

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 8-K**

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

**Date of Report (Date of earliest event reported): December 13, 2018**

**Mistras Group, Inc.**

(Exact name of registrant as specified in its charter)

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

**001- 34481**  
(Commission  
File Number)

**22-3341267**  
(IRS Employer  
Identification No.)

**195 Clarksville Road**  
**Princeton Junction, New Jersey**  
(Address of principal executive offices)

**08550**  
(Zip Code)

Registrant's telephone number, including area code: **(609) 716-4000**

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d 2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company

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

**Item 1.01. Entry into a Material Definitive Agreement.**

#### (a) Acquisition of Onstream

On December 13, 2018, Mistras Group, Inc. ("Mistras," the "Company", "we" or "us") acquired Onstream Holdings, Inc. ("OnStream"), the 100% parent company of Onstream Pipeline Inspection Services, Inc., a provider of pipeline integrity inspection services with facilities in Calgary, Canada and Houston, Texas, primarily serving the oil and gas market. The acquisition was effected pursuant to (i) a Share Purchase Agreement ("the Agreement"), dated December 13, 2018, among 2159562 Alberta Ltd., as purchaser, Mistras, 100% parent company of the purchaser, Onstream, and the shareholders of Onstream listed on Schedule A to the Agreement, who collectively owned approximately 95% of the shares of Onstream and (ii) separate share purchase agreements with other minority shareholders who collectively owned the remaining 5% of the shares of Onstream.

Pursuant to the terms of the Agreement, Mistras purchased all the outstanding shares of Onstream for approximately \$189.9 million (CAD), or approximately \$143.2 million U.S. Dollars (USD), subject to a post-closing adjustment to the extent Onstream's working capital on the closing date is different than an agreed upon amount. The Agreement contains representations, warranties, obligations and conditions customary for agreements governing transactions of a similar nature. In connection with the Agreement, Chad Niehaus and Gerry Wilkinson, two of the major shareholders who will continue to manage the Onstream business for Mistras, entered into agreements whereby they agreed for two years not to compete against Onstream and not to solicit Onstream employees, customers and suppliers. The other major shareholder, Novacap and affiliates, a Canadian private equity firm, also agreed to a 2-year non-solicitation restriction and a 2-year restriction on acquiring or investing in agreed upon competitors of Onstream. Approximately \$2.3 million CAD (approximately \$1.7 million USD) is being held in escrow for various time periods to secure payment of indemnification claims and other items. The Company also obtained a representation and warranty insurance policy for \$19 million CAD (approximately \$14.3 million USD) to cover losses incurred by Onstream for breaches of representations and warranties by the shareholders. Onstream's operating subsidiary entered into employment agreements with Messrs. Niehaus and Wilkinson and certain other members of its senior management as part of the acquisition.

The foregoing is a summary of the Agreement and not a complete description of its terms and is qualified in its entirety by reference to the full text of the Agreement, which is filed as Exhibit 2.1 to this Report and is incorporated herein by reference.

The purchase of Onstream was financed by borrowings under the Company's credit facility.

#### (b) \$400 Million Credit Agreement

On December 13, 2018, the Company entered into a Fifth Amended and Restated Credit Agreement (the "Credit Agreement") with Bank of America, N.A., as agent for the lenders and a lender, and JPMorgan Chase Bank, N.A., Keybank National Association, Wells Fargo Bank, National Association and TD Bank, National Association, as lenders. The Credit Agreement provides the Company with a \$300 million revolving line of credit and a \$100 million senior secured term loan A facility, both with a maturity date of December 12, 2023. The Credit Agreement permits us to borrow up to \$100 million in non-US dollar currencies and to use up to \$20 million of the credit limit for the issuance of letters of credit. The Credit Agreement is secured by liens on substantially all our assets and is guaranteed by some of our subsidiaries. Under certain circumstances, the revolving line of credit can be increased to \$450 million with the consent of the lenders.

Loans under the Credit Agreement bear interest at LIBOR or a base rate, at our option, plus, as applicable a LIBOR margin ranging from 1% to 2%, or a base rate margin ranging from -1.25% to -.375%, based upon our Funded Debt Leverage Ratio. Funded Debt Leverage Ratio is generally the ratio of (1) all outstanding indebtedness for borrowed money and other interest-bearing indebtedness as of the date of determination to (2) EBITDA. The Credit Agreement defines EBITDA as (a) net income, minus (b) income (or plus loss) from discontinued operations minus (c) extraordinary gains (or plus extraordinary losses), plus (d) income tax expenses, plus (e) interest expense, plus (f) depreciation, depletion, and amortization (including non-cash loss on retirement of assets), plus (g) stock compensation expense, minus (h) cash expense related to stock compensation, plus (i) certain amounts of EBITDA of acquired business for the prior twelve months, plus (j) certain expenses related to the closing of the Credit Agreement, plus (k) non-cash expenses which do not (in the current or any future period) represent a cash item (excluding non-cash gains which increase net income), plus (l) non-recurring charges (not to exceed \$10 million in the four consecutive quarters immediately preceding the date of determination) for items such as severance, lease termination charges, asset write-offs and litigation settlements paid, and multi-employer pension plan withdrawal liabilities, all determined for the period of four consecutive fiscal quarters immediately preceding the date of determination of EBITDA. We have the benefit of the lowest margin if our Funded Debt Leverage Ratio is equal to or less than 1.0 to 1, and the margin increases as the ratio increases, to the maximum margin if the ratio is greater than 3.25 to 1. The Company will also bear additional costs for market disruption, regulatory changes effecting the lenders' funding costs, and default pricing of an additional 2% interest rate margin if the Company is in default under the Credit Agreement.

The Credit Agreement contains financial covenants requiring that we maintain a Funded Debt Leverage Ratio not exceeding 4.25- to-1 through December 31, 2018, reducing to a maximum permitted ratio of 3.50-to-1 as of March 31, 2020 and all quarterly periods thereafter, and a Fixed Charge Coverage Ratio of at least 1.25-to-1. Fixed Charge Coverage Ratio means the ratio, as of any date of determination, of (a) (i) EBITDA for the 12 month period immediately preceding the date of determination, taken together as one accounting period, less (ii) the aggregate amount of all capital expenditures made during the period, less (iii) taxes paid in cash during the period, less (iv) Restricted Payments paid in cash during the period, -to- (b) the sum of (i) all interest, premium payments, debt discount, fees, charges and related expenses of us and our subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case, to the extent treated as interest in accordance with U.S. generally accepted accounting principles ("GAAP") and to the extent paid in cash during the period, (ii) the aggregate principal amount of all redemptions or similar acquisitions for value of outstanding debt for borrowed money or regularly scheduled principal payments made during the period, but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under the Credit Agreement, and (iii) payments made during the period under all leases that have been or should be, in accordance with GAAP as in effect for our 2017 audited financial statement, recorded as capitalized leases. Beginning in the second quarter of 2020, the Company can elect to increase the maximum permitted Funded Debt Leverage Ratio to 4.0-to-1 for four fiscal quarters immediately following the fiscal quarter in which the Company acquires another business, with the maximum permitted ratio reducing back to the 3.5-to-1 in the fifth fiscal quarter following such acquisition. The Company can make this election twice during the term of the Credit Agreement.

The Credit Agreement limits our ability to, among other things, create liens, make investments, incur more indebtedness, merge or consolidate, make dispositions of property, pay dividends, make distributions to stockholders or repurchase our stock, enter into a new line of business, enter into transactions with affiliates and enter into burdensome agreements. The Credit Agreement does not limit our ability to acquire other businesses or companies except that the acquired business or company must be in our line of business, we must be in compliance with the financial covenants on a pro forma basis after taking into account the acquisition, and, if the acquired business is a separate subsidiary, in certain circumstances the lenders will receive the benefit of a guaranty of the subsidiary and liens on its assets and/or a pledge of its stock.

The foregoing is a summary of the Credit Agreement and not a complete description of its terms and is qualified in its entirety by reference to the full text of the Credit Agreement, which is filed as Exhibit 10.1 to this Report and is incorporated herein by reference.

#### **Item 2.01. Completion of Acquisition or Disposition of Assets.**

See part (a) of Item 1.01, which is incorporated herein by reference.

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

See part (b) of Item 1.01, which is incorporated herein by reference.

#### **Item 7.01. Regulation FD Disclosure.**

On December 13, 2018, Mistras issued a press release announcing its acquisition of Onstream and entering into the Fifth Amended and Restated Credit Agreement, which is furnished as Exhibit 99.1 to this Report.

#### **Item 9.01. Financial Statements and Exhibit.**

(c) Exhibits

[2.1](#) Share Purchase Agreement, dated as of December 13, 2018, among 2159562 Alberta Ltd., as purchaser, Mistras Group, Inc., as parent of purchaser, the shareholders of Onstream Holdings, Inc. listed in Schedule A thereto, and Onstream Holdings, Inc.

[2.2](#) Form of share purchase agreement for the purchase of Onstream Holdings, Inc. shares from each member of the group of shareholders collectively owning 5% of the shares of Onstream Holdings, Inc.

[10.1](#) Fifth Amended and Restated Credit Agreement, dated December 13, 2018

[99.1](#) Press Release issued by Mistras Group, Inc., dated December 13, 2018.

SIGNATURE

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

MISTRAS GROUP, INC.

Date: December 13, 2018

By: /s/ Michael C. Keefe

Name: Michael C. Keefe

Title: Executive Vice President, General Counsel  
and Secretary

Exhibits

[2.1](#) Share Purchase Agreement, dated as of December 13, 2018, among 2159562 Alberta Ltd., as purchaser, Mistras Group, Inc., as parent of purchaser, the shareholders of Onstream Holdings, Inc. listed in Schedule A thereto, and Onstream Holdings, Inc.\*

[2.2](#) Form of Share Purchase Agreement for the purchase of Onstream Holdings, Inc. shares from each member of the group of shareholders collectively owning 5% of the shares of Onstream Holdings, Inc.

[10.1](#) Fifth Amended and Restated Credit Agreement, dated December 13, 2018

[99.1](#) Press Release issued by Mistras Group, Inc., dated December 13, 2018.

\* The schedules and exhibits to this agreement, which are listed in the table of contents to the agreement, are omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the Securities and Exchange Commission upon request.

**Exhibit 2.1**

**SHARE PURCHASE AGREEMENT**

**AMONG**

**THE PERSONS LISTED IN SCHEDULE 2.1A HERETO, AS VENDORS,**

**AND**

**2159562 ALBERTA LTD., AS PURCHASER,**

**AND**

**MISTRAS GROUP, INC., AS PARENT,**

**AND**

**ONSTREAM HOLDINGS INC.**

**DATED AS OF DECEMBER 13, 2018**

## TABLE OF CONTENTS

	Page
Article 1 INTERPRETATION	2
1.1 Definitions	2
1.2 Articles, Sections and Headings	2
1.3 Extended Meanings	2
1.4 Accounting Principles	2
1.5 Currency	2
1.6 Calculation of Time	3
1.7 Appointment of Vendors' Delegate	3
1.8 Schedules	4
1.9 Third Party Beneficiaries	5
1.10 No Strict Construction	5
1.11 Statutes	5
Article 2 PURCHASE AND SALE	6
2.1 Purchase and Sale of Purchased Shares	6
2.2 Aggregate Consideration	6
2.3 Estimated Aggregate Purchase Price	6
2.4 Creditor's Pay-Out Letter	7
2.5 Payment at Closing	7
2.6 Closing Date Financial Statements	10
2.7 Aggregate Purchase Price Adjustments	11
2.8 Withholding	12
Article 3 REPRESENTATIONS AND WARRANTIES	13

Representations and Warranties of the Major Vendors and of the	
3.1 Corporation	13
3.2 Representations and Warranties of the Purchaser and of the Parent	13
3.3 Disclosure	13
3.4 Survival of Representations and Warranties	14
Article 4 COVENANTS	15
4.1 Due Diligence	15
4.2 Insurance	15
4.3 Maintenance and Access to Records	16
4.4 Personal Information Privacy	17
4.5 Release	18
4.6 R&W Insurance Policy	18
4.7 Tax Matters	18
4.8 Name	24
4.9 Consents and Approvals	25
4.10 Filing and Authorizations	25
4.11 Assignment	26
4.12 401(k) Plan	26
Article 5 CLOSING ARRANGEMENTS	26
5.1 Closing	26
5.2 Vendors' Closing Deliveries	26
5.3 Purchaser Closing Deliveries	28
Article 6 INDEMNIFICATION	29
6.1 Indemnification by the Major Vendors	29
6.2 Indemnification by the Purchaser and the Parent	30
6.3 Limitations on Indemnification	30
6.4 General Indemnification Rules	34

6.5	Direct Claims	36
6.6	Notice of Third Party Claims	37
6.7	Defence of Third Party Claims	37
6.8	Assistance for Third Party Claims	38
6.9	Duty to Mitigate	39
6.10	Exclusivity of Remedy	39
6.11	Purchase Price Adjustment	39
Article 7	GUARANTOR	39
7.1	Guarantee	39
Article 8	GENERAL	40
8.1	Further Assurances	40
8.2	No Waiver	40
8.3	Cost and Expenses	41
8.4	Confidentiality; Public Announcements	41
8.5	Successors, Assigns and Assignments	42
8.6	Entire Agreement	42
8.7	Amendments and Waivers	43
8.8	Notices	43
8.9	Governing Law and Forum	43
8.10	Severability	44
8.11	Specific Performance and other Discretionary Rights	44
8.12	Post-Acquisition Attorney-Client Issues	44
8.13	Counterparts	46
SCHEDULE 1.1	DEFINITIONS	
SCHEDULE 1.1.113	PERMITTED ENCUMBRANCES	
SCHEDULE 1.1.162	WORKING CAPITAL	
SCHEDULE 2.1A	MAJOR VENDORS, PURCHASED SHARES AND PORTION OF PURCHASE PRICE	



SCHEDULE 2.1B	MINORITY VENDORS, MINORITY VENDORS' SHARES
SCHEDULE 2.2	CALCULATION OF PURCHASE PRICE AS OF DECEMBER 31, 2017
SCHEDULE 3.1	REPRESENTATIONS AND WARRANTIES OF THE VENDORS AND OF THE CORPORATION
SCHEDULE 3.2	REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND OF THE GUARANTOR
SCHEDULE 6.1.2(d)	SPECIAL MATTERS
SCHEDULE 8.8	ADDRESSES

THIS SHARE PURCHASE AGREEMENT is made as of December 13, 2018.

**AMONG:** THE PERSONS LISTED IN SCHEDULE 2.1A HERETO  
(the “**Major Vendors**”)

**AND:** 2159562 ALBERTA LTD., a corporation duly constituted under the laws of  
Canada;  
(the “**Purchaser**”)

**AND:** ;  
(the “**Parent**”)

**AND TO WHICH INTERVENES:** ;  
(the “**Corporation**”)

**WHEREAS** the Major Vendors are the owners, beneficially and of record, of those issued and outstanding shares in the share capital of the Corporation set out in Schedule 2.1A hereto (the “**Purchased Shares**”);

**WHEREAS** simultaneously with, and as a condition to, the consummation of the transactions contemplated herein, the Purchaser will acquire all of the issued and outstanding Class C shares of the Corporation (the “**Minority Vendors’ Shares**”) pursuant to a separate share purchase agreement with each Minority Vendor as further described in Schedule 2.1B hereto, such that, after giving effect to such transactions and the transactions contemplated herein, the Purchaser will own all of the issued and outstanding shares in the share capital of the Corporation (the “**Purchased Securities**”);

**WHEREAS** the Corporation is the sole owner, beneficially and of record, of all the issued and outstanding shares in the share capital of Onstream Pipeline Inspection Services Inc., a corporation duly constituted under the laws of Canada (“**OPIS Canada**”), who in turn is the sole owner, beneficially and of record, of all the issued and outstanding shares in the share capital of Onstream Pipeline Inspection USA Inc., a Nevada corporation (“**OPI USA**”);

**WHEREAS** OPIS Canada and OPI USA carry on the business of providing small-diameter pipeline integrity inspection services to petroleum, natural gas and other commodities, as currently conducted by the Group (the “**Business**”);

**WHEREAS** the Purchaser desires to purchase, and the Major Vendors desire to sell, all of the Purchased Shares in the share capital of the Corporation, the whole, subject to the terms and conditions hereinafter set forth;

**NOW THEREFORE**, in consideration of the premises and mutual agreements herein contained, and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties agree as follows:

## **Article 1 INTERPRETATION**

### **1.1 Definitions**

The capitalized words and expressions used in this Agreement or in its Schedules shall have the meaning ascribed to them in Schedule 1.1, unless otherwise expressly stated herein.

### **1.2 Articles, Sections and Headings**

The division of this Agreement into Articles, Sections, Exhibits and Schedules and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder”, “herein” and similar expressions refer to this Agreement as a whole and not to any particular Article, Section, Exhibit, Schedule or other portion hereof. References herein to Articles, Sections, Exhibits or Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement or of the Exhibits and Schedules hereto unless otherwise expressly stated herein.

### **1.3 Extended Meanings**

In this Agreement, words importing the singular number also include the plural and vice versa and words importing any gender include all genders. The term “including” means “including, without limiting the generality of the foregoing”.

### **1.4 Accounting Principles**

Wherever in this Agreement reference is made to a calculation to be made or an action to be taken in accordance with generally accepted accounting principles, such reference will be deemed to be made to ASPE, applicable as at the date on which such calculation or action is made or taken or required to be made or taken in accordance with ASPE.

### **1.5 Currency**

Except as expressly provided herein, all references to currency (dollars or \$) contained herein are to lawful money of Canada.

### **1.6 Calculation of Time**

1.6.1 *Time.* Time is of the essence of this Agreement.

1.6.2 *Calculation of Time.* Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends. Where the last day of any such time period is not a Business Day, such time period shall be extended to the next Business Day following the day on which it would otherwise end.

1.6.3 *Business Days.* Whenever any action to be taken or payment to be made pursuant to this Agreement would otherwise be required to be made on a day that is not a Business Day, such action shall be taken or such payment shall be made on the first Business Day following such day.

1.6.4 *Time of Day.* All references to times of the day are to the times of the day in Calgary, Alberta.

### **1.7 Appointment of Vendors' Delegate**

1.7.1 *Appointment.* Each of the Major Vendors hereby appoints and designates **Novacap TMT IV L.P.** (the “**Vendors' Delegate**”) as the agent for and on behalf of Major Vendors to give and receive notices and communications, to agree, to negotiate, enter into settlements and compromises of Claims, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such Claims, to execute and deliver the Escrow Agreement for and on behalf of the Vendors, to execute and deliver any flow of funds memorandum or similar instrument allocating the proceeds of the Purchase Price payable hereunder, and to take all actions necessary or appropriate in the judgment of Vendors' Delegate for the accomplishment of the foregoing. The execution and delivery of this Agreement by the Major Vendors shall constitute approval of the appointment of the Vendors' Delegate and all actions or inactions of the Vendors' Delegate pursuant to this Agreement, any Ancillary Agreement or any Closing Document and any action taken by the Vendors' Delegate purportedly or stated to be on behalf of a Major Vendor or the Major Vendors, individually or collectively, for which there shall be no obligation for the Purchaser to verify or

otherwise confirm, shall have the effect of binding each of the Major Vendors. No bond shall be required of Vendors' Delegate, and Vendors' Delegate shall receive no compensation for its services.

- 1.7.2 *Notices.* Notices or communications to or from the Vendors' Delegate shall constitute notice to or from each of the Major Vendors in connection with this Agreement, any ancillary documents to which a Vendor is a party, and any instrument, agreement or document relating hereto or thereto.
- 1.7.3 *Decisions.* A decision, act, consent or instruction of the Vendors' Delegate shall constitute a decision of all Vendors and shall be final, binding and conclusive upon each Major Vendor.
- 1.7.4 *Responsibility and Indemnity.* In exercising or failing to exercise all or any of the powers conferred upon the Vendors' Delegate hereunder (including, without limitation, as it relates to any of the actions or inactions referenced in Section 1.7.1 hereof), the Vendors' Delegate shall incur no responsibility whatsoever to any Vendor by reason of any error in judgment or other act or omission performed or omitted hereunder (including, without limitation, as it relates to any of the actions or inactions referenced in Section 1.7.1 hereof), or any other agreement, instrument or document, excepting only the responsibility for any act or failure to act which represents gross negligence or wilful misconduct. Each Major Vendor agrees to indemnify and to hold and save harmless the Vendors' Delegate from and against any and all loss, damage, liability and expenses of any nature whatsoever (including reasonable legal fees) that the Vendors' Delegate may sustain or incur as a result of any action or omission taken by the Vendors' Delegate in relation to the mandate set forth in the present Section 1.7, save for any such loss, damage, liability or expenses attributable to the gross negligence or wilful misconduct of the Vendors' Delegate.
- 1.7.5 *Purchaser.* The Purchaser is hereby relieved from any Liability to any Major Vendor for any acts done by it in accordance with such decision, act, consent or instruction of the Vendors' Delegate; and the Purchaser is entitled to rely fully upon the act(s) and decision(s) of Vendors' Delegate (in its capacity as such) as being the act(s) and decision(s) of each respective Major Vendor, individually and collectively as a group.

## **1.8 Schedules**

1.8.1 The following Schedules attached hereto are incorporated by reference and deemed to be part hereof:

### Schedules

- 1.1 Definitions
- 1.1.113 Permitted Encumbrances
- 1.1.162 Working Capital
- 2.1(A) Major Vendors, Purchased Shares and Portion of Purchase Price
- 2.1(B) Minority Vendors, Minority Vendors' Shares
- 2.2 Calculation of Purchase Price as of December 31, 2017
- 3.1 Representations and warranties of the Vendors and of the Corporation
- 3.2 Representations and warranties of the Purchaser and of the Parent
- 6.1.2(d) Special Matters
- 8.8 Notice Addresses

1.8.2 The inclusion of information in the Schedules shall not be an admission or acknowledgment that such information is required to be listed in the Schedules, that such items are material, that such items have had, or would reasonably be expected to have, a Material Adverse Change, or that such items are within or outside of the Ordinary Course of Business. Furthermore, the inclusion in the Schedules of information or the exclusion of information from the Schedules will not establish any level of materiality for purposes of this Agreement.

1.8.3 The headings, if any, of the individual sections and subsections of the Schedules are inserted for convenience only and will not constitute a part thereof or a part of this Agreement. The Schedules are arranged in sections corresponding to those contained in this Agreement merely for convenience, and the disclosure of an item in one section or subsection of the Schedules as an exception to any particular covenant, representation or warranty will be deemed adequately disclosed as an exception with respect to any other covenant, representation or warranty to the extent (but only to the extent) that it is readily apparent on its face that such item is relevant as an exception to such other covenant, representation or warranty, in each case, notwithstanding the presence or absence of an appropriate section or subsection of the Schedules with respect to such other covenant, representation or warranty or an appropriate cross-reference thereto within the text of this Agreement or the Schedules.

## **1.9 Third Party Beneficiaries**

Nothing in this Agreement or in any Ancillary Agreement or Closing Document is intended or shall be implied to, or shall, confer upon any Person (other than the Parties and the Group) any rights or remedies of any kind.

## **1.10 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of *contra proferentum* or strict construction shall be applied against any Party.

## 1.11 Statutes

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder. Notwithstanding the foregoing, reference made to any statute in the representations and warranties of the Vendors or of the Purchaser in this Agreement is to that statute as enacted at the time such representation and warranty is made.

## Article 2 PURCHASE AND SALE

### 2.1 Purchase and Sale of Purchased Shares

Upon and subject to the terms and conditions hereof, each Major Vendor shall sell to the Purchaser, and the Purchaser shall purchase from each Major Vendor, on the Closing Date, the Purchased Shares owned by each such Major Vendor, such Purchased Shares which, together with the Minority Vendors' Shares, represent all of the issued and outstanding shares in the capital of the Corporation.

### 2.2 Aggregate Consideration

Subject to the adjustments provided in Section 2.7, the aggregate purchase price payable by Purchaser to the Major Vendors and the Minority Vendors for the Purchased Securities is equal to \$189,887,500

- (1) plus the amount of the Cash,
- (2) less the amount of the Indebtedness,
- (3) less the amount of the Options Aggregate Consideration,
- (4) less the Transaction Expenses (other than Transaction Bonuses paid by the Major Vendors at Closing),
- (5) plus the amount (if any) by which the Closing Working Capital is greater than the Target Working Capital, and
- (6) less the amount (if any) by which the Target Working Capital is greater than the Closing Working Capital;

(the "**Aggregate Purchase Price**"), it being understood that the adjustments referred to in paragraphs (1) to (6) of this Section 2.2 shall be calculated as of the Effective Time on a consolidated basis for the Group and without duplication. An example of the Purchase Price calculation as of December 31, 2017 is attached hereto as Schedule 2.2

### 2.3 Estimated Aggregate Purchase Price

The Parties acknowledge that it is not possible to determine the definitive Aggregate Purchase Price until the Closing Date Financial Statements are available. Accordingly, Vendors' Delegate shall deliver to the Purchaser no later than three (3) Business Days prior to the Closing Date a statement (the "**Estimated Aggregate Purchase Price Statement**") in the form attached hereto as Schedule 2.2 that will comprise:

- (a) an estimated consolidated balance sheet of the Group as at the Effective Time;
- (b) an estimate of the Working Capital as at the Effective Time (the "**Estimated Closing Working Capital**");
- (c) an estimate of the Cash as at the Effective Time (the "**Estimated Closing Cash**");
- (d) an estimate of the Indebtedness as at the Effective Time (the "**Estimated Closing Indebtedness**");
- (e) an estimate of the Transaction Expenses as at the Effective Time (the "**Estimated Closing Transaction Expenses**"); and
- (f) an estimate of the Aggregate Purchase Price as at the Effective Time (the "**Estimated Aggregate Purchase Price**").

### 2.4 Creditor's Pay-Out Letter

Vendors' Delegate shall deliver to the Purchaser prior to the Effective Time, the pay-out letters (the "**Pay-Out Letters**") addressed to the Corporation from the Paid-Out Creditors, in form and substance reasonably satisfactory to the Purchaser.

Each Pay-Out Letter will set out the aggregate amount of principal and interest of the Indebtedness owed by each member of, and collectively by, the Group, as of the Closing Date, to the relevant Paid-Out Creditor, together with all accrued and unpaid interest, all fees, premiums, prepayment penalties, breakage costs or similar charges or expenses or other obligations owed to the relevant Paid-Out Creditors as a result of the early repayment thereof and indicate relevant wire transfer instructions. Pursuant to the Pay-Out Letters, each of the Paid-Out Creditors will irrevocably undertake to terminate the credit agreement or other financial instrument relating to the Indebtedness and to take all required actions in order to discharge promptly, but in no event later than fifteen (15) days after the Closing Date, and in all instances as of the Effective Time, all Encumbrances on the assets of any one or more members of the Group that exist for the benefit of such Paid-Out Creditor, subject to its receipt of payment of the aggregate amount stipulated in such Paid-Out Creditor's Pay-Out Letter(s).

## 2.5 Payment at Closing

2.5.1 *Payment of Options Consideration.* In full and final satisfaction of the Options Aggregate Consideration, the Vendors' Delegate and the Corporation shall direct the Purchaser to pay, or cause to be paid, on behalf of the Corporation, the Options Net Consideration payable to the Optionholders, by way of a wire transfer to the account of the Corporation; and the Corporation shall be responsible to pay the difference between the Options Aggregate Consideration and the Options Net Consideration to the relevant Tax Authorities within the prescribed periods and in accordance with the option cancellation agreements with the Optionholders.

2.5.2 *Estimated Aggregate Purchase Price.* The Estimated Aggregate Purchase Price shall be paid and satisfied at the Closing as follows:

- (a) *Initial Consideration.* The Purchaser shall pay, or cause to be paid, to the Vendors' Delegate at the Closing, by wire transfer of immediately available funds to the account specified by the Vendors' Delegate to the Purchaser prior to the Closing, an amount equal to the Estimated Aggregate Purchase Price minus, (i) the Adjustment Holdback and (ii) the Indemnity Holdback (the "**Initial Consideration**"), which, in turn, Vendors' Delegate shall pay, or cause to be paid, as follows:
  - (i) with respect to an amount equal to the aggregate purchase price set out in the Minority Vendors' SPAs, to Minority Vendors in accordance with said Minority Vendors' SPAs;
  - (ii) with respect to an amount equal to the Preferred Equity Purchase Price, to the Preferred Shareholder;
  - (iii) with respect to the difference between the Initial Consideration and the aggregate amounts set out in Section 2.5.2(a)(i) and 2.5.2(a)(ii), to the Major Vendors in accordance with their respective Common Equity Designated Percentages.
- (b) *Adjustment Holdback.* The Purchaser shall pay, or cause to be paid, to the Escrow Agent at the Closing, by wire transfer of immediately available funds to the account specified by the Escrow Agent to the Purchaser at least two (2) Business Days prior to the Closing, an amount equal to \$300,000 (such amount, together with all interest earned thereon, is hereinafter referred to as the "**Adjustment Holdback**"). The Adjustment Holdback shall be held, invested and disbursed as specified in the Escrow Agreement.
- (c) *Indemnity Holdback.* The Purchaser shall pay, or cause to be paid, to the Escrow Agent at the Closing, by wire transfer of immediately available funds to the account specified by the Escrow Agent to the Purchaser at least two (2) Business Days prior to Closing:
  - (i) an amount equal to \$945,000 (such amount, together with all interest earned thereon, is hereinafter referred to as the "**General Indemnity Holdback**"); and
  - (ii) the amounts set forth on Schedule 6.1.2(d), in an aggregate amount equal to \$1,107,500 (such aggregate amount, together with all interest earned thereon, is hereinafter referred to as the "**Special Indemnity Holdback**"); and collectively with the General Indemnity Holdback, the "**Indemnity Holdback**");

The Indemnity Holdback shall be held, invested and disbursed in accordance with this Agreement and the Escrow Agreement.

(d) *Release of Indemnity Holdback.*

- (i) The General Indemnity Holdback shall be released to the Vendors' Delegate on behalf of the Major Vendors no later than the date of the 18<sup>th</sup>-month anniversary of the Closing Date, except for (a) amounts previously paid to the Purchaser therefrom pursuant to Article 6 or (b) amounts subject to a pending Claim against the General Indemnity Holdback made by the Purchaser

against the Major Vendors in accordance with, and pursuant to Article 6, subject to the terms and conditions of the Escrow Agreement.

- (ii) The amounts of Special Indemnity Holdback corresponding to the matters set forth on Schedule 6.1.2(d) shall be released to the Vendors' Delegate on behalf of the Major Vendors upon the expiration of the period applicable to the matters covered thereby as specified on Schedule 6.1.2(d), except for (a) amounts previously paid to the Purchaser therefrom pursuant to Article 6 or (b) amounts subject to a pending Claim against the Special Indemnity Holdback made by the Purchaser against the Major Vendors in accordance with, and pursuant to Article 6, subject to the terms and conditions of the Escrow Agreement.

2.5.3 *Indebtedness and Transaction Expenses.* At Closing, the Purchaser shall also make the following payments:

- (a) The Purchaser shall pay, on behalf of the Corporation and, to the extent applicable, the other members of the Group, that portion of the Indebtedness payable to the Paid-Out Creditor thereof (which amount shall be the amount set forth in the applicable Pay-Out Letter) in immediately available funds in such manner as directed by such Paid-Out Creditor and, subsequent to Closing, the Corporation shall, as consideration, issue shares in the capital of the Corporation to the Purchaser equal to the fair market value of such payments immediately following the acquisition of the Purchased Securities hereunder;
- (b) The Purchaser shall pay, as per Vendors' Delegate instructions, on behalf of the Vendors, the Estimated Closing Transaction Expenses (other than the Transaction Bonuses) pursuant to those wire transfer instructions provided by the Vendors' Delegate.
- (c) The Purchaser shall pay, or cause to be paid, as per Vendors' Delegate instructions, on behalf of the Vendors, the Transaction Bonuses to the account of the Corporation in accordance with those wire transfer instructions provided by the Vendors' Delegate, and, in turn, the Corporation shall pay or cause such amounts to be paid: (A) to the recipients and in the amounts set forth in bonus payment instruction letter provided to Purchaser and the Corporation by the Vendors' Delegate, and (B) to each Tax Authority the applicable amount payable to such Tax Authority in satisfaction of the employee Tax withholding obligations attributable to the Transaction Bonuses and the employer portion of any payroll or employment Taxes arising from, or due and payable with respect to the Transaction Bonuses (and for greater certainty, all such amounts so paid shall under this Section 2.5.3(c) shall be included in Transaction Expenses or purposes of calculating the Aggregate Purchase Price under Section 2.2 hereof).

## 2.6 Closing Date Financial Statements

- 2.6.1 No later than sixty (60) days after the Closing Date, the Purchaser shall deliver to the Vendors' Delegate (i) the Closing Date Financial Statements prepared in accordance with ASPE and the methodology set forth in Schedule 2.2 at the expense of the Major Vendors, and (ii) the calculation of the Closing Cash, Closing Indebtedness, Closing Transaction Expenses and the Closing Working Capital based on such Closing Date Financial Statements and the calculation of the Purchase Price (collectively, the "**Closing Calculation**"). The Purchaser and the Vendors shall be permitted access to the audit and related working papers of the Auditors in respect of the Closing Date Financial Statements in accordance with customary protocols regarding such access.
- 2.6.2 The Major Vendors may object to the Closing Calculation by written notice from the Vendors' Delegate to the Purchaser within sixty (60) days following receipt thereof, which notice shall specify in reasonable detail those items or amounts as to which the Vendor objects (the "**Objection Notice**") and the Parties shall be deemed to have agreed upon all other items and amounts contained in such Closing Calculation which are not impacted by items or amounts objected to in the Objection Notice. If no Objection Notice is made within the period and in the manner specified in the preceding sentence, or if the Purchaser and the Vendors' Delegate confirm in writing that they accept the Closing Calculation prior to the end of such sixty (60) days period, then the Closing Calculation shall be conclusive, final and binding on all the Parties without possibility of amendment or appeal and shall constitute the final Closing Calculation.
- 2.6.3 If an Objection Notice is delivered in the manner and within the sixty (60) period specified in the preceding paragraph, the Parties shall in good faith attempt to resolve any matters in dispute with respect to the Closing Calculation as promptly as practicable. If the Purchaser and the Vendors' Delegate are unable to resolve all such items in dispute within thirty (30) days after the receipt of the Objection Notice giving rise to such dispute, then those items or calculations in dispute shall be submitted for resolution within five (5) Business Days following such thirty (30) days period to Deloitte & Touche LLP or, if they are unwilling or unable to accept the mandate to resolve the dispute, to such other independent firm of chartered accountants as the Purchaser and the Vendors' Delegate may agree in writing or, failing agreement, as appointed by the court (howsoever selected, the "**Independent Firm**"). The Independent Firm, acting as an expert and not as arbitrator, will limit its review only to the specific items or calculations in dispute (except to the extent that ASPE requires adjustments to other items as a result thereof). The Parties shall use commercially reasonable efforts to cause the Independent Firm to submit its determination or

opinion in a written statement delivered to the Purchaser and the Vendors' Delegate as promptly as practicable, but in no event later than thirty (30) Business Days of the appointment of such Independent Firm, and such determination or opinion, together with those items accepted by the Purchaser and the Vendors' Delegate in respect of the Closing Calculation or otherwise resolved between the Purchaser and the Vendors' Delegate, shall be conclusive, final and binding on all the Parties without possibility of amendment or appeal and shall constitute the final Closing Calculation.

- 2.6.4 The Parties shall cooperate fully in the preparation of the Closing Calculation. While the Independent Firm is making its determination hereunder, the Parties (which for this subsection 2.6.4 shall include the Vendors' Delegate) shall not communicate with the Independent Firm on the subject matter of its review, except by joint conference call, joint meeting or letter with copy simultaneously delivered to the other Parties.
- 2.6.5 The Parties will bear their respective fees and expenses (including those of their respective advisors) in preparing, auditing or reviewing, as the case may be, the Closing Calculation. The fees and expenses of the Independent Firm will be allocated between the Vendors and the Purchaser as determined (and as set forth in the final determination) by the Independent Firm based upon the relative success (in terms of percentages) of each of the Purchaser's claim, on the one hand, and the Vendors' claim, on the other hand. For example, if the final determination reflects a sixty-fourty (60-40) compromise of the Parties' claims being determined by the Independent Firm, the Independent Firm would allocate expenses forty percent (40%) to the Party (i.e. either the Purchaser, on the one hand, or the Vendors, on the other hand) whose claims were determined to be sixty percent (60%) successful and sixty percent (60%) to the Party (i.e. either the Purchaser, on the one hand, or the Vendors, on the other hand) whose claims were determined to be forty percent (40%) successful. Vendors shall be liable for fees and expenses owed by the Vendors to the Independent Firm in accordance with their Common Equity Designated Percentage. The accounting and audit procedures provided for by this Section 2.6 shall be the exclusive and conclusive methodology for determination of the matters covered thereby and shall be binding upon the Parties and shall not be contested by any of them other than as provided for in this Section 2.6.

## 2.7 Aggregate Purchase Price Adjustments

- 2.7.1 If the Aggregate Purchase Price as finally determined pursuant to Section 2.6, is less than the Estimated Aggregate Purchase Price (such difference, represented by a positive number, being the "**Over Payment**"), then, within five (5) Business Days following such final determination, Purchaser and Vendor's Delegate, shall give joint written instructions to the Escrow Agent:
- (a) to release from the Adjustment Holdback an amount equal to the Over Payment (or the entire Adjustment Holdback, to the extent the Over Payment is not less than the Adjustment Holdback amount) by wire transfer of immediately available funds to an account specified by Purchaser; and
  - (b) to release the remaining Adjustment Holdback, if any, to the Major Vendors in accordance with the Escrow Agreement and their Common Equity Designated Percentage.
- 2.7.2 If the Over Payment exceeds the Adjustment Holdback, then the Major Vendors shall, within five (5) Business Days following the final determination, make payment by wire transfer to Purchaser in immediately available funds of such excess.
- 2.7.3 If the Purchase Price as finally determined pursuant to Section 2.6, is greater than the Estimated Aggregate Purchase Price (such difference, represented by a positive number, being the "**Under Payment**"), then, within five (5) Business Days following such final determination,
- (a) Purchaser shall make payment by wire transfer to Vendors' Delegate for the benefit of the Major Vendors, in immediately available funds, of an amount equal to the Under Payment (and which amount shall subsequently be distributed by Vendors' Delegate to the Major Vendors based on their respective Common Equity Designated Percentages or as otherwise agreed by the Major Vendors) ; and
  - (b) Purchaser and Vendors' Delegate, shall give written instructions to the Escrow Agent to release the Adjustment Holdback to Major Vendors, in accordance with the Escrow Agreement and their Common Equity Designated Percentage of such amount.

## 2.8 Withholding

Each of Purchaser, its Affiliates, Escrow Agent and, effective upon the Closing, the Company, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as each of Purchaser, its Affiliates, the Escrow Agent and, effective upon the Closing, the Company, respectively, is required to deduct and withhold under the Tax Act, Code, or any Tax law, with respect to the making of such payment. Before making any such deduction or withholding, Purchaser, its Affiliates (including, from and after the Closing, the Corporation), the Escrow Agent or their agents, as applicable, shall use commercially reasonable efforts to notify Vendors of the intention to make such deduction or



withholding. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

### **Article 3**

#### **REPRESENTATIONS AND WARRANTIES**

#### **3.1 Representations and Warranties of the Major Vendors and of the Corporation**

##### *3.1.1 Representations*

Each Major Vendor severally (and not jointly and severally) represents and warrants to the Purchaser as set forth in Sections 3.1.1 through (and including) 3.1.7 of Schedule 3.1 hereof with respect to itself and the Purchased Shares that it holds, and acknowledges that the Purchaser is relying upon such representations and warranties in entering into this Agreement. The Corporation represents and warrants to the Purchaser as set forth in Sections 3.1.8 through (and including) 3.1.46 of Schedule 3.1 hereof and acknowledge that the Purchaser is relying upon such representations and warranties in entering into this Agreement.

##### *3.1.2 No Other Representations and Warranties*

Except for the representations and warranties set forth in Schedule 3.1, the Major Vendors and the Corporation make no further representations or warranties to the Purchaser, whether express or implied, statutory or otherwise, with respect to the Corporation or any members of the Group, their assets and liabilities or the Purchased Shares, including with respect to (i) any financial projections and their underlying assumptions or any other information furnished by the Major Vendors or the Corporation or their respective Representatives, (ii) the title, the physical condition or value or the environmental condition, of any assets shown or reflected on the balance sheet included in the Closing Date Financial Statements and of all assets acquired by the Corporation or any member of the Group since then, or (iii) the future profitability or future earnings performance of the Corporation or any member of the Group and their Business.

#### **3.2 Representations and Warranties of the Purchaser and of the Parent**

The Purchaser and the Parent jointly and severally represent and warrant to and in favour of the Major Vendors as set forth in Schedule 3.2 hereof and acknowledge that the Vendors are relying upon such representations and warranties in entering into this Agreement. Except for the representations and warranties set forth in Schedule 3.2, the Purchaser and the Parent make no further representations or warranties to the Major Vendors, whether express or implied, statutory or otherwise.

#### **3.3 Disclosure**

Disclosure of any fact or item in any Schedule hereto referenced by or to a particular Article or Section in this Agreement shall be deemed to have been disclosed with respect to every other Article or Section in this Agreement to the extent (but only to the extent) that it is readily apparent on its face that such fact or item is relevant as disclosure to such other Article or Section. The specification of any dollar amount in the representations or warranties contained in this Agreement or the inclusion of any specific item in any Schedule hereto is not intended to imply that such amounts, or higher or lower amounts, or the items so included or other items, are or are not material, and no Party shall use the fact of the setting of such amounts or the inclusion of any such item in any dispute or controversy between the Parties as to whether any obligation, item or matter not described herein or included in a Schedule is or is not material for purposes of this Agreement. No disclosure relating to any possible Breach of any contracts or Laws shall be construed as an admission or indication that such Breach exists or has actually occurred.

#### **3.4 Survival of Representations and Warranties**

*3.4.1 Major Vendors and Corporation.* All representations and warranties made by the Vendors and the Corporation in this Agreement shall survive the Closing as follows:

- (a) the representations and warranties set forth in Sections 3.1.1 (a), 3.1.1 (b), 3.1.1 (c) (i) (1), 3.1.1 (c) (i) (2), 3.1.1 (c) (ii), 3.1.3, 3.1.4, 3.1.8 (a), 3.1.9, 3.1.13 (a), 3.1.13 (b), and 3.2.7 of Schedule 3.1 (the “**Fundamental Representations**”) shall survive the Closing without time limit;
- (b) the Tax Representations shall survive the Closing and continue in full force and effect until forty-five (45) days following the expiration of the statute of limitations or prescription applicable to the matters covered thereby;
- (c) the representations and warranties set forth in Section 3.1.32 (Environmental Matters) of Schedule 3.1 shall survive the Closing and continue in full force and effect until the date of the fourth (4<sup>th</sup>) anniversary of the Closing Date;
- (d) the representations and warranties set forth in Sections 3.1.35 (Employee Plans) and 3.1.37 (Intellectual

Property Rights) of Schedule 3.1 shall survive the Closing and continue in full force and effect until the date of the second (2<sup>nd</sup>) anniversary of the Closing Date;

- (e) all of the other representations and warranties of the Major Vendors and of the Corporation in this Agreement shall survive the Closing and continue for a period ending thirty (30) days after completion of the audited consolidated financial statements of the Corporation as of and for the period ending December 31, 2019; provided, however, that such survival period will under no circumstances extend beyond the date that is eighteen (18) months after the Closing Date.

After the expiry of the applicable survival period, the Major Vendors shall have no further liability hereunder with respect to the applicable representations and warranties, except with respect to Claims for indemnification made within such survival period in accordance with the terms of this Agreement, in which case any representation or warranty that is the subject of such claim shall survive, to the extent of such claim only, until such claim is resolved, whether or not the amount of Loss resulting from such claimed breach has been finally determined at the time notice is given. For the avoidance of doubt, notification of a Claim for indemnification shall be sufficient to cause any such representation or warranty to continue to survive for purposes of resolving the Claim at issue. The Indemnified Party shall not be required to file a lawsuit, begin an arbitration or commence another formal or informal proceeding in order to cause such representation or warranty to continue to survive.

- 3.4.2 *Purchaser*. All representations and warranties made by the Purchaser in this Agreement shall survive the Closing until forty-five (45) days following the expiration of the statute of limitations or prescription applicable to the matters covered thereby.
- 3.4.3 *Fraud*. Notwithstanding anything herein contained to the contrary, in the case of any Breach by a Party of any representation or warranty involving Fraud, there shall be no time limitation on the right of the other Party to bring any Claim in respect of such Breach or failure and to be indemnified in respect thereof.
- 3.4.4 *Covenants*. None of the covenants or other agreements contained herein shall survive the Closing Date other than those which by their terms contemplate performance in whole or in part after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period explicitly specified herein (or, if no date or period is specified, then such covenants and agreements shall survive until fully performed).

## **Article 4 COVENANTS**

### **4.1 Due Diligence**

- 4.1.1 *Due Diligence*. The Purchaser acknowledges that, prior to the execution of this Agreement, (i) the documents in the Project Snowball virtual data room managed by Robert W. Baird & Co. Incorporated on the Firmex platform and the documents listed in the Schedules have been made available to the Purchaser and its Representatives for due diligence purposes, and (ii) it has satisfied itself with the results of its due diligence investigations in respect of matters related to the operations, assets, liabilities and financial position of the Corporation and the members of the Group prior to the execution of this Agreement.

### **4.2 Insurance**

- 4.2.1 *Liability Insurance*. The Purchaser hereby undertakes and covenants that it shall cause each member of the Group to maintain in full force and effect, for a period of at least three (3) years, insurance against all liability for any Third Party Claims regarding defective products or services manufactured, sold, provided or performed by or on behalf of any member of the Group on or prior to the Closing, such insurance to be for at least the same amount and on the same terms and conditions as the Corporation represented to the Purchaser were applicable immediately prior to the Closing and with insurers or insurers with a Standard and Poor's financial strength rating of at least A; provided, however, that the Purchaser may satisfy the requirements of the foregoing sentence by having the members of the Group covered under an insurance policy maintained by the Purchaser for itself and its subsidiaries, providing not less than the level of coverage required hereby.
- 4.2.2 *Directors Liability*. The Purchaser agrees that it shall not permit or acquiesce any member of the Group amending, repealing or terminating any rights to indemnification or exculpation now existing in favour of any Person who was, at any time prior to Closing, a director or officer of a member of the Group, as provided in Articles or by-laws of the relevant member of the Group or any indemnification agreements currently in effect. Prior to the Closing, the Corporation will, at the cost of the Major Vendors, also cause the members of the Group to secure from their insurers, directors' and officers' insurance coverage for the current and former directors and officers of all members of the Group on a six year "trailing" (or "run-off") basis on terms and conditions no less advantageous to them than those contained in the relevant policy in effect on the date hereof. The Purchaser shall not terminate and shall not permit the members of the Group to terminate any such policy for a period of six years from the Closing Date. The

provisions of this Section 4.2.2 are for the benefit of, and shall be enforceable by, each director and officer referred to above, his or her heirs and his or her representatives, and are in addition to, and not in substitution for, any rights to indemnification or contribution that any such Person may have by contract or otherwise.

### 4.3 Maintenance and Access to Records

The Purchaser agrees that it will retain all Books and Records and any other documents, information and files relating to the members of the Group delivered to it by the Vendors or the Group and relating to any period ending on or prior to the Closing Date for a period of seven (7) years following the Closing Date. So long as such Books and Records and such other documents, information and files are retained by the Purchaser, the Major Vendors or their authorized representatives shall have reasonable access thereto but the Purchaser shall not be responsible or liable to the Major Vendors for or as a result of any loss or destruction of or damage to any such books, or records or such other documents, information and files. In addition, the Major Vendors may also retain any copy of the Books and Records which they reasonably deem to be necessary as prior owners of the Corporation, but in all instances subject to confidentiality agreements appropriately protective of the Corporation and Purchaser. Privileged communications and documents related to the transaction contemplated herein or in any Ancillary Agreement or Closing Document remain the property of the Major Vendors, are not meant to be delivered at Closing even if they are inadvertently disclosed when information systems and records are handed over on Closing.

### 4.4 Personal Information Privacy

- 4.4.1 The Parties hereto acknowledge that they are responsible for compliance at all times with applicable privacy laws which govern the collection, use and disclosure of Personal Information acquired by or disclosed to a Party pursuant to or in connection with this Agreement (the “**Disclosed Personal Information**”).
- 4.4.2 No Party shall use the Disclosed Personal Information for any purposes other than those related to the performance of this Agreement and the completion of the transactions contemplated hereunder, other than as: (i) required by OPIS Canada, OPI USA and/or the Major Vendors in the Ordinary Course of Business; and (ii) permitted under applicable privacy laws.
- 4.4.3 Each Party acknowledges and confirms that the Disclosed Personal Information is necessary for the purposes of determining if the Parties shall proceed with the transactions contemplated hereunder, and that the Disclosed Personal Information relates solely to the carrying on of the business and the completion of the transactions contemplated hereunder.
- 4.4.4 Each Party acknowledges and confirms that it has and shall continue to employ appropriate technology and procedures in accordance with applicable Law to prevent accidental loss or corruption of the Disclosed Personal Information provided to it, unauthorized input or access to the Disclosed Personal Information provided to it, and unauthorized or unlawful collection, storage, disclosure, recording, copying, alteration, removal, deletion, use or other processing of such Disclosed Personal Information provided to it.
- 4.4.5 Each Party shall at all times keep strictly confidential all Disclosed Personal Information provided to it, and shall instruct those employees or advisors responsible for processing such Disclosed Personal Information to protect the confidentiality of such information in a manner consistent with the Parties’ obligations hereunder. Each Party shall ensure that access to the Disclosed Personal Information provided to it shall be restricted to those employees or advisors of the respective Party who have a bona fide need to access such information in order to complete the transactions contemplated hereunder.
- 4.4.6 Each Party shall promptly notify the other Parties to this Agreement of all inquiries, complaints, requests for access, and claims of which the Party is made aware in connection with the Disclosed Personal Information. The Parties shall fully cooperate with one another, with the persons to whom the Personal Information relates, and any Governmental Authority charged with enforcement of applicable privacy laws, in responding to such inquiries, complaints, requests for access, and claims.

### 4.5 Release

Each Major Vendor, on behalf of such Major Vendor and each of such Major Vendor’s heirs, representatives, successors, and assigns, hereby **RELEASES AND FOREVER DISCHARGES** Purchaser and each of its officers, directors, employees, agents, stockholders, controlling persons, representatives, Affiliates, successors, assigns, and each member of the Group (individually, a “**Releasee**” and collectively, “**Releasees**”) from any and all Claims, Actions, Orders, Losses, Liabilities, and Contracts whatsoever, whether known or unknown, suspected or unsuspected, both at Law and in equity, which such Major Vendor or any of such Major Vendor’s respective heirs, representatives, successors, or assigns now has, has ever had or may hereafter have against the respective Releasees arising contemporaneously with or prior to the Closing Date or on account of or arising out of any matter, cause or event occurring contemporaneously with or prior to the Closing Date including any rights to indemnification or reimbursement from any member of the Group, whether pursuant to their respective organizational documents, Contract or otherwise and whether or not relating to Claims or Actions pending on, or

asserted after, the Closing Date; provided, however, that nothing contained herein shall operate to release any obligations of Purchaser arising under this Agreement and the Ancillary Agreements or to prohibit any Major Vendor who is also a director or officer of any member of the Group from asserting a claim for indemnification for third party claims. Each Major Vendor, on behalf of such Major Vendor and each of such Major Vendor's heirs, representatives, successors and assigns, and each member of the Group, hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Claim or Action, or commencing, instituting, or causing to be commenced, any Claim or Action, of any kind against any Releasee, based upon any matter purported to be released hereby.

#### 4.6 R&W Insurance Policy

The Purchaser shall obtain the R&W Insurance Policy at its sole cost and expense, which R&W Insurance policy shall be bound prior to the Closing Date.

#### 4.7 Tax Matters

##### 4.7.1 Tax Filings

- (a) Purchaser will cause to be prepared and filed on a timely basis, all income Tax Returns for any member of the Group for any Pre-Closing Tax Period and for which Tax Returns have not been filed as of the Closing Date, at the Major Vendors' expense. No later than thirty (30) days prior to the deadline for filing any income Tax Returns (taking into account all extensions properly obtained), the Purchaser will provide drafts of such returns to the Vendors' Delegate for review and comment on such drafts. The Purchaser shall make such changes to the Tax Returns as requested by the Vendors' Delegate and that are received in writing by the Purchaser no later than ten (10) days prior to such filing due date, unless in any such instance, such requested changes are (i) contrary to applicable Laws, (ii) inconsistent with past practices of the Group, or (iii) reasonably determined in good faith likely to negatively impact any Tax period or portion thereof following the Closing Date. The Purchaser will also provide the Vendors' Delegate with copies of such Tax Returns in the form actually filed.
- (b) Purchaser will cause to be prepared and filed on a timely basis, all Tax Returns (other than income Tax Returns) for any member of the Group for any Pre-Closing Tax Period and for which Tax Returns have not been filed as of the Closing Date, at the Major Vendors' expense.
- (c) Purchaser will cause to be prepared and filed on a timely basis, all Tax Returns for the Group for all Straddle Periods applicable to any member of the Group, as the case may be (all such Tax Returns being referred to herein as "**Stub Period Tax Returns**"), at the Major Vendors' expense. No later than thirty (30) days prior to the deadline for filing such Stub Period Tax Returns in respect of an income Tax, the Purchaser will provide drafts of such Stub Period Tax Returns to the Vendors' Delegate and provide the Vendors' Delegate with reasonable opportunity to review and comment on such drafts. The Purchaser shall make such changes to the Stub Period Tax Returns as requested by the Vendors' Delegate and that are received in writing by the Purchaser no later than ten (10) days prior to such filing due date, unless in any such instance, such requested changes are (i) contrary to applicable Laws, (ii) inconsistent with past practices of the Group, or (iii) reasonably determined in good faith likely to negatively impact any Tax period or portion thereof following the Closing Date.
- (d) The Corporation, Major Vendors and Purchaser will cooperate fully with each other and make available to each other in a timely fashion, all data and other information as may reasonably be required for the preparation of all Tax Returns referred to in this Section 4.7 and in connection with any audit, litigation or other proceeding with respect to Taxes and will preserve that data and other information until the expiration of any applicable limitation period for maintaining books and records under any applicable Tax Law with respect to the Tax Returns.
- (e) 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, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.
- (f) Purchaser, Major Vendors and the Corporation agree to retain all books and records with respect to Tax matters pertinent to the Group relating to any Pre-Closing Tax Period until the expiration of the statute of limitations (and, to the extent notified by Purchaser or Major Vendors, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any Tax Authority.
- (g) Except to the extent required by any applicable Law, as otherwise expressly contemplated by this Agreement, or with the prior written consent of Vendors' Delegate (which consent shall not be unreasonably conditioned, delayed or withheld), the Purchaser covenants that it will not, and it will not cause or permit the

Group to (i) take any action out of the Ordinary Course of Business on the Closing Date (except as expressly contemplated in this Agreement), (ii) make any election or deemed election or make or change any Tax election (other than a Section 338(g) Election contemplated by Section 4.7.5), (iii) amend any Tax Return or take any position on any Tax Return, in each case that results in any increased Tax liability or reduction of any deduction, credit or loss carry-over of any such entity in respect of any period ending on or before or which includes the Closing Date. In the event that the Purchaser contemplates any actions, elections or amendments associated with, or related to, any Tax Returns in the circumstances referred to in the preceding sentence, the Purchaser agrees to notify the Vendors' Delegate at least thirty (30) days before the date at which the Purchaser anticipates to make such actions or file to such election or amendments and the Purchaser will (i) consider in good faith any reasonable comments to such actions, elections or amendments contemplated to be made by the Purchaser or the Group and (ii) make any reasonable changes to such actions, elections or amendments, in each case, that are received in writing by the Purchaser no later than ten (10) days prior to such action or filing date; provided that such changes are not contrary to applicable Laws and are consistent with the past practices of the Group. The Purchaser agrees that the Major Vendors are to have no liability for any Tax (including any related interest and penalties) resulting from any action referred to in the two preceding sentences in the event that the Purchaser or Group set aside or disregarded requests, suggestion or comments made by the Vendors' Delegate as provided above.

- (h) Major Vendors and Purchaser agree, upon request, to use reasonable best efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed on the Vendors, Purchaser or any member of the Group.

#### 4.7.1 *Pre-Closing Taxes.*

Upon the filing of any Tax Return for a Pre-Closing Tax Period, the Major Vendors shall, as an adjustment to the Purchase Price, severally (and not jointly and severally) and promptly pay to Purchaser but in any event within five (5) days of a written demand thereof, *pro rata* on the basis of their Common Equity Designated Percentages, an amount equal to the Taxes, if any, payable with respect thereto in excess of any such Taxes taken into account as a Current Liability in the calculation of Closing Working Capital, as finally determined. Upon the filing of any Tax Return for a Straddle Period (if any), the Major Vendors shall, as an adjustment to the Purchase Price, severally (and not jointly and severally) and promptly pay to Purchaser but in any event within fifteen (15) days of a written demand thereof, *pro rata* on the basis of their Common Equity Designated Percentages, an amount equal to the portion of the Taxes, if any, payable with respect thereto in excess of any such Taxes taken into account in the calculation of the Purchase Price and as a Current Liability in the calculation of Closing Working Capital, as finally determined, determined as follows: the amount of any Taxes based on or measured by income, receipts or payments (including withholding) of the Group for the portion of the Straddle Period ending on the Closing Date (the "**Pre-Closing Straddle Period**") shall be determined based on an interim closing of the books as of the close of business on the Closing Date and as if the relevant member of the Group had a taxation year ending on the Closing Date, and the amount of other Taxes that are calculated on a periodic basis (e.g. real and personal property taxes) of the Group for the Pre-Closing Straddle Period shall 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 Closing Date and the denominator of which is the number of days in such Straddle Period. In preparing any income Tax Returns for the Group for any Pre-Closing Tax Period or in computing the amount of any Taxes based on or measured by income or receipts of the Group for the Pre-Closing Tax Period or any Straddle Period, the Purchaser shall to the extent allowable under applicable Law claim, deduct or otherwise utilize any available loss carry forwards, deductions or tax credits generated in the Pre-Closing Tax Period or otherwise generated in the Pre-Closing Straddle Period (whether refundable or not) (including, but not limited to, any Scientific Research and Experimental Development refundable tax credits or similar investment tax credits).

Without duplication of any other payments or adjustments made pursuant hereto, upon payment by any Tax Authority to any member of the Group of any Tax refund and other proceeds paid to any member of the Group in respect of any Pre-Closing Tax Period or in respect of a Pre-Closing Straddle Period (as determined in accordance with the principles set out in Section 4.7.20), including, but not limited to, the payment of any refundable tax credits (including, but not limited to, any Scientific Research and Experimental Development refundable tax credits or similar investment tax credits) associated with or attributable to any Pre-Closing Tax Period or Pre-Closing Straddle Period; the proceeds of such payments in excess of any such Taxes taken into account in the calculation of the Purchase Price and as a Current Asset in the calculation of Closing Working Capital, as finally determined, shall, as an adjustment to the Purchase Price, promptly be remitted to the Vendors' Delegate, on behalf of the Major Vendors, but in any event within fifteen (15) days of the date of receipt of any such payment. For certainty, no payment shall be made under this Section 0 in respect of any refund or credit that has been applied to reduce the amount of Taxes payable by the Major Vendors in respect of a Pre-Closing Tax Period or Pre-Closing Straddle Period under Section 0

#### 4.7.2 *Post-Closing Taxes.* The Purchaser and the Group shall be fully responsible for any Taxes associated with any period

after the Closing Date at the complete exoneration of the Major Vendors, including, but not limited to, any income Taxes for a Straddle Period to be paid in connection with any period after the Closing Date as determined in accordance with the principles set out in Section 0.

- 4.7.3 *Tax Assessments or Claims associated with any Pre-Closing Tax Period or Straddle Period.* Upon any Tax Authority issuing a Tax assessment or a draft Tax assessment with respect to any member of the Group or making a Claim in respect of Taxes of any member of the Group associated with or in respect of any Pre-Closing Tax Period or any Straddle Period for which the Major Vendors are liable to indemnify Purchaser pursuant to the provisions of Article 6, or threatening orally or in writing to make any such Claim (a “**Tax Claim**”), the Purchaser shall promptly notify the Vendors’ Delegate in writing of the foregoing together with all details in connection with same and the copy of all relevant Tax assessments, draft Tax assessments, proceedings, letters or correspondence with the applicable Tax Authority, as applicable, and in any event, within thirty (30) days that the Purchaser or the Corporation receives notice of any such Tax Claim. The Vendors’ Delegate may participate (at Major Vendors’ own expense) in the defence of any Tax Claim by giving written notice to that effect to the Purchaser not later than ten (10) days after receiving notice of that Tax Claim. The Purchaser shall not settle any Tax Claim that could give rise to a claim for indemnification under Article 6 without the written consent of the Vendors’ Delegate (such consent not to be unreasonably withheld, conditioned or delayed) to the extent, and for so long as, the Vendors’ Delegate participates in the defence of a Tax Claim.
- 4.7.4 *Certain U.S. Tax Elections.* At the sole election of Purchaser, Purchaser may make or cause to be made an election under Section 338(g) of the Code (and any comparable provision of state, local, or non-US Law) in respect of the Corporation and OPIS Canada (each, a “**Section 338(g) Election**”).
- 4.7.5 *Adjustment.* Any amount paid by the Purchaser or the Major Vendors under this Section 4.7 shall be considered as an adjustment to the Purchase Price.
- 4.7.6 *Bump.*
- (a) The Major Vendors acknowledge that it is the intention of the Purchaser to obtain the benefit of a “full tax cost bump” under paragraphs 88(1)(c) and 88(1)(d) of the Tax Act in respect of the Purchased Shares.
  - (b) No Major Vendor nor any Person related to a Major Vendor has:
    - (i) acquired any shares or debt of Parent;
    - (ii) acquired any right to or interest in, or option in respect of any shares or debt of Parent; or
    - (iii) knowingly acquired any property (other than money) that is substituted for any property held by the Corporation at the Effective Date or any property the fair market value of which is wholly or partly attributable to, or the fair market value of which is determined primarily by reference to, the fair market value of any of the property referred to in (i) or (ii) above or the proceeds of disposition therefrom (“**Prohibited Property**”) if such property was a Prohibited Property at the time of acquisition by the Major Vendor.
  - (c) The Major Vendors covenant and agree that:
    - (i) they, nor any entity controlled by any of one of the Major Vendors, will not at any time prior to the date that is 36 months after the Closing Date (the “**Prohibited Period**”):
      - (A) acquire any shares or debt of Parent (or any successor thereto);
      - (B) acquire any right to or interest in, or option in respect of any shares or debt of Parent (or any successor thereto);
      - (C) acquire any property owned by the Corporation or any subsidiary at the Closing Date; or
      - (D) knowingly acquire any Prohibited Property if such property was a Prohibited Property at the time of acquisition; and
    - (ii) they will use commercially reasonable efforts to ensure that each Person who is related to a Major Vendor does not at any time in the Prohibited Period:
      - (A) acquire any shares or debt of Parent (or any successor thereto);
      - (B) acquire any right to or interest in, shares or debt of Parent (or any successor thereto);
      - (C) acquire any property owned by Corporation, or a subsidiary at the Closing Date; or

(D) knowingly acquire any Prohibited Property if, to the knowledge of the Related Person, such property was a Prohibited Property at the time of acquisition by the Related Person.

(d) For the purposes of this paragraph 4.7.7 a Person shall be deemed to be related to a Major Vendor if (i) they are related for purposes of the Tax Act, or (ii) they are a shareholder of, or related to, the Preferred Shareholder.

4.7.7 If any member of the Group has made an eligible dividend designation (as defined in the Tax Act) in respect of any dividend paid or payable to the Vendors on or prior to the Closing Date in excess of what is permitted under the Tax Act, upon request by the Purchaser, the Major Vendors shall concur with an election under subsection 185.1(2) of the Tax Act (and the equivalent provisions of any applicable provincial tax statute) to treat such excess as a taxable dividend and not as an eligible dividend. The Major Vendors shall execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to implement and carry out the true intent and meaning hereof.

4.7.8 If the amount of any capital dividend (within the meaning of the Tax Act) paid by any member of the Group on or prior to the Closing Date is in excess of the capital dividend account (as defined in the Income Tax Act) of such member immediately before such dividend became payable, upon the Purchaser's request, the Major Vendors shall concur with an election under subsection 184(3) of the Tax Act and the equivalent provisions of any applicable provincial tax statute to treat such dividend as two distinct dividends, namely: (i) a "capital dividend" equal to the balance of the capital dividend account of such member of the Group immediately before such dividend became payable, and (ii) a "taxable dividend" for any excess. The Major Vendors shall execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to implement and carry out the true intent and meaning hereof.

#### **4.8 Name**

Each Major Vendor covenants and agrees that, from and after the Closing Date, it shall not, directly or indirectly, in any way, use (whether as part of a corporate or entity name or otherwise), trade under or seek to obtain any benefit from the name "Onstream Pipeline Inspection Services Inc." or any derivative thereof or any similar name (which will automatically be deemed to include any name using the word "Onstream") or any other trade name used by OPIS Canada or OPI USA, except pursuant to this Agreement.

#### **4.9 Consents and Approvals**

The Purchaser and the Major Vendors shall, and the Major Vendors shall cause OPIS Canada and OPI USA to, use reasonable commercial efforts to obtain any and all consents or approvals of any Governmental Authority required to complete the transactions contemplated by this Agreement.

#### **4.10 Filing and Authorizations**

4.10.1 Each of the Major Vendors and the Purchaser shall:

- (a) make, or cause to be made, all such filings and submissions under all applicable Laws, as may be required for it to complete the purchase and sale of the Purchased Shares in accordance with the terms of this Agreement; and
- (b) use reasonable efforts to obtain, or cause to be obtained, any order, permit, approval, consent, waiver, License or other authorization issued, granted, given or authorized by, or made applicable under the authority of, any Governmental Authority having jurisdiction necessary in order to complete the transfer of the Purchased Shares in accordance with the terms of this Agreement.

4.10.2 Subject to compliance at all times with applicable Law and the other provisions of this Agreement, the Major Vendors, each member of the Group and the Purchaser shall coordinate and cooperate with each other in exchanging information and supplying such assistance as is reasonably requested in connection with the foregoing including providing each Party with all notices and information supplied to or filed with or received from any Governmental Authority (except for notices and information which the Major Vendors, any member of the Group or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive and which may be filed on a confidential basis).

4.10.3 Without limiting the generality of the foregoing, each member of the Group and the Purchaser shall:

- (a) comply, at the earliest practicable date and after consultation with the other Party, with any request for additional information or documentary material received by it from any Governmental Authority; and
- (b) cooperate with one another in connection with any filings or other submission aimed at resolving any

investigation or other inquiry concerning the transactions contemplated hereunder initiated by any Governmental Authority, including providing each other with copies of any notifications, filings, applications and other submissions in draft form so that the other Party can confirm that information contained within is consistent and accurate.

#### **4.11 Assignment**

In the event that the Purchaser or any of its successors or assigns (i) consolidates with or merges or amalgamates into any other Person and is not the continuing or surviving corporation or entity of such consolidation, merger or amalgamation, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then and in each such case, proper provision will be made so that the successor or assignee of the Purchaser (as the case may be) assumes the obligations set forth in this Article 4.

#### **4.12 401(k) Plan**

Subject to applicable Law, Parent shall cause a new or existing 401(k) plan of Parent or any of its subsidiaries to accept as a direct rollover or plan-to-plan transfer all or part of the account balance of an employee under OPI USA's 401(k) plan (including any promissory note representing an outstanding participant loan).

### **Article 5 CLOSING ARRANGEMENTS**

#### **5.1 Closing**

The transactions contemplated herein shall be completed at 10:00 a.m. on the Closing Date remotely via the electronic exchange of documents and signatures, or any other time agreed upon in writing by the Purchaser and the Major Vendors provided; however, that the Parties agree that the Closing shall take effect from the Effective Time.

#### **5.2 Vendors' Closing Deliveries**

5.2.1 *Vendor Deliveries.* At the Closing, the Major Vendors shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) evidence that the Third Party Consents have been obtained;
- (b) written resignations from all directors or officers of the Group from their respective positions with the Group, including releases;
- (c) all share certificates representing the Purchased Shares, duly endorsed for transfer or accompanied by irrevocable stock transfer powers of attorney duly executed in blank, in either case, by the holders of record, together with evidence satisfactory to the Purchaser that the Purchaser has been entered in the shareholder registry of the Corporation as the holder of record of the Purchased Shares;
- (d) the fully executed Pay-Out Letters;
- (e) the original copies of the debentures with Novacap marked "cancelled" as of the Closing Date;
- (f) the Minority Vendors' SPAs, duly executed by each of the Minority Vendors;
- (g) the Escrow Agreement, duly executed by the Vendors' Delegate;
- (h) employment agreements with Chad Niehaus, Gerry Wilkinson, Mike Niosi, Mark Rudnicki, Stephen Westwood and Ron Ostafichuk, duly executed by such individuals;
- (i) a Restrictive Covenant Agreement, duly executed by each of the Vendors, Chad Niehaus and Gerry Wilkinson;
- (j) all Books and Records of the Group and the Business and the originals of the minute books held by the Major Vendors;
- (k) Vendors' Delegate shall deliver a properly completed IRS Form W-9 or applicable IRS Form W-8;
- (l) OPI USA shall deliver (or cause to be delivered) a certificate, in form and substance as prescribed by Treasury Regulations promulgated under Section 1445 of the Code, stating that OPI USA is not, and has not been during the relevant period specified in Section 897(c)(1)(ii) of the Code, a "United States real property holding corporation" within the meaning of Section 897(c) of the Code (together with proof of timely mailing to the IRS of the notice required to be mailed in connection therewith);



- (m) certificate of status of the Corporation, OPIS Canada and OPI USA in each jurisdiction where it or its Subsidiaries exists or is extra-provincially registered and in which it carries on business;
- (n) fully executed option cancellation agreements from any Person who held stock options of the Corporation at any time prior to the Closing;
- (o) certified copies of the articles and by-laws or other constating documents of each member of the Group;
- (p) certified copies of resolutions of the directors of the Corporation and OPIS Canada authorizing the transactions contemplated by this Agreement;
- (q) copies of the endorsements on the insurance policies of the Corporation / OPIS Canada and OPI USA listing the Purchaser as an additional insured;
- (r) to the extent not covered by or included in the Pay-Out Letters to the satisfaction of Purchaser, discharges of, or no interest letters (along with authority or undertakings to discharge), in form and content satisfactory to the Purchaser acting reasonably, with respect to all Liens, other than Permitted Liens, regarding the Business and each member of the Group and their respective property and assets, and discharges of any Liens with respect to the Shares;
- (s) to the extent in the control of the Major Vendors, all documents, materials and assets belonging or related to OPIS Canada or OPI USA or the Business not in the possession of the Corporation, OPIS Canada or OPI USA, including all corporate minute books, closing books, corporate seals, cheque books, books of account, Contracts and other Books and Records of OPIS Canada and OPI USA;
- (t) termination and waiver in respect of the Shareholders' Agreement dated November 25, 2015 among Novacap TMT IV, L.P., Novacap International TMT IV, L.P., NVC TMT IV, L.P., Onstream Pipeline Inspection Ltd., 1423371 Alberta Inc., Gerry Wilkinson, 1424615 Alberta Ltd., Chad Niehaus, Onstream Pipeline Inspection Services Inc. and Onstream Holdings Inc, as supplemented on February 3, 2016;
- (u) termination and waiver in respect of each restricted share ownership agreements between the Corporation and each of the employee shareholders holding Class C shares as set forth in Schedule 2.1(B);
- (v) evidence satisfactory to the Purchaser that OPI USA has adopted such resolutions and taken such other actions as may be necessary in order to effectuate the termination of its 401(k) plan, effective immediately prior to the Effective Time;
- (w) all pass keys, physical keys, passwords, combinations and any other access rights and/or requirements in respect of or in connection with the Leased Property, in all instances held by one more Vendors who is not an employee of the Corporation immediately prior to the Closing;
- (x) the Flow of Funds Memorandum, duly executed by the Vendors' Delegate on behalf of each and all of the Vendors; and
- (y) all such further documents as may reasonably be required to give full effect to the provisions of this Agreement, or as otherwise may reasonably be requested by Purchaser.

### 5.3 Purchaser Closing Deliveries

5.3.1 *Purchaser Deliveries.* At the Closing, the Purchaser shall deliver or cause to be delivered to the Major Vendors the following documents and payments:

- (a) the payment of the Initial Consideration;
- (b) the payment of the Adjustment Holdback and of the Indemnity Holdback to the Escrow Agent;
- (c) an executed release and discharge in form reasonably satisfactory to the Major Vendors, of all officers and directors of each member of the Group from all Claims against each such officer and director arising out of decisions taken in good faith at any time on or before Closing, in all instances solely and limited in and to their capacity as an officer or director;
- (d) the Minority Vendors' SPAs, duly executed by the Purchaser;
- (e) the Escrow Agreement, duly executed by the Purchaser and the Parent;
- (f) employment agreements with Chad Niehaus, Gerry Wilkinson, Mike Niosi, Mark Rudnicki, Stephen Westwood and Ron Ostafichuk, duly executed by OPIS Canada;

- (g) the Restrictive Covenant Agreements, duly executed by the Purchaser;
- (h) the R&W Insurance Policy; and
- (i) all such further documents as may reasonably be required to give full effect to the provisions of this Agreement, or as otherwise may reasonably be requested by Purchaser.

## **Article 6**

### **INDEMNIFICATION**

#### **6.1 Indemnification by the Major Vendors**

- 6.1.1 *Individual Liability.* Subject to Sections 3.4.1, 3.4.4 and 6.3.1, each Major Vendor, severally (and not jointly and severally), shall indemnify and save harmless the Purchaser from and against all Losses suffered or incurred by the Purchaser, the Parent or any of their respective Affiliates (including, from and after the Closing, any member of the Group) and their respective Representatives (collectively, the “**Purchaser Indemnitees**”) attributable to, arising out of or resulting from (a) any Breach of any representation or warranty made or given by such Major Vendor in Sections 3.1.1 through (and including) 3.1.7 of Schedule 3.1 to this Agreement, and (b) any failure by such Major Vendor to observe or perform any of its, his or her covenants or obligations contained in any Transaction Document, including without limitation the Restrictive Covenant Agreement.
- 6.1.2 *Collective Liability.* Subject to Sections 3.4.1, 3.4.4 and 6.3.1, the Major Vendors shall jointly and severally indemnify and save harmless the Purchaser Indemnitees from and against all Losses suffered or incurred by any Purchaser Indemnitee attributable to, arising out of or resulting from:
- (a) any Breach of any representation or warranty set forth in Sections 3.1.8 through (and including) 3.1.46 of Schedule 3.1 to this Agreement;
  - (b) any failure by any member of the Group or any Vendor to observe or perform any of its covenants or obligations contained in any Transaction Document other than the Restrictive Covenant Agreements;
  - (c) any Pre-Closing Taxes; and
  - (d) the matters set forth on Schedule 6.1.2(d).

#### **6.2 Indemnification by the Purchaser and the Parent**

- 6.2.1 *Liability.* Subject to Sections 3.4.4 and 6.3.2, the Purchaser and the Parent shall jointly and severally indemnify and save harmless the Major Vendors (but in all instances, solely and limited in and to their capacity as a Vendor) from and against all Losses suffered or incurred by them (in their capacity as a Vendor) attributable to, arising out of or resulting from:
- (a) any Breach of any representation or warranty made or given by the Purchaser or the Parent in this Agreement; or
  - (b) any failure by the Purchaser or the Parent to observe or perform any of its covenants or obligations contained in this Agreement.

#### **6.3 Limitations on Indemnification**

##### *6.3.1 Limitations on Indemnification of the Purchaser Indemnitees*

- (a) No Claims for indemnification may be made by any Purchaser Indemnitee against the Major Vendors pursuant to Section 6.1.1(a) or Section 6.1.2(a) (i) for any single Loss or series of related Losses that do not exceed \$25,000, up to \$100,000 in the aggregate (which Losses, up to \$100,000 in the aggregate, shall not be counted toward the Threshold) (the “**Mini-Basket**”), and (ii) unless and until the aggregate amount of the Losses suffered or incurred by the Purchaser Indemnitees, taken as a whole, collectively exceed \$945,000 (the “**Threshold**”), in which event only the amount of such Losses which exceed the Threshold may be recovered by the Purchaser Indemnitees, subject to the limitations hereof. Notwithstanding the foregoing, the Mini-Basket and the Threshold shall not be applicable for Claims made against the Major Vendors in respect of any Losses arising in connection with Claims based on the Breach of any Fundamental Representation, the Breach of any Tax Representations or in the event of Fraud.
- (b) The maximum aggregate liability of the Major Vendors to indemnify the Purchaser Indemnitees pursuant to Sections 6.1.1(a) or 6.1.2(a) shall not exceed the General Indemnity Holdback (the “**First Source Amount**”), except for Losses related to Breaches of Fundamental Representations, Breaches of Tax Representations and Fraud, which the maximum aggregate liability of a Major Vendor hereunder shall not exceed its Common

Equity Designated Percentage of the Purchase Price Cap (after deducting the Preferred Equity Purchase Price), and, in the case of a Major Vendor who is also a Preferred Shareholder, such amount plus, the Preferred Equity Purchase Price (collectively, the “**Caps**”), provided, however, that the Caps shall not apply to, and the Purchaser Indemnitees shall be entitled to indemnification under this Agreement from, any Major Vendor for any indemnifiable Loss resulting from Fraud by such Major Vendor.

- (c) If Losses related to Claims for indemnification made by any Purchaser Indemnitee against the Major Vendors pursuant to Sections 6.1.1(a) or 6.1.2(a) exceed the sum of the Threshold and the First Source Amount, the coverage provided by the R&W Insurance Policy shall then be the second source of satisfaction of any unsatisfied Loss in excess of the First Source Amount (and the sole source of satisfaction of any unsatisfied Loss in excess of the sum of the Threshold and the First Source Amount for Losses related to Breaches of representations and warranties of the Major Vendors or the Corporation other than Losses related to Breaches of Fundamental Representations, Breaches of Tax Representations and Fraud.
- (d) In the case of (1) Breaches of Fundamental Representations, (2) Breaches of Tax Representations, or (3) Fraud, if Losses related to Claims for indemnification made by any Purchaser Indemnitee against the Major Vendors pursuant to Section 6.1 exceed the sum of the Threshold and the First Source Amount and, if applicable and to the extent covered, the amount of the limit of liability of the R&W Insurance Provider under the R&W Insurance Policy, any Purchaser Indemnitee shall be entitled to indemnification from the Major Vendors for the amount of the unsatisfied portion of the Losses which are in excess of the aggregate of such amounts subject to the Caps.
- (e) In the case of Losses resulting from or otherwise associated with the indemnification obligations under Section 6.1.2(c) (“**Qualified Losses**”):
  - (i) if such Qualified Losses result from (1) a Breach of a Tax Representation, or (2) is otherwise covered by the R&W Insurance Policy (a “**Covered Tax Liability**”), Purchaser Indemnitees shall pursue indemnification as follows:
    - (I) First, the Major Vendors shall be responsible for such portion of such Qualified Losses for an amount up to the Threshold;
    - (II) Second, if the amount of such Qualified Losses exceeds the Threshold, then (x) provided such Qualified Loss is a Covered Tax Liability, then the Purchaser Indemnitees shall seek indemnification for such excess amount against the General Indemnity Holdback and (y) otherwise, the Major Vendors shall be responsible for such excess up to the “Retention” as this term is defined in the R&W Insurance Policy;
    - (III) Third, in the event that the sum of the amount set out in subsection I and the amount actually disbursed under subsection II in connection with such Qualified Losses is lower than the “Retention” as this term is defined in the R&W Insurance Policy, the Major Vendors shall be responsible for such shortfall subject to the Purchase Price Cap;
    - (IV) Fourth,
      - a. Purchaser Indemnitees shall then actively pursue coverage and payment under the R&W Insurance Policy for the actual amount of such Qualified Losses, up to the policy limit of the R&W Insurance Policy and, in order to do so, shall use commercially reasonable efforts to obtain payment and compensation under the R&W Insurance Policy; provided however, it being understood and agreed that the actions to be undertaken by Purchaser Indemnitees under this subsection (IV)(a) shall consist solely of filing an insurance claim and reasonable follow up discussions and correspondence with the R&W Insurance Provider, but shall specifically not include or be deemed to require the filing of any lawsuit or otherwise instituting any legal proceedings (whether arbitrational, judicial or otherwise);
      - b. in the event that coverage is denied by the R&W Insurance Provider notwithstanding the efforts of Purchaser Indemnitees referred to in subsection (IV)(a) above, the Major Vendors shall be responsible for any such Qualified Losses which exceed the sum of the amounts set out in subsections (I) through (III) above, subject to the Purchase Price Cap;
      - c. in the event that R&W Insurance Provider honours the R&W Insurance Policy and makes payments under the R&W Insurance Policy, such payments from the R&W Insurance Provider shall be the fourth source of indemnification of the Purchaser Indemnitees hereunder;

- (V) Fifth, in the event that coverage is provided by the R&W Insurance Provider and that such Qualified Losses exceed the sum of the amounts set out in subsections (I) through (III) above together with the payments made under subsection (IV)(c) above, the Major Vendors shall be responsible for any excess amount, subject to the Purchase Price Cap;
- (ii) with respect to Qualified Losses which are not a Covered Tax Liability, any Purchaser Indemnitee shall be entitled to indemnification from the Major Vendors from dollar one up to the Purchase Price Cap;
- (iii) notwithstanding any provisions hereof, no Major Vendor shall support, or indemnify any Purchaser Indemnitees with respect to any reduction in value or consequential, indirect, special or punitive losses (but not for the remainder of such Losses) on any income taxes that are included in any such Qualified Losses or any liability identified in Schedule 6.1.2(d).
- (f) The maximum aggregate liability of a Major Vendor associated with (i) Breaches of Sections 6.1.1(b) or 6.1.2(b), (ii) Liabilities associated with the indemnification obligations under Section 6.1.2(c) or (iii) Liabilities identified in Schedule 6.1.2(d), shall not exceed its Common Equity Designated Percentage of the Purchase Price Cap (after deducting the Preferred Equity Purchase Price), and, in the case of a Preferred Shareholder, such amount plus, the Preferred Equity Purchase Price.
- (g) In the event that Losses related to any Claim for indemnification made by any Purchaser Indemnitee against the Major Vendors pursuant to Section 6.1.2(d) exceed the amount of Special Indemnity Holdback corresponding to any matter set forth on Schedule 6.1.2(d) (*i.e.*, such amount has been distributed or otherwise is being held for pending claims by a Purchaser Indemnitee), then the General Indemnity Holdback shall be the second source of satisfaction of any unsatisfied Loss in excess of the applicable Special Indemnity Holdback (only to the extent that such unsatisfied Loss exceeds the Threshold, together with all other Losses that have been applied to the Threshold, collectively exceed the Threshold, but not subject to any Mini-Basket).
- (h) In the event that any Purchaser Indemnitee seeks recourse to the Escrow Amount for matters that a Major Vendor is severally (and not jointly and severally) liable for, the full amount of funds remaining in the Escrow Amount shall be available to the Purchaser Indemnitee for recourse (and the Purchaser Indemnitee's recourse shall not be limited to such Major Vendor's Common Equity Designated Percentage of the Escrow Amount).
- (i) No Party hereto shall be obligated to indemnify any other Person with respect to any Losses with respect to any matter if such matter was included in the calculation of the adjustment to the Purchase Price.

### 6.3.2 *Limitations on Indemnification of the Major Vendors*

- (a) No Claims for indemnification may be made by the Major Vendors against the Purchaser and Parent pursuant to Section 6.2.1(a) unless and until the aggregate Losses suffered or incurred by the Major Vendors, taken as a whole, collectively exceed the Threshold, in which event only the amount of such Losses which exceed the Threshold may be recovered by the Major Vendors, subject to the limitations hereof.
- (b) The maximum aggregate liability of the Purchaser and Parent with respect to indemnification by the Purchaser or Parent pursuant to Section 6.2 shall not exceed ten percent (10%) of the Purchase Price Cap, provided, however, that the maximum aggregate liability associated with Losses related to Breaches of the representations and warranties set forth in Sections 3.2.1, 3.2.2 and 3.2.7 of Schedule 3.2 shall be capped at the Purchase Price.

## 6.4 **General Indemnification Rules**

The obligations of the Indemnifier to indemnify the Indemnified Party in respect of any Loss shall also be subject to the principles set forth in this Section 6.4.

- 6.4.1 *Materiality Scrape.* For the purposes of this Article 6, in determining (i) whether a Breach of any representation or warranty exists, (ii) whether a Breach of any covenant or agreement exists, and (iii) the amount of any Losses with respect to any such Breach of representation or warranty or Breach of covenant or agreement, any qualification or limitation based on materiality using the terms "material," "materiality," "material respects," or "Material Adverse Change" or any similar term, shall not be taken into account, and the existence of any Breach of any representation, warranty, covenant or agreement, and the amount of any Losses with respect to any such Breach of representation, warranty, covenant or agreement shall be determined as if "material," "materiality," "material respects," "Material Adverse Change" (which shall instead be read as adverse change), or any similar term, qualification or limitation based on materiality were not contained therein.

- 6.4.2 *R&W Insurance Policy.* Notwithstanding any provisions hereof and any reference to the R&W Insurance Policy hereunder, the subscription to the R&W Insurance Policy shall be the sole responsibility of the Purchaser and at its sole cost. Under no circumstances, the Major Vendors and the Vendors' Delegate shall bear any liability or responsibility in connection with same. Without limiting the foregoing, the Major Vendors and the Vendors' Delegate shall have no liability, and the limitations of liability under this Article 6 shall not be limited, restricted or affected in any manner (and the Major Vendors shall continue to benefit from all rights they have hereunder), in the event that (but in all instances only insofar as it is a result of): (a) the R&W Insurance Policy is not in force at the Effective Time for any reason; (b) the R&W Insurance Policy is terminated or cancelled or becomes null and of no effect at any time after the Effective Time for any reason; or (c) the R&W Insurance Provider refuses, omits or delays to make any payment under the R&W Insurance Policy for any reason, whether or not the R&W Insurance Provider is in default or not under the R&W Insurance Policy.
- 6.4.3 *Appeal.* In addition to the right provided to the Indemnifier to participate in or assume control of the defence of a Third Party Claim as provided in Article 6, the Indemnified Party shall not permit any right of appeal in respect of any Third Party Claim to terminate without giving the Indemnifier notice thereof and an opportunity to contest such Third Party Claim.
- 6.4.4 *Loss.* The Indemnified Party shall not be entitled to Claim for any punitive or other special damages.
- 6.4.5 *Tax Benefits.* The amount of any Loss for which indemnification is provided under this Article 6 will be reduced to take account of any net Tax benefit actually realized in the year of the Loss or the following taxable year by the Indemnified Party (and, if the Indemnified Party is the Purchaser, the Corporation) arising from the occurrence or payment of that Loss, to the extent necessary to ensure that the Indemnified Party receives a net amount which, taking into account any such net Tax benefit, is sufficient to fully compensate for the Loss, but results in no net gain to the Indemnified Party, such amount of net Tax benefit to be determined by the Indemnified Party in its sole discretion, which shall be final and conclusive if made in good faith.
- 6.4.6 *Changes in Tax.* The Major Vendors shall not be liable for any Claim for Tax if and to the extent it is attributable to, or the amount of the Claim is increased as a result of, any (i) legislation not in force as at the Closing Date, or (ii) change in the rates of Tax applicable at the Closing Date.
- 6.4.7 *Recovery Once.* With respect to any Loss suffered by the Indemnified Party, no liability shall attach to the Indemnifier to the extent that the same Loss has been recovered by the Indemnified Party under any other representation or warranty contained in this Agreement or any other document referred to herein and, accordingly, the Indemnified Party may only recover once in respect of the same Loss.
- 6.4.8 *Insurance.* The obligation of indemnification shall not apply to the extent that any Loss claimed is reimbursed through insurance to the Indemnified Party.
- 6.4.9 *Adjustments.* The Indemnifier shall have no obligation to indemnify the Indemnified Party for any Loss with respect to any matter if such matter was included in a calculation of an adjustment to the Purchase Price in accordance with Article 2.
- 6.4.10 *Provisions.* The amount of Losses shall be reduced by any allowance, provision or reserve in respect of and to the extent the matter giving rise to such Claim was included in the Financial Statements or the Closing Date Financial Statements so as to be included in the computation of the Closing Working Capital.
- 6.4.11 *Remedy.* To the extent that any Breach of representation or warranty contained in this Agreement is capable of remedy, the Indemnified Party shall afford the Indemnifier a reasonable opportunity to remedy the matter complained of within the time period so required (but in no event to exceed 30 days).
- 6.4.12 *Fault of Party.* The obligation of indemnification shall not apply to the extent that any Loss results from the fault of the Party seeking indemnification or from Fraud committed by such Party.
- 6.4.13 *Loss Decrease.* For purposes of clarification, to the extent any Loss has been reduced in accordance with the provisions of this Section 6.4 (the "**Loss Decrease**"), the amount of such Loss Decrease shall be excluded for the purposes of calculating if the Mini Basket or the Threshold has been reached.

## 6.5 Direct Claims

Any Direct Claim shall be asserted by giving the Indemnifier reasonably prompt written notice thereof, but in any event not later than twenty (20) days after the Indemnified Party becomes aware of acts, omissions or facts that may give rise to such Direct Claim (or such shorter period as may be necessary to give the Indemnifier reasonable time to timely respond in any applicable proceeding, in the event of a litigated matter). Such notice to the Indemnifier shall describe the Direct Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be

sustained by the Indemnified Party. The Indemnifier shall then have a period of thirty (30) days within which to respond in writing to such Direct Claim (the “**Response Period**”). If the Indemnifier does not so respond within the Response Period, the Indemnifier shall be deemed to have rejected such Claim, and in such event the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party (including those provided for in the Escrow Agreement, if applicable). If the Indemnifier agrees prior to the expiration of the Response Period as to the validity of the Direct Claim (or of any portion thereof), the Indemnifier shall promptly pay, or the Parties shall direct the Escrow Agent to pay, to the extent applicable, to the Indemnified Party the amount of such Direct Claim (or portion thereof as to which the Indemnifier agreed was valid) forthwith upon such amount being quantified. If the Parties fail to agree as to the validity of all or any portion of the Direct Claim or its amount, any Party may exercise all remedies as may be available to such Party with respect to all or such portion of the Direct Claim as to which there is disagreement, as applicable. If the Indemnified Party is a Purchaser Indemnitee, such Purchaser Indemnitee shall be authorized to notify the Escrow Agent and the R&W Insurance Provider of the Direct Claim (or portion thereof as to which there is disagreement). To the extent the applicable Claim seeks payment from the Indemnity Holdback, the payment of the applicable Loss (or portion thereof) shall also proceed in accordance with the procedures set forth in the Escrow Agreement.

## 6.6 Notice of Third Party Claims

If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than twenty (20) days after receipt of such notice of such Third Party Claim (or such shorter period as may be necessary to give the Indemnifier reasonable time to timely respond in any applicable proceeding, in the event of a litigated matter). Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party. If the Indemnified Party is a Purchaser Indemnitee, such Purchaser Indemnitee shall be authorized to notify the Escrow Agent and the R&W Insurance Provider of the Third Party Claim. To the extent the applicable Claim seeks payment from the Indemnity Holdback, the payment of the applicable Loss (or portion thereof) shall also proceed in accordance with the procedures set forth in the Escrow Agreement.

## 6.7 Defence of Third Party Claims

6.7.1 *Assumption of Defence.* The Indemnifier may participate in or assume the defence of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than thirty (30) days after receiving notice of that Third Party Claim (the “**Notice Period**”), but only if (i) it acknowledges in writing its obligation to indemnify the Indemnified Party against any and all Losses that may result from such Third-Party Claim in accordance with the terms of this Agreement and (ii) such Third-Party Claim is exclusively for civil monetary damages at law. Notwithstanding the foregoing, the Indemnifier shall not be entitled to assume the defense of any Third Party Claim for equitable or injunctive relief or any claim that would impose criminal liability or damages, and the Indemnified Party shall have the right to defend, at the expense of the Indemnifier, any such Third Party Claim. The Indemnifier’s right to so participate in or assume the defence of such Third Party Claim, shall be subject to the rights of any insurer or other party who has potential liability in respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming such defence. The Indemnified Party shall cooperate in good faith in the defence of each Third Party Claim, even if the defence has been assumed by the Indemnifier, and may participate in such defence assisted by counsel of its own choice at its cost and expense, provided that, subject to the satisfaction of (i) and (ii) above, the Indemnifier and its legal counsel shall lead the defence unless the interests of the Indemnified Party and the Indemnifier cannot, in the view of counsel for the Indemnified Party, be properly represented by the same counsel, then the Indemnified Party shall have the right to have its own counsel defend it and the expenses of such separate counsel for the Indemnified Party shall be borne by the Indemnifier. If the Indemnified Party has not received the notice within the Notice Period that the Indemnifier has elected to assume the defence of such Third Party Claim, the Indemnified Party may, at its option, elect to settle or compromise the Third Party Claim or assume such defence, assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

6.7.2 *Settlement.* The Indemnifier shall not settle, compromise or offer to settle or compromise any Third Party Claim without the written consent of the Indemnified Party, unless:

- (a) the terms of the compromise and settlement require only the payment of money and do not require the Indemnified Party to admit any wrongdoing or take or refrain from taking any action;
- (b) the Indemnified Party receives, as part of the compromise and settlement, an unconditional release, which is in form and substance satisfactory to the Indemnified Party, acting reasonably, from any and all obligations or liabilities it may have with respect to the Third Party Claim; and
- (c) such settlement is on a basis that would not result in (i) the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnified Party or any of its Affiliates, (ii) a finding or admission of a violation of Law, wrongdoing or violation of the rights of any Person by the

Indemnified Party or any of its Affiliates or (iii) equitable remedies or any obligation of the Indemnified Party other than the payment of money damages for which the Indemnified Party will be indemnified hereunder.

## 6.8 Assistance for Third Party Claims

The Indemnifier and the Indemnified Party shall use all reasonable efforts to make available to the Party which is undertaking and controlling the defence of any Third Party Claim (the “**Defending Party**”):

6.8.1 those employees whose assistance, testimony or presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim; and

6.8.2 all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim.

Each of them shall otherwise cooperate with the Defending Party. The Indemnifier shall be responsible for all expenses associated with making such documents, records and materials available.

## 6.9 Duty to Mitigate

Nothing in this Agreement shall in any way restrict or limit the general obligation at law of an Indemnified Party to mitigate any Loss which it may suffer or incur by reason of the Breach by an Indemnifier of any representation or warranty or the Breach of any covenant of the Indemnifier hereunder. If any Loss can be reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any Claim against, recovery from, settlement with or payment by any other Person, the Indemnified Party shall use its reasonable good faith efforts to take the appropriate steps to attempt to enforce such Claim, recovery, settlement or payment.

## 6.10 Exclusivity of Remedy

Except for claims for Fraud and as provided in this Section 6.10, the sole and exclusive remedy of the Purchaser Indemnitees and the Major Vendors (in law, under applicable law or otherwise) for any Breach by the other of its representations, warranties or covenants in this Agreement or arising from the transactions contemplated hereby shall be a claim for indemnification pursuant to this Article 6. For the avoidance of doubt, none of the limitations and restrictions (including time for asserting Claims) on indemnification set forth in this Article 6 shall affect the rights of the Purchaser Indemnitees to make Claims against the R&W Insurance Provider under the R&W Insurance Policy, which rights shall be governed solely by the terms and conditions of the R&W Insurance Policy.

## 6.11 Purchase Price Adjustment

Any indemnification payment made under this Article 6 shall be treated by the Purchaser and the Major Vendors as an adjustment to the Aggregate Purchase Price. Such adjustment shall be allocated to the holders of the Class A and the Class B shares of the Corporation, pro rata in accordance with their interests.

## Article 7 GUARANTOR

### 7.1 Guarantee

7.1.1 *Scope of Guarantee.* The Parent hereby unconditionally and irrevocably guarantees to the Major Vendors, jointly and severally with the Purchaser, the prompt and full performance and payment of all obligations of the Purchaser under this Agreement (the “**Purchaser Obligations**”). The guarantee under this Article 7 may be enforced by the Major Vendors without the necessity at any time of resorting to or exhausting any other remedy or without the necessity at any time of having recourse to this Agreement. The Parent agrees that nothing contained herein shall prevent the Major Vendors from exercising any and all rights or remedies under this Agreement or any Ancillary Agreement or Closing Document if any of the Purchaser or the Parent fail to timely perform the Purchaser Obligations, and the exercise of any of the aforesaid rights and the completion of any actions or proceedings related thereto shall not constitute a discharge of any of the obligations of the Parent hereunder, it being the express purpose and intent of the Parent that the Parent’s obligations hereunder shall be absolute, independent and unconditional under any and all circumstances.

7.1.2 *Survival of Guarantee.* The obligation of the Parent to perform the Purchaser Obligations will not be limited or reduced as a result of the termination, invalidity or unenforceability of any right of the Major Vendors against the Purchaser due to any incapacity, disability or lack or limitation of status or of the power of the Purchaser or as a result of bankruptcy, insolvency or similar proceeding involving the Purchaser or for any other circumstance or reason whatsoever (other than the fulfillment of the Purchaser Obligations).

7.1.3 *Reinstatement.* The terms of this Article 7 shall continue to be effective, or be reinstated, as the case may be, if at

any time any payment (in whole or in part) of any of the Purchaser Obligations is rescinded or must otherwise be returned or restored by the Major Vendors by reason of bankruptcy, insolvency or reorganization of the Purchaser, all as though such obligation had not been fulfilled.

7.1.4 *Costs and Expenses.* If at any time hereafter the Major Vendors retain counsel to pursue collection, to sue for enforcement of the terms hereof, or to file a Claim in any suit or proceeding related to the guarantee set forth in this Article 7, then each such event where the Major Vendors prevail, all of the reasonable legal fees, including extra-judicial fees and costs, related thereto shall be an additional liability of the Parent to the Major Vendors, payable on demand.

## **Article 8 GENERAL**

### **8.1 Further Assurances**

Each of the Parties hereto shall from time to time execute and deliver all such further documents and instruments and do all acts and things as another Party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **8.2 No Waiver**

Failure of a Party to insist upon the strict performance of any term or condition of this Agreement or to exercise any right, remedy or recourse hereunder shall not be construed as a waiver or relinquishment of any such term and condition.

### **8.3 Cost and Expenses**

Each of the Parties shall be responsible for and pay their respective legal, financial advisory and accounting costs and expenses incurred in connection with the consummation of the transactions contemplated herein, including the preparation, execution and delivery of this Agreement, the Ancillary Agreements and the Closing Documents, and, except as otherwise expressly set forth herein, any other costs and expenses whatsoever and howsoever incurred in connection herewith and/or therewith.

### **8.4 Confidentiality; Public Announcements**

8.4.1 Except as may be required by applicable Law or stock exchange regulation or as otherwise expressly contemplated herein, no Party or their respective Affiliates or Representatives shall disclose to any third party this Agreement, the subject matter or terms hereof, or any Confidential Information concerning the business or affairs of any other Party which it may have acquired from such Party in the course of pursuing the Transactions without the prior written consent of the Corporation or the Purchaser, as the case may be; provided, however, any Party may disclose any such Confidential Information as follows: (a) to such Party's Affiliates and its or its Affiliates' employees, lenders, financial advisors, counsel, or accountants which shall also be subject to the requirements of this Section 8.4.1; (b) to comply with any applicable Law or Order, provided that prior to making any such disclosure the Party making the disclosure notifies the other Party of any Claim or Action of which it is aware which may result in disclosure and uses its best efforts to limit or prevent such disclosure; (c) to the extent that the Confidential Information is or becomes generally available to the public through no fault of the Party or its Affiliates making such disclosure; (d) to the extent that the same information is already known by the Party making such disclosure prior to receipt of such Confidential Information; (e) to the extent that the Party that received the Confidential Information independently develops the same information without in any way relying on any Confidential Information; and (f) to the extent that the same information becomes available to the Party making such disclosure on a nonconfidential basis from a source other than a Party or its Affiliates, which source, to the knowledge of the disclosing Party, is not prohibited from disclosing such information by a legal, contractual, or fiduciary obligation to the other Party. The Purchaser may also disclose any such Confidential Information to the extent it believes, after consultation with legal counsel, that such disclosure is necessary or prudent as a company whose shares are publicly traded. If the Transactions are not consummated, each Party will return or destroy as much of the Confidential Information concerning the other Party as the Parties that have provided such information may reasonably request. Nothing in this Section 8.4.1 shall limit any disclosure (i) made in connection with the enforcement of or defense of any right or remedy relating to this Agreement or the Transaction Documents, (ii) as is necessary to prepare Tax Returns or other filings with any Governmental Authority or to defend or object to any reassessment of Taxes, (iii) as is necessary for a Major Vendor (or its Representatives) to prepare and disclose, as may be required, accounting statements, (iv) to assert, defend or protect any rights of a Major Vendor under this Agreement or any of the Transaction Documents or (v) for disclosure by Novacap, or their respective affiliates or successors, in their non-publicly distributed marketing materials and in any non-public update or communication to their limited partners, investors or prospective investors, financing sources, accountants, consultants and others (so long as in each case in the foregoing clauses (ii), (iii) or (v), such disclosure has a valid business purpose, is consistent with prior practice of Novacap, the recipients are bound by customary confidentiality provisions, and Novacap is responsible for any and all breaches of any such Person(s)).



8.4.2 All public notices to third parties and all other announcements, communications, press releases and publicity concerning the Agreement or the transactions contemplated by the Agreement, if prior to the Closing, must be jointly planned and coordinated by the Major Vendors and the Purchaser, unless required by applicable Law. Each Major Vendor hereby agrees with the Purchaser that from and after Closing no announcements, communications, press releases or publicity concerning the Agreement or the transactions contemplated by the Agreement shall be made or be caused to be made unless the Purchaser shall have provided its prior written consent. Subject to the exception provided in Section 8.4.1, the Purchaser hereby agrees with the Major Vendors that from and after Closing, to the extent that any announcements, communications, press releases or publicity concerning the Agreement or the transactions contemplated by the Agreement specifically name Novacap, Purchaser shall provide a copy of such announcement, communication, press release or publicity to Vendors' Delegate in draft form at least one day prior to its release, and the Purchaser shall consider in good faith any reasonable comments made by the Vendors' Delegate that are received by the Purchaser prior to such release, to the extent such reasonable comments relate to Novacap.

## **8.5 Successors, Assigns and Assignments**

This Agreement will enure to the benefit of and be binding upon the respective successors (including any successor by reason of the amalgamation or statutory arrangement of any Party) and permitted assigns of the Parties. This Agreement may not be assigned by any Party without the prior written consent of the other Parties.

## **8.6 Entire Agreement**

This Agreement, the Confidentiality Agreement, the Ancillary Agreements and the Closing Documents constitute the entire agreement between the Parties with respect to the subject matters hereof and thereof and cancels and supersedes any prior understandings, agreements, negotiations and discussions between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement. No Party has been induced to enter into the Agreement in reliance on, and there will be no liability assessed with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in the Agreement or in the Ancillary Agreements or Closing Documents.

## **8.7 Amendments and Waivers**

No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all Parties. No waiver of any Breach of any provision of this Agreement or any waiver or consent to depart from the requirements of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, will be limited to the specific Breach waived.

## **8.8 Notices**

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and will be given by personal delivery, by registered mail, by courier services (followed by receipt by registered mail or courier services within two Business Days) or by e-mail addressed to each Party as set forth in Schedules 2.1(A) and 8.8 or to other coordinates that have been designated by notice by any recipient Party to the others, to such other address, individual or electronic communication number (followed by receipt by registered mail or courier services within two Business Days).

Any demand, notice or other communication given by personal delivery or courier services shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third (3<sup>rd</sup>) Business Day following the deposit thereof in the mail and, if given by e-mail, on the day of transmittal thereof if given during the normal business hours of the recipient on a Business Day and on the next Business Day if not given during such hours. If the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

## **8.9 Governing Law and Forum**

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Alberta and the Laws of Canada applicable therein. Each of the Parties irrevocably submits and attorns to the jurisdiction of the courts of the Province of Alberta situated in the city of Calgary to determine all issues, whether at law or in equity arising from the Agreement. To the extent permitted by applicable Law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to the Agreement in the courts of the Province of Alberta in the city of Calgary, or that the subject matter of the Agreement may not be enforced in these courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of these courts, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether

through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under the Agreement.

## 8.10 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

## 8.11 Specific Performance and other Discretionary Rights

Each of the Parties acknowledges and agrees that a Breach by a Party of any obligation in this Agreement shall cause the other Party to sustain injury for which it would not have an adequate remedy at Law for money damages. Therefore, each of the Parties agrees that in the event of any such Breach, the aggrieved Party shall be entitled to specific performance of such obligation and provisional interlocutory and permanent injunctive relief and other equitable remedies to which it may be entitled and the Parties further agree to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive relief or other equitable remedies.

## 8.12 Post-Acquisition Attorney-Client Issues

8.12.1 *Vendors Post-Acquisition Use of Law Firms.* Each of the Parties acknowledges that (i) one or more Vendors and the Group have retained the Law Firms to act as their counsel in connection with the transactions contemplated by this Agreement as well as other past and ongoing matters; (ii) except for the Vendors and the Group, the Law Firms have not acted as counsel for any other Person in connection with the transactions contemplated by this Agreement; and (iii) no Person other than the Vendors and the Group has the status of client of the Law Firms for conflict of interest or any other purpose as a result thereof. The Purchaser (x) waives and will not assert, and will cause each of its Affiliates to waive and not assert, any conflict of interest relating to the Law Firms' representation after the Closing of any Vendor, member of the Group or their respective Affiliates in any matter involving the transactions contemplated by this Agreement; and (y) consents to, and will cause each of its Affiliates to consent to, any such representation, even though, in each case, (A) the interests of such Vendor, and or such Vendor's Affiliate may be directly adverse to the Purchaser or any of its Affiliates; or (B) the Law Firms may have represented the Group or any of their Affiliates in a substantially related matter.

8.12.2 *Purchaser's Non-Access to the Group's Legal Records Regarding the Transaction.* The Purchaser agrees that, after the Closing, neither the Purchaser nor any of its Affiliates will have any right to access or control any of the Law Firms' records relating to or affecting the transactions contemplated by this Agreement, which will be the property of (and controlled by) the Vendors. In addition, all communications between the Vendors and Group, on the one hand, and the Law Firms, on the other hand, related to this or any other proposed sale of the Purchased Shares, the Agreement or the transactions contemplated hereby shall be deemed to be attorney-client confidences that belong solely to the Vendors and their respective Affiliates (and not the Group) (the "**Vendors Pre-Closing Communications**"). Accordingly, neither the members of the Group nor the Purchaser shall have access to any such Vendors Pre-Closing Communications or to the files of the Law Firms relating to such engagement from and after the Closing, and all books, records and other materials of the Group in any medium (including electronic copies) containing or reflecting any of the Vendors Pre-Closing Communications or the work product of legal counsel with respect thereto, including any related summaries, drafts or analyses, and all rights with respect to any of the foregoing, are hereby retained by, assigned and transferred to the Vendors effective as of the Closing. Such material and information shall be excluded from the transfer contemplated by this Agreement and shall be delivered to the Vendors immediately prior to the Closing with no copies thereof retained by the members of the Group, the Purchaser or any of the Purchaser's Affiliates or Representatives. From and after the Closing, the Purchaser and the members of the Group shall maintain the confidentiality of all such material and information. From and after the Closing, none of the Purchaser, the members of the Group, Affiliates and Representatives shall access or in any way, directly or indirectly, use or rely upon any such materials or information. To the extent that any such materials or information are not delivered to the Vendors prior to the Closing, they will be held for the benefit of the Vendors, and the Purchaser, the members of the Group and their respective Affiliates will deliver all such material and information to the Vendors promptly upon discovery thereof, without using or retaining copies thereof. Without limiting the generality of the foregoing, from and after the Closing, (a) the Vendors and their respective Affiliates (and not the members of the Group) shall be the sole holders of the attorney-client privilege with respect to such engagement and the Vendors Pre-Closing Communications, and none of the members of the Group shall be a holder thereof, (b) to the extent that files of Vendors' Counsel in respect of such engagement and with respect to the Vendors Pre-Closing Communications constitute property of the client, only the Vendors and their respective Affiliates (and not the members of the Group) shall hold such property rights and (c) Vendors' Counsel shall not have any duty whatsoever to reveal or disclose any such attorney-client communications, files or the Vendors Pre-Closing Communications to the members of the Group by reason of any attorney-client relationship between Vendors' Counsel and the members of the Group or otherwise. As to Vendors Pre-Closing Communications, the Purchaser and its Affiliates (including, after the Closing, the members of the Group) and the Vendors, together with

any of their respective Affiliates, successors or assigns, agree that no such party may use or rely on any of the Vendors Pre-Closing Communications in any action or claim against or involving any of the Parties hereto after the Closing.

8.12.3 *Vendors' Retention of Attorney-Client Privilege with respect to Sell-Side Legal Representation.* The Purchaser agrees, on its own behalf and on behalf of its Affiliates, that from and after the Closing, (i) the attorney-client privilege, all other evidentiary privileges, and the expectation of client confidence as to all Vendors Pre-Closing Communications belong to the Vendors and will not pass to or be claimed by the Purchaser, the members of the Group or any of their respective Affiliates; and (ii) the Vendors will have the exclusive right to control, assert, or waive attorney-client privilege, any other evidentiary privilege, and the expectation of client confidence with respect to such Vendors Pre-Closing Communications. Accordingly, the Purchaser will not, and will cause each of its Affiliates not to, (x) assert any attorney-client privilege, other evidentiary privilege, or expectation of client confidence with respect to any Vendors Pre-Closing Communications, except in the event of a post-Closing dispute with a Person that is not a Vendor or one of their respective Affiliates; or (y) take any action that could cause any Vendors Pre-Closing Communications to cease being a confidential communication or to otherwise lose protection under the attorney-client privilege or any other evidentiary privilege including waiving such protection in any dispute with a Person that is not a Vendor or one of their respective Affiliates. Furthermore, each of the Purchaser and the Vendors agrees, on its own behalf and on behalf of each of its Affiliates, that in the event of a dispute between any Vendor or one of their respective Affiliates, on the one hand, and any member of the Group, on the other hand, arising out of or relating to any matter in which the Law Firms jointly represented both parties, neither the attorney-client privilege, the expectation of client confidence, nor any right to any other evidentiary privilege will protect from disclosure to such members of the Group or Affiliate thereof, any information or documents developed or shared during the course of the Law Firms' joint representation.

### 8.13 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall conclusively be deemed to be an original but all of which taken together shall be deemed to constitute one and the same agreement. A facsimile or electronic transmission of the Agreement bearing a signature on behalf of a Party shall be legal and binding on such Party.

*(remainder of this page left blank intentionally)*

### SHARE PURCHASE AGREEMENT

The undersigned hereby (a) agrees to the covenants, terms and conditions of the Share Purchase Agreement among Novacap TMT IV, L.P., Novacap International TMT IV, L.P., NVC TMT IV, L.P., 2157996 Alberta Ltd. (successor to 1165437 Alberta Ltd.), , as Major Vendors, 2159562 Alberta Ltd., as purchaser, Mistras Group, Inc., as guarantor of the purchaser, with the intervention of Onstream Holdings Inc. (the "**Agreement**"), and (b) authorizes this signature page to be attached as a counterpart signature page to the Agreement as of the date first written above.

**NOVACAP TMT IV, L.P.**, by its general partner, Novacap Management Inc.

**in its capacity as Vendors' Delegate**

Per: \_\_\_\_\_  
Name:  
Title:

**NOVACAP TMT IV, L.P.**, by its general partner, Novacap Management Inc.

Per: \_\_\_\_\_  
Name:  
Title:

**NOVACAP INTERNATIONAL TMT IV, L.P.**, by its general partner, Novacap Management Inc.

Per: \_\_\_\_\_  
Name:  
Title:

**NVC TMT IV, L.P.**, by its general partner, Novacap Management Inc.

Per: \_\_\_\_\_  
Name:  
Title:

*(remainder of this page left blank intentionally)*

**SHARE PURCHASE AGREEMENT**

The undersigned hereby (a) agrees to the covenants, terms and conditions of the Share Purchase Agreement among Novacap TMT IV, L.P., Novacap International TMT IV, L.P., NVC TMT IV, L.P., 2157996 Alberta Ltd. (successor to 1165437 Alberta Ltd.), , as Major Vendors, 2159562 Alberta Ltd., as purchaser, Mistras Group, Inc., as guarantor of the purchaser, with the intervention of Onstream Holdings Inc. (the “**Agreement**”), and (b) authorizes this signature page to be attached as a counterpart signature page to the Agreement as of the date first written above.

**2157996 ALBERTA LTD.**

**ONSTREAM HOLDINGS INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

*(remainder of this page left blank intentionally)*

**SHARE PURCHASE AGREEMENT**

The undersigned hereby (a) agrees to the covenants, terms and conditions of the Share Purchase Agreement among Novacap TMT IV, L.P., Novacap International TMT IV, L.P., NVC TMT IV, L.P., 2157996 Alberta Ltd. (successor to 1165437 Alberta Ltd.), , as Major Vendors, 2159562 Alberta Ltd., as purchaser, Mistras Group, Inc., as guarantor of the purchaser, with the intervention of Onstream Holdings Inc. (the “**Agreement**”), and (b) authorizes this signature page to be attached as a counterpart signature page to the Agreement as of the date first written above.

**2159562 ALBERTA LTD.**

**MISTRAS GROUP, INC.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

*(remainder of this page left blank intentionally)*



## SCHEDULE 1.1

### DEFINITIONS

#### 1.1 Definitions

- 1.1.1 “**Accounts Payable**” means all accounts payable and accrued liabilities related to the Business of the Group, calculated in accordance with ASPE, but excluding any amounts payable to the Vendors or any of their Affiliates;
- 1.1.2 “**Accounts Receivables**” means all accounts receivable due, owing, or accruing, to the Group in connection with the Business, net of allowance for doubtful accounts, in each case, calculated in accordance with ASPE, including all Contracts in transit, manufacturer’s warranty receivables, notes, accounts receivable, trade account receivables, and insurance proceeds receivable, but excluding any amounts receivable from the Vendors or any of their Affiliates other than receivables due and owing from same in connection with the Business;
- 1.1.3 “**Action**” means any action, appeal, petition, plea, charge, suit, litigation, arbitration, mediation, hearing, inquiry, investigation or similar event, occurrence, or proceeding;
- 1.1.4 “**Adjustment Holdback**” has the meaning ascribed thereto in Section 2.5.2(b);
- 1.1.5 “**Affiliate**” has the meaning ascribed thereto in the CBCA;
- 1.1.6 “**Aggregate Purchase Price**” has the meaning ascribed thereto in Section 2.2 hereof;
- 1.1.7 “**Agreement**” means this agreement, its recitals, together with its Schedules and all amendments made hereto by written agreement between the Parties;
- 1.1.8 “**Ancillary Agreements**” means the Minority Vendors’ SPAs, the Escrow Agreement, the Restrictive Covenant Agreements, the employment agreements referenced in Section 5.2.1(h) and the option cancellation agreements referenced in Section 5.2.1(n);
- 1.1.9 “**ASPE**” means (a) prior to January 1, 2011, the generally accepted accounting principles stated in the Handbook of the Canadian Institute of Chartered Accountants; and (b) since January 1, 2011, the Accounting Standards for Private Enterprises generally accepted in Canada from time to time and approved by the Chartered Professional Accountants of Canada, or any successor organization, applicable on a consolidated basis to private enterprises, in both cases, in effect as of a given date and applied on a basis consistent with that of preceding periods;
- 1.1.10 “**Auditors**” means KPMG LLP;



- 1.1.11 “**Basis**” means any fact, situation, circumstance, status, condition, activity, practice, occurrence, event, incident, action, failure to act, or transaction that forms the basis for any specified consequence;
- 1.1.12 “**Books and Records**” means any books, records and accounts of the Group related to the Business, including invoices, financial data and records and copies of filed Tax Returns but excludes all privileged communications and all documents containing such communications related to the transactions contemplated herein or in any Ancillary Agreement or Closing Document;
- 1.1.13 “**Breach**” means any breach, inaccuracy, failure to perform, failure to comply, conflict with, default, violation, termination or cancellation;
- 1.1.14 “**Business**” has the meaning ascribed thereto in the preamble hereof;
- 1.1.15 “**Business Day**” means any day on which Canadian chartered banks are generally open for business in Toronto (Ontario), other than a Saturday or a Sunday;
- 1.1.16 “**Caps**” has the meaning ascribed thereto in Section 6.3.1(b) hereof;
- 1.1.17 “**Cash**” means cash and cash equivalents of the Group, on a consolidated basis, including term deposits, guaranteed investment certificates and similar readily liquid instruments, net of outstanding cheques calculated in accordance with ASPE;
- 1.1.18 “**CASL**” means an *Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23;
- 1.1.19 “**CBCA**” means the *Canada Business Corporations Act*, as now in effect and as may be amended from time to time prior to the Closing Date;
- 1.1.20 “**Claims**” means any claim, complaint, demand, grievance, prosecution or legal, judicial, arbitral or administrative proceedings, including assessment or reassessment and any appeal or application for review;
- 1.1.21 “**Closing**” means the completion on the Closing Date of the sale to, and purchase by, the Purchaser of the Purchased Shares and the completion of all other transactions contemplated by this Agreement which are to occur concurrently with the purchase and sale of the Purchased Shares;
- 1.1.22 “**Closing Calculation**” has the meaning ascribed thereto in Section 2.6.1;

- 1.1.23 “**Closing Cash**” means the Cash as at the Effective Time as determined on the basis of the Closing Date Financial Statements;
- 1.1.24 “**Closing Date**” means December 13, 2018;
- 1.1.25 “**Closing Date Financial Statements**” means the audited and consolidated balance sheet of the Group for the period ending on the Effective Time on the Closing Date;
- 1.1.26 “**Closing Document**” means any agreement or document entered into in connection or delivered in connection with the Closing other than the Ancillary Agreements;
- 1.1.27 “**Closing Indebtedness**” means the Indebtedness at the Effective Time based on the Closing Date Financial Statements but disregarding any unamortized transaction cost or other similar account which reduces the value of the long term debt on the balance sheet;
- 1.1.28 “**Closing Transaction Expenses**” means the Transaction Expenses as at the Effective Time based on the Closing Date Financial Statements;
- 1.1.29 “**Closing Working Capital**” means the Working Capital at the Effective Time based on the Closing Date Financial Statements;
- 1.1.30 “**Code**” means the Internal Revenue Code of 1986, as amended;
- 1.1.31 “**Collective Agreement**” means any collective agreement, letter of understanding, letter of intent or other written communication with any labour union or employee association that governs the terms and conditions of employment of any Employees;

- 1.1.32 “**Common Equity Designated Percentage**” for each Major Vendor means the percentage set forth opposite his, her or its name in the total set out in Schedule 2.1(A) hereto;
- 1.1.33 “**Commitment**” with respect to any Person means (a) options, warrants, convertible securities, exchangeable securities, subscription rights, conversion rights, exchange rights, or other Contracts that could require such Person to issue any of its Equity Interests, or any other securities convertible into, exchangeable or exercisable for, or representing the right to subscribe for any Equity Interest of such Person, (b) statutory pre-emptive rights or pre-emptive rights granted under the applicable Person’s organizational documents, and (c) stock appreciation rights, phantom stock, profit participation, or other similar rights with respect to such Person;
- 1.1.34 “**Confidential Information**” means any information concerning the businesses and affairs of the Purchaser or the Corporation and their respective Subsidiaries which is not generally known to the public;
- 1.1.35 “**Confidentiality Agreement**” means the confidentiality agreement dated June 14, 2018, entered into between the Parent and the Corporation;
- 1.1.36 “**Consent**” means any consent, approval, notification, waiver, authorization, filing or other similar action that is necessary;
- 1.1.37 “**Contract**” means any contract, agreement, arrangement, commitment, letter of intent, memorandum of understanding, promise, obligation, right, instrument, document, or other similar understanding, whether written or oral;
- 1.1.38 “**Corporation**” has the meaning ascribed thereto in the preamble;
- 1.1.39 “**Covered Tax Liability**” has the meaning ascribed thereto in Section 6.3.1(e)(i) hereof;
- 1.1.40 “**Current Assets**” means the aggregate sum of the values of the Group’s Accounts Receivable and Prepaid Expenses, calculated in accordance with ASPE, but excluding, for greater certainty, any future income Tax assets (both current and non-current portions) and income Taxes receivable;
- 1.1.41 “**Current Liabilities**” means, without duplication, the aggregate sum of the Group’s Accounts Payable and deferred revenues, calculated in accordance with ASPE but excluding any amount, without duplication, that is included within Indebtedness or Transaction Expenses, and excluding any 2018 year-end annual bonuses payable in accordance with the list provided to Purchaser, liabilities payable or accrued relating to Claims, income Taxes payable and future income Tax Liability (both current and non-current portions);

- 1.1.42 “**Defending Party**” has the meaning ascribed thereto in Section 6.8;
- 1.1.43 “**Direct Claim**” means any Claim by an Indemnified Party against an Indemnifier which does not result from a Third Party Claim;
- 1.1.44 “**Effective Time**” means 11:59 PM Mountain Time, on the Closing Date;
- 1.1.45 “**Employees**” means all of the individuals who are employed by any member of the Group, whether on a full-time or part-time basis, and includes any Person retained by any member of the Group, or in conjunction with the Business, as an independent contractor or consultant, a list of which is in the Employment Matters Disclosure Letter;
- 1.1.46 “**Employee Plans**” means each and every retirement, pension, retirement savings, bonus or incentive award, profit sharing, deferred compensation, life insurance, medical, hospital, dental care, vision care, drug, sick leave, short term or long term disability, unemployment benefits, supplemental income, stock purchase, stock option, phantom stock, share appreciation rights or material fringe benefit plan, program, agreement, arrangement or policy (i) that is administered, maintained, sponsored or otherwise funded or contributed to, or required to be funded or contributed to, by or on behalf of any member of the Group or any ERISA Affiliate, for the benefit of the Employees, or (ii) with respect to which any member of the Group or any ERISA Affiliate has any Liability, except that the term “**Employee Plans**” shall not include any public statutory plans with which the Group is required to comply, including the Canada Pension Plan or plans administered pursuant to applicable provincial health tax, workers’ compensation and workers’ safety and employment insurance legislation;
- 1.1.47 “**Employment Matters Disclosure Letter**” means the disclosure letter provided by the Vendors to the Purchaser which includes information in relation to Employees and Employee Plans;
- 1.1.48 “**Encumbrance**” means any encumbrance (registered or unregistered and statutory or otherwise) and includes any security interest, mortgage, hypothec, conditional sale, pledge, lien (statutory or otherwise), assignment, charge, security under section 426 or section 427 of the *Bank Act* (Canada), trust or deemed trust (whether contractual, statutory or otherwise arising);
- 1.1.49 “**Environmental Authorization**” means approvals, permits, Orders, Consents, agreements, instructions, directions, authorizations or registrations issued, granted, conferred or required by a Governmental Authority with respect to any Environmental Law;
- 1.1.50 “**Environmental Laws**” means all applicable domestic or foreign federal, provincial, state, local or municipal statutes, laws (including the common law),

ordinances, regulations or by-laws relating in whole or in part to the environment or Hazardous Substances;

- 1.1.51 “**Equity Interest**” means (a) with respect to a corporation, any and all shares of capital stock and any Commitments with respect thereto, (b) with respect to a partnership, limited liability company, trust or similar Person, any and all units, interests or other partnership/limited liability company interests, and any Commitments with respect thereto, and (c) any other direct or indirect equity ownership or participation in a Person;
- 1.1.52 “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended;
- 1.1.53 “**ERISA Affiliate**” means any other Person that, together with any Member of the Group, would be treated as a single employer under Section 414 of the Code;
- 1.1.54 “**Escrow Agent**” means Computershare Trust Company of Canada, as escrow agent;
- 1.1.55 “**Escrow Agreement**” means the escrow agreement between the Vendors’ Delegate, the Purchaser, the Parent and the Escrow Agent to be executed on the Closing Date;
- 1.1.56 “**Estimated Aggregate Purchase Price**” has the meaning ascribed thereto in Section 2.3(f);
- 1.1.57 “**Estimated Aggregate Purchase Price Statement**” has the meaning ascribed thereto in Section 2.3;
- 1.1.58 “**Estimated Closing Cash**” has the meaning ascribed thereto in Section 2.3(c);
- 1.1.59 “**Estimated Closing Indebtedness**” has the meaning ascribed thereto in Section 2.3(d);
- 1.1.60 “**Estimated Closing Transaction Expenses**” has the meaning ascribed thereto in Section 2.3(e);
- 1.1.61 “**Estimated Closing Working Capital**” has the meaning ascribed thereto in Section 2.3(b);
- 1.1.62 “**Financial Statements**” means the Year End Financial Statements and the Interim Financial Statements, copies of which are attached hereto as Section 3.1.22 of Schedule 3.1;
- 1.1.63 “**First Source Amount**” has the meaning ascribed thereto in Section 6.3.1(b);

- 1.1.64 “**Fraud**” means a claim for fraud, provided there is a Specific Intent to Deceive. “**Specific Intent to Deceive**” means that the Party making the representation or warranty had actual knowledge of the material inaccuracy of such representation or warranty and had Specific Intent to Deceive the other Party;
- 1.1.65 “**Fundamental Representations**” has the meaning ascribed thereto in Section 3.4.1 (a);
- 1.1.66 “**Governmental Authority**” or “**Governmental Authorities**” means any (a) multinational, federal, provincial, state, territorial, regional, municipal, local, governmental or public department, ministry, central bank, court, tribunal, arbitral body, commission, agency board or bureau, domestic or foreign, (b) any agency, commission, arbitration panel, quasi-governmental or private body exercising any regulatory, administrative, expropriation or Tax Authority under or for the account of any of the foregoing, or (c) any judiciary or quasi-judiciary tribunal, court or body, that have jurisdiction over the Business;
- 1.1.67 “**Group**” means, collectively, the Corporation and its Subsidiary, Onstream Pipeline Inspection Services Inc. and its Subsidiary, Onstream Pipeline Inspection USA Inc., and “member of the Group” means any one of them;
- 1.1.68 “**Group IP Agreements**” means all licenses, sublicenses, and other Contracts, whether written or oral, relating to Intellectual Property to which any member of the Group is a party, beneficiary, or otherwise bound;
- 1.1.69 “**GST/HST**” means Taxes imposed under Part IX of the *Excise Tax Act* (Canada);
- 1.1.70 “**Hazardous Substances**” means any hazardous chemical, material, waste or substance that is prohibited, controlled or regulated by any Governmental Authority pursuant to, or for which liability is imposed under Environmental Laws;
- 1.1.71 “**Indebtedness**” means, in relation to the Group, on a consolidated basis;
- (a) all indebtedness of the Group for borrowed money or in respect of loans or advances of any kind or for the deferred purchase price of property or services;
  - (b) the amount of all liabilities of the Group pursuant to all capital leases;
  - (c) all liabilities of the Group evidenced by bonds, debentures, notes or similar instruments or debt securities;
  - (d) all liabilities of the Group in respect of dividends;
  - (e) all guarantees by the Corporation of the debt of other Persons (except for these provided in the Ordinary Course of Business);

- (f) all liabilities of the Group in respect of bankers' acceptances;
- (g) all income Taxes net of income Taxes receivable;
- (h) all liabilities of the Group to the Vendors or any of their Affiliates with respect to management fees; and
- (i) all fees, accrued and unpaid interest, premiums or penalties (including prepayment penalties) or other obligations related to any of the foregoing;

for greater certainty, Indebtedness shall not include any liabilities included in the definition of Current Liabilities;

1.1.72 “**Indemnifier**” means any Party obligated to provide indemnification under this Agreement;

1.1.73 “**Indemnified Party**” means any Person entitled to indemnification under this Agreement;

1.1.74 “**Indemnity Holdback**” has the meaning ascribed thereto in Section 2.5.2(c);

1.1.75 “**Independent Firm**” has the meaning ascribed thereto in Section 2.6.3;

1.1.76 “**Information Technology**” means all computer systems, communication systems, software (other than off-the-shelf software) and hardware, whether owned, used or licensed;

1.1.77 “**Initial Consideration**” has the meaning ascribed thereto in Section 2.5.2(a);

1.1.78 “**Intellectual Property**” means any and all rights in, arising out of, or associated with any and all of the following in any jurisdiction throughout the world: (a) trademarks, service marks, trade names, and similar indicia of source or origin, all registrations and applications for registration thereof; (b) copyrights and all registrations and applications for registration thereof; (c) patents and patent applications; (d) internet domain name registrations and social media accounts or handles; and (e) other intellectual property and related proprietary rights;

1.1.79 “**Interim Financial Statements**” means the unaudited consolidated financial statements of the Group for the 8 month period ended August 31, 2018 (the “**Interim Balance Sheet Date**”), consisting of an unaudited balance sheet and the accompanying statement of operations of the Group;

1.1.80 “**Inventories**” means all inventories of every nature and kind owned by the Group and pertaining to the Business including raw materials, spare parts, packaging materials, finished goods, work in process and production and shipping supplies, in each case, calculated in accordance with ASPE;

- 1.1.81 “**IRS**” means the Internal Revenue Service and, to the extent relevant, the Department of Treasury;
- 1.1.82 “**Knowledge of the Vendors**” means the actual or constructive knowledge of Chad Niehaus, Mark Rudnicki and Gerry Wilkinson, after reasonable internal inquiry;
- 1.1.83 “**Law Firms**” refer to McMillan LLP and Foley and Lardner LLP and their successors;
- 1.1.84 “**Laws**” means all applicable Canadian or foreign federal, provincial, state or municipal statutes, laws (including common law, civil law and equity), ordinances, regulations or by-laws, and all Orders of any Governmental Authority;
- 1.1.85 “**Liability**” means any debt, liability, obligation, duty and responsibility of any kind and description, whether accrued or fixed, absolute or contingent, monetary or non-monetary, direct or indirect, known or unknown, determined or determinable, asserted or unasserted, matured or unmatured, or of any other nature, including those arising under any Law, action or governmental order and those arising under any contract, regardless of whether such debt, liability, obligation, duty or responsibility would be required to be disclosed on a balance sheet prepared in accordance with ASPE;
- 1.1.86 “**License**” means any license, permit, franchise, approval, consent, permission, waste generator number, registration, assessment, certificate or other authorization whether contractual, regulatory or governmental;
- 1.1.87 “**Loss**” means any loss, liability, damage, payment, amounts paid in settlement, obligation, cost, expense, Tax, charge, fine, penalty or assessment actually suffered by an Indemnified Party, as well as any diminution in value, incidental and consequential damages as a direct result of such matters, (i) including the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise and all interest, and reasonable professional fees and disbursements (including reasonable fees and expenses of outside attorneys, accountants and other professional advisors and of expert witnesses and other costs of investigation, preparation and litigation in connection therewith), but (ii) excluding punitive or other special damages;
- 1.1.88 “**Loss Decrease**” has the meaning ascribed thereto in Section 6.4.13;
- 1.1.89 “**Major Vendor**” or “**Major Vendors**” means, individually or collectively, as the case may be, Novacap and the Preferred Shareholder;
- 1.1.90 “**Material Adverse Change**” means any change that is material and adverse to the properties, assets, Liabilities, rights, obligations, operations, Business,



prospects, the results of operations or the condition (financial or otherwise) of the Group, taken as a whole, except for any change caused by, pertaining to or arising from the following: (a) the announcement, pendency or completion of the transaction contemplated herein or the performance of any obligation hereunder; (b) changes in the Canadian, United States or foreign economies or in the capital markets in general, except to the extent specifically related to or disproportionately impacting the Group or the Business; (c) changes in or relating to the currency exchange rates; (d) conditions generally affecting the industry in which the Group operate or the markets for any of the products or services of the Group, except to the extent specifically related to or disproportionately impacting the Group or the Business; (e) the initiation, occurrence or continuation of war (whether declared or undeclared), armed hostilities or acts of terrorism; (f) any change or proposed change in applicable Laws, regulatory conditions, government programs or policies, or the interpretation, application or non-application of Laws; (g) any change in ASPE; (h) any action taken by the Vendors or the Group in response to the written request of the Purchaser; and (i) a natural disaster;

1.1.91 “**Material Contract**” means:

- (a) any Contract (with the exception of contracts which are dealt with in paragraphs (b) to (m) below) involving aggregate payments in any year to or by any member of the Group of an amount or value in excess of \$500,000;
- (b) the Real Property Leases;
- (c) the Contracts in respect of the largest ten (10) customers (by revenue) of the Group for the twelve (12) month period ending on December 31, 2017;
- (d) the Contracts in respect of the largest ten (10) suppliers (by revenue) of the Group for the twelve (12) month period ending on December 31, 2017;
- (e) a Contract involving an amount in excess of \$100,000 relating to Indebtedness, borrowed money or the mortgaging, pledging or otherwise placing an Encumbrance on any Equity Interest (including the Purchased Shares) or asset or group of assets of the Group;
- (f) a written Contract with an Employee (except Contracts in the Ordinary Course of Business with Employees with annual base compensation of less than \$150,000);
- (g) any Contract concerning an investment or interest in a limited liability company, partnership, joint venture, or similar arrangement;

- (h) any Contract concerning noncompetition;
  - (i) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance, change of control, or other similar Contract for the benefit of its current or former directors, officers, employees, consultants or stockholders;
  - (j) any collective bargaining Contract;
  - (k) any written Contract for the employment of any individual on a full time, part time, consulting, or other basis providing annual compensation in excess of \$150,000 or providing severance benefits;
  - (l) any Contract under which it has advanced or loaned or guaranteed any loan in any amount to any of its directors, officers or consultants or any Vendor or, outside the Ordinary Course of Business, to its Employees that are not Vendors; and
  - (m) a Contract with an officer, director or shareholder of any of the member of the Group (or any Person related to any of the foregoing Persons), including the Vendors;
- 1.1.92 “**Minority Vendors**” means those shareholders of the Corporation listed in Schedule 2.1(B) hereto;
- 1.1.93 “**Minority Vendors’ Shares**” has the meaning ascribed thereto in the preamble;
- 1.1.94 “**Minority Vendors’ SPAs**” means the share purchase agreements entered into on the date hereof between the Purchaser and each of the Minority Vendors;
- 1.1.95 “**Notice Period**” has the meaning ascribed thereto in Section 6.7.1 hereof;
- 1.1.96 “**Novacap**” means Novacap TMT IV, L.P., Novacap International TMT IV, L.P. and NVC TMT IV, L.P.;
- 1.1.97 “**Objection Notice**” has the meaning ascribed thereto in Section 2.6.1;
- 1.1.98 “**OHS Laws**” means all laws, statutes, ordinances and regulations relating to occupational health and safety and industrial hygiene matters including matters relating to indoor air quality, noise and vibration, and exposures to any Hazardous Substances;
- 1.1.99 “**Open Source Software**” means software that is licensed under an agreement that is, or is substantially similar to, a license now or in the future approved by the Open Source Initiative, which licensed include all versions of the GNU GPL, the GNU LGPL, the GNU Affero GPL, the MIT license, the Eclipse Public

License, the Common Public License, the CDDL, the Mozilla Public License, the Academic Free License and the BSD license and the Apache Licenses;

- 1.1.100 “**Optionholders**” means the Employees who hold options of the Corporation immediately prior to the Closing;
- 1.1.101 “**Options Aggregate Consideration**” means the aggregate consideration payable by the Corporation to the Optionholders (in the amounts set forth in Section 3.1.9 of Schedule 3.1) as a result of the cancellation of the options held by such Optionholders, which cancellation shall occur immediately prior to, or concurrently with, the Closing;
- 1.1.102 “**Options Net Consideration**” means the Options Aggregate Consideration, less any amount that the Corporation (or any member of the Group) is required by law or otherwise to deduct, retain or remit with respect to such consideration;
- 1.1.103 “**Order**” means any legally enforceable order or any judgment, injunction, decision, verdict, decree, subpoena, precept, command, directive, ruling, award or writ, or other similar determination or finding by, before, or under the supervision of any court, tribunal, arbitrator or other Governmental Authority, arbitrator, or mediator;
- 1.1.104 “**Ordinary Course of Business**” means, when used in relation to the conduct of the Business, any action which is taken in the ordinary course of the normal day-to-day operations of such Person consistent with the Group’s past practices;
- 1.1.105 “**Over Payment**” has the meaning ascribed thereto in Section 2.7.1;
- 1.1.106 “**Owned Intellectual Property**” means Intellectual Property that is owned by any member of the Group and used in the operation of the Business as currently conducted and excludes Third Party Intellectual Property;
- 1.1.107 “**Paid-out Creditors**” means Novacap and Bank of Montreal, as administrative agent for the lenders under the OPIS Canada credit agreement, dated as of November 25, 2015;
- 1.1.108 “**Parent**” has the meaning ascribed thereto in the preamble hereof;
- 1.1.109 “**Parties**” means the Vendors, the Purchaser, the Parent and the Corporation, and “**Party**” means any one of them;
- 1.1.110 “**Pay-Out Letters**” has the meaning ascribed thereto in Section 2.4;
- 1.1.111 “**Pension Plan**” means each of the Employee Plan that is a “registered pension plan” as that term is defined in subsection 248(1) of the Tax Act;

- 1.1.112 **“Permits”** means all permits, certificates, certificates of authorization, certificates of compliance, authorizations, licenses, approvals of and registrations with any Governmental Authority or pursuant to any Laws that are used or held in connection with the Business or and any certification, approval, accreditation, or other similar authorization issued to a member of the Group by industry organizations including Nadcap (formerly National Aerospace and Defense Contractors Accreditation Program) and/or the International Organization for Standardization (ISO);
- 1.1.113 **“Permitted Encumbrances”** means
- (a) applicable municipal laws or by-laws, development agreements, subdivision agreements, site plan agreements and building restrictions which do not affect, in any material respect, the use or value of the Real Property affected thereby;
  - (b) any easements, including rights of way for, or reservations or rights of others relating to, sewers, water lines, gas lines, pipelines, electric lines, telegraph and telephone lines and other similar products or services and any registered or recorded restrictions or covenants that run with the land, provided that they do not individually or in the aggregate detract from the value or marketability of the Real Property in any material respect and will not materially adversely affect the ability of any member of the Group to carry on its Business as it has been carried on in the immediately preceding twelve (12) month period;
  - (c) defects or irregularities in title to the Real Property which do not, in any material respect, affect the use or value of the of the Real Property affected thereby;
  - (d) reservations, limitations, provisions and conditions, if any, expressed in any original grants of land by a Governmental Authority which do not, in any material respect, affect the use or value of the Real Property affected thereby;
  - (e) undetermined or inchoate construction or repair or storage liens arising in the Ordinary Course of Business of a member of the Group, a claim for which has not been filed or registered pursuant to Law or notice in writing of which has not been given to the Group and which, in any such case, relate to obligations not due and payable or that are being contested in good faith;
  - (f) statutory liens incurred or deposits made in the Ordinary Course of Business in connection with workers’ compensation, unemployment insurance and similar legislation, but only to the extent that each such statutory lien or deposit relates to amounts not yet due;

- (g) inchoate or statutory liens for Taxes not at the time overdue and inchoate or statutory liens for overdue Taxes the validity of which the Corporation is contesting in good faith but only for so long as such contestation effectively postpones enforcement of any such liens or Taxes;
- (h) Encumbrances given by a member of the Group to a public utility or any Governmental Authority when required in the Ordinary Course of Business;
- (i) rights of equipment lessors under equipment contracts provided the terms of such equipment contracts have been complied with up to and on the Closing Date;
- (j) financing statements evidencing the rights of equipment lessors under equipment contracts in and to the equipment and vehicles which are subject to such contracts provided the terms of such equipment contracts have been complied with up to and on the Closing Date;
- (k) any privilege in favour of any lessor, licensor or permitter for rent to become due or for other obligations or acts, the performance of which is required under contracts so long as the payment of or the performance of such other obligation or act is not delinquent and provided that such Encumbrances or privileges do not, in any material respect, affect the use or value of the assets affected thereby; and
- (l) Encumbrances listed on Schedule 1.1.113;

1.1.114 **“Person”** includes any individual, trust, trustee, executor, administrator, legal personal representative, estate, firm, partnership, joint venture, venture capital fund, joint stock company, association, body corporate, corporation, unincorporated association or organization, Governmental Authority, syndicate or other entity, whether or not having legal status;

1.1.115 **“Personal Information”** means information about an individual who can be identified by the Person who holds that information, but does not include business contact information when collected, used or disclosed for the purposes of contacting an individual in that individual’s capacity as an employee or an official of an organization and for no other purposes;

1.1.116 **“Pre-Closing Straddle Period”** has the meaning ascribed thereto in Section 0;

1.1.117 **“Pre-Closing Taxes”** means (i) any Taxes of or imposed on or with respect to any member of the Group for a Pre-Closing Tax Period or a Pre-Closing Straddle Period (as determined in accordance with Section 0 for Straddle Periods); (ii) any Taxes of any other Person for which any member of the Group is liable as a result of having been a member of an affiliated, consolidated, combined or

unitary group on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar state, local, or non-U.S. Law; (iii) any Taxes imposed on any member of the Group as a result of being a transferee or successor, by contract (other than agreements entered into in the Ordinary Course of Business and not principally relating to Taxes) or pursuant to any Law, which Taxes relate to an event or transaction occurring before the Closing; (iv) any Taxes arising under Section 951, Section 951A or Section 965 of the Code (or similar provisions of state or local Law) with respect to the income, business or operations of any member of the Group in any period (or portion thereof) ending on or before the Closing Date; or (v) any liabilities of the Vendors or any member of the Group under Section 965(h) of the Code; but excluding any Taxes taken into consideration in the calculation of the Purchase Price (to the extent necessary in order to avoid duplication);

- 1.1.118 **“Pre-Closing Tax Period”** means all taxable periods ending on or before the Closing Date;
- 1.1.119 **“Preferred Equity Purchase Price”** means that portion of the Purchase Price associated with the acquisition of the Class D Preferred Shares as set forth in Schedule 2.1(A), i.e. \$6,555,356.74;
- 1.1.120 **“Preferred Shareholder”** means 2157996 Alberta Ltd. (successor to 1165437 Alberta Ltd.);
- 1.1.121 **“Prepaid Expenses”** means the aggregate sum of all prepaid expenses and other current assets of the Group, and deposits relating to the Business, including all prepaid school and municipal taxes, all prepaid workers compensation, all prepaid charges for or purchases of water, gas, oil, hydro and other utilities, all prepaid maintenance and support contract, all prepaid insurance premiums and all prepaid lease payments, in each case calculated in accordance with ASPE;
- 1.1.122 **“Privacy Laws”** means any and all applicable Laws relating to privacy and the collection, use and disclosure of Personal Information in all applicable jurisdictions, including the *Personal Information Protection and Electronic Documents Act* (Canada) and any and all comparable provincial legislation, including the *Personal Information Protection Act* (Alberta);
- 1.1.123 **“Purchase Price Cap”** means \$189,887,500;
- 1.1.124 **“Purchased Securities”** has the meaning ascribed thereto in the preamble;
- 1.1.125 **“Purchased Shares”** has the meaning ascribed thereto in the preamble;
- 1.1.126 **“Purchaser”** has the meaning ascribed thereto in the preamble hereof;

- 1.1.127 “**Purchaser Indemnitee**” has the meaning ascribed thereto in Section 6.1.1 hereof;
- 1.1.128 “**Qualified Losses**” has the meaning ascribed thereto in Section 6.3.1(e) hereof;
- 1.1.129 “**Real Properties**” or “**Real Property**” means, as applicable, the real properties subject to the Real Property Leases;
- 1.1.130 “**Real Property Leases**” means the leases, subleases and other agreements in the nature of a lease, license or right of use and/or occupancy of real property to which any member of the Group is a party as lessee, beneficiary, licensee or equivalent, a list of which is attached as Section 3.1.36 of Schedule 3.1;
- 1.1.131 “**Release**” means any spilling, leaking, pumping, pouring, emitting, discharging, dumping or disposing of any Hazardous Substance into the environment;
- 1.1.132 “**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person;
- 1.1.133 “**Response Period**” has the meaning ascribed thereto in Section 6.5;
- 1.1.134 “**Restrictive Covenant Agreements**” shall mean the restrictive covenant agreements in form and content satisfactory to the Purchaser entered into as of the date hereof by and between the Purchaser and each of the Vendors, Chad Niehaus and Gerry Wilkinson;
- 1.1.135 “**R&W Insurance Provider**” means Chubb Insurance Company of Canada;
- 1.1.136 “**R&W Insurance Policy**” means the representation and warranty insurance policy taken out by the Purchaser, at its sole cost and expense, as of the date hereof in relation to the transaction contemplated herein, on terms and conditions acceptable to the Vendors and included on the form provided to Vendors’ Delegate, acting reasonably, including a provision providing that the insurers under such policy shall have no right of subrogation against the Vendors;
- 1.1.137 “**Section 338(g) Election**” has the meaning ascribed thereto in Section 4.7.5;
- 1.1.138 “**Stock Option Plan**” means the Corporation’s 2016 Incentive Stock Option Plan;
- 1.1.139 “**Straddle Period**” means any taxable period that begins before and ends after the Closing Date;
- 1.1.140 “**Stub Period Tax Returns**” has the meaning ascribed thereto in Section 4.7.1(c);

- 1.1.141 “**Subsidiary**” has the meaning ascribed thereto in the CBCA;
- 1.1.142 “**Target Working Capital**” means Five Million Seven Hundred Seventy-Seven Thousand Dollars (\$5,777,000);
- 1.1.143 “**Tax**” and “**Taxes**” includes any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever and wheresoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, license, profits, capital, capital gains, franchise, windfall profits, transfer, land transfer, sales, goods and services, harmonized sales, use, local, value-added, ad valorem, excise, net worth, stamp, registration, capital stock, withholding, business, franchising, property, environmental, social security, disability, payroll, estimated, unclaimed property or escheat, alternative or add-on minimum, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, and all employment, unemployment, employment insurance and Canada, and other Governmental Authority pension plan premiums or contributions and for greater certainty, all contributions payable under any tax Laws;
- 1.1.144 “**Tax Act**” means the *Income Tax Act* (Canada);
- 1.1.145 “**Tax Authority**” means the *Canada Revenue Agency*, and any other national, state, local, provincial, territorial or other Governmental Authority responsible for the administration, implementation, assessment, determination, enforcement, compliance, collection or other imposition of any Taxes;
- 1.1.146 “**Tax Claim**” has the meaning ascribed thereto in Section 4.7.4;
- 1.1.147 “**Tax Representations**” means the representations and warranties of the Vendors and the Corporation, as applicable, contained in Section 3.1.6 and 3.1.33 of Schedule 3.1;
- 1.1.148 “**Tax Returns**” means any and all returns, reports, declarations, statements, information, estimates, rebates or credits, elections, designations, schedules, filings or other documents (including any related or supporting information) relating to Taxes filed or required to be filed by any Tax Authority or pursuant to any Law relating to Taxes or in fact filed with any Tax Authority, including all information returns, Claims for refund, amended returns, declarations of estimated Taxes, and requests for extensions of time to file any of the preceding items;
- 1.1.149 “**Third Party Claim**” means any Claim asserted against an Indemnified Party or any member of the Group, that is paid or payable to, or claimed by, any Person who is not a Party or an Affiliate of a Party;



- 1.1.150 “**Third Party Consents**” means all Consents, Orders, rulings, authorizations, acknowledgements, registrations, declarations, filings, submissions of information, sanctions, licenses, exemptions or permits necessary or otherwise required from any Governmental Authority or Person or pursuant to any Law in order to consummate the transactions contemplated by this Agreement or any Ancillary Agreement or Closing Document;
- 1.1.151 “**Third-Party Intellectual Property**” means Intellectual Property that is owned by a Person other than the Group and used by the Group in the operation of the Business as currently conducted;
- 1.1.152 “**Threatened**” a Claim or other matter will be deemed to have been “Threatened” if any demand or statement has been made (orally or in writing) or any notice has been given (orally or in writing);
- 1.1.153 “**Threshold**” has the meaning ascribed thereto in Section 6.3.1;
- 1.1.154 “**Transaction Bonuses**” means the transaction bonuses payable to Company employees by virtue of, or in connection with the Transaction, including the amount of the employer portion of any payroll or employment Taxes arising from, or due and payable with respect to, such transaction bonuses;
- 1.1.155 “**Transactions**” means all of the transactions contemplated by this Agreement and the other Transaction Documents, including (a) the sale of the Purchased Shares by the Vendors to Purchaser and Purchaser’s delivery of the Purchase Price therefor, (b) the execution, delivery, and performance of all of the documents, instruments and agreements to be executed, delivered, and performed in connection with this Agreement, including each Ancillary Agreement and Closing Document, and (c) the performance by Purchaser, the Vendors and the members of the Group of their respective covenants and obligations (pre- and post-Closing) under this Agreement and the other Transaction Documents;
- 1.1.156 “**Transaction Documents**” means this Agreement, the Ancillary Agreements and Closing Documents;
- 1.1.157 “**Transaction Expenses**” means, to the extent not already considered as Current Liabilities in the calculation of the Estimated Aggregate Purchase Price or of the Purchase Price and to the extent not already paid by the Group or by the Vendors, the Transaction Bonuses and the legal, financial advisory and accounting costs and expenses incurred by or on behalf of the Group in connection with the consummation of the transactions provided for herein, including the preparation, execution and delivery of the Transaction Documents;
- 1.1.158 “**Under Payment**” has the meaning ascribed thereto in Section 2.7.3;
- 1.1.159 “**Vendors**” means the Major Vendors and the Minority Vendors;

- 1.1.160 “**Vendors’ Delegate**” has the meaning ascribed thereto in Section 1.7.1;
- 1.1.161 “**Vendors Pre-Closing Communications**” has the meaning ascribed thereto in Section 8.12.2;
- 1.1.162 “**Working Capital**” means an amount (which may be positive or negative) equal to: (i) the aggregate Current Assets of the Group, *minus* (ii) the aggregate Current Liabilities of the Group, the whole calculated in accordance with ASPE provided, however, that any item that is included in the calculation of Indebtedness or Transaction Expenses for the purposes of this Agreement shall be excluded from the determination of Working Capital. For illustrative purposes, the calculation of Working Capital as of December 31, 2017 is attached as Schedule 1.1.162; and
- 1.1.163 “**Year End Financial Statements**” means the audited, consolidated financial statements of the Corporation for the years ended December 31, 2016 and 2017.

## SCHEDULE 3.1

### REPRESENTATIONS AND WARRANTIES OF THE VENDORS AND OF THE CORPORATION

#### *Representations in respect of Vendors*

##### 3.1.1 *Capacity and No Violation of Vendors.*

- (a) Each Vendor that is a corporation or other legal entity has been duly incorporated or otherwise formed, under all applicable Laws, is validly subsisting and is in good standing under the Laws of its jurisdiction of incorporation or other formation. Each Vendor that is a corporation or other legal entity has the corporate or legal power and authority to own its assets and carry on its business as currently owned and carried on. No resolution has been adopted providing for the dissolution or winding up of any Vendor that is a corporation or other legal entity.
- (b) Each Vendor that is a natural person has the requisite capacity and authority, and each Vendor that is a corporation or other legal entity has the corporate or legal power and authority, to execute and deliver each Transaction Document to which he, she or it is a party, and to perform and to consummate the Transactions. Each Vendor has taken all actions necessary to authorize the execution and delivery of each Transaction Document to which he, she or it is party, the performance of obligations of such Vendor thereunder, and the consummation of the Transactions. This Agreement has been duly executed by each of the Vendors and constitutes legal, valid and binding obligations, enforceable against the Vendors in accordance with its terms, subject to bankruptcy, insolvency and other similar Laws affecting creditors' rights generally.
- (c) Except as set forth in Section 3.1.1 of Schedule 3.1, the execution by each of the Vendors of this Agreement, the performance by them of their obligations hereunder and the completion of the transactions contemplated herein will not result in:
  - (i) a Breach of any provision of: (1) in the case of a Vendor that is a corporation or other legal entity, any articles and by-laws of any such Vendor, (2) any Laws or Orders to which any Vendor is subject, (3) any Contract, Order, or Permit to which any Vendor is a party or by which any Vendor is bound or to which any assets of any Vendor are subject, or
  - (ii) result in the creation or imposition of any Encumbrance upon the Purchased Shares.

- 3.1.2 *Approvals and Consents.* No Consent, Order or permit is necessary or otherwise required to be obtained by any of the Vendors from any Governmental Authority or Person in connection with the execution and delivery of this Agreement or the consummation by the Vendors of the Transactions.
- 3.1.3 *Title to Purchased Securities.* The Vendors are, and will be at Closing, the record and beneficial owners of, and have, and will have at Closing, good and marketable title to all of the Purchased Securities, free and clear of all Encumbrances. The Purchased Securities currently constitute, and will at Closing constitute, all of the issued and outstanding Equity Interests of the Corporation. At the Closing, all of the Purchased Securities, constituting all of the issued and outstanding Equity Interests of the Corporation, shall be transferred free and clear of any Encumbrances from Vendors to Purchaser, and Purchaser shall have good and marketable title to such Purchased Securities. Schedules 2.1A and Schedule 2.1B also sets forth: the name, address and state/province of residence (state/province of incorporation) of each Vendor; each Vendor's ownership of Equity Interests of the Corporation as of the date hereof; and, in the case of each Vendor that is not a natural person (corporation, partnership, etc.) other than Novacap, the name, address and state/province of residence (state/province of incorporation) of each individual who is the ultimate beneficial owner of the Equity Interests of such Vendor and the amount of Equity Interests of such Vendor beneficially owned by such individual. No Vendor or member of the Group is or was a party to any Contract (i) that could require such Vendor to sell, transfer, or otherwise dispose of any Equity Interest of the Group (other than this Agreement and the Minority Vendor SPAs ) or, in the case of the members of the Group, to issue any Equity Interest of the Group, or (ii) with respect to any Equity Interest of the Group.
- 3.1.4 *Restrictions on Transfer of Shares.* There are no restrictions of any kind on the transfer of the Purchased Securities except those set out in the articles of the Corporation and under applicable securities Laws. For greater certainty, other than as set forth in Section 3.1.4 of Schedule 3.1, no resolution or consent of the directors or shareholders of the Corporation are required to authorize or approve the transfer of the Purchased Securities to the Purchaser or any of the other transactions contemplated in this Agreement.
- 3.1.5 *Dividends and Other Distributions.* Other than as set forth in Section 3.1.5 of Schedule 3.1, no member of the Group has declared or paid any dividends or declared or made any other distribution on any of its shares or other securities nor has any member of the Group, directly or indirectly, redeemed, purchased or otherwise acquired any of its shares or other securities or agreed to do any of the foregoing. No capital dividends or eligible dividends were paid to the Minority Vendors.

- 3.1.6 *Residency.* Except as disclosed in writing to the Purchaser, prior to the Effective Time, no Vendor is a “non-resident” of Canada, or a partnership that is not a “Canadian partnership”, in each case within the meaning of the Tax Act.
- 3.1.7 *No Litigation.* There is no pending, or to the Knowledge of the Vendors, Threatened, Claim or Action against the Vendors, at law or otherwise, with respect to the Purchased Securities. There is no Order outstanding against the Vendors or by which Vendors are bound which relates to the Purchased Securities.

***Representations in respect of the Group***

3.1.8 *Organization*

- (a) Each member of the Group has been duly incorporated is subsisting and is in good standing under the Laws of its jurisdiction of incorporation.
- (b) Each member of the Group has the corporate or legal power and authority to own its assets and carry on its businesses as currently owned and carried on. No resolution has been adopted providing for the dissolution or winding up of any member of the Group.

3.1.9 *Capitalization*

- (a) Section 3.1.9 of Schedule 3.1 contains a complete and accurate list of each member of the Group showing: (i) legal name, jurisdiction of incorporation or formation and (ii) each of the Group members’ authorized as well as issued and outstanding Equity Interests (together with the holders thereof).
- (b) All of the outstanding Equity Interests of each member of the Group (i) have been duly authorized, are validly issued, fully paid and non-assessable, (ii) were issued in compliance with all applicable state and federal securities Laws and any applicable exemptions thereunder, (iii) were not issued in Breach of any Commitments, and (iv) are held of record and beneficially by the respective Vendors as set forth in Schedule 2.1.
- (c) Other than as set forth in Section 3.1.9 of Schedule 3.1, and other than the options held by the Optionholders which are being paid out concurrently with the Closing of the transactions contemplated by this Agreement, there is no:
  - (i) outstanding security held by any Person which is convertible or exchangeable into Equity Interests of any member of the Group;
  - (ii) outstanding or authorized Commitments of any nature whatsoever, written or oral (other than this Agreement),

obligating any member of the Group to issue, sell, redeem, purchase or transfer any Equity Interests of any member of the Group (or securities convertible into or exchangeable for any Equity Interests of any member of the Group);

- (iii) agreement or understanding of any nature whatsoever, written or oral (other than this Agreement) which grants to any Person the right to purchase or otherwise acquire any Equity Interests of any member of the Group;
  - (iv) Commitment with respect to any Equity Interest of any member of the Group, and no such Commitment will arise in connection with or as a result of the Transactions; or
  - (v) Contract with respect to the voting or transfer of the Equity Interests of any member of the Group.
- (d) The Transactions constitute a Trigger Event (as defined in the Stock Option Plan) under Article 15 of the Stock Option Plan, and in accordance therewith the Board of Directors of the Corporation has taken all necessary action to terminate and cancel the options held by the Optionholders immediately prior to, or concurrently with, the Closing by payment of the Options Net Consideration to the Optionholders as set forth opposite their respective name in Section 3.1.9 of Schedule 3.1. Such payment of the Options Net Consideration to the Optionholders is in full and complete payment of any amounts owed to the Optionholders pursuant to the options held by the Optionholders, and such amounts shall not be subject to adjustment pursuant to the terms of such option agreements and of this Agreement.
- (e) Except as set forth in Section 3.1.9 of Schedule 3.1, the Corporation has no subsidiaries and holds no Equity Interest in any other Person.

3.1.10 *Constating Records.* The minute books of each member of the Group made available to Purchaser for review were correct and complete as of the date of such review, no further entries have been made through the date of this Agreement, such minute books and records contain the true signatures of the persons purporting to have signed them, and such minute books and records contain copies of all articles and by-laws and of all resolutions passed by the respective shareholders and directors of each such member of the Group since the date of their incorporation or formation. True, correct and complete copies of the minute books of each member of the Group have been delivered to the Purchaser.

3.1.11 *Unanimous Shareholders Agreement.* No member of the Group has been or is otherwise subject to any unanimous shareholders agreement. Except as set forth

in Section 3.1.11 of Schedule 3.1, there are no shareholder agreements, pooling agreements, voting trusts or other similar agreements with respect to the ownership or voting of any of the securities of the Corporation.

3.1.12 *Private Issuer Status.* Each member of the Group is a “private issuer” within the meaning of National Instrument 45-106 – Prospectus and Registration Exemptions.

3.1.13 *Capacity and No Violation of Corporation.*

- (a) Each member of the Group has the corporate or legal power and authority, to execute and deliver each Transaction Document to which it is a party, and to perform and to consummate the Transactions. Each member of the Group has taken all actions necessary to authorize the execution and delivery of each Transaction Document to which it is party, the performance of obligations of such member of the Group thereunder, and the consummation of the Transactions.
- (b) This Agreement has been duly executed and delivered by the Corporation and constitutes a legal, valid and binding obligation, enforceable against the Corporation in accordance with its terms, subject to bankruptcy, insolvency and other similar Laws affecting creditors’ rights generally.
- (c) Except for Third Party Consents listed in Section 3.1.14 of Schedule 3.1, the execution and delivery by the Corporation of this Agreement, the performance by the Corporation of its obligations hereunder and the completion of the transactions contemplated herein will not result in:
  - (i) a Breach of any provision of: (i) any articles and by-laws of the Corporation or any member of the Group, (ii) any Material Contract to which any member of the Group is party, (iii) any shareholders’ agreement binding upon any member of the Group, or (iv) any Laws;
  - (ii) the creation of any Encumbrance upon the assets of any member of the Group.

3.1.14 *Approvals and Consents.* Other than the Third Party Consents listed in Section 3.1.14 of Schedule 3.1, no Consent, Order or permit is necessary or otherwise required to be obtained by any member of the Group from any Governmental Authority or Person which is a party to a Material Contract in connection with the execution of this Agreement or the consummation by any member of the Group of the transactions provided for herein.

- 3.1.15 *Investment Canada Act.* No member of the Group is engaged in any of the activities of a “cultural business” as described in section 14.1(5) of the *Investment Canada Act* (Canada).
- 3.1.16 *Competition Act.* The Group does not have assets in Canada with an aggregate value that exceeds \$92 million or aggregate gross revenues from sales in or from Canada that exceed \$92 million, in either case as determined in accordance with Part IX of the *Competition Act* (Canada) and the regulations promulgated thereunder.
- 3.1.17 *Compliance with Laws.* Except as set forth in Section 3.1.17 of Schedule 3.1, no member of the Group is conducting, and since January 1, 2015 has conducted, the Business in Breach of any applicable Laws in any material respect. Since January 1, 2015, no member of the Group has received any notice in writing from any Governmental Authority alleging that a member of the Group is not in compliance with any Laws. None of the representations and warranties in this Section 3.1.17 shall be deemed to relate to permits (which are governed by Section 3.1.18), environmental matters (which are governed by Section 3.1.32), to tax matters (which are governed by Section 3.1.33), to employee matters (which are governed by Section 3.1.34), to employee plans (which are governed by Section 3.1.35) or to intellectual property rights (which are governed by Section 3.1.37) of Schedule 3.1.
- 3.1.18 *Permits.* All material Permits are listed in Section 3.1.18 of Schedule 3.1. The listed Permits are the only permits (other than those relating to Intellectual Property), certificates, certificates of authorization, certificates of compliance, authorizations, licenses, approvals of and registrations with any Governmental Authority or pursuant to any Laws that are required under applicable Law to carry on the Business as currently conducted. The listed Permits are in full force and effect and the completion of the transactions contemplated by this Agreement will not constitute a Breach of the terms of such listed Permits. The members of the Group are not in Breach of any material Permit and to the Knowledge of the Vendors there is no Basis that could reasonably be expected to lead to the termination or suspension of any such Permit. Since January 1, 2015, no member of the Group has received any notice in writing from any Governmental Authority alleging that a member of the Group is not in compliance with any Permit.
- 3.1.19 *Absence of Certain Changes or Events.* Except as disclosed in Section 3.1.19 of Schedule 3.1, since December 31, 2017, there has not occurred:
- (a) any redemption, repurchase or other acquisition of Equity Interests of any member of the Group by any member of the Group or any declaration of, payment of or agreement to pay any dividend, or the declaration or authorization of any other distribution of, on or in respect of any of its securities whether payable in cash, securities or otherwise;



- (b) no member of the Group has made any change in excess of five percent (5%) in the aggregate for all the compensation arrangements with the Employees, officers or directors of the Group;
- (c) no member of the Group has entered into, amended, or terminated (except for Contracts which expire by the passage of time) any Material Contract;
- (d) no member of the Group has made any material change in any method of accounting or auditing practice except as required by ASPE;
- (e) no member of the Group has effected a split, combination or reclassification of any of the outstanding shares or securities of any member of the Group;
- (f) no member of the Group has sold, leased, transferred, or assigned any assets other than in the Ordinary Course of Business;
- (g) no member of the Group has entered into any Contract (or series of related Contracts) either involving more than \$150,000 or outside the Ordinary Course of Business;
- (h) to the Knowledge of the Vendors, no party to any Material Contract to which any member of the Group is a party or by which it is bound or any of its assets is subject has Breached any such Material Contract;
- (i) no Encumbrance has been imposed upon any of the assets of any member of the Group, except for garage keeper's liens which are imposed and discharged in the Ordinary Course of Business;
- (j) no member of the Group has made any capital expenditure (or series of related capital expenditures) either involving more than \$100,000 or outside the Ordinary Course of Business;
- (k) no member of the Group has made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other Person (or series of related capital investments, loans, and acquisitions);
- (l) no member of the Group has issued any note, bond, or other debt instrument or created, incurred, assumed, or guaranteed any Liability for borrowed money or capitalized lease Contract;
- (m) no member of the Group has materially delayed or postponed the payment of material accounts payable or other Liabilities, in any such instance other than in the Ordinary Course of Business;
- (n) no member of the Group has canceled, compromised, waived, or released any Claim or Action (solely involving a claim for money) (or series of

related Claims or Actions solely involving a claim for money) having an aggregate value of \$10,000 or more;

- (o) no member of the Group has entered into any Contracts or granted any rights under or with respect to any Intellectual Property, except for Contracts entered into in the Ordinary Course of Business;
- (p) there has been no change made or authorized to the organizational documents of any member of the Group;
- (q) no member of the Group has issued, sold, or otherwise disposed of any of its Equity Interests;
- (r) no member of the Group has experienced any damage, destruction, or loss (whether or not covered by insurance) to its assets or properties having an aggregate value of \$50,000 or more;
- (s) no member of the Group has made any wage or salary increases, paid any bonus or other amounts in respect of Employees, or increased the compensation, entitlements under the Employee Plans, benefits or perquisites paid or payable to the Employees, except in the Ordinary Course of Business;
- (t) no member of the Group has hired or dismissed any Employee whose base remuneration exceeded \$150,000 per year, except in the case of any hiring in the Ordinary Course of Business;
- (u) no member of the Group has made any loan to, or entered into any other transaction with, any of its directors, officers, or Employees;
- (v) no member of the Group has entered into any Collective Agreement or written employment Contract or materially modified the terms of any existing Collective Agreement or written employment Contract;
- (w) no member of the Group has adopted, materially amended or terminated any bonus, profit sharing, incentive, severance or similar Contract for the benefit of any of its directors, officers, Employees or stockholders (or taken any such action with respect to any other Employee Benefit Plan), in each case other than as required under applicable Law or the terms of such Contract or Employee Plan;
- (x) no member of the Group has made or pledged to make any charitable or other capital contribution either involving more than \$20,000 (individually or in the aggregate) or outside the Ordinary Course of Business;

- (y) no member of the Group has made any payment on any Liabilities, indebtedness (including trade payables) or other obligations owed to any Vendor or member of the Group or any of their respective Affiliates; or
- (z) no member of the Group has made any agreement or commitment to do any of the foregoing.

3.1.20 *Contracts*

- (a) Section 3.1.20 of Schedule 3.1 sets forth a list of the Material Contracts. Each Material Contracts is valid and binding on the member of the Group which is a party to such Material Contract in accordance with its terms and is in full force and in effect subject to bankruptcy, insolvency and other similar Laws affecting creditors' rights generally and no written notice of default or dispute in respect thereof has been received by any member of the Group.
- (b) True and complete copies of all Material Contracts (including all modifications, amendments and supplements thereto and waivers thereunder) have been provided to Purchaser.
- (c) The members of the Group are not in Breach of any Material Contract, and, to the Knowledge of the Vendors, no other party to any Material Contract is in Breach (or is alleged to be in Breach) of, or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred and there exists no state of facts which, after notice or lapse of time or both, would constitute a Breach of any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.
- (d) To the Knowledge of the Vendors, no counterparty to any Material Contract is in default of any of its obligations under any Material Contract.

3.1.21 *Accounts Receivable.* All accounts and notes receivable of each member of the Group represent revenue generated for products sold or services performed in the Ordinary Course of Business or valid claims as to which full performance has been rendered by the applicable member of the Group, and are reflected properly in their books and records. There are no disputes with respect to any of the accounts receivable of any member of the Group. No counter claims, defenses, offsetting claims or adjustments with respect to the accounts or notes receivable of any member of the Group are pending or, to the Knowledge of the Vendors, Threatened. All of the accounts and notes receivable of each member of the Group are collectible in full in the Ordinary Course of Business, net of the reserve therefor. Except as disclosed in Section 3.1.21 of Schedule 3.1, no member of the Group has agreed to any deduction, discount or other deferred

price or quantity adjustment with respect to any of its accounts receivables. All of the accounts and notes receivable of each member of the Group relate solely to sales of goods or services to customers of the Group, none of whom is an Affiliate of any member of the Group or any Vendor).

3.1.22 *Financial Statements.* Except as indicated therein, the Year-End Financial Statements have been prepared in accordance with ASPE and they present fairly, in all material respects, the financial condition and the results of operations of the Group as of the date and for the periods presented therein, are correct and complete, and are consistent with the books and records of the Group. The Interim Financial Statements have been prepared in accordance with ASPE and they present fairly, in all material respects, the financial condition and the results of operations of the Group as of the date and for the periods presented therein, are correct and complete, and are consistent with the books and records of the Group, except that they are subject to normal year-end adjustments(which will not be material individually or in the aggregate) and lack footnotes and other presentation items.

In the context of the Corporation being a Canadian controlled private corporation reporting under ASPE, the Group maintains accurate (in all material respects) books and records reflecting its assets and liabilities and the Group maintains such internal control as management determined is necessary (i) to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error, and (ii) to ensure that all transactions have been recorded in the accounting records and are reflected in the financial statements.

3.1.23 *Liabilities.*

- (a) The Group does not have any Liability which would be required to be disclosed or taken into consideration in the Financial Statements in accordance with ASPE, except for (i) Liabilities quantified on the face of the Interim Financial Statements (rather than in any notes thereto) and not heretofore paid or discharged, and (ii) Liabilities which have arisen after the Interim Balance Sheet Date in the Ordinary Course of Business which, individually or in the aggregate, are not material and are of the same character and nature as the Liabilities quantified on the face of the Interim Financial Statements (rather than any notes thereto) none of which results from or relates to any Breach of Contract, Breach of warranty, tort, infringement, or Breach of Law or arose out of any Claim, Action or Order.
- (b) Section 3.1.22 of Schedule 3.1 lists the Indebtedness of the Group, including the estimated outstanding principal amount of and outstanding interest on (as of the date set forth on such Schedule) all indebtedness for borrowed money and capitalized equipment lease obligations (including the outstanding principal amount and accrued but unpaid

interest and the name of the lender) owed to a bank or any other Person by the Group. All of such indebtedness can be repaid at any time without any restriction or penalty.

- 3.1.24 *Group Warranty.* Except as provided in Section 3.1.24 of Schedule 3.1, each service rendered or business conducted by the Group, including if applicable any product manufactured, sold, leased, or delivered by the Group, has been in conformity with all Contracts in all material respects,, and all express and implied warranties, and the Group has no Liability (and to the Knowledge of the Vendors, there is no Basis that could reasonably be expected to lead to any present or future Claim or Action against it giving rise to any Liability) for Losses in connection therewith. No service rendered or business conducted by the Group, including any product designed, manufactured, sold, or delivered by the Group, is subject to any guaranty, warranty, or other indemnity or similar Liability beyond the applicable standard terms and conditions of the Group. Section 3.1.24 of Schedule 3.1 provides for a description of the standard terms and conditions of the Group's guaranty, warranty, and similar Liability obligations.
- 3.1.25 *Assets.* The machinery and equipment, rolling stock and other tangible movable property owned or used by the Group are, in all material respects, in good operating condition, and repair (taking into account the age of such property) ordinary wear and tear excepted.
- 3.1.26 *Title to Assets.* The Corporation has good, marketable, and indefeasible title to, or a valid leasehold interest in, the properties and assets it uses, located on its premises, shown on the Interim Financial Statements, or acquired after the date thereof, free and clear of all Encumbrances other than Permitted Encumbrances, except for properties and assets disposed of in the Ordinary Course of Business since the Interim Balance Sheet Date.
- 3.1.27 *Inventory.* The Inventories are of a quality and quantity useable in the Ordinary Course of Business and fit for the purpose for which they were procured or manufactured. The levels of each item of Inventory are consistent with those maintained by the Group prior to the date of this Agreement in accordance with its normal business practice, and such levels are reasonable in light of seasonal adjustments, market fluctuations in the industry and the requirements of their customers. Inventory is expensed and is not included in the Interim Balance Sheet.
- 3.1.28 *Books and Records.* The Books and Records of each member of the Group fairly reflect, in all material respects, the transactions and dispositions of the assets of such member of the Group.
- 3.1.29 *Bank Accounts and Powers of Attorney.* Section 3.1.29 of Schedule 3.1 sets forth the name and location (including municipal address) of each bank, trust company or other institution in which any member of the Group has an account, money

on deposit or a safety deposit box and the name of each person authorized to draw thereon or to have access thereto and the name of each person holding a power of attorney from any member of the Group.

- 3.1.30 *Affiliate Transactions.* Except as set forth in Section 3.1.30 of Schedule 3.1, no Vendor or Affiliate of any Vendor, or any individual related by blood, marriage or adoption to any such individual or any entity in which any such Person or individual owns any beneficial interest (other than as the owner of less than five percent (5%) of the stock or other equity securities of a publicly traded entity), is a party to any Contract, transaction or arrangement with the Group or has any interest in any assets, property or rights (tangible or intangible) used by the Group (including any Intellectual Property). No Vendor or Affiliate of any Vendor owns any beneficial interest in any customer, partner or supplier of the Group. None of the assets, tangible or intangible, or properties that are used by the Group are owned by any Vendor or their respective Affiliates (other than the Group). Except as set forth in Section 3.1.30 of Schedule 3.1, no Vendor or Affiliate of any Vendor has been involved in any business arrangement or relationship with the Group since January 1, 2017.
- 3.1.31 *Litigation.* Except as set forth in Section 3.1.31 of Schedule 3.1, there is no Claim, Action or Order (or, to the Knowledge of the Vendors, any Basis therefor that could reasonably be expected to lead to any such Claim, Action or Order) of more than \$50,000 pending or, to the Knowledge of the Vendors, Threatened, against any member of the Group.
- 3.1.32 *Environmental Matters.* Except as disclosed in Section 3.1.32 of Schedule 3.1:
- (a) Each member of the Group is and has for the previous four years been in compliance, in all material respects, with all Environmental Laws and Environmental Authorizations. There are no pending Claims, Actions or Orders or, to the Knowledge of the Vendors, Threatened Claims, Actions or Orders (and, to the Knowledge of the Vendors, there is no Basis that could reasonably be expected to lead to any such Claims, Actions or Orders) pursuant to any Environmental Laws with respect to any member of the Group or any of the Real Properties as of the Closing Date.
  - (b) All material Environmental Authorizations required under Environmental Laws as applicable to the Business are listed in Section 3.1.32 of Schedule 3.1. To the Knowledge of the Vendors, the members of the Group are not in Breach of any material Environmental Authorization. The Group has not received any written directive, inquiry, notice, Order, warning or other written communication from any Governmental Authority or other Persons that relates to any actual or alleged violation of or liability under any applicable Environmental Laws or in relation to the substantial modification, suspension or revocation of any Environmental Authorization applicable to the Business or the

Real Properties, that in each case remains pending or unresolved as of the Closing Date, and the Group is not aware of any facts, conditions or circumstances that would reasonably be believed to provide grounds for a substantial modification, suspension or revocation of any Environmental Authorization.

- (c) No Real Property is, has been or is proposed to be listed on the National Priorities List or the Superfund Enterprise Management System or any Canadian contaminated sites legislation, or any similar state, provincial or local list of sites requiring investigation or clean-up and, to the Knowledge of the Vendors, no former real property owned, leased or operated by the Business and no location to which Hazardous Substances generated by or used by the Business have been disposed or have otherwise come to be located is, has been or, to the Knowledge of the Vendors, is proposed to be included on such a list.
- (d) There has been no Release of Hazardous Substances (1) by any member of the Group (or any of their respective Representatives) or, to the Knowledge of the Vendors, any other Person at the Real Property or any former real property owned, leased or operated by the Business, or (2) by any member of the Group (or any of their respective Representatives) at any other location, in each case as would reasonably be expected to result in a material liability under Environmental Laws.
- (e) There are no underground storage tanks or sumps (“USTs”), asbestos-containing material (“ACM”) or polychlorinated biphenyls (“PCBs”) or PCB-containing equipment at the Real Property. To the Knowledge of the Vendors, any former USTs, ACM or PCBs at the Real Property were removed in compliance with all Environmental Laws.
- (f) All material environmental reports, inspections, investigations, studies, audits, tests, reviews or other analysis, evaluations, assessments, sample results and correspondence related to compliance or liabilities of the Business, the Real Property or any former real property owned, leased or operated by the Business, with respect to Environmental Laws and environmental Permits, in the possession or control of Vendors have been provided or made available to Purchaser.
- (g) The Transaction will not result in any liabilities or obligations for site investigation or remediation or require the consent of any Person pursuant to “transaction-triggered” or “responsible property transfer” Environmental Laws.
- (h) Except as provided in Contracts entered into in the Ordinary Course of Business, no member of the Group, nor any predecessor entity, has expressly or by operation of Law agreed to indemnify any third party, or

assumed or undertaken any liability of a third party, under Environmental Laws.

- (i) This Section 3.1.32 of Schedule 3.1 contains the sole and exclusive representations and warranties of the Group with respect to Environmental Laws, Environmental Authorizations and Hazardous Substances.

### 3.1.33 *Tax Matters*

- (a) Each member of the Group has filed all income and other material Tax Returns required to be filed by it on or prior to the Closing Date with the appropriate Governmental Authorities and all such Tax Returns are true, correct and complete in all material respects and have been prepared in compliance with applicable Law.
- (b) Each member of the Group has timely paid in full all Taxes, including all instalments on account of Taxes for the current year, that are due and payable by it whether or not assessed by the appropriate Governmental Authority and whether or not shown on any Tax Return. Each member of the Group has established reserves that are reflected on its Books and Records and on the Financial Statements that are adequate for the payment by each member of the Group of all Taxes that are not yet due and payable and that relate to periods ending on or prior to the Closing Date or after the Closing Date, but only, in this latter situation, for such period up to the Closing Date. Except to the extent provided for in the Financial Statements, no member of the Group is liable for any Tax at the date hereof, and no deficiencies for any Taxes have been asserted in writing or assessed against any member of the Group which remain unpaid, except for deficiencies which are being contested in good faith and for which adequate provision has been made in the Financial Statements.
- (c) With respect to any period for which Tax Returns are not yet required to be filed or for which Taxes are not yet due and payable, each member of the Group has only incurred liabilities for Taxes in the Ordinary Course of Business.
- (d) Each member of the Group has duly and timely deducted, withheld, collected and remitted, the amount of all Taxes and other amounts required under any Laws (whether or not shown or required to be shown on a Tax Return) to be withheld, deducted or collected and has duly and timely remitted such amounts to the appropriate Governmental Authorities.



- (e) No member of the Group is currently the beneficiary of any extension of time within which to file any Tax Return. No power of attorney with respect to any Tax matter of any member of the Group is currently in force.
- (f) No member of the Group has, nor had, any obligation to file on or prior to the Closing Date any Tax Return required to be made, prepared or filed under the applicable Law of any jurisdiction other than Canada and the U.S. in respect of any Taxes. No Claim has ever been made by any Governmental Authority in a jurisdiction where the members of the Group do not file Tax Returns that any of the members of the Group is or may be subject to Taxes by the jurisdiction.
- (g) There are no assessments or reassessments for Taxes that have been issued and are outstanding. There are no appeals or Claims by or against the Group in connection with any Taxes, or any matters under discussion, audit or appeal with any Governmental Authority relating to Taxes asserted by any such Governmental Authority and the Group has not requested, offered to enter into or entered into any agreement or other arrangement, or executed any waiver providing for any extension of time within which any Governmental Authority may assess or collect Taxes for which the Group is or may be liable.
- (h) Except as set forth in Section 3.1.33(h) of Schedule 3.1, there are no closing agreements or similar arrangements with any Governmental Authority with regard to the determination of the Tax liability of any member of the Group that would have continuing effect on periods (or portions thereof) ending after the Closing Date. There are no requests or rulings or determinations in respect of any Tax or Tax asset pending between any member of the Group and any Governmental Authority.
- (i) There are no Encumbrances for Taxes upon the assets of any member of the Group other than Taxes which are being contested in good faith and for which adequate provision has been made in the Financial Statements.
- (j) Except as set forth in Section 3.1.33(h) of Schedule 3.1, no member of the Group is a party to, or bound by, any Tax sharing, Tax indemnification, Tax allocation or similar agreement the principal purpose of which relates to Taxes as contemplated by Section 191.3 of the Tax Act or otherwise. Any such agreement shall terminate on or prior to the Closing Date.
- (k) Except as set forth in Section 3.1.33(k) of Schedule 3.1, no member of the Group: (i) has been a member of an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under any Law governing Taxes) filing a consolidated federal income Tax Return (other than a group the common

parent of which was the Corporation); or (ii) has any liability for the Taxes of any Person (other than with respect to any member of the affiliated group of which the Corporation is the parent) under U.S. Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law), under any agreement or arrangement, as a transferee or successor or by contract (other than agreements entered into in the Ordinary Course of Business and not principally relating to Taxes).

- (l) No member of the Group will be required to include any item of income or gain in, or be required to exclude any item of deduction or loss from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in, or improper, method of accounting for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed on or prior to the Closing Date; (iii) intercompany transaction or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign Law) occurring or arising in a taxable period ending on or prior to the Closing Date; (iv) installment sale or open transaction disposition made on or prior to the Closing Date; (v) election under Section 108(i) of the Code; (vi) prepaid amount or advance payment received on or prior to the Closing Date; (vii) use of the “deferral method of accounting”; (ix) the application of Section 951 or Section 951A of the Code with respect to income earned or recognized or payments received on or prior to the Closing Date; or (x) reserves claimed by any member of the Group in respect of a period ending on or prior to the Closing Date.
- (m) No member of the Group has 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.
- (n) Each member of the Group has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return that could reasonably be expected to result in the imposition of penalties under Section 6662 of the Code or any comparable provisions of state, local or non-U.S. applicable Law. No member of the Group has engaged in any “listed transaction,” as set forth in U.S. Treasury Regulations Section 1.6011-4(b)(2).
- (o) In the last three years, no member of the Group has distributed stock of another Person or had its stock distributed by another Person in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

- (p) Except as set forth in Section 3.1.33(p) of Schedule 3.1, no member of the Group has, or has ever had in the past three years, any direct or indirect interest in any trust, joint venture, partnership, corporation, limited liability company, or other business entity for U.S. federal income Tax purposes (including a contract or arrangement treated as a partnership for U.S. federal income Tax purposes) other than an interest in another member of the Group.
- (q) The prices and terms for any transaction or arrangement involving the transfer or provision of any property or services between or among the members of the Group or its branches, offices or permanent establishments comply with the principles set forth in Section 482 of the Code and Section 247 of the Tax Act (and any similar provisions of state, local or foreign Law), are arm's length for purposes of all applicable transfer pricing Laws, and all related documentation required by such Laws has been timely prepared or obtained and, if necessary, retained (in each case, to the extent applicable).
- (r) No member of the Group acquired property from a non-arm's length Person, within the meaning of the Tax Act, for consideration, the value of which is less than the fair market value of the property, in circumstances which could subject it to a liability under Section 160 of the Tax Act. The value of the consideration paid or received by any member of the Group, as the case may be, for the acquisition, sale, transfer or provision of property (including intangibles) or the provision of services (including financial transactions) from or to a non-arm's length person is equal to the estimated fair market value of such property acquired, provided or sold or services purchased or provided.
- (s) Except as disclosed in writing to the Purchaser, there are no circumstances existing as of the date hereof or that may exist as at the Closing Date which may result in the application to any member of the Group of any of Sections 78, 80, 80.01, 80.02, 80.03 or 80.04 of the Tax Act (or any similar provisions of state, local or foreign Law).
- (t) The Purchased Shares do not constitute "taxable Canadian property" within the meaning of Section 248 of the Tax Act, and at no time in the 60 month period terminating on the Closing Date did the Purchased Shares derive, directly or indirectly, more than 50% of their fair market value from one or any combination of: i) real or immovable property situated in Canada; ii) Canadian resource properties; iii) timber resource properties; or iv) options in respect of, or interests in, or for civil law rights in, property described in any of i) to iii) whether or not the property exists.

- (u) The Corporation and OPIS Canada are duly registered under Part IX of the *Excise Tax Act* (Canada) with respect to GST/HST and the registration numbers are 802427567RT001 and 802446161 RT001.
- (v) No member of the Group has made an election in accordance with subsection 83(2) of the Tax Act in respect of the full amount of any dividend payable by it on shares of any class of its capital stock, where the amount of such dividend exceeded the “capital dividend account” (within the meaning assigned to this term in subsection 89(1) of the Tax Act) of the member of the Group immediately before the dividend became payable.
- (w) No members of the Group has made an “excessive eligible dividend designation” within the meaning of subsection 89(1) of the Tax Act.
- (x) Vendors have made available to the Purchaser complete and correct copies of all U.S. federal and state income Tax Returns and Canadian federal and provincial income Tax Returns filed with respect to any member of the Group for all taxable periods since 2015.
- (y) No member of the Group has any Liability for Taxes under Section 965 of the Code.
- (z) To the Knowledge of the Vendors, no United States person (as defined in the Code) will be required to receive notice of an election under Section 338 of the Code under the circumstances described in Treasury Regulations Section 1.338-2(e)(4) in connection with a Section 338(g) Election made with respect to the Corporation or OPIS Canada.

#### 3.1.34 *Employee Matters*

- (a) The Employment Matters Disclosure Letter contains a true, correct and complete list of the Employees and with respect to each such Employee the following information, as applicable: (i) the name and position of such Employee (ii) the date of hire and the recognized service date of such Employee, (iii) the location(s) of employment of such Employee, (iv) the employer of such Employee, (v) the amount of salary currently being paid on a gross annualized basis, the hourly pay rate (if applicable) of such Employee and the amount of compensation paid in calendar years 2016 and 2017; (vi) the nature and amount of all compensation proposed to be paid during calendar year 2018 and (vii) the nature and amount of any material perquisites or personal benefits currently being provided to or for the account of such Employee, other than the Employee Plans of general application described herein. Also set forth in the Employment Matters Disclosure Letter is a list of individuals who are “leased employees” within the meaning of Section 414(n) of the Code, the amount

paid by the Group during calendar years 2016 and 2017 and the current hourly pay rate or other compensatory arrangements with respect to each such person.

- (b) Except as set forth in the Employment Matters Disclosure Letter, each member of the Group is currently conducting and, and since January 1, 2016, has conducted its operations in compliance with any Law, Order or Contract applicable to each member of the Group relating to labor or employment relations or practices (including terms and conditions of employment, management labor relations, wage and hour issues, meal and rest periods, data privacy and data protection, immigration, classification as exempt employees or independent contractors, equal opportunity, occupational safety and health, collective bargaining, non-discrimination, harassment, immigration, the payment of social security and other Taxes), except for any such violations that would not, individually or in the aggregate, reasonably be expected to (i) subject the Group member to any material Liability or (ii) adversely affect in any material respect the Group member's ability to conduct its business after the Closing Date as presently conducted. There are no pending or, to the knowledge of any Group member, Threatened charges of unfair labor practices, employment discrimination or other wrongful action with respect to any aspect of employment of any Employee or former employee by any Group member. All persons who have performed services for each Group member and have been classified as independent contractors have satisfied the requirements of all material federal and state laws to be so classified, and as applicable each Group member has fully and accurately reported their compensation on IRS Forms 1099 or other applicable tax forms for independent contractors when required to do so. No Group member has, since January 1, 2016, engaged in any unfair labor practice, except as provided for in the Employment Matters Disclosure Letter.
- (c) The members of the Group are not a party to any Collective Agreement. No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Employees by way of certification, interim certification, voluntary recognition, or successor rights, or, to the knowledge of any Group member, has applied or Threatened to apply to be certified as the bargaining agent of any of the Employees. There are no pending, or to the Knowledge of the Vendors, Threatened union organizing activities involving the Employees.
- (d) There is no strike or lock-out occurring or, to the Knowledge of the Vendors, Threatened. No member of the Group has suffered during the

past thirty-six (36) months any strike, lock-out, work stoppage, or other similar labour dispute.

- (e) The Employees have no outstanding or pending claims for disability, injury or workers' compensation arising from or related to the employment of the Employees (other than routine claims for benefits and appeals arising therefrom). All Workers Compensation Board of Alberta premiums for the Corporation have been paid in full and the Workers Compensation Board Account(s) for the Corporation is in good standing.
- (f) Except as set forth in the Employment Matters Disclosure Letter, or as implied by Law, the Employees have no other agreements, written or oral, with the Group concerning the Employee's employment or the Employee's entitlement to any salary, wage, bonus, commission, vacation pay, length of notice or severance payment required to terminate such employment or any other benefits or entitlements pursuant to Employee Plans or otherwise (excluding, for greater certainty, unwritten Contracts of employment which may be terminated on reasonable notice and without penalty). There are no change of control agreements in place with Employees.
- (g) There are no employment related disputes, grievances, legal actions, lawsuits, arbitrations, charges, complaints, administrative or other proceedings pending or, to the Knowledge of the Vendors, Threatened by or between any member of the Group and any Employee that involve the labor or employment relations and practices of any member of the Group, including any claims for actual or alleged harassment or discrimination based on race, national origin, age, sex, sexual orientation, religion, disability, or similar tortuous conduct, wage and hour claims, breach of contract, wrongful termination, defamation, intentional or negligent infliction of emotional distress, interference with contract or interference with actual or prospective economic advantage, which would reasonably be expected to (i) subject any Group member to any material liability or (ii) adversely affect in any material respect any Group member's ability to conduct its business after the Closing Date as presently conducted.
- (h) None of the current officers, executives or other key employees of any member of the Group has notified the member Group that he or she is terminating or intends to terminate his or her employment with the member Group prior to, upon or within twelve (12) months following the Closing Date. There has not been and there will not be, any adverse change relating to relations with employees of any member of the Group as a result of the transactions contemplated by this Agreement. Except as provided for in the Employment Matters Disclosure Letter, no officer,

executive or other key employee of any member of the Group is party to any confidentiality, non-competition, proprietary rights or other such agreement that would materially restrict the performance of such person's employment duties with the Group member or the ability of the Group member to conduct its business.

- (i) Except as set forth in the Employment Matters Disclosure Letter, the members of the Group have not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of the federal Worker Adjustment and Retraining Notification Act or any similar state, local or foreign Law (including any state Laws relating to plant closings or mass layoffs) (collectively, "**WARN**") during the last two (2) years. The members of the Group are and have been in compliance with WARN, and no member of the Group has incurred any liability or obligation under WARN which remains unsatisfied.

### 3.1.35 *Employee Plans*

- (a) The Employment Matters Disclosure Letter sets forth an accurate and complete list of all Employee Plans.
- (b) Accurate and complete copies of (i) each of Employee Plan, including the current plan amendments, any related trusts, all summary plan descriptions and other summaries and descriptions furnished to participants and beneficiaries; (ii) a written description of any Employee Plan that is not otherwise in writing; (iii) all insurance policies that provide benefits under any Employee Plan; (iv) the Form 5500 filed in each of the most recent two plan years with respect to each Employee Plan, including all schedules thereto, financial statements and the opinions of independent accountants; (v) all material communications between the IRS of the United States Department of Labor and any member of the Group; and (vi) with respect to any Employee Plan that meets or purports to meet the requirements of Section 401(a) of the Code (a "**Qualified Plan**"), the most recent determination letter or, for a plan maintained pursuant to a prototype plan document, opinion letter issued by the IRS for such Employee Plan have been made available to the Purchaser.
- (c) Except as disclosed in the Employment Matters Disclosure Letter, each Employee Plan is and at all times has been maintained, funded, administered and operated in all material respects in accordance with its terms and all applicable Laws, including ERISA and the Code. Each Employee Plan that provides deferred compensation subject to Section 409A of the Code is in material compliance with Section 409A of the Code in form and operation. All returns, reports and filings required by

any Governmental Authority or which must be furnished to any Person with respect to each Employee Plan have been filed or furnished.

- (d) No member of the Group nor any ERISA Affiliate has ever established, maintained or contributed to, or had an obligation to maintain or contribute to, or has any Liability with respect to any (i) multiemployer plan as defined in Section 3(37)(A) of ERISA, (ii) pension plan subject to Title IV of ERISA or Section 412 or 430 of the Code, (iii) voluntary employees' beneficiary association under Section 501(c)(9) of the Code, or (iv) welfare benefit fund as defined in Section 419(e) of the Code. Except as required by the continuation coverage requirements of Sections 601 et seq. of ERISA and Section 4980B of the Code, no member of the Group provides health or welfare benefits for any retired or former employee, or their beneficiaries or dependents, nor is any member of the Group obligated to provide health or welfare benefits to any active employee following such employee's retirement or other termination of service.
- (e) Each Qualified Plan has received a favorable determination or opinion letter from the IRS that it is qualified under Section 401(a) of the Code, and each such Qualified Plan complies in form and in operation with the requirements of the Code and meets the requirements of a "qualified plan" under Section 401(a) of the Code. No event has occurred or circumstance exists that could reasonably be expected to give rise to disqualification or loss of Tax-exempt status of any such Qualified Plan or trust.
- (f) All data necessary to administer each Employee Plan in respect of Employees and former employees of the members of the Group and their respective beneficiaries is in the possession of the Group and is complete and in a form which is sufficient for the proper administration of the Employee Plans.
- (g) No transaction prohibited by Section 406 of ERISA and no "prohibited transaction" under Section 4975 of the Code has occurred with respect to any Employee Plan. No member of the Group nor any ERISA Affiliate has any Liability to the IRS with respect to any Employee Plan, including any Liability imposed by the excise Tax provisions of chapter 43 of the Code. All contributions and payments made or accrued with respect to all Employee Plans are deductible under Sections 162 or 404 of the Code. There is no unfunded Liability under any Employee Plan. No Action has been concluded that resulted in any Liability of any member of the Group or any ERISA Affiliate that has not been fully discharged (other than routine claims for benefits and appeals arising therefrom).



- (h) The Corporation has the right to modify and terminate benefits (other than pensions) with respect to both retired and active employees. No individual classified as a non-employee for purposes of receiving employee benefits (such as an independent contractor, leased employee, consultant or special consultant), regardless of treatment for other purposes, is eligible to participate in or receive benefits under any Employee Plan. Each Employee Plan sponsored by the Corporation permits assumption thereof by the Purchaser upon the Closing without the consent of the participants or any other Person.
- (i) Except as provided for in the Employment Matters Disclosure Letter, the consummation of the transactions contemplated by this Agreement (either alone or in conjunction with any other event, including termination of employment) will not cause accelerated vesting, payment or delivery of, or increase the amount or value of any payment or benefit under or in connection with any Employee Plan. No member of the Group has made or become obligated to make, and no member of the Group will as a result of the consummation of the transactions contemplated by this Agreement become obligated to make, any payments that could be non-deductible by reason of Section 280G of the Code (without regard to subsection (b)(4) thereof), nor will any member of the Group be required to “gross up” or otherwise compensate any individual because of the imposition of any excise Tax on such a payment to the individual.
- (j) Except as disclosed in the Employment Matters Disclosure Letter, the Group does not maintain, sponsor or contribute to, or have any obligation to contribute to, any Employee Plan. The Group has described or set forth copies of all the employment policies, procedures and work related rules currently in effect with respect to Employees, including Employee Plans and policies regarding holidays, sick leave, vacation, disability, and death benefits, bereavement, termination, change of control, and severance pay, automobile allowances and rights to company-provided vehicles and expense reimbursements. The Group does not have any oral or informal Employee Plans in place, or any oral or informal agreements with Employees, other than as have been disclosed to the Purchaser. None of the Employee Plans is a Pension Plan, a defined benefit plan or a defined contribution plan.
- (k) Except as set forth in the Employment Matters Disclosure Letter, no improvements have been promised in respect of any of the Employee Plans that are not reflected in the copies of the Employee Plans provided to the Purchaser.

3.1.36 *Real Property Leases and Real Properties*

- (a) Neither the Corporation nor any member of the Group owns any real property.
- (b) The Real Properties constitute all of the real and immovable property interests held for use, or used, by the Group. With respect to each of the Real Properties:
  - (i) all facilities and Improvements (defined below) located thereon have received all Permits, including all certificates of occupancy, zoning approvals, entitlements and authorizations of all Governmental Authorities, required in connection with the ownership or operation thereof and have, in all material respects, been operated and maintained in accordance with applicable Laws;
  - (ii) there are no Persons (other than the Corporation) in possession of the Real Properties;
  - (iii) all buildings, structures, building systems and equipment, utilities and all components thereof, including the roof, foundation, load-bearing walls and other structural elements thereof, heating, ventilation, air conditioning, mechanical, electrical, plumbing and other building systems, sewer, storm and waste water systems, parking facilities, fire protection and security systems, and computer, wiring and cable installations, included in the Real Properties (collectively, the “Improvements”) are in good condition and repair and sufficient for the operation of the business as currently conducted thereon and as currently proposed to be conducted thereon and are in compliance with all applicable Laws. There are no structural deficiencies or latent defects affecting any of the Improvements that would, individually or in the aggregate, interfere in any respect with the use or occupancy of the Improvements or any portion thereof in the operation of the business as currently conducted thereon nor are there any material deferred repaired items;
  - (iv) all facilities and Improvements located on the Real Properties are supplied with utilities and other services necessary and adequate for the operation of such facilities, including gas, electricity, water, telephone, sanitary sewer, and storm sewer, all of which services are being provided in accordance with all applicable Laws and are provided via public roads or via permanent, irrevocable, appurtenant easements benefiting the Real Properties; and

- (v) the Corporation has adequate rights of ingress to and egress from the Real Properties and the facilities and Improvements located on the Real Properties, via public roads or via permanent, irrevocable, appurtenant easements benefiting the Real Properties, for the operation of the Business thereon in the Ordinary Course of Business.
- (c) Section 3.1.36 of Schedule 3.1 contains a list of all of the Real Property Leases. Copies of the Real Property Leases have been delivered to the Purchaser. With respect to each Real Property Lease:
- (i) the Contract is enforceable;
  - (ii) the Contract will continue to be enforceable on identical terms following the consummation of the Transactions;
  - (iii) no party to the Contract is in Breach, and no event has occurred which, with notice or lapse of time, would constitute a Breach thereunder;
  - (iv) no party to the Contract has repudiated any provision thereof;
  - (v) there are no Claims, Actions, Orders, or forbearances in effect as to the Contract;
  - (vi) the Corporation has not granted or suffered to exist any Encumbrance in the Real Property Leases;
  - (vii) all facilities leased or subleased under the Contract have received all Permits required in connection with the operation thereof and have been operated and maintained in accordance with applicable Laws; and
  - (viii) all facilities leased or subleased under the Contract are supplied with utilities and other services necessary for the operation of said facilities.
- (d) To the Knowledge of the Vendors, neither the whole nor any portion of the Real Properties is subject to any order to be sold or is being condemned, expropriated or otherwise taken by any Governmental Authority with or without payment of compensation therefor, nor to the Knowledge of the Vendors has any such condemnation, expropriation or taking been proposed.

3.1.37 *Intellectual Property Rights*

- (a) Section 3.1.37 of Schedule 3.1 contains a list of (i) all registered Intellectual Property owned by any member of the Group, including for clarity all internet domain names and social media accounts and handles; (ii) all pending applications for Intellectual Property filed by any member of the Group; (iii) unregistered Owned Intellectual Property that is material to the conduct of the Business; and (iv) all Group IP Agreements that are material to the conduct of the Business (excluding shrink-wrap, click-wrap, or other similar agreements for commercially available off-the-shelf software).
- (b) A member of the Group is the sole and exclusive legal and beneficial owner of all right, title, and interest in and to the Owned Intellectual Property, free and clear of all Encumbrances other than Permitted Encumbrances.
- (c) The Owned Intellectual Property and the Third-Party Intellectual Property constitutes all of the Intellectual Property necessary for and material to the conduct of the Business as currently conducted.
- (d) The conduct of the Business as currently conducted does not infringe, misappropriate, or otherwise violate the Intellectual Property of any Person. No Person is infringing, misappropriating, or otherwise violating any Owned Intellectual Property and, to the Knowledge of the Vendors, any Third-Party Intellectual Property that is material to the conduct of the Business.
- (e) No other Person has the right to use the Owned Intellectual Property, save pursuant to license agreements granted in the Ordinary Course of Business on such terms and conditions as are customary in this field.
- (f) The Owned Intellectual Property is valid, subsisting and in full force and effect and currently in compliance with any and all formal legal requirements necessary to maintain the validity and enforceability thereof. There is no claim existing or, to the Knowledge of the Vendors, threatened against any member of the Group alleging adverse ownership, infringement, misappropriation, invalidity or other opposition to, or any conflict with, any of the Owned Intellectual Property. There is no claim asserted in writing or, to the Knowledge of the Vendors, Threatened or otherwise existing against any member of the Group alleging adverse ownership, infringement, misappropriation, invalidity or other opposition to, or any conflict with, any of the Third Party Intellectual Property that is material to the conduct of the Business.

- (g) Each member of the Group has used commercially reasonable efforts to protect and preserve the confidentiality of trade secrets, and other non-public proprietary information in connection with the Business (including measures to protect secrecy and confidentiality where appropriate).
- (h) Except as provided for in Section 3.1.37 of Schedule 3.1, all current employees, contractors and Consultants who contributed to the discovery, development, conception, creation or reduction to practice of any rights in and to any Owned Intellectual Property have entered into valid and enforceable written agreements containing confidentiality obligations and assignments of their interest in such Intellectual Property to respective member of the Group. To the Knowledge of the Vendors, no such employee, contractor or consultant is in default of any material term of any such agreement.

3.1.38 *Privacy Laws.* Each member of the Group has conducted and is conducting the Business in compliance with all applicable Privacy Laws including in connection with its collection, use and disclosure of Personal Information. No member of the Group has received a complaint or notice of any breach or violation of any such privacy Laws. All Personal Information of each member of the Group:

- (a) has been collected, used or disclosed with the consent of each individual to which such Personal Information relates (if such consent is required under applicable Privacy Laws);
- (b) has been used only for the purposes for which the Personal Information was initially collected or for a subsequent purpose for which consent was subsequently obtained; or
- (c) has been collected, used or disclosed for a purpose in respect of which consent may, under applicable Privacy Laws, be implied.

3.1.39 *Anti-Spam Laws.* Each member of the Group has at all times since November 25, 2015, complied with CASL in all material-respects and is not aware of any complaints filed against it for failing to comply with CASL.

3.1.40 *Information Technology*

- (a) Section 3.1.40 of Schedule 3.1 sets out a true, correct and complete list of all material Information Technology owned, licensed, used or held for use in connection with the Business and all fees payable in connection therewith and all Contracts relating to the maintenance and support, security, disaster recovery management and utilization of such Information Technology.

- (b) None of the Information Technology depends upon any service, technology or data of any third party (other than the Internet and hosted systems). Such Information Technology is sufficient for the conduct of the Business in the Ordinary Course of Business as presently conducted and has not suffered any material malfunctions, failures, unplanned outages or security breaches, including but not limited to, cybersecurity breaches since November 25, 2015. Each member of the Group uses all reasonable means, consistent with industry practice, to protect the security and integrity of all such Information Technology and any and all Personal Information stored therein. The use of any Information Technology by each member of the Group does not exceed the scope of the rights granted therein, including any applicable limitation upon the usage, type or number of licenses, users, hardware, time, services or systems.
- (c) Since November 25, 2015, no written notice of a defect or default has been sent or received by any member of the Group in respect of any license or lease under which the Group receives Information Technology.
- (d) Each member of the Group has in place industry standard disaster recovery processes.
- (e) None of the Information Technology owned or used by any member of the Group in connection with the Business fails to comply in any material respect with any applicable warranty nor other contractual commitment relating to the use, functionality, or performance of such Information Technology.
- (f) Except as provided for in Section 3.1.40 of Schedule 3.1, no member of the Group has incorporated Open Source Software into, or combined Open Source Software with, the Owned Intellectual Property or Third-Party Intellectual Property and no product or service offered by any member of the Group is distributed with any software that is licensed pursuant to, or is otherwise subject to, an open-source, public-source, freeware or other third party license agreement that, in each case, requires the respective member of the Group to disclose or license any material proprietary source code that embodies Owned Intellectual Property or Third-Party Intellectual Property or that requires any material product or service to be made available at no charge.

#### 3.1.41 *Insurance*

- (a) Section 3.1.41 of Schedule 3.1 contains a list of all insurance policies currently maintained by or for any member of the Group. Such policies are in force and effect. Copies of all such policies and arrangements have been delivered to the Purchaser.

- (b) No member of the Group is in default, in any material respect, under any provision of any such policy and has not received notice of cancellation or non-renewal of any such policy.
- (c) To the Knowledge of the Vendors, there is no threatened termination of, or material premium increase with respect to, any of the insurance policies currently maintained by or for any member of the Group. There is no claim pending under any such insurance policy as to which coverage has been denied or disputed by the underwriters of such insurance policy.

3.1.42 *Occupational Health & Safety and Workers' Compensation.*

- (a) There are no outstanding inspection orders or written equivalent made under OHS Laws which relate to any member of the Group, and each member of the Group has complied in all material respects with any orders previously issued under OHS Laws.
- (b) All current assessments under workers' compensation legislation in relation to any member of the Group and, to the knowledge of the Vendors, all of their respective contractors and sub-contractors have been properly paid or accrued. No member of the Group has been subject to any additional or penalty assessment under such legislation which has not been paid or accrued.
- (c) Except as set forth in Section 3.1.42 of Schedule 3.1, there have been no material infractions by any member of the Group or their Employees under OHS Laws.

3.1.43 *Safety Incidents.* Section 3.1.43 of Schedule 3.1 sets forth and describes, since January 1, 2015, all incidents resulting in bodily injury or harm to an Employee or other person working with or for any member of the Group or in connection with the Business and any sanctions, fines or Orders imposed or threatened on any such member of the Group, the Vendor or any Employees in relation to such incidents.

3.1.44 *Customers and Suppliers.*

- (a) Section 3.1.44 of Schedule 3.1 lists the Group's (a) 20 largest customers in terms of sales during (i) the 12 month period ended as of December 31, 2017 and (ii) the eight month period ended as of the Interim Balance Sheet Date and states the approximate total sales by the Group to each such customer during such periods, respectively and (b) ten largest suppliers during the 12 month period ended December 31, 2017 and the eight month period ended as of the Interim Balance Sheet Date. Except as set forth in Section 3.1.43 of Schedule 3.1, no Vendor or member of the Group has received notice of termination or otherwise has Knowledge

of an intention to terminate or materially reduce the relationship with the Group from any customer or supplier and, to the Knowledge of the Vendors, there is no Basis that could reasonably be expected to lead to the termination or a material reduction of the relation with the Group with respect to any such customer or supplier.

- (b) Except as provided for in Section 3.1.44 of Schedule 3.1, no member of the Group has had sales to customers other than in the United States and Canada in the three year period immediately preceding the Closing Date.

3.1.45 *Corrupt Practices.* No Vendor or member of the Group or, to the Knowledge of the Vendors, any of the Employees or former employees of the members of the Group has directly or indirectly, in connection with or in any way related to the Business, made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of what form, whether in money, property or services (i) to obtain favorable treatment for business or Contracts secured, (ii) to pay for favorable treatment for business or Contracts secured, (iii) to obtain special concessions or for special concessions already obtained, or (iv) in violation of any Law. There is no pending or, to the Knowledge of the Vendors, Threatened, Claim or Action (or, to the Knowledge of the Vendors, any Basis that could reasonably be expected to lead to any such Claim or Action) by any Governmental Authority relating to possible violations of any anti-corruption Law.

3.1.46 *No Broker.* Neither the Vendors nor any member of the Group has any liability of any kind to any broker, intermediary, agent or any similar Person for or on account of the transactions contemplated herein, except for Robert W. Baird & Co. Incorporated.



## SCHEDULE 3.2

### REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND OF THE GUARANTOR

#### *Representations in respect of the Purchaser and of the Parent*

##### 3.2.1 *Organization*

- (a) Each of the Purchaser and of the Parent has been duly incorporated or otherwise formed, is validly subsisting and in good standing under the Laws of its jurisdiction of incorporation or formation. Each of the Purchaser and of the Parent has the corporate or legal power and authority to own its assets and carry on its business as currently owned and carried on. No resolution has been adopted providing for the dissolution or winding-up of the Purchaser or the Parent.

##### 3.2.2 *Authority and No Violation*

- (a) Each of the Purchaser and the Parent has the corporate or legal power and authority, to execute and deliver each Transaction Document to which it is a party, and to perform and to consummate the Transactions. Each of the Purchaser and the Parent has taken all actions necessary to authorize the execution and delivery of each Transaction Document to which it is party, the performance of its obligations thereunder, and the consummation of the Transactions. This Agreement has been duly executed by the Purchaser and by the Parent and constitutes a legal, valid and binding obligation, enforceable against the Purchaser and the Parent in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.
- (b) The execution by the Purchaser and by the Parent of this Agreement, the performance by the Purchaser of its obligations hereunder and the completion of the transactions contemplated herein, will not result in a material Breach of any provision of their certificate or articles of incorporation and by-laws or of any applicable Laws.

- 3.2.3 *Approvals and Consents.* No Consent, Order or permit is necessary or otherwise required to be obtained by the Purchaser or by the Parent from any Governmental Authority or other Person in connection with the execution and delivery of this Agreement or the consummation by the Purchaser or by the Parent of the transactions contemplated hereby.

- 3.2.4 *Accredited Investor Status.* The Purchaser is a “accredited investor” within the meaning of National Instrument 45-106 – Prospectus Exemptions.
- 3.2.5 *Litigation.* There are no Claims, Actions or Orders pending or, to the knowledge of the Purchaser, Threatened, which might involve the possibility of any material judgment or liability against the Purchaser, or which might adversely affect the ability of the Purchaser to enter into this Agreement or to perform its obligations hereunder.
- 3.2.6 *Tax Matters.* The Purchaser is not a “non-resident” of Canada within the meaning of the Tax Act.
- 3.2.7 *No Broker.* The Purchaser does not have any liability of any kind to any broker, intermediary, agent or any similar Person for or on account of the transactions contemplated herein.
- 3.2.8 *Purchaser Investigation.* The Purchaser has conducted to its satisfaction an independent investigation of the financial condition, results of operations, assets, liabilities, properties, prospects and projected operations of the Group and, in making its determination to proceed with the transactions contemplated hereby, the Purchaser has relied solely on the results of its own independent investigation and the representations and warranties of the Corporation and the Vendors expressly and specifically set forth in this Agreement and has not relied on any other representations or warranties. Such representations and warranties of the Corporation and the Vendors contained herein constitute the sole and exclusive representations and warranties made to the Purchaser in connection with the transactions contemplated hereby.

**Exhibit 2.2**

THIS SHARE PURCHASE AGREEMENT is made as of December \_\_\_\_, 2018,

**AMONG:** **THE PERSON INDICATED AS “VENDOR” ON THE EXECUTION PAGE OF THIS AGREEMENT**

(the “**Vendor**”)

**AND:** **2159562 ALBERTA LTD.**, a corporation duly constituted under the laws of Alberta;

(the “**Purchaser**” and, collectively with the Vendor, the “**Parties**”, each a “**Party**”)

**WHEREAS** the Vendor is the owner of those Class C shares indicated on the execution page of this Agreement (the “**Purchased Shares**”) of Onstream Holdings Inc. (the “**Corporation**”);

**WHEREAS** the Purchaser wishes to purchase the Purchased Shares from the Vendor, and the Vendor wishes to sell to the Purchaser the Purchased Shares, on and subject to the terms and conditions of this Agreement;

**WHEREAS** the sale and purchase of the Purchased Shares by the Purchaser contemplated herein is contingent upon the simultaneous acquisition by the Purchaser of all issued and outstanding securities of the Corporation, to be effected pursuant to several share purchase agreements to be entered into simultaneously by and among the Purchaser and each registered holder of securities in the capital of the Corporation (each an “**Individual Shareholder SPA**”, and, collectively, the “**Individual Shareholder SPAs**”), including, but not limited to, the Master SPA (as defined herein);

**WHEREAS** this Agreement shall become effective concurrently with all Individual Shareholder SPAs, including that share purchase agreement to be entered into among the Purchaser, Novacap TMT IV, L.P., Novacap International TMT IV, L.P., NVC TMT IV, L.P., 2157996 Alberta Ltd. (successor to 1165437 Alberta Ltd.) and Mistras Group Inc., as guarantor (the “**Master SPA**”);

**NOW THEREFORE**, in consideration of the premises and mutual agreements herein contained, and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties agree as follows:

**Article 1**  
**INTERPRETATION**

**1.1 Definitions**

1.1.1 “**Action**” means any action, appeal, petition, plea, charge, suit, litigation, arbitration, mediation, hearing, inquiry, investigation or similar event, occurrence, or proceeding;

1.1.2 “**Affiliate**” has the meaning ascribed thereto in the *Canada Business Corporations Act*;

- 1.1.3 “**ASPE**” means (a) prior to January 1, 2011, the generally accepted accounting principles stated in the Handbook of the Canadian Institute of Chartered Accountants; and (b) since January 1, 2011, the Accounting Standards for Private Enterprises generally accepted in Canada from time to time and approved by the Chartered Professional Accountants of Canada, or any successor organization, applicable on a consolidated basis to private enterprises, in both cases, in effect as of a given date and applied on a basis consistent with that of preceding periods;
- 1.1.4 “**Breach**” means any breach, inaccuracy, failure to perform, failure to comply, conflict with, default, violation, termination or cancellation;
- 1.1.5 “**Claims**” means any claim, complaint, demand, grievance, prosecution or legal, judicial, arbitral or administrative proceedings, including assessment or reassessment and any appeal or application for review;
- 1.1.6 “**Closing**” means the consummation of the transactions contemplated in the Master SPA and the Individual Shareholder SPAs;
- 1.1.7 “**Closing Date**” has the meaning ascribed thereto in Section 2.1;
- 1.1.8 “**Contract**” has the meaning ascribed thereto in Section 3.1.2(a);
- 1.1.9 “**Corporation**” means Onstream Holdings Inc.;
- 1.1.10 “**Encumbrance**” means any encumbrance (registered or unregistered and statutory or otherwise) and includes any security interest, mortgage, hypothec, conditional sale, pledge, lien (statutory or otherwise), assignment, charge, security under section 426 or section 427 of the *Bank Act* (Canada), trust or deemed trust (whether contractual, statutory or otherwise arising).
- 1.1.11 “**Governmental Authority**” means any (a) multinational, federal, provincial, state, territorial, regional, municipal, local, governmental or public department, ministry, central bank, court, tribunal, arbitral body, commission, agency board or bureau, domestic or foreign or (b) any agency, commission, arbitration panel, quasi-governmental or private body exercising any regulatory, administrative, expropriation or tax authority under or for the account of any of the foregoing;
- 1.1.12 “**Individual Shareholder SPA**” and “**Individual Shareholder SPAs**” have the meaning ascribed thereto in the preamble;
- 1.1.13 “**Laws**” means all applicable Canadian or foreign federal, provincial, state or municipal statutes, laws (including common law, civil law, and equity), ordinances, regulations or by-laws, and all Orders of an Governmental Authority;
- 1.1.14 “**Liability**” means any debt, liability, obligation, duty and responsibility of any kind and description, whether accrued or fixed, absolute or contingent, monetary or non-monetary, direct or indirect, known or unknown, determined or determinable,

asserted or unasserted, matured or unmatured, or of any other nature, including those arising under any Law, action or governmental order and those arising under any contract, regardless of whether such debt, liability, obligation, duty or responsibility would be required to be disclosed on a balance sheet prepared in accordance with ASPE;

- 1.1.15 “**Loss**” means any loss, liability, damage, payment, amounts paid in settlement, obligation, cost, expense, Tax, charge, fine, penalty or assessment actually suffered by an Indemnified Party, as well as any diminution in value, incidental and consequential damages as a direct result of such matters, (i) including the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise and all interest, and reasonable professional fees and disbursements (including reasonable fees and expenses of outside attorneys, accountants and other professional advisors and of expert witnesses and other costs of investigation, preparation and litigation in connection therewith), but (ii) excluding punitive or other special damages;
- 1.1.16 “**Major Vendors**” means Novacap TMT IV, L.P., Novacap International TMT IV, L.P., NVC TMT IV, L.P. and 2157996 Alberta Ltd. (successor to 1165437 Alberta Ltd.)
- 1.1.17 “**Master SPA**” has the meaning ascribed thereto in the preamble;
- 1.1.18 “**Orders**” means any legally enforceable order or any judgment, injunction, decision, verdict, decree, subpoena, precept, command, directive, ruling, award or writ, or other similar determination or finding by, before, or under the supervision of any court, tribunal, arbitrator or other Governmental Authority, arbitrator, or mediator;
- 1.1.19 “**Party**” and “**Parties**” have the meaning ascribed thereto in the preamble;
- 1.1.20 “**Purchased Shares**” has the meaning ascribed thereto in the preamble;
- 1.1.21 “**Purchase Price**” has the meaning ascribed thereto in Section 2.2.1;
- 1.1.22 “**Purchaser**” has the meaning ascribed thereto in the preamble;
- 1.1.23 “**Releasee**” and “**Releasees**” have the meaning ascribed thereto in Section 5.2;
- 1.1.24 “**Vendor**” has the meaning ascribed thereto in the preamble;
- 1.1.25 “**Vendors’ Delegate**” has the meaning ascribed thereto in Section 1.5.1.

## 1.2 Articles, Sections and Headings

The division of this Agreement into Articles, Sections, Exhibits and Schedules and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder”, “herein”

and similar expressions refer to this Agreement as a whole and not to any particular Article, Section, Exhibit, Schedule or other portion hereof. References herein to Articles, Sections, Exhibits or Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement or of the Exhibits and Schedules hereto unless otherwise expressly stated herein.

### 1.3 Extended Meanings

In this Agreement, words importing the singular number also include the plural and vice versa and words importing any gender include all genders. The term “including” means “including, without limiting the generality of the foregoing”.

### 1.4 Currency

Except as expressly provided herein, all references to currency (dollars or \$) contained herein are to lawful money of Canada.

### 1.5 Appointment of Vendors' Delegate

1.5.1 *Appointment.* The Vendor hereby appoints and designates **Novacap TMT IV, L.P.** (the “**Vendors' Delegate**”) as the agent for and on behalf of Vendor to give and receive notices and communications, to agree, to negotiate and to enter into settlements and compromises of any claims, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, to execute and deliver any flow of funds memorandum or similar instrument in respect of the proceeds of the Purchase Price payable hereunder and the payment of any transactions costs, and to take all actions necessary, desirable or appropriate in the judgment of Vendors' Delegate for the accomplishment of the foregoing and the sale of the Purchased Shares to the Purchaser pursuant to the terms hereof. The execution and delivery of this Agreement by the Vendor shall constitute approval of the appointment of the Vendors' Delegate and all actions or inactions of the Vendors' Delegate pursuant to this Agreement and any action taken or not taken by the Vendors' Delegate purportedly or stated to be on behalf of the Vendor, for which there shall be no obligation for the Purchaser to verify or otherwise confirm, shall have the effect of binding the Vendor. No bond shall be required of Vendors' Delegate, and Vendors' Delegate shall receive no compensation for its services. Vendor recognizes and agrees that the Vendors' Delegate will be acting in a similar capacity under all of the Individual Shareholder SPAs, including the Master SPA under which Vendors' Delegate and its Affiliates, among others, are selling their respective securities of the Corporation to Purchaser.

1.5.2 *Notices.* Notices or communications to or from the Vendors' Delegate shall constitute notice to or from the Vendor in connection with this Agreement, and any instrument, agreement or document relating hereto or thereto.

- 1.5.3 *Decisions.* A decision, act, consent or instruction of the Vendors' Delegate shall constitute a decision, act, consent or instruction of the Vendor and shall be final, binding and conclusive upon the Vendor.
- 1.5.4 *Responsibility and Indemnity.* In exercising or failing to exercise all or any of the powers conferred upon the Vendors' Delegate hereunder (including, without limitation, as it relates to any of the actions or inactions referenced in Section 1.5.1 hereof), the Vendors' Delegate shall incur no responsibility whatsoever to the Vendor by reason of any error in judgment or other act or omission performed or omitted hereunder (including, without limitation, as it relates to any of the actions or inactions referenced in Section 1.5.1 hereof), or any other agreement, instrument or document, excepting only the responsibility for any act or failure to act which represents gross negligence, fraud or wilful misconduct. The Vendor agrees to indemnify and to hold and save harmless the Vendors' Delegate from and against any and all loss, damage, liability and expenses of any nature whatsoever (including reasonable legal fees) that the Vendors' Delegate may sustain or incur as a result of any action or omission taken by the Vendors' Delegate in relation to the mandate set forth in the present Section 1.5, save for any such loss, damage, liability or expenses attributable to the gross negligence, fraud or wilful misconduct of the Vendors' Delegate.
- 1.5.5 *Purchaser.* The Purchaser is hereby relieved from any Liability to the Vendor for any acts done by it in accordance with such decision, act, consent or instruction of the Vendors' Delegate; and the Purchaser is entitled to rely fully upon the decision(s), act(s), consent(s) or instruction(s) of Vendors' Delegate (in its capacity as such) as being the decision(s), act(s), consent(s) and instruction(s) of the Vendor.

## **1.6 Third Party Beneficiaries**

Nothing in this Agreement is intended or shall be implied to, or shall, confer upon any Person any rights or remedies of any kind, except for the Vendors' Delegate and the Purchaser.

## **1.7 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of *contra proferentum* or strict construction shall be applied against any Party.

## **Article 2 PURCHASE AND SALE**

### **2.1 Purchase and Sale of Purchased Shares**

Upon and subject to the terms and conditions hereof, effective as of the date at which the Master SPA and each of the other Individual Shareholder SPAs become effective (the "**Closing Date**"), the Vendor hereby sells to the Purchaser, and the Purchaser shall purchase from the Vendor, on the Closing Date, the Purchased Shares, such Purchased Shares

representing all of the issued and outstanding shares in the capital of the Corporation held by the Vendor.

## 2.2 Purchase Price

2.2.1 The aggregate purchase price payable by the Purchaser to the Vendor for the Purchased Shares is equal to the purchase price set forth on the execution page of this Agreement (the “**Purchase Price**”).

2.2.2 In respect of the Purchase Price, the Vendor acknowledges and agrees to the following:

- (a) The Purchase Price contemplated herein (1) (i) is based on the estimated purchase price pursuant to which the Major Vendors shall sell their respective Class A and Class B shares in the share capital of the Corporation pursuant to the Master SPA, and (b) also takes into consideration the purchase price pursuant to which the Major Vendors shall sell their Class D preferred shares in the share capital of the Corporation pursuant to the Master SPA, and (2) is not subject to any adjustment, except in connection with the indemnification provisions set out in Article 5;
- (b) The Purchase Price per Purchased Share contemplated hereunder is equal to the purchase price per Class C share sold by each of the other vendors under the other Individual Shareholder SPAs;
- (c) The Master SPA contemplates purchase price adjustments in respect of the amount of cash, indebtedness and working capital of the Corporation and its subsidiaries on the Closing Date, with such purchase price adjustments being effected post-closing. Those purchase price adjustments set out in the Master SPA shall pertain to all of the consideration payable to the Major Vendors and to the individual vendors selling shares to the Purchaser pursuant to Individual Shareholder SPAs, and, as a result of such post-closing purchase price adjustments, the adjusted purchase price per share at which the Major Vendors shall sell their Class A and Class B shares could be higher or lower than the purchase price per Class C share payable to the Vendor hereunder and to the other vendors under the other Individual Shareholder SPAs (other than the Master SPA), and, as a result of such adjustments, the aggregate purchase price pursuant to which the Major Vendors shall sell their shares in the share capital of the Corporation (Class A, Class B and Class D preferred shares) could be increased or decreased;
- (d) For the avoidance of doubt, (i) if such purchase price adjustments under the Master SPA increase the consideration payable to the Major Vendors under the Master SPA, the Vendor (or any other vendor under Individual Shareholder SPAs) shall not be entitled to any further consideration under this Agreement (or under any other Individual Shareholder SPAs) and



undertakes to assert no Claim or initiate any Action claiming any right or entitlement in connection with any such increase, and (ii) if such purchase price adjustments under the Master SPA decrease the consideration payable to the Major Vendors under the Master SPA, the Vendor (or any other vendor under any other Individual Shareholder SPA) shall not be subject to any disgorgement of the Purchase Price payable to him or her hereunder (or to such other vendor under any other Individual Shareholder SPA (other than the Master SPA));

- (e) Furthermore, the Master SPA provides for (a) escrow requirements on the purchase price payable to the Major Vendors, (b) comprehensive representations and warranties in respect of the Corporation and its subsidiaries and their business and affairs, and (c) indemnification obligations in favour of the Purchaser and other persons, that are only supported by the Major Vendors. Any reduction of the purchase price payable to the Major Vendors under the Master SPA as a result of the foregoing obligations of the Major Vendors shall not affect the Purchase Price payable to the Vendor hereunder except to the extent that such reduction stems or results from a breach of the Vendor's representations and warranties under this Agreement;
- (f) For the avoidance of doubt, nothing in this Section 2.2.2 shall affect or alter the scope of the Vendor's representations and warranties under Article 3 hereunder and his or her indemnification obligations under Article 5 hereunder.

### **2.3 Payment at Closing**

The Purchaser shall pay, or cause to be paid, to the Vendors' Delegate at Closing, by wire transfer of immediately available funds to the account specified by the Vendors' Delegate to the Purchaser, an amount equal to the Purchase Price. For the avoidance of doubt, such Purchase Price payable by the Purchaser hereunder may, at the sole election of the Purchaser, be combined or otherwise commingled with the purchase price to be paid under the Master SPA and one, some or all of the other Individual Shareholder SPAs.

## **Article 3 REPRESENTATIONS AND WARRANTIES OF THE VENDOR**

The Vendor represents and warrants to the Purchaser as stated below, and acknowledges that the Purchaser is relying upon such representations and warranties in entering into this Agreement:

### **3.1 Capacity and No Violation of the Vendor.**

- 3.1.1 The Vendor has the requisite capacity and authority to execute and deliver this Agreement, and to perform and to consummate the transactions hereunder. This

Agreement has been duly executed by the Vendor and constitutes legal, valid and binding obligations, enforceable against the Vendor in accordance with its terms, subject to bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

3.1.2 The execution by the Vendor of this Agreement, the performance of his or her obligations hereunder and the completion of the transactions contemplated herein will not result in:

- (a) a Breach of any provision of: (1) any Laws or Orders to which the Vendor is subject or (2) any contract, agreement, arrangement, commitment, obligation, right, instrument, order, or permit, whether written or oral (collectively, a “**Contract**”), to which the Vendor is a party or by which the Vendor is bound or to which any assets of the Vendor are subject, or
- (b) result in the creation or imposition of any Encumbrance upon the Purchased Shares.

### **3.2 Approvals and Consents**

No consent, approval, authorization, order or permit is necessary or otherwise required to be obtained by the Vendor from any Governmental Authority or person (which term includes any individual, trust, executor, legal representative, partnership, joint venture, association, corporation, organization or other entity, whether or not having legal status), in connection with the execution and delivery of this Agreement or the consummation by the Vendor of the transactions contemplated hereby.

### **3.3 Title to Purchased Shares**

The Vendor is the record and beneficial owner of good and marketable title to all of the Purchased Shares, free and clear of all Encumbrances. The Vendor is not or was not a party to any Contract that could require such Vendor to sell, transfer, or otherwise dispose of any of the Purchased Shares (other than this Agreement). At Closing, all of the Purchased Shares shall be transferred free and clear of any Encumbrances from Vendor to Purchaser, and Purchaser shall have good and marketable title to the Purchased Shares.

### **3.4 Restrictions on Transfer of Shares**

There are no restrictions of any kind on the transfer of the Purchased Shares except those set out in the articles of the Corporation and under applicable securities laws.

### **3.5 Residency**

The Vendor is not a “non-resident” of Canada within the meaning of the *Income Tax Act* (Canada).

### **3.6 No Litigation**

There is no pending, or to the actual knowledge of the Vendor, threatened, Claim or Action against the Vendor, at law or otherwise, with respect to the Purchased Shares. There is no Order outstanding against the Vendor or by which the Vendor is bound which relates to the Purchased Shares.

### **3.7 Survival of Representations and Warranties**

All representations and warranties made by the Vendor in this Agreement shall survive the consummation of the transaction contemplated hereby without limit.

## **Article 4 CLOSING ARRANGEMENTS**

### **4.1 Closing**

The transactions contemplated herein shall be completed at 10:00 a.m. on the Closing Date remotely via the electronic exchange of documents and signatures, or any other time agreed

upon in writing by the Purchaser and the Vendors; provided however, that the Parties agree that the Closing shall take effect from 11:59 P.M. Mountain Time on the Closing Date and concurrently with the closing contemplated under the Master SPA and each of the other Individual Shareholder SPAs.

## **4.2 Vendors' Closing Deliveries**

4.2.1 *Vendor Deliveries.* At Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) all share certificates representing the Purchased Shares, duly endorsed for transfer or accompanied by irrevocable stock transfer powers of attorney duly executed in blank, in either case, by the holder(s) of record, together with evidence satisfactory to the Purchaser that the Purchaser has been entered in the shareholder registry of the Corporation as the holder of record of the Purchased Shares;
- (b) a Restrictive Covenant Agreement (as defined in the Master SPA), duly executed by the Vendor;
- (c) a termination agreement in respect of the restricted share ownership agreement in form and content satisfactory to the Purchaser;
- (d) to the extent in the control of Vendor, all documents, materials and assets belonging or related to the Corporation, Onstream Pipeline Inspection Services Inc. or Onstream Pipeline Inspection USA Inc.; and
- (e) such further documents as may reasonably be required to give full effect to the provisions of this Agreement, or as otherwise may reasonably be requested by Purchaser.

## **Article 5 INDEMNIFICATION AND RELEASE**

### **5.1 Indemnification by the Vendors**

5.1.1 The Vendor shall indemnify and save harmless the Purchaser, the Vendors' Delegate, the Major Vendors (as defined in the Master SPA) and any and all Affiliates, shareholders, partners, directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such persons from and against all losses suffered or incurred by them attributable to, arising out of or resulting from (a) any breach of any representation or warranty made or given by such Vendor in Article 3 hereof, and (b) any failure by such Vendor to observe or perform any of its, his or her covenants or obligations contained herein, in the Restrictive Covenant Agreement or in any other document delivered by Vendor pursuant to Section 4.2

hereof. The maximum aggregate liability of the Vendor associated with breaches of this Section 5.1.1 shall not exceed the Purchase Price.

5.1.2 Any indemnification payment made under this Article 5 shall be treated by the Purchaser and the Vendor as an adjustment to the Purchase Price.

## **5.2 Release**

The Vendor, on his or her behalf and each of the Vendor's heirs, representatives, successors, and assigns, hereby **RELEASES AND FOREVER DISCHARGES** the Purchaser and each of its officers, directors, employees, agents, stockholders, controlling persons, representatives, Affiliates, successors, assigns, and each member of the Group (as such term is defined in the Master SPA) (individually, a "**Releasee**" and collectively, "**Releasees**") from any and all Claims, Actions, Orders, Losses, Liabilities, and Contracts whatsoever, whether known or unknown, suspected or unsuspected, both at Law and in equity, which Vendor or any of Vendor's respective heirs, representatives, successors, or assigns now has, has ever had or may hereafter have against the respective Releasees arising contemporaneously with or prior to the Closing Date or on account of or arising out of any matter, cause or event occurring contemporaneously with or prior to the Closing Date including any rights to indemnification or reimbursement from any member of the Group, whether pursuant to their respective organizational documents, Contract or otherwise and whether or not relating to Claims or Actions pending on, or asserted after, the Closing Date; provided, however, that nothing contained herein shall operate to release any obligations of Purchaser arising under this Agreement and the Ancillary Agreements (as such term is defined in the Master SPA) or to prohibit Vendor to the extent Vendor is also a director or officer of any member of the Group from asserting a claim for indemnification for third party claims. Each Vendor, on behalf of Vendor and each of Vendor's heirs, representatives, successors and assigns, and each member of the Group, hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Claim or Action, or commencing, instituting, or causing to be commenced, any Claim or Action, of any kind against any Releasee, based upon any matter purported to be released hereby.

## **Article 6 GENERAL**

### **6.1 Further Assurances**

Each of the Parties hereto shall from time to time execute and deliver all such further documents and instruments and do all acts and things as another Party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **6.2 No Waiver**

Failure of a Party to insist upon the strict performance of any term or condition of this Agreement or to exercise any right, remedy or recourse hereunder shall not be construed as a waiver or relinquishment of any such term and condition.

### **6.3 Cost and Expenses**

Each of the Parties shall be responsible for and pay their respective legal, financial advisory and accounting costs and expenses incurred in connection with the consummation of the transactions contemplated herein, including the preparation, execution and delivery of this Agreement.

### **6.4 Successors, Assigns and Assignments**

This Agreement will enure to the benefit of and be binding upon the respective successors (including any successor by reason of the amalgamation or statutory arrangement of any Party) and permitted assigns of the Parties. This Agreement may not be assigned by any Party without the prior written consent of the other Party.

### **6.5 Entire Agreement**

This Agreement, together with the agreements referred to herein, constitutes the entire agreement between the Parties with respect to the subject matters hereof and thereof and cancels and supersedes any prior understandings, agreements, negotiations and discussions between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement. No Party has been induced to enter into the Agreement in reliance on, and there will be no liability assessed with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in the Agreement.

### **6.6 Amendments and Waivers**

No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all Parties. No waiver of any breach of any provision of this Agreement or any waiver or consent to depart from the requirements of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

### **6.7 Legal Advice**

The Vendor acknowledges that he or she has been given the opportunity to seek independent legal advice and has elected, at his or her sole discretion, to receive or not to receive such legal advice in connection with this Agreement.

### **6.8 Notices**

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and will be given by personal delivery, by registered mail, by courier services (followed by receipt by registered mail or courier services within two (2) Business Days (as defined in the Master SPA)) or by e-mail addressed to each Party as set forth in the Signature Page to this Agreement or to other coordinates that have been designated by

notice by any recipient Party to the others, to such other address, individual or electronic communication number (followed by receipt by registered mail or courier services within two (2) Business Days).

Any demand, notice or other communication given by personal delivery or courier services shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third (3<sup>rd</sup>) Business Day following the deposit thereof in the mail and, if given by e-mail, on the day of transmittal thereof if given during the normal business hours of the recipient on a Business Day and on the next Business Day if not given during such hours. If the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

#### **6.9 Governing Law and Forum**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. Each of the Parties irrevocably submits and attorns to the jurisdiction of the courts of the Province of Alberta situated in the city of Calgary to determine all issues, whether at law or in equity arising from the Agreement.

#### **6.10 Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

#### **6.11 Specific Performance and other Discretionary Rights**

Each of the Parties acknowledges and agrees that a breach by a Party of any obligation in this Agreement shall cause the other Party to sustain injury for which it would not have an adequate remedy at law for money damages. Therefore, each of the Parties agrees that in the event of any such breach, the aggrieved Party shall be entitled to specific performance of such obligation and provisional interlocutory and permanent injunctive relief and other equitable remedies to which it may be entitled and the Parties further agree to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive relief or other equitable remedies.

#### **6.12 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall conclusively be deemed to be an original but all of which taken together shall be deemed to constitute one and the same agreement. A facsimile or electronic transmission of the Agreement bearing a signature on behalf of a Party shall be legal and binding on such Party.

*(remainder of this page left blank intentionally)*



THE PARTIES HAVE EXECUTED THIS AGREEMENT on the date first written above.

For the PURCHASER:

**2159562 ALBERTA LTD**

Per: \_\_\_\_\_

Name:

Title:

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

For the VENDOR:

SIGNED, SEALED AND DELIVERED in the presence of: )  
)  
)  
)  
)  
)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[NAME OF VENDOR]

Number of Class C shares: \_\_\_\_\_ (the "**Purchased Shares**")

Purchase Price: \$\_\_\_\_\_ (the "**Purchase Price**")

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

**FIFTH AMENDED AND RESTATED  
CREDIT AGREEMENT**

Dated December \_\_\_\_\_, 2018

By and among

**MISTRAS GROUP, INC.,**  
as the Borrower,

**BANK OF AMERICA, N.A.,**  
as Administrative Agent, a Lender and L/C Issuer,

and

The Lenders Party Hereto

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,**  
as Sole Lead Arranger, Sole Bookrunner, and Syndication Agent

and

**JPMORGAN CHASE BANK, N.A.,**  
as Co-Syndication Agent

and

**KEYBANK NATIONAL ASSOCIATION,**  
as Documentation Agent

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as Documentation Agent



## TABLE OF CONTENTS

	Page
ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS	1
1.01 Defined Terms	2
1.02 Other Interpretive Provisions	29
1.03 Accounting Terms	30
1.04 Rounding	30
1.05 Exchange Rates; Currency Equivalents.	25
1.06 Additional Alternative Currencies.	31
1.07 Change of Currency.	32
1.08 Times of Day	32
1.09 Letter of Credit Amounts	32
1.10 UCC Terms	32
 ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS	 32
2.01 Loans	32
Borrowings, Conversions and Continuations	
2.02 of Committed Loans	33
2.03 Letters of Credit	35
2.04 Repayment of Loans	43
2.05 Prepayments	43
2.06 Termination or Reduction of Commitments	44
2.07 Interest and Default Rate	45
2.08 Fees	45
Computation of Interest and Fees; Retroactive	
2.09 Adjustments of Applicable Rate	46

2.10	Evidence of Debt	46
	Payments Generally; Administrative Agent's	
2.11	Clawback	47
2.12	Sharing of Payments by Lenders	49
2.13	Increase in Revolving Commitments	59
2.14	Cash Collateral.	60
2.15	Defaulting Lenders.	61
2.16	Proposed LIBOR Amendment.	61
ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY		54
3.01	Taxes	54
3.02	Illegality	54
3.03	Inability to Determine Rates	59
	Increased Costs; Reserves on Eurodollar Rate	
3.04	Loans	59
3.05	Compensation for Losses	61
	Mitigation Obligations; Replacement of	
3.06	Lenders	61
3.07	Survival	62
ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS		62
4.01	Conditions of Initial Credit Extension	62
4.02	Conditions to all Credit Extensions	63
ARTICLE V. REPRESENTATIONS AND WARRANTIES		64
5.01	Existence, Qualification and Power	64
5.02	Authorization; No Contravention	64

5.03	Governmental Authorization; Other Consents	64
5.04	Binding Effect	65
	Financial Statements; No Material Adverse	
5.05	Effect; No Internal Control Event	65
5.06	Litigation	66
5.07	No Default	66
5.08	Ownership of Property; Liens	66
5.09	Environmental Compliance	66
5.10	Insurance	66
5.11	Taxes	66
5.12	ERISA Compliance	66
5.13	Subsidiaries; Equity Interests	67
	Margin Regulations; Investment Company	
5.14	Act; Public Utility Holding Company Act	67
5.15	Disclosure	68
5.16	Compliance with Laws	68
5.17	Taxpayer Identification Number	68
5.18	Intellectual Property; Licenses, Etc.	68
5.19	Rights in Collateral; Priority of Liens	68
	Sanctions Concerns and Anti-Corruption	
5.20	Laws	68
5.21	Solvency	68
5.22	Casualty, Etc.	68
5.23	Responsible Officers	68
5.24	Collateral Representations	68
5.25	EEA Financial Institutions	68

ARTICLE VI. AFFIRMATIVE  
COVENANTS

6.01	Financial Statements	70
6.02	Certificates; Other Information	71

6.03	Notices	73
6.04	Payment of Obligations	73
6.05	Preservation of Existence, Etc.	73
6.06	Maintenance of Properties	73
6.07	Maintenance of Insurance	73
6.08	Compliance with Laws	74
6.09	Books and Records	74
6.10	Inspection Rights	74
6.11	Use of Proceeds	74
6.12	Financial Covenants	74
	Additional Guarantors; Pledges of Stock;	
6.13	Security Interests	75
6.14	Collateral Records	76
6.15	Security Interests; Landlord Subordinations	76
6.16	Deposits	77
6.17	Further Assurances	77
6.18	Anti-Corruption Laws	77

ARTICLE VII. NEGATIVE COVENANTS 77

7.01	Liens	77
7.02	Investments	78
7.03	Indebtedness	79
7.04	Fundamental Changes	81
7.05	Dispositions	81
7.06	Restricted Payments	81
7.07	Change in Nature of Business	81
7.08	Transactions with Affiliates	82
7.09	Burdensome Agreements	82
7.10	Use of Proceeds	82
7.11	Prepayment of Subordinated Notes	82
7.12	Intentionally Omitted	82
7.13	Sanctions	82

7.14	Anti-Corruption Laws	82
ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES		82
8.01	Events of Default	82
8.02	Remedies Upon Event of Default	85
8.03	Application of Funds	85
ARTICLE IX. ADMINISTRATIVE AGENT		86
	Appointment and Authority of Administrative	
9.01	Agent	86
9.02	Rights as a Lender	87
9.03	Exculpatory Provisions	87
9.04	Reliance by Administrative Agent	88
9.05	Delegation of Duties	88
9.06	Resignation of Administrative Agent	89
	Non-Reliance on Administrative Agent and	
9.07	Other Lenders	90
9.08	No Other Duties, Etc	90
	Administrative Agent May File Proofs of	
9.09	Claim; Credit Bidding	90
9.10	Guaranty Matters	91
9.11	Collateral Matters	92
	Secured Cash Management Agreements and	
9.12	Secured Hedge Agreements	92
9.13	ERISA Matters	92
ARTICLE X. MISCELLANEOUS		95
10.01	Amendments, Etc.	95
	Notices; Effectiveness; Electronic	
10.02	Communications	97



10.03	No Waiver; Cumulative Remedies; Enforcement	97
10.04	Expenses; Indemnity; Damage Waiver	99
10.05	Payments Set Aside	101
10.06	Successors and Assigns	101
10.07	Treatment of Certain Information; Confidentiality	105
10.08	Right of Setoff	107
10.09	Interest Rate Limitation	107
10.10	Counterparts; Integration; Effectiveness	107
10.11	Survival of Representations and Warranties	108
10.12	Severability	108
10.13	Replacement of Lenders	108
10.14	Governing Law; Jurisdiction; Etc.	108
10.15	Waiver of Jury Trial	110
10.16	No Advisory or Fiduciary Responsibility	110
10.17	Electronic Execution	110
10.18	USA PATRIOT Act Notice	111
10.19	Time of the Essence	111
10.20	Judgment Currency	111
10.21	Keepwell	111
10.22	Subordination	111
10.23	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	111

## SCHEDULES

1.01(E)	Existing Letters of Credit
1.01(R)	Responsible Officers
2	Commitments and Applicable Percentages

5  
5  
5.12(c)  
5.12(d)  
5  
5.24(b)  
5.24(c)  
5.24(d)  
5.24(e)  
5.24(f)  
5.24(g)  
7  
7  
10  
10

Litigation  
Environmental Matters  
ERISA Events  
Pension Plans  
Subsidiaries and Other Equity Investments  
Intellectual Property  
Documents, Instruments, and Tangible Chattel Paper  
Deposit Accounts & Securities Accounts  
Commercial Tort Claims  
Pledged Equity Interests  
Other Properties  
Existing Liens  
Existing Indebtedness  
Administrative Agent's Office, Certain Addresses for Notices  
Processing and Recordation Fees

#### EXHIBITS

Exhibit "A"  
Exhibit "B"  
Exhibit "C"  
Exhibit "D"  
Exhibits "E-1" – "E-4"  
Exhibit "F"  
Exhibit "G"  
Exhibit "H"

Form of Committed Loan Notice  
Form of Revolving Credit Loan Note  
Form of Compliance Certificate  
Form of Assignment and Assumption  
Forms of U.S. Tax Compliance Certificate  
Form of Secured Party Designation Notice  
Form of Notice of Loan Prepayment  
Form of Term Note



**FIFTH AMENDED AND RESTATED CREDIT AGREEMENT**

**THIS FIFTH AMENDED AND RESTATED CREDIT AGREEMENT** (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as this “Agreement”) is entered into this \_\_\_\_\_ day of December, 2018 by and among

**MISTRAS GROUP, INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, having its principal office located at 195 Clarksville Road, Princeton Junction, New Jersey 08550 (hereinafter referred to as the “Borrower”),

**AND**

**BANK OF AMERICA, N.A.**, a national banking association duly organized and validly existing under the laws of the United States of America, having an office located at 194 Wood Avenue South, Iselin, New Jersey 08830, in its capacity as a lender and as the issuer of letters of credit hereunder (hereinafter referred to as “Bank of America”),

**AND**

**OTHER FINANCIAL INSTITUTIONS**, that are either signatories to this Loan Agreement or who from time to time may hereafter become a lender under this Agreement (hereinafter together with Bank of America, collectively referred to as the “Lenders” and individually referred to as a “Lender”),

**AND**

**BANK OF AMERICA, N.A.**, a national banking association duly organized and validly existing under the laws of the United States of America, having an office located at 194 Wood Avenue South, Iselin, New Jersey 08830, in its capacity as the administrative agent for the Lenders hereunder (hereinafter referred to as the “Administrative Agent”, as said definition is more fully described in Section 1.01 hereof).

**WITNESSETH:**

**WHEREAS**, pursuant to a certain Fourth Amended and Restated Credit Agreement dated December 8, 2017 (hereinafter, as amended and/or modified, referred to as the “Original Credit Agreement”), executed by and among the Borrower, Bank of America, certain other Lenders signatory thereto, and the Administrative Agent, the “Lenders” (as such term is defined in the Original Credit Agreement) agreed to make available to the Borrower a certain credit facility (hereinafter, as amended and/or modified, referred to as the “Original Credit Facility”); and

**WHEREAS**, the Borrower has requested that the Lenders amend and restate the terms, conditions, and provisions of the Original Credit Agreement and all of the loan documentation associated therewith for the purpose of amending, modifying, extending and restating the Original Credit Facility and the terms, conditions and provisions thereof in order to provide for, *inter alia*, (a) a five (5) year senior secured amended and restated revolving credit facility in the aggregate maximum principal amount of up to US\$300,000,000.00 (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the “Revolving Credit Facility”), which Revolving Credit Facility (i) includes (1) a US\$20,000,000.00 sublimit for the issuance of standby and commercial letters of credit and (2) a US\$100,000,000.00 sublimit for multicurrency borrowings in readily available and freely transferable and convertible currencies, including, but not limited to, Euros, Pounds Sterling, Canadian Dollars, and Japanese

Yen, (ii) is made available to the Borrower for working capital and other lawful corporate purposes set forth and described herein, and (iii) is made available in full substitution and replacement for the Original Credit Facility, and (b) a five (5) year senior secured term loan A facility in the aggregate original principal amount of US\$100,000,000.00 (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the “Term Loan Facility”, and hereinafter the Revolving Credit Facility and the Term Loan Facility shall be collectively referred to as the “Credit Facilities” and individually referred to as a “Credit Facility”); and

**WHEREAS**, the Lenders have agreed to make the Credit Facilities available to the Borrower, subject to the terms, conditions and provisions hereinafter set forth; and

**WHEREAS**, the Borrower, the Administrative Agent and the Lenders anticipate and contemplate that the Lenders may sell, assign and transfer at times after the date hereof, a portion of their respective interests in the Credit Facilities to other financial institutions described in the definition of “Eligible Assignee” set forth in Section 1.01 of this Agreement, and said additional lenders shall hereinafter be a part of and constitute a member of the Lenders; and

**WHEREAS**, the Lenders and the Borrower have requested that the Administrative Agent act as administrative and collateral agent for the Lenders in connection with the Credit Facilities, and the Administrative Agent has agreed to accept such responsibilities and duties, subject to the terms, conditions and provisions hereinafter set forth.

**NOW, THEREFORE**, in consideration of these premises and the mutual representations, covenants and agreements of the Borrower, the Lenders and the Administrative Agent, each party binding itself and its respective successors and assigns, hereby promises, covenants and agrees to amend, modify and restate the Original Credit Agreement with all of the terms, conditions and provisions set forth herein below and all of the terms, conditions and provisions of the Original Credit Agreement are hereby deemed superseded, substituted and replaced by the following:

## **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:

“Add Back Amounts” means, for the purposes of calculating EBITDA, to the extent that the Borrower or one of its Subsidiaries acquires a Person in accordance with the terms, conditions, and provisions of this Agreement, an amount to be included by the Administrative Agent in such calculation of EBITDA, determined as follows: (a) for the first quarterly test date following such acquisition, 100% of the TTM EBITDA with respect to such acquired Person; (b) for the second quarterly test date following such acquisition, 75% of the TTM EBITDA with respect to such acquired Person; (c) for the third quarterly test date following such acquisition, 50% of the TTM EBITDA with respect to such acquired Person; and (d) for the fourth quarterly test date following such acquisition, -0-% of the TTM EBITDA with respect to such acquired Person.

“Additional Secured Obligations” means (a) all obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements and (b) to the extent provided for in this Agreement and the other Loan Documents, 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” or “Administrative Agent” means Bank of America, N.A., in its capacity as Administrative Agent under any of the Loan Documents, or any successor Administrative Agent.

“Administrative Agent’s Office” means, with respect to any currency, Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02 attached hereto and made a part hereof with respect to such currency, or such other address or account with respect to such currency as Administrative Agent may from time to time notify the Borrower and Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by Administrative Agent.

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

“Aggregate Commitments” means the Commitments of all Lenders.

“Agreement” has the meaning assigned and ascribed to such term as set forth in the preamble to this Agreement.

“Alternative Currency” and “Alternative Currencies” means each of Euro, Sterling, Yen, Canadian Dollars and each other currency (other than Dollars) that is approved in accordance with Section 1.06.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Sublimit” means an amount equal to the lesser of the Aggregate Commitments and US\$100,000,000.00. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Commitments.

“Applicable Percentage” means (a) in respect of the Term Loan Facility, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Loan Facility represented by (i) on or prior to the Closing Date, such Lender’s Term Commitment at such time and (ii) thereafter, the outstanding principal amount of such Lender’s Term Loans at such time, and (b) in respect of the Revolving Credit Facility, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Lender’s Revolving Commitment at such time, subject to adjustment as provided in Section 2.15. If the commitment of each Lender to make Committed Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender with respect to the Committed Loans shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means, from time to time, the following percentages per annum, based upon the Funded Debt Leverage Ratio, as set forth in the most recent Compliance Certificate received by Administrative Agent pursuant to Section 6.02(a):

Pricing Level	Funded Debt Leverage Ratio	LIBOR Margin	Base Rate Margin	Revolving Commitment Fee	SBLC Fee/Comm’l L/C Fee
1	≤ 1.00:1	100.0 bps	-125.0 bps	20.0 bps	100.0 bps
2	> 1.00 but ≤ 1.50:1	125.0 bps	-100.0 bps	20.0 bps	125.0 bps
3	> 1.50 but ≤ 2.00:1	137.5 bps	-87.5 bps	25.0 bps	137.5 bps
4	> 2.00 but ≤ 2.75:1	150.0 bps	-75.0 bps	30.0 bps	150.0 bps
5	> 2.75 but ≤ 3.25:1	175.0 bps	-37.5 bps	35.0 bps	175.0 bps
6	> 3.25	200.0 bps	-37.5 bps	35.0 bps	200.0 bps

Any increase or decrease in the Applicable Rate resulting from a change in the Funded Debt Leverage Ratio shall become effective as of the first Business Day of the month immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with Section 6.02(a), then Pricing Level 6 shall apply as of the first Business Day of the month following the date such Compliance Certificate was required to have been delivered until the first Business Day of the month immediately following the delivery of such Compliance Certificate. The Applicable Rate in effect from the Closing Date until receipt of the Compliance Certificate for the period ended December 31, 2018 shall be determined based upon Pricing Level 6. In addition, at all times while the Default Rate is in effect, the highest rate set forth in each column of the Applicable Rate shall apply. Finally, if the sum of the Base Rate plus the Applicable Rate shall ever be less than zero, such sum shall be deemed to be zero for all purposes under this Agreement.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“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 Merrill Lynch, Pierce, Fenner & Smith Incorporated (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement), in its capacity as sole lead arranger and sole bookrunner.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another.

“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 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit “D” 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 capital 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, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a capital lease.

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

“Availability Period” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

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

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“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 Eurocurrency Rate plus 1.00%, subject to the interest rate floors set forth therein; provided that if the Base Rate shall be less than zero, such rate shall be deemed zero 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.

“Base Rate Loan” means a Committed Loan that bears interest at a rate based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

“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 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”.



“Borrower” has the meaning assigned and ascribed to such term as set forth in the preamble to this Agreement.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Committed Borrowing.

“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 Eurocurrency Rate Loan, means any such day that is also a London Banking Day:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day that is also a London Banking Day;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Canadian Dollars” and “CAD” mean lawful money of Canada.

“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).

“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 Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Administrative Agent and the L/C Issuer shall agree in their sole (but reasonable) discretion, other credit support, in each case, in Dollars and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“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, at the time it enters into a Cash Management Agreement with a Loan Party or any Subsidiary, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); provided, however, 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.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means, with respect to a specified Person, 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 (hereinafter such right shall be referred to as an “option right”)), directly or indirectly, of more than fifty percent (50%) of the equity securities of such Person entitled to vote for members of the board of directors or equivalent governing body of such Person 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 twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of such Person cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above

constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(c) any individual(s) or entity(s) acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of such Person, or control over the equity securities of such Person entitled to vote for members of the board of directors or equivalent governing body of such Person on a fully-diluted basis (and taking into account all such securities that such individual(s) or entity(s) or group has the right to acquire pursuant to any option right) representing more than fifty percent (50%) of the combined voting power of such securities.

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986, as amended and modified from time to time.

“Collateral” means any and all assets and rights and interests in or to property of the Borrower and each of the other Loan Parties, whether real or personal, tangible or intangible, in which a Lien is granted or purported to be granted pursuant to the Collateral Documents.

“Collateral Documents” means all agreements, instruments and documents now or hereafter executed and delivered in connection with this Agreement pursuant to which Liens are granted or purported to be granted to the Administrative Agent in Collateral securing all or part of the Obligations each in form and substance satisfactory to the Administrative Agent.

“Commitment” and “Commitments” means, individually or collectively, a Term Commitment or a Revolving Commitment, as the context may require.

“Committed Borrowing” means a borrowing consisting of simultaneous Committed Loans of the same Type, in the same currency, and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Committed Loan” and “Committed Loans” means, individually and collectively, Term Loans or Revolving Loans, as the context may require.

“Committed Loan Notice” means a notice of (a) a Committed Borrowing, (b) a conversion of Committed Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), substantially in the form of Exhibit “A” or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system which form, platform and system shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Compliance Certificate” means a certificate substantially in the form of Exhibit “C” attached hereto and made a part hereof.

“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.

“Contemplated Acquisition” means the acquisition by the Borrower of one hundred percent (100%) of the outstanding shares of capital stock of Onstream Holdings Inc., a corporation constituted under the laws of Canada.

“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.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Credit Facility” and “Credit Facilities” have the meanings assigned and ascribed to such terms as set forth in the second recital of this Agreement.

“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) when used with respect to Obligations other than L/C Fees an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) two hundred basis points (2.0%) per annum; provided, however, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus two hundred basis points (2.0%) per annum, and (b) when used with respect to L/C Fees, a rate equal to the Applicable Rate plus two hundred basis points (2.0%) per annum, in each case, to the fullest extent permitted by applicable Law.

“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, the L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or the L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three

Business Days after written request by the Administrative Agent or the 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, the L/C Issuer and each other Lender promptly following such determination.

“Delaware LLC” and “Delaware LCCs” means, individually and collectively, any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Designated Jurisdiction” means any country, region or territory to the extent that such country or territory is the subject of any Sanction (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, 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 and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division.

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

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

“EBITDA” means (a) net income minus (b) income (or plus loss) from discontinued operations minus (c) extraordinary gains (or plus extraordinary losses), plus (d) income tax expenses, plus (e) interest

expense, plus (f) depreciation, depletion, and amortization (including non-cash loss on retirement of assets), plus (g) stock compensation expense, minus (h) cash expense related to stock compensation, plus (i) Add Back Amounts, if applicable, in an amount not to exceed US\$40,000,000.00, plus (j) amounts expended by the Borrower in connection with the closing of the credit facilities described in this Agreement, and adjusted for certain historical expenses, accounting adjustments, and other non-cash charges, plus (k) non-cash expenses which do not (in the current or any future period) represent a cash item (excluding any non-cash gains which increase net income), plus (l) non-recurring cash charges in an aggregate amount not to exceed \$10,000,000.00 for the period of four consecutive fiscal quarters immediately preceding any date of determination, in respect of the following: (i) severance payments; (ii) general asset write-offs recorded during said period; (iii) lease termination payments; (iv) litigation settlement payments; and (v) multi-employer pension plan withdrawal liabilities.

“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 delegate) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that (a) meets the requirements to be an assignee under Section 10.06(b)(v) and (vi) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)) and (b) is a commercial bank with either (i) an investment grade credit rating from any of Moody’s, S&P or Fitch or (ii) a public debt rating from any of Moody’s, S&P or Fitch which is at least as high as the public debt rating for the then lowest rated Lender under this Agreement which is not then a Defaulting Lender.

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

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

“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, as amended or modified from time to time, and the rules and regulations promulgated thereunder.

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

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

“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.

“Euro” and “EUR” mean the single currency of the Participating Member States.

“Eurocurrency Rate” means:

(a) for any Interest Period, with respect to any Credit Extension:

(i) denominated in a LIBOR Quoted Currency, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, 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, hereinafter referred to as the “LIBOR Rate”) at or about 11:00 a.m. (London time) on the Rate Determination Date, for deposits in the relevant currency, with a term equivalent to such Interest Period; and

(ii) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate (“CDOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, 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, hereinafter referred to as the “CDOR Rate”) at or about 10:00 a.m. (Toronto, Ontario time) on the Rate Determination Date with a term equivalent to such Interest Period; and

(b) for any interest rate 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) determined two (2) Business Days prior to such date for Dollar deposits being delivered in the London interbank market for deposits in Dollars with a term of one (1) month commencing that day;

provided that (i) to the extent a comparable or successor rate is approved by the Administrative Agent in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and (ii) if the Eurocurrency Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurocurrency Rate Loan” means a Committed Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate”. Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency. All Committed Loans denominated in an Alternative Currency must be Eurocurrency Rate Loans.

“Event of Default” has the meaning specified in Section 8.01.

“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 of a Lien to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.21 of this Agreement and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guarantors of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a 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, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps 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 any Loan or any Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in such Loan or such Commitment (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that,



pursuant to Section 3.01(a)(ii), (a)(iii) or (c), 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(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Existing Letters of Credit" means the Letters of Credit set forth on Schedule 1.01(E).

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

"Fee Letter" means that certain letter agreement dated November 14, 2018, by and between the Borrower and the Arranger.

"Fitch" means Fitch, Inc. and any successor thereto.

"Fixed Charge Coverage Ratio" means the ratio, as of any date of determination thereof, of (a) (i) EBITDA for the twelve (12) month period immediately preceding said date of determination, taken together as one accounting period, less (ii) the aggregate amount of all Capital Expenditures made during said test period, less (iii) taxes paid in cash during said test period, and less (iv) Restricted Payments paid in cash during said test period, -to- (b) the sum of (i) all interest, premium payments, debt discount, fees, charges and related expenses of the Borrower and its Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case, to the extent treated as interest in accordance with GAAP and to the extent paid in cash during said test period, (ii) the aggregate principal amount of all redemptions or similar acquisitions for value of outstanding debt for borrowed money or regularly scheduled principal payments made during said test period, but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.03, and (iii) subject to and in accordance with Section 1.03(b), payments made during said test period under all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"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.

"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, with respect to the L/C Issuer, such Defaulting Lender’s Applicable 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 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 Debt” means, as of any date of determination thereof, all outstanding Indebtedness for borrowed money and other interest-bearing Indebtedness, including current and long term Indebtedness, but excluding (i) Indebtedness evidenced by Subordinated Notes and (ii) the capital lease between the Borrower and S.J. Vahaviolos Partners L.L.C. relating to the Borrower’s occupancy of the premises located at 195 Clarksville Road, Princeton Junction, New Jersey.

“Funded Debt Leverage Ratio” means, as of any date of determination, the ratio of (a) Funded Debt as of said date of determination - to- (b) EBITDA for the period of four consecutive fiscal quarters immediately preceding said date of determination, taken together as one accounting period.

“Funding Indemnity Letter” means a funding indemnity letter in form and substance acceptable to 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, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

“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 by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien).

The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantor” and “Guarantors” means, individually and collectively, as the context may require, (a) Quality Services Laboratories, Inc., a Delaware corporation, (b) The Nacher Corporation, a Louisiana corporation, (c) Mistras International Holdings Inc., a Delaware corporation, (d) West Penn Non-Destructive Testing, LLC, a Pennsylvania limited liability company, (e) any additional guarantors added pursuant to the terms, conditions, and provisions of Section 6.13 hereof, all on a joint and several basis, and (f) with respect to the payment and performance by each Specified Loan Party of its obligations under its Guaranty with respect to Swap Obligations and/or Additional Secured Obligations, the Borrower.

“Guarantor Subsidiary” means any Person that (a) is a Majority-Owned Subsidiary, (b) has assets or operating income that represents five percent (5.0%) or more of the Consolidated assets or operating income of the Borrower, and (c) was formed or incorporated in the United States.

“Guaranty” means the Fifth Amended and Restated Guaranty Agreement dated of even date herewith executed and delivered by the Guarantors, on a joint and several basis, in favor of Administrative Agent, for the benefit of the Lenders, as said Fifth Amended and Restated Guaranty Agreement may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented.

“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, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, at the time it enters into a Swap Contract, or any transactions or confirmations thereunder, permitted under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

“Holding Company” means any holding company formed for the purposes of holding the Equity Interests of the Borrower.

“Honor Date” has the meaning set forth in Section 2.03(c).

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Increase Effective Date” has the meaning specified in Section 2.13(f).

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

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations (including, without limitation, earnout obligations) of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than ninety (90) days or such longer period as permitted in the ordinary course of business); provided, however, such obligations shall not include contingent purchase price amounts required to be recorded pursuant to GAAP until such time, if at all, as the Borrower has determined that such purchase price amounts are no longer contingent;

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) capital leases and Synthetic Lease Obligations; provided, however, that, notwithstanding the adoption of FASB ASU No. 2016-02 (Leases) to the contrary, existing and future leases commonly referred to as “operating leases” shall not constitute Indebtedness for any purpose hereunder;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

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

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

“Indemnitee” and “Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Interest Payment Date” means (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and

ending on the date one (1), two (2) or three (3) months thereafter, as selected by the Borrower in its Committed 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, in the case of a Eurocurrency Rate Loan, 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 pertaining to a Eurocurrency Rate Loan 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.

“Internal Control Event” means a material weakness in, or fraud that involves management or other employees who have a significant role in the Borrower’s internal controls over financial reporting.

“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 capital stock or other securities 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 equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the L/C Application and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Judgment Currency.” has the meaning specified in Section 10.20.

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

“L/C Advance” and “L/C Advances” mean, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

“L/C 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 L/C Issuer.

“L/C Borrowing” and “L/C Borrowings” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing. All L/C Borrowings shall be denominated in Dollars.

“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 Expiration Date” means the day that is thirty days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“L/C Fee” has the meaning specified in Section 2.03(h).

“L/C Issuer” means Bank of America, N.A. in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, (a) the aggregate amount available to be drawn under all outstanding Letters of Credit plus (b) the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. 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 1.09. 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.

“L/C Sublimit” means an amount equal to \$20,000,000.00. The L/C Sublimit is part of, and not in addition to, the Aggregate Commitments. The initial portion of the L/C Sublimit applicable to each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Lender” and “Lenders” have the meaning assigned and ascribed to such terms as set forth in the preamble to this Agreement.

“Lending Office” means, as to the Administrative Agent, the 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” and “Letters of Credit” means any letter of credit issued hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a sight commercial letter of credit or a standby letter of credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

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

“LIBOR Quoted Currency” means Dollars, Euro, Sterling, and Yen, in each case, as long as there is a published LIBOR rate with respect thereto.

“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 2.16.

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption 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 in consultation with the Borrower).

“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).

“Loan” and “Loans” mean an extension of credit by a Lender to the Borrower under Article II in the form of a Committed Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letter, (f) each Issuer Document, (g) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14, and (h) all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing (but specifically excluding any Secured Hedge Agreement or any Secured Cash Management Agreement); provided, however, that for purposes of Section 10.01, “Loan Documents” shall mean this Agreement, the Guaranty and the Collateral Documents.

“Loan Party” and “Loan Parties” means, individually and collectively, the Borrower and each Person (other than Administrative Agent, the L/C Issuer, or any Lender) executing a Loan Document including, without limitation, each Guarantor and such each Person executing a Collateral Document.

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

“Majority-Owned Subsidiary” of the Borrower means a Subsidiary of which the Borrower owns, directly or indirectly through another Subsidiary, more than fifty percent (50%) of the issued and outstanding capital stock or other equity interests.

“Master Agreement” has the meaning set forth 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 or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of the Borrower to perform its obligations under this Agreement; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party which could reasonably be expected to have a material adverse effect upon the rights of the Lenders hereunder.

“Maturity Date” means December \_\_\_\_\_, 2023.

“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 five percent (105%) of the Fronting Exposure of the 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 the provisions of Section 2.14(a)(i), (a)(ii) or (a)(iii), an amount equal to one hundred five percent (105%) of the Outstanding Amount of all L/C Obligations.

“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.

“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 10.01 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.

“Note” and “Notes” means one or more promissory notes made by the Borrower in favor of a Lender evidencing Committed Loans made by such Lender, substantially in the form of Exhibit “B” and Exhibit “H”, in each case, attached hereto and made a part hereof, as said promissory note(s) may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented.

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

“Obligations” means: (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, (b) to the extent provided for in this Agreement and the other Loan Documents, 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, and (c) all Additional Secured Obligations; 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 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; and (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 and 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 and, if applicable, any certificate or articles of formation or organization of such entity, as any of the foregoing may be from time to time amended, modified, substituted, and/or supplemented.

“Original Credit Agreement” has the meaning assigned and ascribed to such term as set forth in the first recital of this Agreement.

“Original Credit Facility” has the meaning assigned and ascribed to such term as set forth in the first recital of this Agreement.

“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 Committed Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Committed Loans occurring on such date, and (b) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding 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.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation,

and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Participating Member State” means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“PATRIOT Act” has the meaning specified in Section 10.18.

“PBGC” means the Pension Benefit Guaranty Corporation.

“PCAOB” means the Public Company Accounting Oversight Board.

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

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

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

“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.

“Pledged Subsidiary” means any Person that (a) is a direct or indirect foreign Subsidiary of the Borrower, (b) has assets or operating income that represents five percent (5.0%) or more of the Consolidated assets or operating income of the Borrower, and (c) is a Majority-Owned Subsidiary.

“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.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000.00 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.

“Quarterly Payment Date” means the last Business Day of March, June, September and December.

“Rate Determination Date” means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by the Administrative Agent).

“Recipient” means the Administrative Agent, any Lender, the 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.

“Register” has the meaning specified in Section 10.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

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

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Committed Loans, a Committed Loan Notice and (b) with respect to an L/C Credit Extension, a L/C Application.

“Required Lenders” means, at any time, Lenders having Total Credit Exposures representing 66 2/3% or more of the Total Credit Exposures of all Lenders. 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 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 L/C Issuer in making such determination.

“Resignation Effective Date” has the meaning set forth in Section 9.06.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party, and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent 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 reasonably satisfactory to the Administrative Agent.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Person thereof).

“Revaluation Date” means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance, amendment and/or extension of a Letter of Credit denominated in an Alternative Currency, (ii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, (iii) in the case of all Existing Letters of Credit denominated in Alternative Currencies, the Closing Date, and (iv) such additional dates as the Administrative Agent or the L/C Issuer shall determine or the Required Lenders shall require.

“Revolving Commitment” and “Revolving Commitments” means, as to each Lender, its obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.01(b) and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on the portion of Schedule 2.01 describing the Revolving Loans or in the Assignment and Assumption pursuant to which such 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 Lenders on the Closing Date is \$300,000,000.00.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in L/C Obligations at such time.

“Revolving Credit Facility” has the meaning assigned and ascribed to such term as set forth in the second recital of this Agreement.

“Revolving Loan” and “Revolving Loans” have the meanings specified in Section 2.01(b).

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

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“Sanction(s)” means any financial or economic sanction or trade embargo administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council,

the European Union, any European Union member state, Her Majesty's Treasury ("HMT") or other relevant sanctions authority.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"Scheduled Unavailability Date" has the meaning specified in Section 2.16.

"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 that is entered into by and between any Loan Party (or any Subsidiary of any Loan Party) and any Cash Management Bank.

"Secured Hedge Agreement" means any interest rate, currency, foreign exchange, or commodity Swap Contract, or any transactions or confirmations thereunder, permitted under Article VI or VII that is entered into by and between any Loan Party (or any Subsidiary of any Loan Party) and any Hedge Bank. For purposes of clarity, the defined term "Secured Hedge Agreement" shall not include any transactions or confirmations with a Lender or an Affiliate of such Lender entered into after such Lender ceases to be a Lender or such Affiliate ceases to be an Affiliate of such Lender.

"Secured Party Designation Notice" means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit "F" attached hereto and made a part hereof.

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"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.

"Special Notice Currency" means at any time an Alternative Currency, other than (a) the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe and (b) Yen.

"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 10.21 of this Agreement).

"Spot Rate" for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at

approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Sterling” and “£” mean the lawful currency of the United Kingdom.

“Subordinated Notes” means a collective reference to any subordinated promissory note entered into by the Borrower or any Subsidiary as evidence of Indebtedness incurred under Section 7.03(f)(ii) or Section 7.03(h), which promissory note is subject to a Subordination Agreement in favor of the Administrative Agent, for the benefit of the Lenders, as any such promissory note may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented.

“Subordination Agreement” and “Subordination Agreements” means any subordination agreement entered into by the Borrower or any Subsidiary in connection with Subordinated Notes, as any such subordination agreement may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented.

“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 securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

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

“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 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).

“TARGET Day” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

“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.

“Temporary Leverage Increase” has the meaning specified in Section 6.12(b).

“Term Commitment” and “Term Commitments” means, as to each Lender, its obligation to make Term Loans 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 Lender’s name on Schedule 2.01 under the caption “Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Term Commitments of all of the Lenders on the Closing Date is \$100,000,000.00.

“Term Loan” and “Term Loans” means, collectively and individually, advances made by Lenders under the Term Loan Facility.

“Term Loan Facility” has the meaning assigned and ascribed to such term as set forth in the second recital of this Agreement.

“Threshold Amount” means \$3,500,000.00.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments, Revolving Credit Exposure, and Outstanding Amount of all Term Loans of such Lender at such time.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“TTM EBITDA” means an amount equal to the “Designated Percentage” (as such term is defined below) of the actual historical EBITDA of any Person acquired by the Borrower or one of its Subsidiaries in accordance with the terms, conditions, and provisions of this Agreement, as such EBITDA is calculated as agreed between the Borrower and the Administrative Agent, based on the Administrative Agent’s review of the acquired Person’s financial statements for the twelve (12) month period immediately preceding the last day of the last fiscal quarter of the acquired Person occurring prior to the date of acquisition or such

Person's Federal tax returns covering all or any portion of said period. For the purposes of this definition, the term "Designated Percentage" shall mean (a) in the event the acquired Person's financial statements are "audited" statements, one hundred percent (100%), (b) in the event the acquired Person's financial statements are "reviewed" statements, seventy-five percent (75%), (c) in the event the acquired Person's Federal tax returns are reviewed by the Administrative Agent, seventy-five percent (75%), and (d) in the event the acquired Person's financial statements are "compiled" statements, fifty percent (50%).

"Type" means, with respect to a Committed Loan, its character as a Base Rate Loan or a Eurocurrency 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, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce ("ICC") Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(c)(i).

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(e)(ii)(B)(III).

"Wholly-Owned Subsidiary" of the Borrower means a Subsidiary of which the Borrower owns, directly or indirectly through another Subsidiary, ninety-five percent (95%) or more of the issued and outstanding capital stock or other equity interests.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

"Yen" and "¥" mean the lawful currency of Japan.

**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 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, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

### **1.03 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, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP (including the adoption of IFRS) 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. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(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 as defined herein.

**1.04 Rounding.** Any financial ratios required to be maintained by the Borrower 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 Exchange Rates; Currency Equivalents.** (a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Committed Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Committed Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

**1.06 Additional Alternative Currencies.**(a) The Borrower may from time to time request that Eurocurrency Rate Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency;" provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Administrative Agent and the Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the L/C Issuer. The approval of the Administrative Agent, the Lenders, and/or the L/C Issuer required under this Section 1.06 shall not be unreasonably withheld, conditioned or delayed.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., seven (7) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Administrative Agent shall promptly notify each Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., seven (7) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the L/C Issuer, as the case may be, to permit Eurocurrency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Lenders consent to making Eurocurrency Rate Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Committed Borrowings of Eurocurrency Rate Loans; and if the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.06, the Administrative Agent shall promptly so notify the Borrower.

**1.07 Change of Currency.**(a) Each obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption. If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Committed Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Committed Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

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

**1.09 Letter of Credit Amounts.** Unless otherwise specified herein the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.10 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.

**ARTICLE II.**  
**THE COMMITMENTS AND CREDIT EXTENSIONS**

**2.01 Loans.**

(a) Term Borrowing. Subject to the terms and conditions set forth herein, each Lender severally agrees to make a single loan to the Borrower, in Dollars (and not in any Alternative Currency), on the Closing Date in an amount not to exceed such Lender's Applicable Percentage of the Term Loan Facility. The Borrowing of the Term Loan Facility shall consist of Term Loans made simultaneously by the Lenders in accordance with their respective Applicable Percentage of the Term Loan Facility. Borrowings of the Term Loan Facility repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein, and the Borrower shall execute and deliver a Note to each Lender requesting a Note with respect to its Term Commitment; provided, however, any Borrowing of Term Loans made on the Closing Date or 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 Borrowing.

(b) Revolving Borrowings. Subject to the terms and conditions set forth herein, each Lender severally agrees to make certain loans (hereinafter each such loan shall be referred to as a "Revolving Loan" and all such loans shall be collectively referred to as the "Revolving Loans") to the Borrower in Dollars or in one or more Alternative Currencies 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 Lender's Revolving Commitment; provided, however, that after giving effect to any Borrowing of a Revolving Loan, (i) the aggregate Revolving Credit Exposure shall not exceed the aggregate Revolving Commitments, (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Revolving Commitment, and (iii) the aggregate Outstanding Amount of all Revolving Loans denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit. Within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein, and the Borrower shall execute and deliver a Note to each Lender requesting a Note with respect to its Revolving Commitment.

**2.02 Borrowings, Conversions and Continuations of Committed Loans.**

(a) Notice of Borrowing. Each Committed Borrowing, each conversion of Committed Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to Administrative Agent, which may be given by: (x) telephone or (y) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such Committed Loan Notice must be received by Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans denominated in Dollars or of any conversion of Eurocurrency Rate Loans denominated in Dollars to Base Rate Loans, (ii) four Business Days (or five Business Days in the case of a Special Notice Currency) prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies, and (iii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$500,000.00 or a whole multiple of \$100,000.00 in excess thereof. Except as provided in Section 2.03(c), each conversion to Base Rate Loans shall be in a principal amount of \$500,000.00 or a whole multiple of \$100,000.00 in excess thereof (or, in connection with any conversion or continuation of the Term Loans, if less, the entire principal amount thereof

then outstanding). Each Committed Loan Notice and each telephonic notice shall specify (A) whether the Borrower is requesting a Committed Borrowing, a conversion of Committed Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (B) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (C) the principal amount of Committed Loans to be borrowed, converted or continued, (D) the Type of Committed Loans to be borrowed or to which existing Committed Loans are to be converted, (E) if applicable, the duration of the Interest Period with respect thereto, and (F) the currency of the Committed Loans to be borrowed. If the Borrower fails to specify a currency in a Committed Loan Notice requesting a Borrowing, then the Committed Loans so requested shall be made in Dollars. If the Borrower fails to specify a Type of Committed Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Committed Loans shall be made as, converted to, or continued as Eurocurrency Rate Loans in Dollars with an Interest Period of one (1) month; provided, however, that in the case of a failure to timely request a continuation of Committed Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Rate Loans in their original currency with an Interest Period of one (1) month. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. No Committed Loan may be converted into or continued as a Committed Loan denominated in a different currency, but instead must be repaid in the original currency of such Committed Loan and reborrowed in the other currency.

(b) Advances. Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount (and the currency) of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Committed Loans denominated in a currency other than Dollars, in each case as described in the preceding subsection. In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 2:00 p.m., in the case of any Committed Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent, in the case of any Committed Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Committed 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), Administrative Agent shall make all funds so received available to the Borrower in like funds as received by 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) Administrative Agent by the Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to such Borrowing denominated in Dollars is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing first, shall be applied, to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Eurocurrency Rate Loans. Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans (whether in Dollars or any Alternative Currency) without the prior express written consent of the Required Lenders, and the Required Lenders may demand that any or all of the then outstanding Eurocurrency Rate Loans denominated in an Alternative Currency be prepaid, or redenominated into Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest period with respect thereto, and the Borrower agrees to pay all amounts due under Section 3.05 in accordance with the terms thereof due to any such conversion.

(d) Interest Rates. Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) Interest Periods. After giving effect to all Term Loans, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than one (1) Interest Period in effect in respect of the Term Loan Facility. After giving effect to all Revolving Loans, 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 four (4) Interest Periods in effect in respect of the Revolving Credit Facility.

### **2.03 Letters of Credit**

#### **(a) The Letter of Credit Commitment**

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the L/C Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of the Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the aggregate Revolving Credit Exposure shall not exceed the aggregate Revolving Commitments, (y) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Revolving Commitment, and (z) the aggregate Outstanding Amount of the L/C Obligations shall not exceed the L/C Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof. All commercial Letters of Credit issued hereunder shall require payment upon presentation of a sight draft.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iv), the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the L/C Expiration Date, unless all the Lenders have approved such expiry date.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law

applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which in each case the 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 the L/C Issuer applicable to letters of credit generally, a copy of which policies has previously been provided to the Borrower or is provided in connection with the Borrower's L/C Application

(C) except as otherwise agreed by Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$10,000.00, in the case of a commercial Letter of Credit, or \$100,000.00, in the case of a standby Letter of Credit;

(D) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole and absolute discretion) with the Borrower or such Lender to eliminate the 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 the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole and absolute discretion;

(F) unless specifically provided for in this Agreement, such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(G) the L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the 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 such Letter of Credit.

(vi) The 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 the L/C Issuer shall have all of the benefits and immunities (A) provided to Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the 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" or "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a L/C Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such L/C Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such L/C Application must be received by the L/C Issuer and Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as Administrative Agent and the 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. In the case of a request for an initial issuance of a Letter of Credit, such L/C Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder, (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer reasonably may require. In the case of a request for an amendment of any outstanding Letter of Credit, such L/C Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended, (2) the proposed date of amendment thereof (which shall be a Business Day), (3) the nature of the proposed amendment and (4) such other matters as the L/C Issuer reasonably may require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent reasonably may require.

(ii) Promptly after receipt of any L/C Application at the address set forth in Section 10.02, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such L/C Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(iv) If the Borrower so requests in any applicable L/C Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (hereinafter each such Letter of Credit that has automatic extension provisions shall be referred to as an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the 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 (hereinafter referred to as the “Non-Extension Notice Date”) in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the L/C Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the 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 revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(v) If the Borrower so requests in any applicable L/C Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (hereinafter each such Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder shall be referred to as an “Auto-Reinstatement Letter of Credit”). Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing to the contrary, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (hereinafter referred to as the “Non-Reinstatement Deadline”), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Reinstatement Deadline (A) from the Administrative Agent that the Required Lenders have elected not to permit such reinstatement or (B) from Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that the Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the L/C

Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (hereinafter each such date shall be referred to as an “Honor Date”), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (hereinafter referred to as the “Unreimbursed Amount”), and the amount of such Lender’s Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Committed Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the aggregate Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer, in Dollars, at the Administrative Agent’s Office for Dollar-denominated payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender’s payment to Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Committed Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender’s obligation to make Committed Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(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 L/C Issuer, 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, however, that each Lender’s obligation to make Committed Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through 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 L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer 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 Committed Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause (ii) shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower 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), the 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, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein 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 L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the 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 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) any payment by the 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 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 adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or in the relevant currency markets generally; or

(ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

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 L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight or time draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties or any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of Lenders or the Required Lenders, as applicable, (ii) any action taken or omitted in the absence of gross negligence or willful misconduct or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties or any correspondent, participant or assignee of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary,

damages suffered by the Borrower which the Borrower proves, as determined by a final nonappealable judgment of a court of competent jurisdiction, were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight or time draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to any 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 to the contrary, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the 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 the L/C Issuer or the beneficiary is located, the practice stated in the ISP or 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.

(h) L/C Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance, subject to Section 2.15, with its Applicable Percentage, in Dollars, an L/C fee (hereinafter referred to as the "L/C Fee") (i) for each commercial Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit, and (ii) for each standby Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of 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 Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. L/C Fees shall be (1) due and payable on the last Business Day of each March, June, September and December and the Maturity Date, commencing with the first such date to occur after the issuance of such Letter of Credit, on the L/C Expiration Date and thereafter on demand and (2) computed on a quarterly basis 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 Lenders, while any Event of Default exists, all L/C Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, a fronting fee with respect to each Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit and on a quarterly basis in arrears. Such fronting fee shall be due and payable on the last Business Day of each March, June, September and December, in respect of the quarterly period then ended (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 L/C Expiration 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 1.09. In addition, the Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, the reasonable and customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the 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.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall govern and control.

#### 2.04 Repayment of Loans.

(a) Term Loans. The Borrower shall, on each Quarterly Payment Date commencing with the Quarterly Payment Date occurring in March, 2019 and continuing through the Quarterly Payment Date occurring in September, 2023, repay the aggregate principal amount of all Term Loans outstanding in the respective amounts set forth below opposite the month in which such Quarterly Payment Date occurs, unless repayment of the Term Loans is accelerated sooner pursuant to Section 8.02:

<b>Quarterly Payment Dates</b>	<b>Scheduled Repayment Amount</b>
Quarterly Payment Dates occurring in March, 2019 through and including December, 2020	\$1,250,000.00
Quarterly Payment Dates occurring in March, 2021 through and including December, 2021	\$1,875,000.00
Quarterly Payment Dates occurring in March, 2022 through and including September, 2023	\$2,500,000.00

provided, however, that (i) the final principal repayment installment of the Term Loans shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Term Loans outstanding on such date and (ii) (A) if any principal repayment installment to be made by the Borrower (other than principal repayment installments on Eurocurrency Rate Loans) shall come due on a day other than a Business Day, such principal repayment installment shall be due on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be and (B) if any principal repayment installment to be made by the Borrower on a Eurocurrency Rate Loan shall come due on a day other than a Business Day, such principal repayment installment shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such principal repayment installment into another calendar month, in which event such principal repayment installment shall be due on the immediately preceding Business Day.

(b) Revolving Loans. The Borrower shall repay to the Administrative Agent, for the ratable account of the Lenders, on the Maturity Date the aggregate principal amount of all Revolving Loans outstanding on such date.

## **2.05 Prepayments.**

(a) 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 Committed Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans denominated in Dollars, (B) four (4) Business Days (or five (5), in the case of prepayment of Loans denominated in Special Notice Currencies) prior to any date of prepayment of Eurocurrency Rate Loans denominated in Alternative Currencies, and (C) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurocurrency Rate Loans denominated in Dollars shall be in a principal amount of \$500,000.00 or a whole multiple of \$100,000.00 in excess thereof; (iii) any prepayment of Eurocurrency Rate Loans denominated in Alternative Currencies shall be in a minimum principal amount of \$500,000.00 or a whole multiple of \$100,000.00 in excess thereof; and (iv) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000.00 or a whole multiple of \$100,000.00 in excess thereof or, in each case, 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 Committed Loans to be prepaid and, if Eurocurrency 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 Applicable Percentage 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. Any prepayment of a Eurocurrency 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 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 Credit Facilities.

(b) If the Administrative Agent notifies the Borrower at any time that the aggregate Revolving Credit Exposure exceeds the aggregate Revolving Commitments then in effect, then, within three (3) Business Days after receipt of such notice, the Borrower shall prepay Revolving Loans and/or the Borrower shall Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce such Revolving Credit Exposure as of such date of payment to an amount not to exceed 100% of the aggregate Revolving Commitments then in effect; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b) unless, after the prepayment in full of the Revolving Loans, the aggregate Revolving Credit Exposure exceeds the aggregate Revolving Commitments then in effect. The Administrative Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of further exchange rate fluctuations.

(c) If the Administrative Agent notifies the Borrower at any time that the Outstanding Amount of all Revolving Loans denominated in Alternative Currencies at such time exceeds an amount equal to one hundred five percent (105%) of the Alternative Currency Sublimit then in effect, then, within three (3) Business Days after receipt of such notice, the Borrower shall prepay Revolving Loans in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed one hundred percent (100%) of the Alternative Currency Sublimit then in effect.

**2.06 Termination or Reduction of Commitments.** The Borrower may, upon notice to the Administrative Agent, terminate the aggregate Revolving Commitments, or from time to time permanently reduce the aggregate Revolving Commitments; provided that (a) any such notice shall be received by the

Administrative Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (b) any such partial reduction shall be in an aggregate amount of \$5,000,000.00 or any whole multiple of \$1,000,000.00 in excess thereof, (c) the Borrower shall not terminate or reduce the aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the aggregate Revolving Credit Exposure would exceed the aggregate Revolving Commitments, and (d) if, after giving effect to any reduction of the aggregate Revolving Commitments, the L/C Sublimit or the Alternative Currency Sublimit exceeds the amount of the aggregate Revolving Commitments, such sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the aggregate Revolving Commitments. Any reduction of the aggregate Revolving Commitments shall be applied to the Revolving Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the aggregate Revolving Commitments shall be paid on the effective date of such termination.

## **2.07 Interest and Default Rate.**

(a) Subject to the provisions of subsection (b) below, (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) 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, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower 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 (including a payment default), all outstanding Obligations (including L/C Fees) may 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 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.

(d) For the purposes of the Interest Act (Canada), (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the "deemed year") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year, (ii) the principle of deemed



reinvestment of interest shall not apply to any interest calculation hereunder and (iii) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

**2.08 Fees.** In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) **Commitment Fee.** The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee, in Dollars, equal to the Applicable Rate times the daily amount by which the aggregate Revolving Commitments exceed the sum of (i) the Outstanding Amount of Revolving Loans plus (ii) the Outstanding Amount of L/C Obligations, calculated on the basis of a 360-day year and the number of actual days elapsed. 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 last Business Day 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.** The Borrower shall pay (i) to the Arranger and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times specified in the Fee Letter and (ii) to the Lenders, in Dollars, 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.

**2.09 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.**

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency 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), or, in the case of interest in respect of Revolving Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. 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 2.11(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) 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 Funded Debt Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate in a material respect and (ii) a proper calculation of the Funded Debt Leverage Ratio would have resulted in higher pricing 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 L/C Issuer, as the case may be, promptly within ten (10) days of written demand by the Administrative Agent (or, after the occurrence of the 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 the 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 paragraph shall not limit the rights of the Administrative

Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(h) or 2.07(b) or under Article VIII. The Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

**2.10**

## **Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and 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 accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent 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 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, currency and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (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. 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.

## **2.11 Payments Generally; Administrative Agent's Clawback.**

(a) (i) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Revolving Loans denominated in an Alternative Currency, 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 applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the dates specified herein. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to principal and interest on Revolving Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in Same Day Funds by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (A) after 2:00 p.m., in the case of payments in Dollars, or (B) after the Applicable Time specified by the Administrative Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(ii) On each date when the payment of any principal, interest or fees are due hereunder or under any Note, the Borrower agrees to maintain on deposit in an ordinary checking account maintained by the Borrower with the Administrative Agent (hereinafter, as such account shall be designated by the Borrower in a written notice to the Administrative Agent from time to time, referred to as the "Borrower Account") an amount sufficient to pay such principal, interest or fees in full on such date. The Borrower hereby authorizes the Administrative Agent (A) to deduct automatically all principal, interest or fees when due hereunder or under any Note from the Borrower Account, and (B) if and to the extent any payment of principal, interest or fees under this Agreement or any Note is not made when due to deduct any such amount from any or all of the accounts of the Borrower maintained at the Administrative Agent. The Administrative Agent agrees to provide written notice to the Borrower of any automatic deduction made pursuant to this Section 2.11(a)(ii) showing in reasonable detail the amounts of such deduction. Lenders agree to reimburse the Borrower promptly based on their Applicable Percentage for any amounts deducted from such accounts in excess of amount due hereunder and under any other Loan Documents. The Borrower's failure to deposit funds into the Borrower Account as required under the terms of this Agreement in no way relieves the Borrower of its obligation to make any payment due under the terms of this Agreement on such date.

(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 Committed Borrowing of Eurocurrency Rate Loans (or, in the case of any Committed Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Committed Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Committed 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 Committed 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 Committed Borrowing available to Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day 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 Overnight Rate, 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 Committed Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Committed 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 Issuer 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 Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in Same Day 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 Overnight Rate. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (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 Committed Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(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 Committed Loan, to purchase its participation or to make its payment under Section 10.04(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.

**2.12 Sharing of Payments by Lenders**. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, or the participations in L/C Obligations held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then 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 Committed Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that:

(i) 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

(ii) the provisions of this Section 2.12 shall not be construed to apply to (A) 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), (B) the application of Cash Collateral provided for in Section 2.14, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section 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.

### **2.13 Increase in Revolving Commitments.**

(a) Request for Increase. Provided no Default then exists, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may from time to time, request an increase in the aggregate Revolving Commitments by an amount (for all such requests) not exceeding an additional \$150,000,000.00; provided that (i) any such request for an increase shall be in a minimum amount of \$5,000,000.00, and (ii) the Borrower may make a maximum of two such requests. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than seven (7) Business Days from the date of delivery of such notice to the Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Revolving Commitment.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase, the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the aggregate Revolving Commitments are increased in accordance with this Section 2.13, the Administrative Agent and the Borrower shall determine the effective date (hereinafter referred to as the "Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (y) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.13, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01, and (B) no Default then exists. The Borrower shall prepay any Revolving Loans outstanding on the Increase Effective Date (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 Applicable Percentages arising from any nonratable increase in the Revolving Commitments under this Section 2.13.

(f) Conflicting Provisions. This Section 2.13 shall supersede any provisions in Section 2.12 or 10.01 to the contrary.

### **2.14 Cash Collateral.**

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the L/C Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrower shall be required to provide Cash Collateral pursuant to Section 8.02(c), or (iv) there shall exist a Defaulting Lender, the Borrower shall immediately (in the case of clause (iii) above) or within one (1) Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.15(a)(iv)) and any Cash Collateral provided by the Defaulting Lender).

(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 Issuer 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 reasonably determines in good faith that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon ten (10) days written demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in 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, 2.04, 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 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 otherwise 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 Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (x) 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 (y) the Person providing Cash Collateral and the L/C Issuer 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 the definition of "Required Lenders" and Section 10.01.

(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 10.08 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 the L/C Issuer hereunder; *third*, to Cash Collateralize the L/C Issuer's 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 or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; *sixth*, to the payment of any amounts owing to the Lenders or the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the L/C Issuer 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 or Event of 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 directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Committed Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Committed 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 Committed 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 Committed Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Committed Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Revolving Commitments hereunder without giving effect to Section 2.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.08(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).



(B) Each Defaulting Lender shall be entitled to receive L/C Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) With respect to any fee payable under Section 2.08(a) or any L/C Fees not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitments) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitments. 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. 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, 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 and the L/C Issuer 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 Committed Loans and funded and unfunded participations in Letters of Credit 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; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

**2.16 Proposed LIBOR Amendment**. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, 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 Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

- (a) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or
- (b) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent 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 (such specific date, the “Scheduled Unavailability Date”); or
- (c) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “LIBOR Successor Rate”), together with any proposed LIBOR Successor Rate Conforming Changes and any such amendment shall become effective at 5:00 p.m. (New York 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 do not accept such amendment. If no LIBOR Successor Rate has been determined and the circumstances under clause (a) 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 Eurocurrency Rate Loans shall be suspended, (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (ii) the Eurocurrency Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency 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 (subject to the foregoing clause (ii)) in the amount specified therein. Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

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

**3.01 Taxes.**

- (a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) 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 the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, 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.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, 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

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower 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.

(c) 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 written 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 or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. The Borrower shall, and do hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within fifteen (15) days after written demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally (and not jointly) indemnify, and shall make payment in respect thereof within ten (10) days after written demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (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 such Loan Party to do so), (y) 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 10.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or the Loan Parties 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 and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) 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(e)(i), (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:

- I. 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;
- II. executed copies of IRS Form W-8ECI;
- III. 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 “E-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
- IV. 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 “E-2” or Exhibit “E-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 “E-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 (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(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.

(f) 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 the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. 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 the Loan Parties an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Parties 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, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that such 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 subsection, in no event will the applicable Recipient be required to pay any amount to any Loan Party pursuant to this subsection 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 subsection 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.

(g) 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 or the L/C Issuer, the termination of the Aggregate 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 applicable 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 Eurocurrency 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 or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or continue Eurocurrency Rate Loans in the affected currency or currencies or, in the case of Eurocurrency Rate Loans in Dollars, to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency 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 Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), prepay or, if applicable, and such Loans are denominated in Dollars, convert such Eurocurrency 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 Eurocurrency 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 Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency 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 Eurocurrency Rate. Notwithstanding the foregoing to the contrary and despite the illegality for such a Lender to make, maintain or fund Eurocurrency Rate Loans, that Lender shall remain committed to make Base Rate Loans and shall be entitled to recover interest thereon at the Base Rate. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates.** If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether in Dollars or an Alternative Currency) or in connection with an existing or proposed Base Rate Loan, or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case 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 Eurocurrency Rate Loans in the affected currency or currencies 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.

### **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 reflected in the Eurocurrency Rate) or the 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 the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency 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 the interest on which is determined by reference to the Eurocurrency Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the 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 the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the 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 the L/C Issuer's capital or on the capital of such Lender's or the 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 held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy or liquidity), then from time to time Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 3.04 and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender or the 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) Delay in Requests. Failure or delay on the part of any Lender or the 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 the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the 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 the 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 the 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 Administrative Agent) from time to time, 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 Loan other than a Base 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); or

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

(c) any failure by Borrower to make payment of any Revolving Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency 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 10.13,

including any loss of anticipated profits, any foreign exchange losses 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 or from the performance of any foreign exchange contract. 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 Borrower to Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the applicable offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency 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, the L/C Issuer, or any Governmental Authority for the account of any Lender or the 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 the 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 the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 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 the L/C Issuer, as the case may be, to any unreimbursed cost

or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the 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 10.13.

**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 Maturity Date.

#### **ARTICLE IV.** **CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

**4.01 Conditions of Initial Credit Extension.** The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Administrative Agent's receipt of the following, each of which shall be originals, telecopies (followed promptly by originals), or pdfs sent by electronic mail (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, all Collateral Documents and the Guaranty sufficient in number for distribution to Administrative Agent, each Lender and Borrower;

(ii) Notes executed by Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as 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;

(iv) such documents and certifications as Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of counsel to the Loan Parties acceptable to Administrative Agent addressed to Administrative Agent and each Lender, as to the matters set forth concerning the Loan Parties and the Loan Documents in form and substance acceptable to Administrative Agent;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party,

and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(viii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of Borrower most recently ended prior to the Closing Date, signed by a Responsible Officer of Borrower; and

(ix) such other assurances, certificates, documents, consents or opinions as Administrative Agent, the L/C Issuer or the Required Lenders reasonably may require.

(b) KYC Information.

(i) Upon the reasonable request of any Lender made prior to the Closing Date, Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act.

(ii) If Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, Borrower shall have provided, to each Lender that so requests, a Beneficial Ownership Certification in relation to Borrower.

(c) The Contemplated Acquisition shall have closed simultaneously with the closing of the Credit Facilities.

(d) Any fees required to be paid on or before the Closing Date shall have been paid.

(e) Unless waived by Administrative Agent, Borrower shall have paid the reasonable fees, charges and disbursements of counsel to Administrative Agent (directly to such counsel if requested by Administrative Agent) to the extent invoiced prior to or on the Closing Date and permitted by the terms of this Agreement and/or the other Loan Documents, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between Borrower and Administrative Agent).

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless 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**. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of Borrower and each other Loan Party contained in Article V (other than those set forth and contained in Section 5.05(c)) 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 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 except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) Administrative Agent shall have received, in form and substance satisfactory to it, such other assurances, certificates, documents or consents related to the foregoing as Administrative Agent or the Required Lenders reasonably may require.

(e) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable good faith opinion of the Administrative Agent, the Required Lenders (in the case of any Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency) would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of Eurocurrency Rate Loans) submitted by 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**

Borrower represents and warrants to Administrative Agent and the Lenders that:

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

**5.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation

of any Lien under, or require any payment to be made under (i) 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 (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any applicable Law except in the case of subsections (b) and (c) where such breach, contravention or payment could not 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, in any case, 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.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

**5.05 Financial Statements; No Material Adverse Effect; No Internal Control Event.**

(a) (i) 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 the Consolidated financial condition of Borrower and its Subsidiaries as of the date thereof and their results of operations 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 Borrower and its Consolidated Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated balance sheets of Borrower and its Subsidiaries dated September 30, 2018, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the Consolidated financial condition of Borrower and its Subsidiaries as of the date thereof and their results of operations 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) Since the date of the Audited Financial Statements and except as disclosed in the quarterly financial statements referenced in Section 5.05(b), there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) To the best knowledge of Borrower, no Internal Control Event exists or has occurred since the date of the Audited Financial Statements that has resulted in or could reasonably be expected to result in a misstatement in any material respect, in any financial information delivered or to be delivered to Administrative Agent or Lenders, of (i) covenant compliance calculations provided hereunder or (ii) the

assets, liabilities, financial condition or results of operations of Borrower and its Subsidiaries on a Consolidated basis.

(e) The forecasted balance sheet and statements of income and cash flows of Borrower and its Consolidated Subsidiaries delivered pursuant to Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, Borrower's best estimate of its future financial condition and performance.

**5.06 Litigation.** There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or any of its Subsidiaries 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) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect, and there has been no adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described on Schedule 5.06.

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

**5.08 Ownership of Property; Liens.** Each of Borrower and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of Borrower and its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01, including Liens listed on Schedule 7.01.

**5.09 Environmental Compliance.** Borrower and its Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof Borrower has reasonably concluded that, except as specifically disclosed in Schedule 5.09, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10 Insurance.** The properties of Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as Borrower reasonably believes appropriate. All insurance with respect to the Collateral shall (a) contain a breach of warranty clause in favor of the Administrative Agent, (b) provide that no cancellation, reduction in amount or change in coverage thereof shall be effective until at least ten (10) days after receipt by the Administrative Agent of written notice thereof (thirty (30) days for nonpayment of premium) and (c) be reasonably satisfactory in all material respects to the Administrative Agent.

**5.11 Taxes.** Borrower and its Subsidiaries have filed all foreign and domestic Federal, state and other material tax returns and reports required to be filed, and have paid all foreign and domestic 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 Borrower or any Subsidiary that would, if made, have a Material Adverse Effect, nor is there any tax sharing agreement applicable to Borrower or any Subsidiary.

#### **5.12 ERISA Compliance.**

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state laws except for any failure to comply which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service 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 Internal Revenue Service 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 Internal Revenue Service. To the best knowledge of the Borrower, 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 Borrower, 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) Except as set forth and described on Schedule 5.12(c) attached hereto and made a part hereof, (i) no ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Borrower 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 60% as of the most recent valuation date; (iv) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Borrower nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (i) on the Closing Date, those listed on Schedule 5.12(d) attached hereto and (ii) thereafter, Pension Plans not otherwise prohibited by this Agreement.

(e) The Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

**5.13 Subsidiaries; Equity Interests.** As of the Closing Date, Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and the outstanding Equity Interests in such

Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens. Borrower has no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13.

**5.14 Margin Regulations; Investment Company Act; Public Utility Holding Company Act.**

(a) Neither 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 issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of Borrower, any Person Controlling Borrower, or any Subsidiary (i) is a “holding company,” or a “subsidiary company” of a “holding company,” or an “affiliate” of a “holding company” or of a “subsidiary company” of a “holding company,” within the meaning of the Public Utility Holding Company Act of 1935, or (ii) is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.15 Disclosure.** Borrower has disclosed to Administrative Agent and Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the 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) 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 misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. The information included in the Beneficial Ownership Certification most recently provided to each Lender, if applicable, is true and correct in all respects.

**5.16 Compliance with Laws.** Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (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.

**5.17 Taxpayer Identification Number.** Borrower’s true and correct U.S. taxpayer identification number is set forth on Schedule 10.02 attached hereto and made a part hereof.

**5.18 Intellectual Property; Licenses, Etc.** Borrower and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by Borrower or any Subsidiary infringes upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.



**5.19 Rights in Collateral; Priority of Liens.** Borrower and each other Loan Party own the property granted by it as Collateral under the Collateral Documents, free and clear of any and all Liens in favor of third parties, other than Liens permitted under Section 7.01, including Liens set forth on Schedule 7.01. Upon the proper filing of UCC financing statements and trademark and patent assignments, the Liens granted pursuant to the Collateral Documents will constitute valid and enforceable first, prior and perfected Liens in favor of Administrative Agent, for the ratable benefit of Administrative Agent and Lenders on all collateral on which a lien may be perfected by the filing of such UCC financing statements and trademark and patent assignments, subject only to the Liens set forth on Schedule 7.01.

**5.20 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 any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction, and the Loan Parties and their Subsidiaries have instituted and maintained policies and procedures designed to promote and achieve compliance with the requirements of any Sanction(s).

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**5.21 Solvency.** Each Loan Party is, individually and together with its Subsidiaries on a Consolidated basis, Solvent.

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

**5.23 Responsible Officers.** Set forth on Schedule 1.01(R) attached hereto are Responsible Officers, holding the offices indicated next to their respective names, as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Sections 6.02(a), 6.13 and 6.15 and such Responsible Officers are the duly elected and qualified officers of such Loan Party and are duly authorized to execute and deliver, on behalf of the respective Loan Party, this Agreement, the Notes and the other Loan Documents.

**5.24 Collateral Representations.**

(a) Collateral Documents. The provisions of the Collateral Documents are 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 Liens permitted pursuant to Section 7.01 below) on all rights, title and interests of the respective Loan Parties in the Collateral described therein. Except

for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

(b) Intellectual Property. Set forth on Schedule 5.24(b), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Sections 6.02(a), 6.13 and 6.15, is a list of all intellectual property registered in the United States of America (including all applications for registration and issuance) owned by each of the Loan Parties or that each of the Loan Parties has the right to (including the name/title, current owner, registration or application number, and registration or application date and such other information as reasonably requested by Administrative Agent).

(c) Documents, Instruments, and Tangible Chattel Paper. The Loan Parties do not own or possess any material “Documents”, “Instruments”, or “Tangible Chattel Paper” (as each of the foregoing terms is defined in the UCC).

(d) Deposit Accounts and Securities Accounts. Set forth on Schedule 5.24(d), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Sections 6.02(a), 6.13 and 6.15, is a description of all “Deposit Accounts” and “Securities Accounts” (as each of the foregoing terms is defined in the UCC) of the Loan Parties in the United States of America, including the name of (A) the applicable Loan Party, and (B) in the case of a Deposit Account, the depository institution and average amount held in such Deposit Account and whether such account is a zero balance account or a payroll account.

(e) Commercial Tort Claims. The Loan Parties do not own or possess any material “Commercial Tort Claims” (as such term is defined in the UCC).

(f) Pledged Equity Interests. Set forth on Schedule 5.24(f), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Sections 6.02(a), 6.13 and 6.15, is a list of all Equity Interests pledged or required to be pledged to Administrative Agent pursuant to this Agreement and/or the Collateral Documents, in each case, detailing the owner/pledgor, the Person whose Equity Interests are pledged, the number of shares of each class of Equity Interests, the certificate number and percentage ownership of outstanding shares of each class of Equity Interests and the class or nature of such Equity Interests (i.e. voting, non-voting, preferred, etc.).

(g) Properties. Set forth on Schedule 5.24(g), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Sections 6.02(a), 6.13 and 6.15, is a list of (i) the headquarters location of Borrower and (ii) each other domestic location of “Equipment” (as such term is defined in the Security Agreement) where the aggregate value of said Equipment has been deemed material by Administrative Agent, in its reasonable discretion.

**5.25 EEA Financial Institutions**. No Loan Party is an EEA Financial Institution.

## **ARTICLE VI.**

### **AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, Borrower shall, and

shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

**6.01 Financial Statements.** Deliver to Administrative Agent (whether in hard copy or through a link sent via electronic mail to a copy thereof on the Internet), in form and detail satisfactory to Administrative Agent and the Required Lenders:

(a) promptly after being filed with the SEC, but in any event within seventy-five (75) days after the end of each fiscal year of Borrower (or within such shorter time period as the Borrower may be required to file the foregoing with the SEC), a Consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, shareholders' 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, such consolidated statements to be audited and accompanied by a report and opinion of KPMG US LLP or another independent certified public accounting firm of recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable Securities Laws 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 or with respect to the absence of any material misstatement; and

(b) promptly after being filed with the SEC, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of Borrower, a Consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of 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, such Consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event at least fifteen (15) days before the end of each fiscal year of Borrower, forecasts prepared by management of Borrower, in form satisfactory to Administrative Agent and the Required Lenders, of Consolidated balance sheets and statements of income or operations of Borrower and its Subsidiaries for the immediately following fiscal year (including the fiscal year in which the Maturity Date occurs), prepared on an annual basis.

Notwithstanding the foregoing provisions of this Section to the contrary, the Borrower shall not be obligated to provide to the Administrative Agent and the Lenders any financial statements, reports or other information required herein which has been filed with or furnished to the SEC and which is publicly available through the SEC's electronic data gathering and retrieval system ("EDGAR").

**6.02 Certificates: Other Information.** Deliver to Administrative Agent a sufficient number of copies for delivery by Administrative Agent to each Lender, in form and detail satisfactory to Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief financial officer or president of Borrower and, concurrently with the delivery of the financial statements referred to in Section 6.01(a), on an annual basis, the following updated Schedules to this Agreement (which may be attached to the Compliance

Certificate) to the extent required to make the representation related to such Schedule true and correct as of the date of such Compliance Certificate: Schedules 1.01(R), 5.12(d), 5.13, 5.24(b), 5.24(c), 5.24(d), 5.24(e), 5.24(f), and 5.24(g);

(b) promptly after any request by 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 Borrower by independent accountants in connection with the accounts or books of Borrower or any Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement, reporting notice, or other report or communication sent to the stockholders of Borrower, and copies of any annual, regular, periodic and special reports and registration statements which Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to Administrative Agent pursuant hereto;

(d) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement 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) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the Securities and Exchange Commission (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 thereof;

(f) promptly following any request therefor, provide information and documentation reasonably requested by Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation; and

(g) promptly, such additional information regarding the business, financial or corporate affairs of Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as Administrative Agent or any Lender may from time to time reasonably request.

Notwithstanding the foregoing provisions of this Section to the contrary, the Borrower shall not be obligated to provide to the Administrative Agent and the Lenders any financial statements, reports or other information required herein which has been filed with or furnished to the SEC and which is publicly available through the SEC’s electronic data gathering and retrieval system (“EDGAR”).

Borrower hereby acknowledges that (A) Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to Lenders and the L/C Issuer materials and/or information provided by or on behalf of Borrower hereunder (hereinafter collectively referred to as “Borrower Materials”) by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (hereinafter referred to as the “Platform”) and (B) certain Lenders (hereinafter each such Lender shall be referred to as a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to 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 (1) 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; (2) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized Administrative Agent, any Affiliate thereof, the Arranger, the 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 Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (3) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (4) Administrative Agent and any Affiliate thereof and the 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.”

**6.03 Notices.** Promptly, but in any event within five (5) Business Days, notify Administrative Agent and each Lender for which the Administrative Agent has provided an address:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event;
- (d) of any material change in accounting policies or financial reporting practices by Borrower or any Subsidiary;
- (e) of Borrower’s determination at any time of the occurrence or existence of any Internal Control Event; and
- (f) of any change in the Beneficial Ownership Certification most recently provided to each Lender.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of Borrower setting forth details of the occurrence referred to therein and, to the extent applicable, stating what action 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.** Pay and discharge as the same shall become due and payable, its obligations and liabilities in excess of \$500,000.00, 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 Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; 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.

**6.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) 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; and (c)

preserve or renew any registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.** (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; and (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,

**6.07 Maintenance of Insurance.** Maintain with financially sound and reputable insurance companies not Affiliates of 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 (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons and providing for not less than ten (10) days' prior notice to Administrative Agent of termination, lapse or cancellation of such insurance (thirty (30) days for nonpayment of premium). Borrower shall cause its carriers to name the Administrative Agent as additional insured and, in the case of property or casualty insurance for all tangible Collateral, first loss payee, and shall provide the Administrative Agent with a certificate or certificates evidencing such coverages and the payment of premiums therefore, on or before the Closing Date and at such times as the insurance in question is modified or renewed.

**6.08 Compliance with Laws.** Comply in all material respects 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.** Maintain (a) proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Borrower or such Subsidiary, as the case may be and (b) such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Borrower or such Subsidiary, as the case may be. Borrower shall maintain at all times books and records pertaining to the Collateral in such detail, form and scope as Administrative Agent or any Lender shall reasonably require.

**6.10 Inspection Rights.**

(a) Permit representatives and independent contractors of 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, all at the expense of Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, 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 Borrower at any time during normal business hours and without advance notice.

(b) If requested by Administrative Agent in its sole discretion, permit Administrative Agent and its representatives, upon reasonable advance notice to Borrower, to conduct, at the expense of Borrower, an annual (i.e., not more frequently than once per twelve (12) month period) field exam

on the accounts receivable, inventory, payables, controls and systems of Borrower and its Subsidiaries; provided, however, that at any time while an Event of Default has occurred and is continuing, Administrative Agent shall not be limited to one such field exam per twelve (12) month period.

**6.11 Use of Proceeds(a)** . Use the proceeds of the Committed Loans and Letters of Credit for working capital and other lawful corporate purposes, including, without limitation, financing such acquisitions as may be permitted in accordance with the terms, conditions, and provisions of Section 7.02(f).

**6.12**

## **Financial Covenants**

(a) **Minimum Consolidated Fixed Charge Coverage Ratio**. Maintain, on a Consolidated basis, a Fixed Charge Coverage Ratio of at least 1.25 -to- 1.0. This ratio will be calculated at the end of each reporting period for which this Agreement requires Borrower to deliver financial statements, using the results of the twelve-month period ending with that reporting period.

(b) **Maximum Funded Debt Leverage Ratio**. Maintain, on a Consolidated basis, a Funded Debt Leverage Ratio not exceeding the ratios set forth below:

<b>Test Period Ending</b>	<b>Maximum Funded Debt Leverage Ratio</b>
Closing Date through December 31, 2018	4.25 -to- 1.0
March 31, 2019 through September 30, 2019	4.00 -to- 1.0
December 31, 2019	3.75 -to- 1.0
March 31, 2020 and each fiscal quarter thereafter	3.50 -to- 1.0

This ratio will be calculated at the end of each reporting period for which this Agreement requires Borrower to deliver financial statements, using the results of the twelve-month period ending with that reporting period. Notwithstanding the foregoing to the contrary, for the four (4) quarterly test dates immediately following the date on which any acquisition permitted by the terms of this Agreement occurs, at Borrower's election, the maximum permitted Funded Debt Leverage Ratio may be temporarily increased to 4.00 -to- 1.0 (hereinafter such temporary increase shall be referred to as a "Temporary Leverage Increase"), and then such maximum permitted ratio shall automatically reduce down to 3.50 -to- 1.0 commencing with the fifth (5th) quarterly test date immediately following the date on which said permitted acquisition occurred; provided, however, in no event (i) shall Borrower be permitted to elect a Temporary Leverage Increase more than two (2) times during the term of the Credit Facilities and (ii) shall Borrower be permitted to elect a Temporary Leverage Increase in connection with any acquisition permitted by the terms of this Agreement which occurs prior to April 1, 2020.

**6.13 Additional Guarantors; Pledges of Stock; Security Interests**. Notify Administrative Agent within thirty (30) days after the delivery of the financial statements referred to in Section 6.01(a), on an annual basis, if any Person becomes a Guarantor Subsidiary, a Pledged Subsidiary, or a Holding Company and, promptly thereafter (and in any event within thirty (30) days):

(a) cause any such Person that becomes a Guarantor Subsidiary or a Holding Company, (i) to become a Guarantor by executing and delivering to the Administrative Agent a joinder to the Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) to subject all of its tangible and intangible personal property now owned or hereafter acquired by it to a first priority, perfected Lien (subject to Liens permitted under the terms of Section 7.01 and the other Loan Documents) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Obligations pursuant to the terms and conditions of the Collateral Documents, and (iii) to deliver to the Administrative Agent (1) documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a), (2) with respect to any such Person which has assets or operating income that represents fifteen percent (15.0%) or more of the assets or operating income of the Borrower, favorable opinions of counsel to such Person (which opinions shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to



in the foregoing clause (i)), and (3) updated Schedules 1.01(R), 5.12(d), 5.13, 5.24(b), 5.24(c), 5.24(d), 5.24(e), 5.24(f), and 5.24(g)), all in form, content and scope reasonably satisfactory to Administrative Agent; and/or

(b) take such action, and cause the appropriate Subsidiaries to take such action, from time to time as shall be necessary to ensure that sixty-five percent (65%) of the Equity Interests in any such Person that becomes a Pledged Subsidiary shall be pledged, directly (if such Pledged Subsidiary is owned by a domestic Person) or indirectly (if such Pledged Subsidiary is owned by a foreign Person), to the Administrative Agent, for the benefit of the Lenders, (i) by executing and delivering to the Administrative Agent a pledge agreement, or such other document as Administrative Agent shall deem appropriate for such purpose, and (ii) by delivering to the Administrative Agent (1) documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) with respect to such Pledged Subsidiary, (2) with respect to any such Pledged Subsidiary which has assets or operating income that represents fifteen percent (15.0%) or more of the assets or operating income of the Borrower, favorable opinions of counsel to such Pledged Subsidiary and to such pledging Borrower or Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in the foregoing clause (i)), and (3) updated Schedules 1.01(R), 5.12(d), 5.13, 5.24(b), 5.24(c), 5.24(d), 5.24(e), 5.24(f), and 5.24(g)), all in form, content and scope reasonably satisfactory to Administrative Agent.

**6.14 Collateral Records.** To execute and deliver promptly, and to cause each other Loan Party to execute and deliver promptly, to Administrative Agent, from time to time, solely for Administrative Agent's convenience in maintaining a record of the Collateral, such written statements and schedules as Administrative Agent may reasonably require designating, identifying or describing the Collateral. The failure by Borrower or any other Loan Party, however, to promptly give Administrative Agent such statements or schedules shall not affect, diminish, modify or otherwise limit the Liens on the Collateral granted pursuant to the Collateral Documents.

**6.15 Security Interests; Landlord Subordinations.**

(a) To, and to cause each other Loan Party to, (i) defend the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein, (ii) comply with the requirements of all United States state and federal laws in order to grant to Administrative Agent and Lenders valid and perfected security interests in the Collateral subject only to Liens set forth on Schedule 7.01, with perfection, in the case of any investment property, deposit account or letter of credit, being effected by giving Administrative Agent control of such investment property or deposit account or letter of credit, rather than by the filing of a Uniform Commercial Code ("UCC") financing statement with respect to such investment property, and (iii) do whatever Administrative Agent may reasonably request, from time to time, to effect the purposes of this Agreement and other Loan Documents, including (1) filing notices of liens, UCC financing statements, fixture filings and amendments, renewals and continuations thereof, (2) cooperating with Administrative Agent's representatives, (3) keeping stock records, (4) using reasonable efforts to obtain waivers from landlords and mortgagees and from warehousemen and their landlords and mortgagees, (5) paying claims which might, if unpaid, become a lien on the Collateral, and (6) concurrently with the delivery of any Collateral pursuant to the terms of this Section, provide the Administrative Agent with the applicable updated Schedules 1.01(R), 5.12(d), 5.13, 5.24(b), 5.24(c), 5.24(d), 5.24(e), 5.24(f), and 5.24(g)), all in form, content and scope reasonably satisfactory to Administrative Agent. Administrative Agent is hereby authorized by Borrower to file any UCC financing statements covering the Collateral whether or not Borrower's signatures appear thereon.

(b) In the case of (i) the headquarters location of Borrower located at 195 Clarksville Road, Princeton Junction, New Jersey 08550 and (ii) each other domestic location of Equipment where the aggregate value of said Equipment has been deemed material by Administrative Agent, in its reasonable discretion, said locations as of the Closing Date being set forth and described on Schedule 5.24(g), attached hereto and made a part hereof, the Loan Parties will use their respective commercially reasonable efforts to provide the Administrative Agent with a landlord subordination agreement in form and substance reasonably acceptable to Administrative Agent from the landlords on such real property. Administrative Agent and Borrower hereby acknowledge and agree that said landlord subordination agreements described under the foregoing Section 6.15(b)(ii) may be provided by Borrower on a post-closing basis.

**6.16 Deposits.** Maintain its primary deposit relationship, including, without limitation, operating accounts bearing interest at competitive, market rates and cash management services, with the Administrative Agent, such services to be provided at reasonable, competitive market costs to the Borrower and its Subsidiaries.

**6.17 Further Assurances.** Promptly upon request by Administrative Agent, or any Lender through 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 (including promptly completing any registration or stamping of documents as may be applicable) as Administrative Agent, or any Lender through Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable Law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

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

## **ARTICLE VII. NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

**7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or

benefited thereby is not increased except as expressly contemplated by Section 7.03(b), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.03(b);

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

(d) statutory liens such as carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, provided that adequate reserves with respect thereto are maintained on the books of the applicable Person;

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

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

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

(h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.03(e); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) Liens existing solely with respect to cash or deposit account balances used to Cash Collateralize obligations of a Lender to the L/C Issuer, in accordance with the terms, conditions, and provisions of Section 2.03(a)(iii)(E); and

(k) Liens securing Indebtedness permitted under Section 7.03(h) and Section 7.03(i); provided, however, with respect to any Liens securing subordinate Indebtedness permitted under Section 7.03(h) said Liens shall be subject and subordinate to the Liens granted to the Administrative Agent, for the benefit of the Lenders, in connection with the Credit Facilities and shall, in all events, be subject to the terms, conditions, and provisions of the applicable Subordination Agreement(s).

**7.02 Investments** Make any Investments, except:

(a) Investments held by Borrower or such Subsidiary in the form of cash equivalents or short-term marketable debt securities;

(b) loans to officers, directors and employees of Borrower and Subsidiaries in an aggregate amount not to exceed \$500,000.00 at any time outstanding;

(c) Investments (i) of Borrower in any Wholly-Owned Subsidiary, (ii) of Borrower or any Wholly-Owned Subsidiary in other Subsidiaries, not to exceed \$4,000,000.00 in the aggregate in any twelve (12) month period, and (iii) of any Wholly-Owned Subsidiary in Borrower or in another Wholly-Owned Subsidiary;

(d) Investments of Borrower or its Subsidiaries for strategic purposes in non-Subsidiary joint ventures, not to exceed \$4,000,000.00 individually in any twelve (12) month period;

(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(f) the purchase or other acquisition of all or substantially all of the Equity Interests in, or all or substantially all of the assets of, any Person that, upon the consummation thereof, will be wholly-owned directly by the Borrower or one or more of its Wholly-Owned Subsidiaries (including as a result of a merger or consolidation); provided that, with respect to each purchase or other acquisition made pursuant to this Section 7.02(f):

(i) any such newly-created or acquired Subsidiary shall comply with the requirements of Section 6.13;

(ii) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be substantially the same lines of business as one or more of the principal businesses of the Borrower and its Subsidiaries in the ordinary course;

(iii) (A) immediately before and immediately after giving pro forma effect to any such purchase or other acquisition, no Default shall have occurred and be continuing and (B) immediately after giving effect to such purchase or other acquisition, the Borrower and its Subsidiaries shall be in pro forma compliance with all of the covenants set forth in Section 6.12, such compliance to be evidenced by the Borrower to the reasonable satisfaction of the Administrative Agent and the Required Lenders on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such purchase or other acquisition had been consummated as of the first day of the fiscal period covered thereby; and

(iv) in the event the total cash and noncash consideration paid by or on behalf of the Borrower and its Subsidiaries for any such purchase or other acquisition exceeds \$10,000,000.00, the Borrower shall have delivered to the Administrative Agent, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated, written notice of such purchase or other acquisition, and, if requested by the Administrative Agent, all material purchase or acquisition documents related thereto; and

(g) Guarantees permitted by Section 7.03.

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

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.03 and any refinancings, refundings, renewals or extensions thereof; provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and (ii) the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending of Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(c) Guarantees of Borrower or any Subsidiary in respect of Indebtedness otherwise permitted hereunder of Borrower or any Subsidiary;

(d) obligations (contingent or otherwise) of Borrower or any Subsidiary 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;

(e) Indebtedness in respect of capital leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$35,000,000.00;

(f) (i) Indebtedness assumed in connection with acquisitions permitted under this Agreement or (ii) Indebtedness incurred in connection with the payment of the purchase price for acquisitions permitted under this Agreement, which Indebtedness is unsecured and has been subordinated to the payment of the Obligations on terms approved by the Administrative Agent in writing, or is otherwise approved by the Administrative Agent in writing; provided that, in the case of each of the foregoing clauses (i) and (ii), (A) immediately before and immediately after giving pro forma effect to any such incurrence of Indebtedness, no Default shall have occurred and be continuing and (B) immediately after giving effect to such incurrence of Indebtedness, the Borrower and its Subsidiaries shall be in pro forma compliance with all of the covenants set forth in Section 6.12, such compliance to be evidenced by the Borrower to the reasonable satisfaction of the Administrative Agent and the Required Lenders on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such purchase or other acquisition had been consummated as of the first day of the fiscal period covered thereby;

(g) any earn-out obligation that comprises a portion of the consideration for an acquisition (whether consummated before, on, or after the date of this Agreement) or Indebtedness consisting of obligations under deferred compensation or other similar arrangements incurred in connection with an acquisition (whether consummated before, on, or after the date of this Agreement) permitted under this Agreement;

(h) Indebtedness the payment and performance of which is completely and fully subordinated to the full and indefeasible payment (in cash) and performance of all Obligations pursuant to the express terms of the instruments evidencing such Indebtedness and one or more Subordination Agreements in form and content satisfactory to the Administrative Agent and the Required Lenders; provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$50,000,000.00; and

(i) Indebtedness in respect of mortgages and other Indebtedness not otherwise permitted under this Section 7.03; provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$25,000,000.00.

**7.04 Fundamental Changes.** Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Delaware LLC Division), except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) Borrower, provided that Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Majority-Owned Subsidiary is merging with another Subsidiary, the Majority-Owned Subsidiary shall be the continuing or surviving Person, and provided further that if a Guarantor is merging with another Subsidiary, the Guarantor shall be the surviving Person; and

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a Majority-Owned Subsidiary, then the transferee must either be Borrower or a Majority-Owned Subsidiary and provided further that if the transferor of such assets is a Guarantor, the transferee must either be Borrower or a Guarantor.

**7.05 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property or equipment, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment to the extent that (i) such equipment is exchanged for credit against the purchase price of similar replacement equipment or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement equipment;

(d) Dispositions of property by any Subsidiary to Borrower or to a Majority-Owned Subsidiary; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be Borrower or a Guarantor;

(e) Dispositions permitted by Section 7.04; and

(f) Dispositions of up to \$500,000.00 individually or in a series of related Dispositions;

provided, however, that any Disposition pursuant to clauses (a) through (e) shall be for fair market value.

**7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests (other than Equity Interests in the Borrower, which may be issued or sold without restriction hereunder), except that, so long as no Default shall exist at the time of any action described below or would result therefrom, the Borrower and its Subsidiaries may declare or make any Restricted Payment so long as the Funded Debt Leverage Ratio, calculated on a pro forma basis to include said Restricted Payment, does not exceed 2.50 -to- 1.0, such calculation to be evidenced by the Borrower to the reasonable satisfaction of the Administrative Agent and the Required Lenders.

**7.07 Change in Nature of Business.** Engage in any material line of business substantially different from those lines of business conducted by Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to Borrower or such Subsidiary as would be obtainable by Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to transactions between or among Borrower and any Guarantor or between and among Guarantors, so long as the effect of such transactions is not to circumvent the limitations contained in Section 7.02.

**7.09 Burdensome Agreements.** Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to Borrower or any Guarantor or to otherwise transfer property to Borrower or any Guarantor, (ii) of any Subsidiary to Guarantee the Indebtedness of Borrower or (iii) of Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.03(e) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

**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 of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Prepayment of Subordinated Notes.** Prepay any Subordinated Notes; provided, however, that so long as no Default then exists or would result from any such prepayment, the Borrower may make any prepayment of any Subordinated Notes at any time when the Funded Debt Leverage Ratio is less than 2.50 -to- 1.0.

**7.12 Intentionally Omitted.**

**7.13 Sanctions.** Directly or 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, or otherwise) of Sanctions.

**7.14 Anti-Corruption Laws.** Directly or 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 similar 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.** Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan or any L/C Obligation, 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.** Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01, 6.02, 6.03, 6.05, 6.07, 6.08, 6.10, 6.11, 6.12 or 6.13; or Borrower fails to perform or observe any term, covenant or agreement contained Article VII, or any Guarantor fails to perform or observe any term, covenant or agreement contained in Article III of the Guaranty; or

(c) **Other Defaults.** Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in this Agreement or any other Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after written notice thereof from the Administrative Agent; provided, however, that if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that the applicable Loan Party shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for such Loan Party, in the exercise of due diligence, to cure such failure (but in any event not more than ninety (90) days total from receipt of such written notice); or

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith, shall be (i) with respect to any such representation, warranty, certification or statement of fact which contains a materiality qualification or is qualified by the occurrence of a Material Adverse Effect or similar language, incorrect or misleading in any respect when made or deemed made, and (ii) with respect to any such representation, warranty, certification or statement of fact which does not contain a materiality qualification and is not qualified by the occurrence of a Material Adverse Effect or similar language, incorrect or misleading in any material respect when made or deemed made; or

(e) **Cross-Default.** (i) Borrower or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts), such failed payment having an aggregate principal amount (including any payments owing due to acceleration caused by such failed payment) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or Administrative 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 Borrower or any Subsidiary is the "Defaulting Party" (as such term is defined in such Swap Contract) or (B) any "Termination Event" (as so defined) under such Swap Contract as to which Borrower or any Subsidiary is an "Affected Party" (as so defined) and, in either event, the Swap Termination Value owed by Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; or

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

(g) Inability to Pay Debts; Attachment. (i) Borrower 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 Borrower 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 or 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, enforcement proceedings are commenced by any creditor upon such judgment or order and said judgment or order, as applicable, is not satisfied, stayed, or fully-bonded within thirty (30) days of the commencement of said enforcement proceedings; 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 Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (ii) 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. This Agreement, any Collateral Document, or the Guaranty or any provision thereof, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, 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

Loan Document or any provision thereof; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document or any provision thereof; or

(k) **Change of Control.** There occurs any Change of Control with respect to Borrower and/or any Guarantor except as expressly permitted by Section 7.04 or Section 7.05.

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 Administrative Agent (with the approval of the requisite Lenders (in their sole discretion) as determined in accordance with Section 10.01); 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 Lenders or by Administrative Agent with the approval of the requisite Lenders, as required hereunder in Section 10.01.

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, 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 the 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 Borrower;

(c) require that 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 Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable Law or equity;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the 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 Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of 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 Administrative Agent to pay fully all Obligations then due hereunder, any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied by Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including, to the extent permitted under this Agreement and/or the other Loan Documents, reasonable fees, charges and disbursements of counsel to Administrative Agent and amounts payable under Article III), payable to Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and L/C Fees) payable to Lenders and the L/C Issuer (including, to the extent permitted under this Agreement and/or the other Loan Documents, fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer) 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 Obligations constituting accrued and unpaid L/C Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements and to the to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.14, in each case, ratably among Administrative Agent, the Lenders, the L/C Issuer, 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 Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by applicable Law.

Subject to Section 2.03(c), 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 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 the Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing to the contrary, 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 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 hereof for itself and its Affiliates as if a "Lender" party hereto.

**ARTICLE IX.**  
**ADMINISTRATIVE AGENT**

**9.01 Appointment and Authorization of Administrative Agent.**

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to 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 Administrative Agent, the Lenders and the L/C Issuer, and neither 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. In addition, to the extent required under the laws of any jurisdiction other than the United States of America, each of the Lenders and Secured Parties hereby grants to Administrative Agent any required powers of attorney to execute any Collateral Document or other Loan Document governed by the laws of such jurisdiction on such Lender’s or Secured Party’s behalf.

(b) 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 Issuer hereby irrevocably appoints and authorizes Administrative Agent to act as the agent of such Lender and the 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 Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by Administrative Agent pursuant to Section 9.05 or otherwise 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 Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X, 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 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 Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to Lenders or to provide notice to or consent of the Lenders with respect thereto.

**9.03 Exculpatory Provisions.**

(a) Administrative Agent shall not 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, Administrative Agent and its Related Parties:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not 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 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 Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose 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; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity.

(b) Neither Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by 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 Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.02 and 10.01 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. Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to Administrative Agent by Borrower, a Lender or the L/C Issuer.

(c) Neither 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 or (v) 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 Administrative Agent.

**9.04 Reliance by Administrative Agent.** 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, 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. 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 the L/C Issuer,

Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. 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 Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

**9.05 Delegation of Duties.** 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 Administrative Agent. 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 Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as 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 Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.06 Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall either be a Lender or another bank with an office in the United States (or an Affiliate of any such bank with an office in the United States) acceptable to the Required Lenders and the Borrower. 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) (hereinafter referred to as 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 Issuer, 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) 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, 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) (hereinafter referred to as the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other 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 Issuer 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 the 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(g)) 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). 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 and Section 10.04 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, without limitation, (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) Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). Upon the appointment by the Borrower of a successor L/C Issuer 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, (ii) the retiring L/C Issuer 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 and Other Lenders.** Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**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 Administrative Agent, the Arranger, a Lender or the 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, 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 Administrative Agent shall have made any demand on 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 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 Lenders, the L/C Issuer and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, the L/C Issuer and Administrative Agent and their respective Administrative Agents and counsel and all other amounts due Lenders, the L/C Issuer and Administrative Agent under Sections 2.03(i) and (j), 2.09 and 10.04) 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 the L/C Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and the L/C Issuer, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.08, 2.11 or 10.04.

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

The Secured Parties hereby irrevocably authorize Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the 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 (a) 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, (b) 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) Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with 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 (i) Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by 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 clauses (a) through (h) of Section 10.01, and (iii) to the extent that 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 Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such 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 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 Guaranty Matters.** Each Lender (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably authorizes Administrative Agent, at its option and in its discretion, 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 hereunder. Upon request by Administrative Agent at any time, each Lender and the L/C Issuer will confirm in writing Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

**9.11 Collateral Matters.**

(a) Each Lender (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably authorizes and directs Administrative Agent to enter into the Collateral Documents for the benefit of such Lender and the L/C Issuer. Each Lender and the L/C Issuer hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth in Section 10.01, any action taken by the Required Lenders, in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of Lenders and the L/C Issuer. Administrative Agent is hereby authorized (but not obligated) on behalf of all of Lenders and the L/C Issuer, without the necessity of any notice to or further consent from any Lender or the L/C Issuer from time to time prior to, an Event of Default, to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to the Collateral Documents.

(b) Each Lender and the L/C Issuer hereby irrevocably authorize Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by Administrative Agent under any Loan Document (A) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (1) contingent indemnification obligations and (2) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit, (B) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, (C) subject to Section 10.01, if approved, authorized

or ratified in writing by the Required Lenders, or (D) in connection with any foreclosure sale or other disposition of Collateral after the occurrence of an Event of Default; and

(ii) to subordinate any Lien on any property granted to or held by Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by this Agreement or any other Loan Document.

Upon request by Administrative Agent at any time, each Lender and the L/C Issuer will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of Collateral pursuant to this Section 9.11.

(c) Subject to subsection (b) above, Administrative Agent shall (and is hereby irrevocably authorized by each Lender and the L/C Issuer to) execute such documents as may be necessary to evidence the release or subordination of the Liens granted to Administrative Agent for the benefit of Administrative Agent and Lenders and the L/C Issuer herein or pursuant hereto upon the applicable Collateral; provided that (i) Administrative Agent shall not be required to execute any such document on terms which, in Administrative Agent's opinion, would expose Administrative Agent to or create any liability or entail any consequence other than the release or subordination of such Liens without recourse or warranty and (ii) such release or subordination shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of Borrower or any other Loan Party in respect of) all interests retained by Borrower or any other Loan Party, including the proceeds of the sale, all of which shall continue to constitute part of the Collateral. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, Administrative Agent shall be authorized to deduct all expenses reasonably incurred by Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(d) Administrative Agent shall have no obligation whatsoever to any Lender, the L/C Issuer or any other Person to assure that the Collateral exists or is owned by Borrower or any other Loan Party or is cared for, protected or insured or that the Liens granted to Administrative Agent herein or in any of the Collateral Documents or pursuant hereto or thereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to Administrative Agent in this Section 9.11 or in any of the Collateral Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given Administrative Agent's own interest in the Collateral as one of Lenders and that Administrative Agent shall have no duty or liability whatsoever to Lenders or the L/C Issuer.

(e) Each Lender and the L/C Issuer hereby appoints each other Lender as Administrative Agent for the purpose of perfecting Lenders' and the L/C Issuer's security interest in assets which, in accordance with Article 9 of the UCC can be perfected only by possession. Should any Lender or the L/C Issuer (other than Administrative Agent) obtain possession of any such Collateral, such Lender or the L/C Issuer shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefor shall deliver such Collateral to Administrative Agent or in accordance with Administrative Agent's instructions.

**9.12 Secured Cash Management Agreements and Secured Hedge Agreements.** No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral)

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, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

### **9.13 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, the Arranger and their respective Affiliates, 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 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments;

(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 Section 9.13(a)(i) above is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in Section 9.13(a)(iv) above, 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, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent, the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto);

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E);

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations);

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder; and

(v) no fee or other compensation is being paid directly to the Administrative Agent, the Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Administrative Agent, for itself and on behalf of the Arranger, hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

## **ARTICLE X.** **MISCELLANEOUS**

**10.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by Administrative Agent with the consent of the Required Lenders) and Borrower or the applicable Loan Party, as the case may be, and acknowledged by 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, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01(a) without the written consent of each Lender; provided, however, in the sole and absolute discretion of Administrative Agent, only a waiver by Administrative Agent shall be required with respect to immaterial matters or items specified in Sections 4.01(a)(iii) or (iv) with respect to which Borrower has given assurances satisfactory to Administrative Agent that such items shall be delivered promptly following the Closing Date;

(b) 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 or a mandatory reduction in Commitments is not considered an extension or increase in any Commitment of any Lender);

(c) 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 Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of Borrower to pay interest or L/C Fees at the Default Rate or (ii) to amend 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 L/C Borrowing or to reduce any fee payable hereunder;

(e) change Section 2.12 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) amend Section 1.06 of the definition of "Alternative Currency" without the written consent of each Lender;

(g) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; or

(h) release any Guarantor from the Guaranty or release the Liens on all or substantially all of the Collateral in any transaction or series of related transactions except in accordance with the terms of any Loan Document, without the written consent of each Lender;

and, provided further that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the 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 Administrative Agent in addition to the Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document, and (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything contained herein to the contrary,

(A) 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 may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) no Commitment of any Defaulting Lender may be increased or extended without the consent of such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender, (B) 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 and (C) 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.

Notwithstanding anything to the contrary herein, (a) this Agreement may be amended and restated without the consent of any Lender (but with the consent of Borrower and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement, and (b) Administrative Agent may amend or modify this Agreement and any other Loan Document with the prior consent of the Borrower, such consent not to be unreasonably withheld, conditioned, or delayed and such consent not being required while any Event of Default has occurred and is outstanding, to (i) to cure any ambiguity, omission, mistake, defect or inconsistency therein or (ii) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional property for the benefit of the Secured Parties or join additional Persons as Loan Parties.

#### **10.02 Notices; Effectiveness; Electronic Communications.**

(a) Notices Generally. Except (x) in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below) and (y) in the case of notice of the occurrence of a Default or an Event of Default or the acceleration of the Obligations hereunder, which such notices shall only be given in writing and by hand-delivery, overnight courier service or certified mail, 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 or the L/C Issuer, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, 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 subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to Administrative Agent, the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the 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, email 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 "ADMINISTRATIVE AGENT PARTIES" (AS SUCH TERM IS 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 ADMINISTRATIVE AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (hereinafter collectively referred to as the "Administrative Agent Parties") have any liability to the Borrower, any Lender, the 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 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.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and the L/C Issuer 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 other Lender may change its address, fax number, e-mail address or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the L/C Issuer. 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 Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Committed Loan Notices, L/C Applications and any Notice of Loan Prepayment) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein; provided, however, that such notices are made consistent with past practices among the parties, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the 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 the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by either party, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender, the L/C Issuer or 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 Issuer; provided, however, 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) the L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.12), 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; and 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 2.12, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver.**



(a) Costs and Expenses. Borrower shall pay (i) all reasonable out of pocket expenses incurred by Administrative Agent and its Affiliates (including, to the extent permitted under this Agreement and/or the other Loan Documents, the reasonable fees, charges and disbursements of counsel for Administrative Agent set forth in Section 4.01(c) hereof), 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 out of pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by Administrative Agent, any Lender or the L/C Issuer (including the reasonable fees, charges and disbursements of any counsel for Administrative Agent, any Lender or the 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 10.04, or (B) in connection with the 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 Borrower. Borrower shall indemnify Administrative Agent (and any sub-Administrative Agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee” and all such Persons being collectively called “Indemnitees”) 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), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties 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, the consummation of the transactions contemplated hereby or thereby, or, in the case of Administrative Agent (and any sub-Administrative 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 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), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to Borrower 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 Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, or (B) result from a claim brought by Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 10.04(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 Borrower for any reason fails to indefeasibly pay any amount required under subsections (a) or (b) of this Section 10.04 to be paid by it to Administrative Agent (or any sub-Administrative Agent thereof), the L/C Issuer or any Related Party of any of the foregoing,

each Lender severally agrees to pay to Administrative Agent (or any such sub-Administrative Agent), the L/C Issuer 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 Lenders' 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 Administrative Agent (or any such sub-Administrative Agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-Administrative Agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.11(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, Borrower shall not assert, and 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 subsection (b) above 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 10.04 shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section 10.04 and the indemnity provisions of Section 10.02(e) shall survive the resignation of Administrative Agent and the L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of Borrower is made to Administrative Agent, the L/C Issuer or any Lender, or Administrative Agent, the 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 Administrative Agent, the 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 the L/C Issuer severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by 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 applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

## 10.06 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 Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent, the L/C Issuer 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 subsection (b) of this Section 10.06, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section 10.06, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section 10.06 (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 subsection (d) of this Section 10.06 and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent, the L/C Issuer 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 Commitments and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) 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 Commitments and the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such Assignments) that equal at least the amount specified in subsection (b)(i)(B) of this Section in the aggregate, or in the case of an assignment to a Lender or an Affiliate of a Lender no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 10.06, the aggregate amount of the Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Commitments are 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 Administrative Agent or, if a "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000.00, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000.00, in the case of any assignment in respect of the Term Loan Facility, unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(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 or the Commitments assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section 10.06 and, in addition:

(A) the consent of 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 or an Affiliate of a Lender or an Approved Fund; provided that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender or an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) if the consent of Borrower to an assignment to an Eligible Assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment threshold specified in Section 10.06(b)(i)(B)), Borrower shall be deemed to have given its consent five (5) Business Days after the date notice thereof has been delivered to Borrower by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Borrower prior to such fifth (5<sup>th</sup>) Business Day.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount, if any, required as set forth in Schedule 10.06; provided, however, that the Administrative Agent may, in its sole and absolute 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 Administrative Agent an Administrative Questionnaire. The Administrative Agent shall deliver a copy of such Assignment and Assumption to the Borrower, in accordance with Section 10.02.

(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.

(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, the 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 in accordance with its Applicable Percentage. Notwithstanding the foregoing to the contrary, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the

provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent pursuant to subsection (c) of this Section 10.06, 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 10.04 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, 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 subsection 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 subsection (d) of this Section 10.06.

(c) Register. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of 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 (hereinafter referred to as the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrower, 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 Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (hereinafter 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(s) and/or its Loans (including such Lender's participations in L/C Obligations) 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 Issuer 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 10.04(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 10.01 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(e) (it being understood that the documentation required under Section 3.01(e) 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 subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under subsection (b) of this Section 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 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.12 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 (hereinafter referred to as 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(s), 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. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitments and Loans pursuant to subsection (b) above, Bank of America may, upon thirty (30) days' notice to Borrower and the Lenders, resign as L/C Issuer, in the event of any such resignation as L/C Issuer, Borrower shall be entitled to appoint from among Lenders a successor L/C Issuer hereunder; provided, however, that no failure by Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Upon the appointment of a successor L/C Issuer, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, as the case may be, and (ii) 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.

## **10.07 Treatment of Certain Information; Confidentiality.**

(a) Treatment of Certain Information. Each of Administrative Agent, Lenders and the L/C Issuer agrees to maintain the confidentiality of the “Information” (as such term is 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 and that the party disclosing Information to such Person shall remain liable for any direct damages arising out of any such unauthorized disclosure by any such Person), (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 (after prior notice to Borrower to the extent reasonably practicable and not prohibited by applicable 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 10.07, 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 (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 or (B) the provider of any Platform or other electronic delivery service used by Administrative Agent and/or the L/C Issuer to deliver Borrower Materials or notices to the Lenders or (C) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (viii) with the consent of the Borrower or (ix) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section 10.07, “Information” means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by Borrower or any Subsidiary; provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential or such information is confidential by the apparent nature of the submitted information. Any Person required to maintain the confidentiality of Information as provided in this Section 10.07 shall be considered to have complied with its obligation to do so if such Person has exercised reasonable care consistent with industry standards to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, 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 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 Administrative Agent, the Lenders and the L/C Issuer acknowledges that (i) the Information may include material non-public information concerning Borrower 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 Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan Documents without the prior express written consent of 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. Notwithstanding the foregoing to the contrary, Administrative Agent and Lenders hereby acknowledge and agree that any filing made by a Loan Party with the SEC or any other Governmental Authority, including, without limitation, the filing of the annual, quarterly, and/or other financial statements of Borrower and its Subsidiaries with the SEC, shall not constitute a press release or other public disclosure for purposes of this Section 10.07(c).

(d) **Customary Advertising Material.** The Loan Parties consent to the publication by Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the 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, the L/C Issuer or any such Affiliate to or for the credit or the account of Borrower or any other Loan Party against any and all of the obligations of Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of 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 the L/C Issuer different from the branch or office 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 Issuer and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify Borrower and 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.

**10.09 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 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 Borrower. In determining whether the interest contracted for, charged, or received by 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.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or the 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 expressly provided in Section 4.01, this Agreement shall become effective when it shall have been executed by Borrower and Administrative Agent and when 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.

**10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lender, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that 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 shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, 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 or the L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 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 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 10.06), 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 10.06(b); provided, however, that no such assignment fee shall be due and owing by the Borrower in connection with the replacement of a Defaulting Lender;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, 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.

#### **10.14 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, THE 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 THE 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. 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 SUBSECTION (b) OF THIS SECTION 10.13. EACH OF THE PARTIES HERETO HEREBY 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. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW. SERVICE OF PROCESS HEREUNDER SHALL BE MADE UPON EACH PARTY'S REGISTERED AGENT IN ITS STATE OF INCORPORATION AND EACH PARTY HEREBY AUTHORIZES ITS AGENT TO RECEIVE OF SUCH PROCESS.

**10.15 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, ADMINISTRATIVE AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.14.

**10.16 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 Administrative Agent and any Affiliate thereof, the Arranger and the Lenders are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and Administrative Agent and, as applicable, its Affiliates (including the Arranger) and the Lenders and their Affiliates (collectively, solely for this Section, the "Lenders"), 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 and its Affiliates (including the Arranger) and each Lender each 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 the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (ii) neither the Administrative Agent, any of its Affiliates (including the Arranger) nor any Lender 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 and its Affiliates (including the Arranger) and the Lenders 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 neither the Administrative Agent, any of its Affiliates (including the Arranger) nor any Lender 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 of its Affiliates (including the Arranger) or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

**10.17 Electronic Execution.** The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; ***provided that notwithstanding anything contained herein to the contrary Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by Administrative Agent pursuant to procedures approved by it; provided further without limiting the foregoing, upon the request of Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.***

**10.18 USA PATRIOT Act Notice.** Each Lender that is subject to the “PATRIOT Act” (as such term is hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies 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)) (as amended or modified, the “PATRIOT Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify each Loan Party in accordance with the PATRIOT Act. The Borrower and the other Loan Parties agree to, promptly following a request by Administrative Agent or any Lender, provide all such other documentation and information that Administrative Agent 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.

**10.19 Time of the Essence.** Time is of the essence of the Loan Documents.

**10.20 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate

of exchange used shall be that at which in accordance with normal and customary banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (hereinafter referred to as the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (hereinafter referred to as the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower hereby covenants and agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

**10.21 Keepwell.** Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty 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 its Guaranty 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 Section 10.21 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 10.21 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section 10.21 to constitute, and this Section 10.21 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.

**10.22 Subordination.** Each Loan Party (hereinafter referred to as 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 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 Indebtedness; provided that, in the event that any Loan Party receives any payment of any intercompany Indebtedness at a time when such payment is prohibited by this Section, such payment shall be held by such Loan Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to Administrative Agent.

**10.23 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Solely to the extent any Lender or L/C Issuer that is an EEA Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

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

**1.01 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

**MISTRAS GROUP, INC.,** as Borrower

By: \_\_\_\_\_  
Edward J. Prajzner  
Senior Vice President, Chief Financial Officer  
and Treasurer

**BANK OF AMERICA, N.A.,** as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

**BANK OF AMERICA, N.A.,** as a Lender and as the L/C Issuer

By: \_\_\_\_\_  
William P. Warren  
Senior Vice President

**JPMORGAN CHASE BANK, N.A.,** as a Lender

By: \_\_\_\_\_  
Name:  
Title:

**KEYBANK NATIONAL ASSOCIATION,** as a Lender

By: \_\_\_\_\_  
Name:  
Title:

**WELLS FARGO BANK, NATIONAL ASSOCIATION,** as a Lender

By: \_\_\_\_\_  
Name:  
Title:

**TD BANK, NATIONAL ASSOCIATION**, as a Lender

By: \_\_\_\_\_

Name:

Title:

Signature Page to Fifth Amended and Restated Credit Agreement



ATTACHED TO AND MADE A PART OF THAT CERTAIN FIFTH AMENDED AND RESTATED CREDIT AGREEMENT BY AND AMONG, AMONGST OTHERS, MISTRAS GROUP, INC., AS BORROWER, AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT, DATED DECEMBER \_\_\_\_, 2018

**COMMITMENTS  
AND APPLICABLE PERCENTAGES**

<b>Lender</b>	<b>Revolving Commitment</b>	<b>L/C Sublimit</b>	<b>Term Commitment</b>	<b>Applicable Percentage</b>
Bank of America, N.A.	US\$105,000,000.00	US\$7,000,000.00	US\$35,000,000.00	35.000000000%
Wells Fargo Bank, National Association	US\$60,000,000.00	US\$4,000,000.00	US\$20,000,000.00	20.000000000%
JPMorgan Chase Bank, N.A.	US\$52,500,000.00	US\$3,500,000.00	US\$17,500,000.00	17.500000000%
KeyBank, National Association	US\$45,000,000.00	US\$3,000,000.00	US\$15,000,000.00	15.000000000%
<u>TD Bank, National Association</u>	<u>US\$37,500,000.00</u>	<u>US\$2,500,000.00</u>	<u>US\$12,500,000.00</u>	<u>12.500000000%</u>
Total	US\$300,000,000.00	US\$20,000,000.00	US\$100,000,000.00	100.000000000%

ATTACHED TO AND MADE A PART OF THAT CERTAIN FIFTH AMENDED AND RESTATED CREDIT AGREEMENT BY AND AMONG, AMONGST OTHERS, MISTRAS GROUP, INC., AS BORROWER, AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT, DATED DECEMBER \_\_\_\_, 2018

FORM OF COMMITTED LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Fifth Amended and Restated Credit Agreement, dated December \_\_\_\_, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among Mistras Group, Inc., a Delaware corporation (the "Borrower"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

The undersigned hereby requests (select one):

- \_\_\_ Borrowing of Revolving Loans
\_\_\_ Borrowing of Term Loans
\_\_\_ Conversion or continuation of Revolving Loans
\_\_\_ Conversion or continuation of Term Loans

- 1. On \_\_\_\_\_ (a Business Day).
2. In the amount of (i) \$\_\_\_\_\_ for Revolving Loans and (ii) \$\_\_\_\_\_ for Term Loans
3. Comprised of \_\_\_\_\_ (for Revolving Loans)
[Type of Loan requested]
4. Comprised of \_\_\_\_\_ (for Term Loans)
[Type of Loan requested]
5. For Eurocurrency Rate Loans: with an Interest Period of \_\_\_\_\_ months (for Revolving Loans).
6. For Eurocurrency Rate Loans: with an Interest Period of \_\_\_\_\_ months (for Term Loans).
7. Currency: \_\_\_\_\_ (for Revolving Loans)
8. Currency: US\$ \_\_\_\_\_ (for Term Loans)

The Committed Borrowing requested herein complies with the provisions of Section 2.02 of the Agreement.

**MISTRAS GROUP, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHED TO AND MADE A PART OF THAT CERTAIN FIFTH AMENDED AND RESTATED CREDIT AGREEMENT BY AND AMONG, AMONGST OTHERS, MISTRAS GROUP, INC., AS BORROWER, AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT, DATED DECEMBER \_\_\_\_, 2018**

**FORM OF REVOLVING CREDIT LOAN NOTE**

US\$ \_\_\_\_\_ DECEMBER \_\_\_\_, 2018

**FOR VALUE RECEIVED**, the undersigned ("**Borrower**"), hereby promises to pay to \_\_\_\_\_ or registered assigns ("**Lender**"), in accordance with the provisions of the "Agreement" (as such term is hereinafter defined), the principal amount of each Revolving Loan from time to time made by the Lender to Borrower under that certain Fifth Amended and Restated Credit Agreement, dated December \_\_\_\_, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Agreement**"; the terms defined therein being used herein as therein defined), among Borrower, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

Borrower promises to pay interest on the unpaid principal amount of each Revolving Loan from the date of such Revolving Loans until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in the currency in which such Revolving Loan was denominated and in Same Day Funds at the Administrative Agent's Office for such currency. 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 Agreement.

This Revolving Credit Loan Note (as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, this "**Note**") is one of the Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranty and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the 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 Agreement. Revolving Loans 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, currency and maturity of its Revolving Loans and payments with respect thereto.

This Note is given in full substitution for and in full replacement of that certain [ \_\_\_\_\_ ] Revolving Credit Loan Note #\_\_ dated \_\_\_\_\_, 20\_\_, executed by Borrower, as maker, and delivered to Lender, as payee, in the maximum principal amount of up to \$\_\_\_\_\_ (hereinafter referred to as the "**Original Note**"). The execution and delivery of this Note does not evidence a refinancing, repayment, accord and satisfaction or novation of the indebtedness evidenced by the Original Note.

Borrower, 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.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES OF NEW YORK STATE LAW OTHER THAN §5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.**

**ATTEST:** **MISTRAS GROUP, INC.,** a Delaware corporation

By: \_\_\_\_\_ By: \_\_\_\_\_

Name:      Name:  
Title:     Title:




**ATTACHED TO AND MADE A PART OF THAT CERTAIN FIFTH AMENDED AND RESTATED CREDIT AGREEMENT BY AND AMONG, AMONGST OTHERS, MISTRAS GROUP, INC., AS BORROWER, AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT, DATED DECEMBER \_\_\_\_, 2018**

**FORM OF TERM LOAN NOTE**

US\$ \_\_\_\_\_ DECEMBER \_\_\_\_, 2018

**FOR VALUE RECEIVED**, the undersigned ("**Borrower**"), hereby promises to pay to \_\_\_\_\_ or registered assigns ("**Lender**"), in accordance with the provisions of the "Agreement" (as such term is hereinafter defined), the principal amount of each Term Loan from time to time made by the Lender to Borrower under that certain Fifth Amended and Restated Credit Agreement, dated December \_\_\_\_, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among Borrower, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

Borrower promises to pay interest on the unpaid principal amount of each Term Loan from the date of such Term Loans until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in the currency in which such Term Loan was denominated and in Same Day Funds at the Administrative Agent's Office for such currency. 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 Agreement.

This Term Loan Note (as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, this "Note") is one of the Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranty and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the 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 Agreement. Term Loans 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, currency and maturity of its Term Loans and payments with respect thereto.

Borrower, 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.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



**THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES OF NEW YORK STATE LAW OTHER THAN §5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.**

**ATTEST:** **MISTRAS GROUP, INC.,** a Delaware corporation

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Name:  
Title: Title:

## **MISTRAS Group Announces Acquisition of Onstream Pipeline Inspection For \$143 Million And Increases Fiscal 2018 Revenue Guidance to \$740 Million**

- **Acquires a leading, proprietary, technology-enabled pipeline inspection and data analytics platform**
- **Adds a complementary, fast-growing, highly-profitable leader in the North American small to mid-bore pipeline inspection market**
- **Accelerates growth by leveraging MISTRAS' broad North American footprint and customer relationships**
- **Expands existing credit facility to \$400 million total committed capacity**
- **Revises revenue guidance up by \$10 million for full year 2018, exclusive of the impact of the Onstream acquisition**

PRINCETON JUNCTION, NJ, December 13, 2018 (GLOBE NEWSWIRE) - MISTRAS Group, Inc. ([MG: NYSE](#)), ("MISTRAS"), a leading "one source" global provider of technology-enabled asset protection solutions used to maximize the uptime and safety of critical energy, industrial, and public infrastructure, announced today that it had acquired 100% of the stock of Onstream Pipeline Inspection Services, Inc. ("Onstream"), a leading North American provider of proprietary technology enabling pipeline inspection and data analytics services primarily to the gathering and mid-stream market. The preliminary purchase price for Onstream, acquired from Novacap and affiliates, a Canadian private equity firm, and other shareholders, was approximately \$143 million. In connection with the acquisition of Onstream, the Company upsized its existing credit facility to \$400 million for a new 5-year period. The Company also updated its full year 2018 guidance of estimated consolidated revenues to \$740 million, an increase of \$10 million over the high end of the Company's most recent outlook and exclusive of the impact from Onstream.

Dennis Bertolotti, Chief Executive Officer stated, "The acquisition of Onstream is an ideal opportunity to diversify our business. It will enable us to leverage our strength in the midstream market and accelerate our growth by accomplishing our strategic initiative to add a pipeline integrity pillar to our service portfolio. Onstream is recognized as a leading company in the small- to mid-bore pipeline inspection market in North America and it has been growing at better than 20% annually over the past five years,

while maintaining an extremely attractive margin profile. Onstream is also a technological innovator, with a growing proportion of its revenues derived from new markets and services.”

### **About Onstream Pipeline Inspection**

Onstream is a leading provider of proprietary, technology-enabled inline inspection and data analytics services, and is a leading provider of inline inspection services in the “unpiggable” segment of the small to mid-bore North American gathering and midstream pipeline market. The recently commercialized 16 inch combination tool fleet marks the next stage in Onstream’s expansion into the large diameter midstream market of pipelines up to 20 inches. Onstream is able to produce actionable reports in approximately 20 days, compared to the 60 to 90 day industry norm. Onstream is also very proud of its culture of customer centricity and record for being able to responsively service customers whenever a pipeline inspection is necessary.

Onstream offers combination inspection tools with high-resolution sensors in both free swimming and tethered configurations to identify and record all pertinent pipeline data including hardware, girth welds, bends, metal loss defects and pipeline specific geometry features. Its bi-directional combination tether tool provides an inline inspection option for pipelines previously deemed to be “un-piggable” by traditional free swimming methods. Most importantly, Onstream consolidates all of the data it collects in its proprietary “Streamview” software, where a dedicated team of expert data analysts utilize proprietary algorithms to analyze data and quickly provide highly insightful reports to customers.

Onstream will continue to be managed by its key executives, (Chad Niehaus, President and Chief Executive Officer, and Gerry Wilkinson, co-founder and Chief Technology Officer). On behalf of Onstream, Chad Niehaus said, “The entire Onstream team is very excited to become part of MISTRAS Group, which has earned a reputation for its superior customer service, something for which we share a deep passion. As part of MISTRAS, we will have significant opportunities to utilize our extensive mutual customer relationships to accelerate our rate of growth, especially in the United States. While Onstream is not new to the pipeline inspection industry, it is fairly new to the US market. In addition, by incorporating MISTRAS’ world-class NDT (Nondestructive Testing) services and Advanced NDT technologies, we believe we will now be able to more quickly expand our existing service offering as well as develop and introduce new technologies that enhance our overall capabilities.”

Onstream was founded in 2005 and is based in Alberta, Canada with an additional location in Houston, TX. Onstream generated revenues of approximately \$26.7 million (representing a 4-year compound

annual growth rate of over 25%) for the year ended December 31, 2017 [1]. The preliminary purchase price of approximately \$143 million was paid for with borrowings from the Company's credit facility as well as cash on hand. Based on the Company's projections for 2019, the purchase price for Onstream was approximately 9 times its expected 2019 EBITDA (earnings before interest, taxes, depreciation and amortization).

[1] Per Canadian GAAP results, presented in US Dollars.

### **Increasing Fiscal 2018 Revenue Guidance**

The Company also today announced that based on results to date in the fourth quarter, it is revising its full year revenue guidance higher for fiscal 2018 as shown below:

	<b><u>Previous</u></b>	<b><u>Current</u></b>
Total revenues	\$725 to \$730 million	\$740 million

This revenue guidance is exclusive of the impact of Onstream on 2018's results.

All other guidance is reaffirmed, including the Company's original target of at least \$78 million of adjusted EBITDA for full year 2018. This guidance is based upon management's initial review of its operating results for the fourth quarter of 2018 and is subject to change based on the completion of the Company's year-end financial reporting process. Updated guidance does not include the impact of the Onstream acquisition.

### **Expanded Credit Facility**

In connection with the acquisition of Onstream, the Company amended and restated its existing credit facility ("credit facility") for a new 5-year period. Specifically, the Company increased its committed credit capacity from \$250 million to \$400 million. The credit facility consists of a funded \$100 million term loan and a \$300 million revolving facility, of which approximately \$185 million was outstanding immediately after deal closing. The Company additionally has an uncommitted \$150 million available to it, under an accordion feature of the credit facility. On a pro forma basis, the Company's leverage ratio, defined as Total Funded Indebtedness divided by adjusted EBITDA, which are terms defined under the credit facility, was approximately 3.75X at closing, whereas the permitted maximum leverage ratio is initially 4.25X, stepping down to 3.5X over the next five quarters. Under certain conditions, the Company would be permitted to temporarily step back up to a 4.0X level, for up to four consecutive rolling quarters, on two separate occasions, over the life of the credit facility.

### **Conference Call**

In connection with this release, MISTRAS will hold a conference call on December 14, 2018 at 9:00 a.m. (Eastern). The call will be broadcast over the Web and can be accessed on MISTRAS' Website, [www.mistrasgroup.com](http://www.mistrasgroup.com). Individuals in the U.S. wishing to participate in the conference call by phone may call 1-844-832-7227 and use confirmation code 4087347 when prompted. The International dial-in number is 1-224-633-1529.

### **About MISTRAS Group, Inc.**

MISTRAS is a leading “one source” global provider of technology-enabled asset protection solutions used to maximize the uptime and safety of critical energy, industrial, and public infrastructure. MISTRAS combines our industry-leading services, systems, and technologies to provide a unique, custom-tailored solution for each customer’s individual asset protection need.

Our asset protection portfolio includes field and laboratory inspections & testing; engineering services for asset integrity management; maintenance and light mechanical services; online asset-condition monitoring services; and manufacturing of inspection and monitoring equipment. Data from these solutions is centralized in MISTRAS’ world-class inspection data management software - PCMS™ - to provide our clients with integrated, comprehensive asset protection from a single provider.

For more information, please visit the company's website at [www.mistrasgroup.com](http://www.mistrasgroup.com) or contact Nestor S. Makarigakis, Group Director, Marketing Communications, by email at [marcom@mistrasgroup.com](mailto:marcom@mistrasgroup.com) or by telephone at +1 (609) 716-4000.

### **Forward-Looking and Cautionary Statements**

Certain statements made in this press release are "forward-looking statements" about MISTRAS' financial results and estimates, products and services, business model, strategy, growth opportunities, profitability and competitive position, and other matters. These forward-looking statements generally use words such as "future," "possible," "potential," "targeted," "anticipate," "believe," "estimate," "expect," "intend," "plan," "predict," "project," "will," "may," "should," "could," "would" and other similar words and phrases. Such statements are not guarantees of future performance or results, and will not necessarily be accurate indications of the times at, or by which, such performance or results will be achieved, if at all. These statements are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in these statements. A list, description and discussion of these and other risks and uncertainties can be found in the "Risk Factors" section of the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 14, 2018, as updated by our

reports on Form 10-Q and Form 8-K. The forward-looking statements are made as of the date hereof, and MISTRAS undertakes no obligation to update such statements as a result of new information, future events or otherwise.

### **Use of Non-GAAP Measures**

In addition to financial information prepared in accordance with generally accepted accounting principles in the U.S. (GAAP), this press release also contains adjusted financial measures that we believe provide investors and management with supplemental information relating to operating performance and trends that facilitate comparisons between periods and with respect to projected information. The term "Adjusted EBITDA" used in this release is a financial measurement not calculated in accordance with GAAP and is defined as net income plus: interest expense, provision for income taxes, depreciation and amortization, share-based compensation expense and certain acquisition related costs (including transaction due diligence costs and adjustments to the fair value of contingent consideration), foreign exchange (gain) loss and, if applicable, certain special items as noted.