Bids. Disclosure Schedule 12.7(a) lists (i) U.S. Government Contracts the period of performance of which has not yet expired or terminated or for which final payment has not yet been received (the “**Current U.S. Government Contracts**”); (ii) quotations, bids and proposals for awards of new U.S. Government Contracts made by a Group Company for which no award has been made and for which a Group Company believes there is a reasonable prospect that such an award to such Group Company may yet be made (the “**U.S. Government Contract Bids**”); and (iii) U.S. Government Contracts pursuant to which a Group Company is currently or is reasonably likely to

experience cost, schedule, technical or quality problems that could result in claims against such Group Company (or its successors in interest) by a U.S. Governmental Entity, a prime contractor or a higher-tier subcontractor. The Seller has delivered to the Purchaser true and complete copies of all Current U.S. Government Contracts and of all U.S. Government Contract Bids, including all amendments and other modifications thereto, and has provided the Purchaser with access to true and correct copies of all documentation related thereto requested by the Purchaser. With respect to each Current U.S. Government Contract, Disclosure Schedule 12.7(a) accurately lists (A) the contract number, (B) the award date and (C) the contract end date. With respect to each such U.S. Government Contract Bid, Disclosure Schedule 12.7(a) accurately lists: (A) the request for proposal (RFP) number; (B) the date of proposal submission; (C) the expected award date, if known; (D) the estimated period of performance; and (E) the estimated value based on the proposal, if any. Only the Subsidiary has entered into any U.S. Government Contracts or is an offeror for any U.S. Government Contract Bids.

- (b) Protests. To the Knowledge of the Seller, the Current U.S. Government Contracts are not currently the subject of bid or award protest proceedings, no such Current U.S. Government Contracts are reasonably likely to become subject of bid or award protest proceedings, and no Person has notified the Seller or a Group Company that any U.S. Governmental Entity, prime contractor or higher-tier subcontractor under a U.S. Government Contract intends to seek the agreement of a Group Company to lower rates under any of the U.S. Government Contracts or U.S. Government Contract Bids, including, without limitation, any task order under any U.S. Government Contract Bids.
- (c) Compliance with Contracts. Except as set forth in Disclosure Schedule 12.7(a), (i) each Group Company has materially complied with all terms and conditions of each U.S. Government Contract and U.S. Government Contract Bid to which it is a party, and has materially performed all obligations required to be performed by it thereunder; (ii) each Group Company has complied with all statutory and regulatory requirements, including, without limitation, the Federal Acquisition Regulation (“**FAR**”), and any applicable agency-specific acquisition regulation and related cost principles, where and as applicable to each of the Current U.S. Government Contracts and the U.S. Government Contract Bids; and (iii) the representations, certifications and warranties made by a Group Company with respect to the U.S. Government Contracts or U.S. Government Contract Bids were accurate as of their effective dates, and such Group Company has materially complied with all such certifications.
- (d) Notice of Non-Compliance. With respect to the Current U.S. Government Contracts, (i) neither the Seller nor Group Company has received any written or oral show cause, cure, deficiency, default or similar notice relating to a Current U.S. Government Contract; (ii) no termination for default, cure notice or show cause notice has been issued or threatened and remains unresolved with respect to any U.S. Government Contract or U.S. Government Contract Bid, and to the Knowledge of the Seller no event, condition or omission has occurred or exists that would constitute grounds for such action; (iii) all invoices and claims (including, without limitation, requests for progress payments and provisional costs payments) submitted under each U.S. Government Contract were current, accurate and complete in all material respects as of their submission date; and (iv) none of the execution, delivery or performance of this Agreement and the other documents contemplated hereby does or will conflict with or result in a breach of or default under any U.S. Government Contract or cause a termination of any U.S. Government Contract. None of the Seller, the Company nor the Subsidiary has received any written or oral notice terminating any of the

Current U.S. Government Contracts for convenience or indicating an intent to terminate any of the Current U.S. Government Contracts for convenience.

- (e) No Preferential Status Awards. None of the U.S. Government Contracts are small business set-aside contracts or were awarded based upon the business status of the relevant Group Company.
- (f) False Claims, Defective Pricing and Requests for Pricing Reductions. No Group Company has taken any action (nor has either received any allegations from employees, consultants or independent contractors with respect to any alleged act or omission) or is party to any litigation that could reasonably be expected to give rise to (i) liability under the False Claims Act; (ii) a claim for price adjustment under the Truthful Cost or Pricing Data Act; or (iii) any other request for a reduction in the price of any U.S. Government Contract. There exists no basis for a claim of any liability of the Truthful Cost or Pricing Data Act by any U.S. Governmental Entity as a result of defective cost and pricing data submitted to any U.S. Governmental Entity. Neither the Seller nor a Group Company has conducted or initiated any internal investigation or made a voluntary or involuntary disclosure to any U.S. Governmental Entity with respect to (x) liability under the False Claims Act; (y) a claim for price adjustment under the Truthful Cost or Pricing Act; or (z) any other request for a reduction in the price of any U.S. Government Contracts, including claims based on actual or alleged defective pricing.
- (g) Cost-Type Contracts. Disclosure Schedule 12.7(a) identifies with an asterisk all cost-type U.S. Government Contracts. Each Group Company is in compliance with all cost accounting standards and other Laws applicable to costs charged to U.S. Government Contracts.
- (h) Suspension and Debarment. No Group Company nor any of its respective managers, Officers and Directors or employees in connection with the performance of duties for or on behalf of a Group Company has been debarred, suspended or proposed for suspension or debarment from bidding on any U.S. Government Contract, declared nonresponsible or ineligible or otherwise excluded from participation in the award of any U.S. Government Contract, or for any reason listed on the List of Parties Excluded from Federal Procurement and Non-procurement Programs. No debarment, suspension or exclusion proceeding has been initiated against any Group Company, or any of their respective managers, Officers and Directors or employees in connection with the performance of its duties for or on behalf of a Group Company. To the Knowledge of the Seller, no circumstances exist that would warrant the institution of suspension or debarment proceedings against any Group Company, or any of their respective managers, Officers and Directors or employees in connection with the performance of their duties for or on behalf of a Group Company.
- (i) Audits, Investigations and Enforcement Actions. Except as set forth in Disclosure Schedule 12.7(a), (i) since its inception, to the Knowledge of the Seller, no Group Company has undergone or is currently undergoing any audit, review, inspection, investigation, survey or examination of records relating to any U.S. Government Contract; (ii) no Group Company has received written notice of, and no Group Company has undergone, any investigation or review relating to any U.S. Government Contract; (iii) no such audit, review, inspection, investigation, survey or examination of records is threatened or pending; and (iv) no Group Company has received any official notice that it is or was being specifically audited or investigated by the Government Accountability Office, the Defense Contract Audit Agency of the United States Government, the U.S. Congress, any state or federal agency Inspector General, any state Attorney General, the contracting officer with respect

to any U.S. Government Contract, or the Department of Justice (including any United States Attorney).

- (j) Multiple Award Schedule Contracts. No Group Company has any Federal Supply Service multiple award schedule U.S. Government Contracts, or similar state multiple award schedule Current U.S. Government Contracts.
- (k) Warranties and Guaranties. No written claims, or claims threatened in writing, exist against a Group Company with respect to express warranties and guarantees contained in U.S. Government Contracts on products or services provided by a Group Company; and no such claims have been made against any Group Company. No amendment has been made to any written warranty or guarantee contained in any U.S. Government Contract that could reasonably be expected to result in a Material Adverse Effect on a Group Company. No Group Company has taken any action which could reasonably be expected to give any Person a right to make a claim under any written warranty or guarantee contained in any U.S. Government Contract.
- (l) No Assignment of Contracts. No Group Company has assigned or otherwise conveyed or transferred, or agreed to assign or otherwise convey or transfer, to any Person any U.S. Government Contract or any account receivable relating thereto, whether as a security interest or otherwise.
- (m) Personnel. All personnel who performed or are currently performing under any U.S. Government Contract met or meet all express qualification requirements for the labor categories under which they have been charged, or are being charged. All personnel listed in any U.S. Government Contract Bid or other bid, offer, or proposal meet all applicable requirements set forth in the applicable solicitation. No Group Company has replaced any personnel performing a U.S. Government Contract without obtaining all required approvals from the applicable U.S. Governmental Entity and any other party whose consent is required for replacement of personnel.
- (n) Facility Security Clearances. No Group Company holds facility security clearances.
- (o) Cybersecurity. Except as set forth in Disclosure Schedule 12.7(a),
  - (i) each Group Company has implemented and maintains such organizational, physical, administrative, and technical safeguards consistent with industry standards for the industries in which the relevant Group Company operates that are required under applicable Laws;
  - (ii) each Group Company has written information security policies (“**Company Security Policies**”) to the extent required under applicable Laws that govern an information security program that (x) identifies internal and external risks to the confidentiality, integrity, and availability of the information and Information Systems (as defined in the Department of Defense FAR Supplement) (including, for clarity, all information and transactions stored, processed, or transmitted therein or transmitted thereby) of the relevant Group Company; and (y) implements, monitors, and improves adequate and effective safeguards to control such risks. The Security Policies of each Group Company are consistent with the industry standards for the industry in which the relevant Group Company operates. Each Group Company complies in all material respects with its Security Policies;
  - (iii) each Group Company complies in all material respects with (i) applicable contractual requirements (such as the Department of Defense FAR Supplement 252.204-7012), and (ii) applicable Laws, concerning the safeguarding of information and Information



Systems (including, for clarity, all information and transactions stored, processed, or transmitted therein or transmitted thereby);

- (iv) since December 31, 2016, no Group Company has experienced a Security Incident that triggered reporting requirements defined by contract, such as the Department of Defense FAR Supplement 252.204-7012, or required by Law. “**Security Incident**” means an occurrence that: (a) impacts the confidentiality, integrity, or availability of an Information System; (b) impacts the information the Information System processes, stores, or transmits; or (c) constitutes a violation or imminent threat of violation of Company Security Policies, including acceptable use policies, or any security procedures, contractual requirements, or applicable Laws concerning the safeguarding of information and Information Systems (including, for clarity, all information and transactions stored, processed, or transmitted therein or transmitted thereby).
- (p) No government funding, facilities or resources of a university, college, other educational institution or research centre, or funding from third parties was used in the development of any Intellectual Property (or products created with any Intellectual Property) owned by any Group Company, and no U.S. Governmental Entity, including any university, college, other educational institution or research centre has any claim or right in or to the Intellectual Property (or products created with any Intellectual Property) owned by a Group Company. No current or former employee, consultant or independent contractor of a Group Company who was involved in, or who contributed to, the creation or development of any material element of any Intellectual Property (or products created with any Intellectual Property), has performed services for the government, a university, college or other educational institution, or a research centre, during a period of time during which such employee, consultant or independent contractor was also performing services for the relevant Group Company.
- (q) All technical data, computer software and computer software documentation (as those terms are defined under the FAR and its supplemental regulations) developed, delivered, or used under or in connection with the U.S. Government Contracts have been properly and sufficiently marked and protected so that no more than the minimum rights or licenses required under applicable regulations and U.S. Government Contract terms, if any, have been provided. All disclosures, elections, and notices required by applicable regulations and contract terms to protect ownership of inventions developed, conceived or first actually reduced to practice under U.S. Government Contracts have been made and provided. All technical data, computer software and computer software documentation was developed at private expense and no U.S. Governmental Entity has obtained by contract or otherwise, rights in the technical data, computer software and computer software documentation that will affect the commercial value thereof.

### 13. TAXES

#### 13.1 Except as otherwise disclosed on Disclosure Schedule 13.1:

- (a) all Tax Returns of each Group Company due to have been filed through the date hereof in accordance with any Applicable Law have been duly filed and are correct and complete in all material respects;
- (b) all Taxes, deposits of Taxes or other payments relating to Taxes due and owing by each Group Company (whether or not shown on any Tax Return), have been paid in full;
- (c) there are not now any extensions of time in effect with respect to the dates on which any Tax Returns of a Group Company were or are due to be filed;

- (d) all deficiencies asserted as a result of any examination of any Tax Returns of a Group Company have been paid in full, accrued on the books of a Group Company, as applicable, or finally settled, and no issue has been raised in any such examination which, by application of the same or similar principles, reasonably could be expected to result in a proposed deficiency for any other period not so examined;
- (e) no claims have been asserted and no proposals or deficiencies for any Taxes of a Group Company are being asserted, proposed or, to the Knowledge of the Seller and each Group Company, threatened, and no audit or investigation of any Tax Return of a Group Company is currently underway, pending or, to the Knowledge of the Seller and each Group Company, threatened;
- (f) no claim has ever been made by a Taxing Authority in a jurisdiction in which a Group Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction;
- (g) each Group Company has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, Seller or other third party; there are no outstanding waivers or agreements by or on behalf of a Group Company for the extension of time for the assessment of any Taxes or deficiency thereof, nor are there any requests for rulings, outstanding subpoenas or requests for information, notice of proposed reassessment of any property owned or leased by a Group Company or any other matter pending between a Group Company and any Taxing Authority;
- (h) there are no Liens for Taxes (other than Liens for Taxes which are not yet due and payable), nor are there any Liens for Taxes which are pending or, to the Knowledge of the Seller and each Group Company, threatened;
- (i) no Group Company is a party to any Tax allocation or sharing agreement under which a Group Company will have any liability after the Closing;
- (j) no Group Company has any liability for the Taxes of any Person (other than for itself), as a transferee or successor, by contract, or otherwise;
- (k) no Group Company has made any payments, is obligated to make any payments, or is a party to any agreement that under certain circumstances could obligate it to make any payments that will not be deductible for Tax purposes;
- (l) each Group Company has at all times used proper accounting methods and periods in computing their Tax liability;
- (m) no Group Company has a permanent establishment in any territory other than Germany, the United States, Malta or Switzerland;
- (n) no Group Company has been granted binding or advance rulings of any Taxing Authority, nor has such binding or advance ruling been applied for;
- (o) no appeals or legal actions (*Einspruchs- oder Klageverfahren*) are pending (*anhängig*) for a Group Company;
- (p) no Group Company has been party to any transaction on non-arm's length terms, nor has it entered into a legal obligation to do so and each Group Company has prepared and maintained all documents required by mandatory law for Tax purposes and can provide such

documents to the Taxing Authorities (including but not limited to a transfer pricing documentation, if legally required, in compliance with all terms provided for by all applicable laws);

- (q) no Group Company has or had engaged any freelancers or similar off-payroll workers;
- (r) the Group Companies have recorded sufficient liabilities and/or accruals in the Financial Statements for all Taxes relating to assessment periods until and including the Locked Box Date;
- (s) the Group Companies have not entered into a settlement agreement, compromise, advance ruling (*verbindliche Auskunft*), advance transfer pricing agreement or similar agreements relating to Taxes with any Taxing Authority;
- (t) the Group Companies have not written down any assets, including shares in other Group Companies, to their lower fair market value with the underlying reason for such write down being no longer in existence until lapse of the Locked Box Date;
- (u) except for the upstream merger in 2016, none of the Group companies has been subject to a reorganization under the German Reorganization Act (*Umwandlungsgesetz*) or other reorganizations or spin-offs and similar transactions under foreign law within the last 7 years.

13.2 Except as set forth on Disclosure Schedule 13.2, the Seller has delivered to the Purchaser true, correct and complete copies of all federal, state, local and foreign income Tax Returns for each Applicable Jurisdiction (together with any agent's reports and any accountants' work papers) relating to the operations of each Group Company for taxable years or periods ended on or before the Locked Box Date but not prior to 2016.

13.3 No Group Company has been a party to any transaction or scheme that is required by Applicable law to be disclosed or reported to a Governmental Entity.

#### 14. OFFICERS AND EMPLOYEES

14.1 Disclosure Schedule 14 contains a true, correct and complete list, except that the names of individuals have been omitted, of

- (a) all of the Officers and Directors of each Group Company, specifying their position, annual rate of compensation, work location, length of service, and other benefits provided to each of them, respectively; and
- (b) all of the employees (whether full-time, part-time or otherwise) and independent contractors of each Group Company as of the date hereof, specifying their position, status, annual salary, hourly wages, work location, length of service, other benefits provided to each of them, respectively, consulting or other independent contractor fees.

14.2 Except as set forth on Disclosure Schedule 14, no Group Company is a party to or bound by any Employment Agreement.

14.3 The Seller has provided to the Purchaser true, correct and complete copies of each Employment Agreement to which a Group Company is a party, or by which any of them is otherwise bound, except that the names of individuals have been redacted.

14.4 Each such Employment Agreement is legal, valid, binding and enforceable in accordance with its respective terms with respect to a Group Company, as applicable.

14.5 There is no existing default or breach of a Group Company, as applicable, under any Employment Agreement (or event or condition that, with notice or lapse of time or both could constitute a default or breach) and there is no such default (or event or condition that, with notice or lapse

of time or both, could constitute a default or breach) with respect to any third party to any Employment Agreement.

- 14.6 Neither a Group Company nor the Seller has received a written claim from any Governmental Entity to the effect that any Person not reflected on Disclosure Schedule 14 should be properly classified as an employee (*Arbeitnehmer*) and not as an independent contractor.
- 14.7 Except as reflected in Disclosure Schedule 14, neither a Group Company nor the Seller has made any verbal commitments to any officer, employee, former employee, consultant or independent contractor of a Group Company with respect to compensation, promotion, retention, termination, severance or similar matters in connection with the transactions contemplated hereby or otherwise.
- 14.8 Except as indicated on Disclosure Schedule 14, all officers and employees of each Group Company are active on the date hereof.

15. **LABOUR RELATIONS**

15.1 Except as set forth in Disclosure Schedule 15:

- (a) no Group Company is a party to any works council agreement (*Betriebsvereinbarung*), collective labour agreement (*Tarifvereinbarung*) or other collective bargaining agreement, contract or legally binding commitment with or to any trade union (*Gewerkschaft*) or other employee organisation, group works council (*Konzernbetriebsrat*) or works council (*Betriebsrat*) (or similar body) (“**Employee Organisation**”) in respect of or affecting employees;
- (b) no Group Company is currently engaged in any negotiation with any Employee Organisation;
- (c) no Group Company has engaged in any labour practice prohibited by Labour Laws, and there is no pending or, to the Knowledge of the Seller and each Group Company, threatened complaint regarding any alleged prohibited labour practices;
- (d) there is no strike, labour dispute, work slow down or stoppage pending or, to the Knowledge of the Seller and each Group Company, threatened against a Group Company;
- (e) there is no grievance or arbitration proceeding arising out of or under any collective bargaining agreement which is pending or, to the Knowledge of the Seller and each Group Company, threatened against a Group Company;
- (f) no Group Company has experienced any material work stoppage;
- (g) to the Knowledge of Seller no Group Company is the subject of any union organisation effort; and
- (h) there are no claims pending or, to the Knowledge of the Seller and each Group Company, threatened against a Group Company related to the status of any individual as an independent contractor or employee.

15.2 The Seller and each Group Company have complied with all legal obligations to inform or consult each applicable Employee Organisation about the signing and implementation of this Agreement and no such Employee Organisation has exercised any of its rights that would have the effect of delaying implementation of this Agreement.

**16. INSURANCE POLICIES**

- 16.1** Disclosure Schedule 16 sets forth a list of all policies of insurance maintained (currently maintained or held since October 6, 2016), owned or held by a Group Company (collectively, the “**Insurance Contracts**”), including the policy limits or amounts of coverage, deductibles or self-insured retentions, and annual premiums with respect thereto.
- 16.2** Such Insurance Contracts – if still applicable at the date hereof – are valid and binding in accordance with their terms, are in full force and effect, and the Insurance Contracts will continue in effect after the Closing Date. Similar coverage to the coverage set forth in the Insurance Contracts has been maintained on a continuous basis for the last five (5) years.
- 16.3** No Group Company have received written notice that
- (a) it has breached or defaulted under any of such Insurance Contracts, or
  - (b) that any event has occurred that would permit termination, modification, acceleration or repudiation of such Insurance Contracts.
- 16.4** Except as set forth in Disclosure Schedule 16, no Group Company is in default (including a failure to pay an insurance premium when due) in any material respect with respect to any Insurance Contract, nor has any Group Company failed to give any notice of any material claim under such Insurance Contract in due and timely fashion nor has any Group Company since October 6, 2016, nor to the Knowledge of Seller during the past five (5) years, been denied or turned down for insurance coverage.

**17. ENVIRONMENTAL**

Except as set forth on Disclosure Schedule 17:

- (a) each Group Company has all permits and approvals required under, and each is in full compliance with, all Environmental Laws, and each Group Company is in material compliance with all applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in all Environmental Laws or contained in any other Law, or any notice or demand letter issued thereunder;
- (b) no Group Company has received written notice of actual or threatened liability under Environmental Law from any Governmental Entity or any third party and there is no fact or circumstance that could form the basis for the assertion of any claim against a Group Company under any Environmental Law with respect to any on-site or off-site location;
- (c) no Group Company has entered into or agreed to enter into, and no Group Company has contemplated entering into, any consent decree or order, and since October 6, 2016, and to the Knowledge of Seller during the past ten (10) years, no Group Company is subject to any judgment, decree or judicial or administrative order relating to compliance with, or the cleanup of Hazardous Materials under, any applicable Environmental Law;
- (d) no Group Company has been alleged to be in violation of, and has not been subject to any administrative or judicial proceeding pursuant to, applicable Environmental Laws either now or any time during the past five (5) years;
- (e) no Group Company is subject to any claim, obligation, liability, loss, damage or expense of any kind or nature whatsoever, contingent or otherwise, incurred or imposed or based upon any provision of any Environmental Law or arising out of any act or omission of a Group Company, or a Group Company's employees, agents or representatives or arising out of the ownership, use, control or operation by a Group Company of any plant, facility,

site, area or property (including any plant, facility, site, area or property currently or previously owned or leased by a Group Company) from which any Hazardous Materials were released into the environment (the term “**release**” meaning any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, and the term “**environment**” meaning any surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air);

- (f) the Company has made available to the Purchaser true, correct and complete copies of all reports and – to the extent material to the Business – all correspondence, memoranda, computer data and files relating to environmental matters of the Company Group since October 6, 2016; and no Group Company has paid any fine, penalty or assessment since October 6, 2016, or to the Knowledge of Seller during the past five (5) years, with respect to environmental matters;
- (g) no Group Company nor any of its predecessor entities manufactures or has manufactured any product containing asbestos;
- (h) no Group Company nor any of its predecessor entities has paid any fine, penalty or assessment since October 6, 2016, or to the Knowledge of Seller during the past five (5) years with respect to environmental matters;
- (i) no Leased Real Property, improvement or equipment of a Group Company contains any asbestos, polychlorinated biphenyls, underground storage tanks, open or closed pits, sumps or other containers used for storage of substantial amounts of fluids; and
- (j) no Group Company has imported, manufactured, stored, managed, used, operated, transported, treated or disposed of any Hazardous Material other than in compliance with all Environmental Laws.

## **18. INTELLECTUAL PROPERTY**

- 18.1** Disclosure Schedule 18.1 contains a list of all Company Registered Intellectual Property, which identifies all Company Registered Intellectual Property, and identifies that which is owned and that which is licensed by each Group Company.
- 18.2** No Company Intellectual Property or product or service used by a Group Company related to Company Intellectual Property is subject to any proceeding or outstanding decree, order, judgment, agreement or stipulation
  - (a) restricting in any manner the use, transfer or licensing thereof by a Group Company or
  - (b) that may affect the validity, use or enforceability of the Company Intellectual Property or any such product or service.
- 18.3** Each item of Company Registered Intellectual Property is valid and subsisting.
- 18.4** All necessary registration, maintenance and renewal fees currently due in connection with Company Registered Intellectual Property have been made and all necessary documents, recordings and certifications in connection with the Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the Applicable Jurisdiction for the purpose of maintaining the Company Registered Intellectual Property.
- 18.5** The Company owns and has good and exclusive title to, or has licenses (sufficient for the conduct of the Business) to, each item of Company Intellectual Property, free and clear of any Lien (excluding licenses and related restrictions); and the Company is the exclusive owner or exclusive licensee of all trademarks and service marks, trade names and domain names used by a

Group Company, including the sale of any products or the provision of any services of a Group Company, free and clear of all Liens. No Group Company has granted any rights or interest in the Company Intellectual Property to a third party.

- 18.6** The Company owns exclusively and has good title to all copyrighted works used by a Group Company that
- (a) are products of a Group Company or
  - (b) a Group Company otherwise expressly purports to own, free and clear of all Liens.
- 18.7** Disclosure Schedule 18.7 lists all works of original authorship used by a Group Company and prepared by or on behalf of a Group Company (including Software programs) by title, version number, author(s) and publication date (if any), regardless of whether a Group Company has obtained or is seeking a copyright registration for such works.
- 18.8** To the extent that the Company Intellectual Property has been developed or created by a third party for a Group Company, the relevant Group Company has a written agreement with such third party with respect thereto and such Group Company thereby either
- (a) has ownership of and is the exclusive owner of, or
  - (b) has an irrevocable license (sufficient for the operations of each Group Company as currently conducted and as proposed to be conducted) to,
- all of such third party's Intellectual Property in such work, material or invention by operation of law or by valid assignment, to the extent it is sufficient for the conduct of the Business.
- 18.9** The operations of the Business, including the Group Companies' design, development, marketing and sale of the products or services of any such Group Company (including with respect to products currently under development), has not and does not infringe or misappropriate in any manner the Intellectual Property of any third party or, to the Knowledge of the Seller and each Group Company, constitute unfair competition or trade practices under the Laws of any jurisdiction.
- 18.10** The Seller and each Company Group has no Knowledge of, and has not received written notice of or any other overt threat from any third party, that the operation of the Business, or any act, product or service of a Group Company, infringes or misappropriates the Intellectual Property of any third party or constitutes unfair competition or trade practices under the Laws of any jurisdiction.
- 18.11** To the Knowledge of the Seller and each Group Company, no Person has or is infringing or misappropriating any Company Intellectual Property.
- 18.12** The Group Companies have taken reasonable steps to protect the rights of the relevant Group Companies in the Confidential Information and any trade secret or confidential information of third parties used by any Group Company, and, without limiting the generality of the foregoing, the Group Companies have enforced a policy requiring each employee and contractor to execute a proprietary information/confidentiality agreement in substantially the form provided to the Purchaser, and, except under confidentiality obligations, there has not been any disclosure by a Group Company of any Confidential Information or any such trade secret or confidential information of third parties.
- 19. SOFTWARE**
- 19.1** Disclosure Schedule 19 sets forth a true, correct and complete list of: (i) the Company Proprietary Software, (ii) the Company Licensed Software, and (iii) to the extent materially relevant to

the Business all technical and restricted materials relating to the acquisition, design, development, use or maintenance of computer code program documentation and materials used by a Group Company.

- 19.2 Except as set forth on Disclosure Schedule 19, the Company has all right, title and interest in and to the Company Proprietary Software, free and clear of all Liens. The Company has developed the Company Proprietary Software through its own efforts, as described in paragraph 19.4 below, and for its own account. The use of the Company Software does not breach any term of any license or other contract between a Group Company, on the one hand, and any third party, on the other hand. The Group Companies are in compliance with the terms and conditions of all license agreements in favour of a Group Company relating to the Company Licensed Software.
- 19.3 The Company Proprietary Software does not infringe or misappropriate any Intellectual Property right of any third party. The source code for the Company Proprietary Software has been maintained in confidence.
- 19.4 The Company Proprietary Software was:
- (a) developed by the Company's employees working within the scope of their employment at the time of such development or
  - (b) developed by agents, consultants, contractors or other Persons who have executed appropriate instruments of assignment in favor of the Company as assignee that have conveyed to the Company ownership of all of its Intellectual Property rights in the Company Proprietary Software; or
  - (c) acquired by the Company in connection with acquisitions in which the Company obtained appropriate representations, warranties and indemnities from the transferring party relating to the title to Intellectual Property rights in the Company Proprietary Software.
- 19.5 No Group Company has received notice from any third party claiming any right, title or interest in the Company Proprietary Software.
- 19.6 No Group Company has granted rights in the Company Software to any third party.

## 20. TRANSACTIONS WITH RELATED PARTIES

- 20.1 Except as set forth on Disclosure Schedule 20, no Officer or Director of a Group Company and no relative (*Angehöriger*) within the meaning of Section 15 of the German Tax Code (*Abgabenordnung*) of such person, and no entity in which any such person or any of its relatives owns any beneficial interest, (other than a publicly held corporation whose share is traded on a national securities exchange or in the over-the-counter market and less than five percent of the share of which is beneficially owned by all such Officers or Directors and their respective relatives in the aggregate) has entered into any agreement with any Group Company or holds any rights or claims against any Group Company.
- 20.2 Except as set forth on Disclosure Schedule 20, no current or former Officer or Director or employee of a Group Company has any interest in:
- (a) any contract, arrangement or understanding with, or relating to, a Group Company or the properties or assets of a Group Company;
  - (b) any loan, arrangement, understanding, agreement or contract for or relating to a Group Company or the properties or assets of a Group Company; or
  - (c) any property (real, personal or mixed), tangible or intangible, used or currently intended to be used by a Group Company.



**21. UNDISCLOSED PAYMENTS**

No Group Company nor any of their respective Officers or Directors, nor anyone acting on behalf of any of them, has since October 6, 2016 made or received any payment not correctly categorized and fully disclosed in the relevant Group Company's books and records in connection with or in any way relating to or affecting a Group Company.

**22. CUSTOMER AND SUPPLIER RELATIONS**

**22.1** Disclosure Schedule 22 contains a true, correct and complete list of (i) the names and addresses of those Customers to which a Group Company made sales of more than €100,000 during the twelve (12) month period ended on the Locked Box Date and (ii) the names of the Suppliers, and the amount of sales to or purchases from each such Customer or Supplier during the twelve (12) month period ended on the Locked Box Date.

**22.2** Each Group Company maintains good relations with each of its Customers and Suppliers and, to the Knowledge of the Seller and each Group Company, no event other than possibly the COVID-19 Pandemic has occurred that could materially and adversely affect the relations of any Group Company with any Customer or Supplier.

**22.3** Except as set forth on Disclosure Schedule 22, no Customer or Supplier has during the last twelve (12) months cancelled, terminated or, to the Knowledge of the Seller and each Group Company, made any threat to cancel or otherwise terminate any of its contracts with a Group Company or to decrease its usage or supply of a Group Company's services or products of the Business.

**22.4** The Seller and each Company Group has no Knowledge to the effect that any current Customer or Supplier may terminate or materially alter its business relations with a Group Company, either as a result of the transactions contemplated hereby or otherwise, other than possibly the COVID-19 Pandemic.

**23. ANTITRUST**

**23.1** No Group Company is engaged in any agreement, arrangement, practice or conduct which amounts to an infringement of the Antitrust Law of any jurisdiction in which a Group Company conducts business and no Officers or Director is engaged in any activity which would be an offence or infringement under any such Antitrust Law.

**23.2** No Group Company is the subject of any investigation, inquiry or proceedings by any relevant government body, agency or authority in connection with any actual or alleged infringement of the Antitrust Law of any jurisdiction in which a Group Company conducts business.

**23.3** No such investigation, inquiry or proceedings have been threatened or are pending and there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.

**23.4** No Group Company is affected by any existing or pending decisions, judgments, orders or rulings of any relevant government body, agency or authority responsible for enforcing the Antitrust Law of any jurisdiction and no Group Company have given any undertakings or commitments to such bodies which affect the conduct of the Business.

**24. NOTES AND ACCOUNTS RECEIVABLE**

- 24.1 Except as shown in Disclosure Schedule 24.1, all notes receivable and notes payable (the “**Affiliate Loans**”) of the Group Companies owing by or to any Officer or Director, employee or Affiliate of a Group Company or by or to the Seller or a Shareholder have been paid in full, settled by way of capital contribution in kind, cancelled or otherwise discharged prior to the date hereof or shall have been paid in full, settled by way of capital contribution in kind, cancelled or otherwise discharged prior to or as of the Closing Date. Disclosure Schedule 24.1 sets forth a true, correct and complete list of all Affiliate Loans and the outstanding balance and applicable interest payments under each Affiliate Loan as of the date hereof. For the avoidance of doubt, amounts in salary or ancillary benefits to employees of a Group Company under the relevant employment agreements are not deemed Affiliate Loans.
- 24.2 The Seller has delivered to the Purchaser a true, correct and complete schedule of the Receivables as of Locked Box Date showing the amount of each Receivable and an aging of amounts due thereunder, which schedule is true, correct and complete as of that date.
- 24.3 Except as set forth on Disclosure Schedule 24.3, to the Knowledge of the Seller and each Group Company, the debtors to which the Receivables relate are not in or subject to a bankruptcy or insolvency proceeding and none of the Receivables has been made subject to seizing (*Pfändung*) or an assignment for the benefit of creditors. Except as set forth on Disclosure Schedule 24.3, all such Receivables are current and there are no disputes regarding the collectibility of any such Receivables.
- 24.4 Except as set forth on Disclosure Schedule 24.3, all receivables reflected in the Financial Statements as of the Locked Box Date (net of any reserves shown thereon)
- (a) will be valid, existing and collectible in a manner consistent with the Company Group’s past practices,
  - (b) represent monies (including VAT) due for goods sold and delivered or services rendered in the Ordinary Course, and
  - (c) will not be subject to any refund or adjustment or any defence, right of set-off, assignment, restriction, security interest or other Lien. No Group Company has factored any of its receivables.
- 24.5 The accounts payable of the Group Companies reflected on the Balance Sheets as of the Locked Box Date and that will be reflected in the Financial Statements as of the Locked Box Date arose or will arise from bona fide transactions in the Ordinary Course.
- 25. LICENCES**
- 25.1 Disclosure Schedule 25 is a true, correct and complete list of all Licenses held by each Group Company material to the Business.
- 25.2 The Group Companies own or possess all Licenses that are necessary to enable it to carry on the Business. All such Licenses are valid, binding and in full force and effect.
- 25.3 The execution, delivery and performance hereof and the consummation of the transactions contemplated hereby shall not adversely affect any such License, or require consent from, or notice to, any Governmental Entity with the exception of those mentioned in Clause 6.6.3 of the Agreement.
- 25.4 The Company has taken all necessary action to maintain each License. No loss or expiration of any License is threatened, pending, or to the knowledge of the Seller and the Shareholders reasonably foreseeable (other than expiration upon the end of any term).

25.5 To the Knowledge of the Seller and each Group Company, each independent contractor listed on Disclosure Schedule 14 has the requisite License required to provide the services such independent contractor provides to the Company Group.

26. **ETHICAL PRACTICES**

Since October 6, 2016, and to the Knowledge of Seller at all times past no Group Company nor any representative thereof has offered or given, and the Seller and each Group Company has no Knowledge of any Person that has offered or given on its behalf or for furtherance of the selling of products of a Group Company, anything of value to:

- (a) any official of a Governmental Entity, any political party or official thereof or any candidate for political office;
- (b) any customer or member of any Governmental Entity; or
- (c) any other Person,

in any such case while knowing or having reason to know that all or a portion of such money or thing of value may be offered, given or promised, directly or indirectly, to any customer or member of any Governmental Entity or any candidate for political office for the purpose of the following:

- (i) influencing any action or decision of such Person, in such Person's official capacity, including a decision to fail to perform such Person's official function;
- (ii) inducing such Person to use such Person's influence with any Governmental Entity to affect or influence any act or decision of such Governmental Entity to assist a Group Company in obtaining or retaining business for, with, or directing business to, any Person; or
- (iii) where such payment would constitute a bribe, kickback or illegal or improper payment to assist a Group Company in obtaining or retaining business for, with, or directing business to, any Person.

27. **PRODUCT AND SERVICE WARRANTIES AND GUARANTIES**

27.1 Except as set forth on Disclosure Schedule 27, no Group Company makes any express warranty or guaranty as to goods sold, or services provided by, a Group Company which is (i) outside the Ordinary Course or (ii) for a warranty period of more than two years (each of (i) and (ii) a "**Warranty**"), and there is no pending or, to the Knowledge of the Seller and each Group Company, threatened claim alleging any breach of any Warranty.

27.2 Except as set forth on Disclosure Schedule 27, no Group Company has exposure to, or liability under, any Warranty

- (a) beyond that which is typically assumed in the ordinary course of business by Persons engaged in businesses comparable in size and scope of the Group Companies, or
- (b) that would have a Material Adverse Effect on a Group Company or its respective operations.

Copies of the warranties set forth in Disclosure Schedule 27 have been made available to the Purchaser.

27.3 Except as set forth on Disclosure Schedule 27, adequate reserves for any expense to be incurred by any Group Company as a result of any Warranty granted prior to the Locked Box Date will be reflected in the Financial Statements as of the Locked Box Date.

**28. BROKERS, FINDERS AND INVESTMENT BANKERS**

Except as set forth on Disclosure Schedule 28, no Group Company, nor the Seller, nor any Officer or Director or employee of a Group Company nor any Affiliate of a Group Company, has employed any broker, finder or investment banker or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with the transactions contemplated hereby.

**29. BANK ACCOUNTS**

Disclosure Schedule 29 sets forth a true, correct and complete list and description of all bank accounts used by any Group Company.

**30. SELLER OR SHAREHOLDER GUARANTEES**

Except as otherwise disclosed on Disclosure Schedule 30, the Seller or a Shareholder has not guaranteed any obligations of a Group Company under any guarantee, letter of credit, bid bond or performance bond.

**31. DISCLOSURE**

No representation, warranty or covenant made by the Seller in this Agreement, the Disclosure Schedules or the Appendices or any Seller Ancillary Document contains an untrue statement of a material fact or omits to state a material fact required to be stated herein or therein or is necessary to make the statements contained herein or therein not misleading.

**32. AUTHORISATION**

**32.1** Except as set forth on Disclosure Schedule 32.1, the Seller and the Shareholders have the right, power, authority and capacity to execute and deliver this Agreement and each Seller Ancillary Document and to perform their obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

**32.2** This Agreement has been, and the Seller Ancillary Documents shall be as of the Closing Date, duly executed and delivered by the Seller and the Shareholders, and do or shall, as the case may be, constitute the valid and binding agreements of the Seller and the Shareholders enforceable against the Seller and the Shareholders in accordance with their respective terms.

**33. ABSENCE OF RESTRICTIONS AND CONFLICTS**

The execution, delivery and performance of this Agreement and the Seller Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfilment of and compliance with the terms and conditions hereof and thereof do not or shall not, as the case may be, with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any part the right to terminate, modify or cancel

- (a) any contract, agreement, permit, franchise, license or other instrument applicable to the Seller or a Shareholder,
- (b) any judgment, decree or order of any Governmental Entity to which the Seller or a Shareholder is a party or by which the Seller or a Shareholder or any of its or his respective properties are bound, or
- (c) any Law or arbitration award applicable to the Seller or a Shareholder.

**34. OWNERSHIP OF EQUITY**

**34.1** Except as set forth on Disclosure Schedule 2.1, the Seller has good and valid title to and beneficial ownership of the number of shares of capital share set forth next to the Seller's name on Disclosure Schedule 2.1, and such shares are

- (a) validly issued, fully paid, and non-assessable, and
- (b) free and clear of all Liens.

**34.2** Other than the shares listed on Disclosure Schedule 2.1, the Seller owns no shares of capital share of a Group Company or any other equity security of a Group Company, or any option, warrant, right, call, commitment or right of any kind to have any such equity security issued.

**35. LEGAL PROCEEDINGS**

There are no suits, actions, claims, proceedings or investigations pending or, to the Knowledge of the Seller and each Group Company, threatened against, relating to or involving the Seller which could reasonably be expected to adversely affect the Seller's ability to consummate the transactions contemplated by this Agreement or the Seller Ancillary Document.

**36. AMOUNTS OWED TO SELLER**

No Group Company owes or is obligated to pay the Seller any amount, except for salary, employee benefits and bonuses, accrued prior to the Closing in the Ordinary Course.

## **SCHEDULE 2 - PURCHASER WARRANTIES**

### **1. ORGANIZATION**

The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, USA, and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

### **2. AUTHORIZATION**

The Purchaser has full corporate power and authority to execute and deliver this Agreement and the Purchaser Ancillary Documents, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

The execution and delivery of this Agreement and the Purchaser Ancillary Documents by the Purchaser, the performance by the Purchaser of its obligations hereunder and thereunder, and the consummation of the transactions provided for herein and therein have been duly and validly authorised by all necessary corporate action on the part of the Purchaser.

This Agreement has been and, as of the Closing Date, the Purchaser Ancillary Documents shall be, duly executed and delivered by the Purchaser and do or shall, as the case may be, constitute the valid and binding agreements of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, subject to applicable bankruptcy insolvency and other similar Laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of course in granting equitable remedies.

### **3. ABSENCE OF RESTRICTIONS AND CONFLICTS**

The execution, delivery and performance of this Agreement and the Purchaser Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfilment of, and compliance with, the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, or permit the acceleration of any obligation under,

- (a) any term or provision of the constitutional documents of the Purchaser,
- (b) any contract to which the Purchaser is a party,
- (c) any judgment, decree or order of any Governmental Entity to which the Purchaser is a party or by which the Purchaser or any of its properties is bound, or
- (d) any statute, law, rule or regulation applicable to the Purchaser;

unless, in each case, such violation, conflict, breach, default, loss of benefit or accelerated obligation would not, either individually or in the aggregate, have a material adverse impact on the ability of the Purchaser to consummate the transactions contemplated hereby, or by the Purchaser Ancillary Documents.

### **4. R&W INSURANCE POLICY.**

Purchaser has received a written commitment from the R&W Insurer to fully bind the R&W Insurance Policy effective as of the Closing Date. Purchaser represents and warrants to Seller that it has provided a true and correct copy of such commitment to Seller that is in full force and effect prior to the date hereof.

**5. FINANCING**

The Purchaser has sufficient immediately available funds or binding and unconditional financing commitments to enable it to make all payments required to be made by it under this Agreement.

Schedules (or similar attachments) to this Exhibit have been omitted in accordance with Items 601(a)(5) and/or 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission on a confidential basis upon request.

### SCHEDULE 3 - DISCLOSURE SCHEDULES

|                             |  |
|-----------------------------|--|
| Disclosure Schedule 1       | Jurisdiction of Incorporation or Organization; Qualifications to do Business |
| Disclosure Schedule 2.1     | Capital Structure of Group Companies   |
| Disclosure Schedule 3       | Subsidiaries   |
| Disclosure Schedule 4.2     | Leased Real Property   |
| Disclosure Schedule 4.5     | Real Property properties   |
| Disclosure Schedule 5       | Title Exceptions; List of Assets   |
| Disclosure Schedule 7       | Financial Statements   |
| Disclosure Schedule 8       | Undisclosed Liabilities  |
| Disclosure Schedule 9       | Certain Changes  |
| Disclosure Schedule 10      | Legal Proceedings  |
| Disclosure Schedule 11      | Exceptions to Compliance with Law  |
| Disclosure Schedule 12      | Company Contracts  |
| Disclosure Schedule 12.7(a) | U.S. Government Contracts  |
| Disclosure Schedule 13.1    | Tax Exceptions   |
| Disclosure Schedule 13.2    | Tax Returns Exceptions   |
| Disclosure Schedule 14      | Officers and Employees; Employment Agreements                                |
| Disclosure Schedule 15      | Labour Relations   |
| Disclosure Schedule 16      | Insurance Policies   |
| Disclosure Schedule 17      | Environmental, Health and Safety Matters                                     |
| Disclosure Schedule 18.1    | Intellectual Property  |
| Disclosure Schedule 18.7    | Works of Original Authorship   |
| Disclosure Schedule 19      | Company Software   |
| Disclosure Schedule 20      | Transactions with Affiliates   |
| Disclosure Schedule 22      | Customer and Supplier Relations  |
| Disclosure Schedule 24.1    | Affiliate Loans  |
| Disclosure Schedule 24.3    | Accounts Receivable  |



|                          |                                |
|--------------------------|--------------------------------|
| Disclosure Schedule 25   | Licenses                       |
| Disclosure Schedule 27   | Product and Service Warranties |
| Disclosure Schedule 28   | Brokers                        |
| Disclosure Schedule 29   | Bank Accounts                  |
| Disclosure Schedule 30   | Seller Guarantees              |
| Disclosure Schedule 32.1 | Authorization                  |

**Certification of Principal Executive Officer  
Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934**

I, Wahid Nawabi, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AeroVironment, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2021

/s/ Wahid Nawabi  
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Wahid Nawabi  
President and Chief Executive Officer

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**Certification of Principal Financial Officer  
Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934**

I, Kevin P. McDonnell, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AeroVironment, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2021

/s/ Kevin P. McDonnell

Kevin P. McDonnell

Senior Vice President and Chief Financial Officer

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**Certification**  
**Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**  
**(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) (the "Act"), each of the undersigned officers of AeroVironment, Inc., a Delaware corporation (the "Company"), does hereby certify, to each such officer's knowledge, that:

The Quarterly Report on Form 10-Q for the quarter ended January 30, 2021 (the "Periodic Report") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Wahid Nawabi

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Wahid Nawabi  
President and Chief Executive Officer

/s/ Kevin P. McDonnell

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Kevin P. McDonnell  
Senior Vice President and Chief Financial Officer

Dated: March 9, 2021

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.