
**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): **September 8, 2021**

TACTILE SYSTEMS TECHNOLOGY, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-37799
(Commission
File Number)

41-1801204
(I.R.S. Employer
Identification No.)

3701 Wayzata Blvd, Suite 300, Minneapolis, MN 55416
(Address of principal executive offices) (Zip Code)

(612) 355-5100
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, Par Value \$0.001 Per Share	TCMD	The Nasdaq Stock Market

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.

On September 8, 2021, Tactile Systems Technology, Inc. (the “Company”) entered into an Asset Purchase Agreement (the “Purchase Agreement”) with International Biophysics Corporation (“Seller”) and H. David Shockley, Jr. (the “Stockholder”), for the purchase by the Company of substantially all of the assets of Seller’s AffloVest branded high frequency chest wall oscillation vest therapy business (the “Acquired Business”). The closing of the transaction contemplated by the Purchase Agreement occurred simultaneously with the execution of the Purchase Agreement on September 8, 2021.

The consideration for the Acquired Business consisted of an all-cash purchase price of \$80,000,000, subject to certain inventory-related adjustments, of which a total of \$500,000 was deposited into escrow accounts at closing for purposes of satisfying certain post-closing purchase price adjustments and indemnification claims, if needed. The Purchase Agreement provides that the Seller may receive additional consideration from the Company, if earned, in the form of earn-out payments in the amount of up to \$10.0 million based on revenues of the Acquired Business during the 12-month period beginning on the first day of the calendar month following the closing, and up to \$10.0 million based on revenues of the Acquired Business during the 12-month period thereafter.

The Purchase Agreement contains customary representations, warranties and covenants by each of the parties. The Purchase Agreement also provides that the parties will indemnify each other for certain liabilities arising under the Purchase Agreement, subject to various limitations, including, among other things, deductibles, caps and time limitations. The Company has obtained representation and warranty insurance that provides coverage for certain breaches of, and inaccuracies in, representations and warranties made by Seller in the Purchase Agreement, subject to exclusions, deductibles and other terms and conditions.

The cash consideration to be paid by the Company at closing was financed with a combination of cash on hand and borrowings under the Company’s amended credit agreement.

The foregoing description of the Purchase Agreement is a summary, does not purport to be complete, and is qualified in its entirety by reference to the full text of the Purchase Agreement, which is attached to this Current Report on Form 8-K as Exhibit 2.1 and is incorporated herein by reference.

The Purchase Agreement is described herein to provide investors with information regarding the terms of the transaction. The representations, warranties and covenants contained in the Purchase Agreement were made solely for the purposes of the Purchase Agreement; were made only as of specified dates and do not reflect subsequent information; were made solely for the benefit of the parties thereto; may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures that modify, qualify and create exceptions to such representations, warranties and covenants; were made for the purposes of allocating risk between the parties thereto instead of establishing matters of fact; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Purchase Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties, their affiliates or their respective businesses. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Purchase Agreement, which subsequent information may or may not be reflected in the Company’s public disclosures.

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

On September 8, 2021, the Company entered into a First Amendment Agreement (the “Amendment”), which amends the Amended and Restated Credit Agreement, dated as of April 30, 2021 (as amended by the Amendment, the “Credit Agreement”), by and among the Company, the lenders from time to time party thereto, and Wells Fargo Bank, National Association, as administrative agent. The Amendment, among other things, adds a \$30.0 million incremental term loan to the \$25.0 million revolving credit facility provided by the original Credit Agreement. The term loan and the revolving credit facility mature on September 8, 2024. The Credit Agreement provides that, subject to satisfaction of certain conditions, the Company may increase the amount of the revolving loans available under the Credit Agreement and/or add one or more term loan facilities in an amount not to exceed \$25.0 million in the aggregate, such that the total aggregate principal amount of loans available under the Credit Agreement (including under the revolving credit facility) does not exceed \$80.0 million.

On September 8, 2021, in connection with the closing of the acquisition of the Acquired Business, the Company borrowed the \$30.0 million term loan and utilized that borrowing, together with a draw of \$25.0 million under the revolving credit facility and cash on hand, to fund the purchase, as described in Item 1.01 above. The principal of the term loan is required to be repaid in quarterly installments of \$750,000.

The term loan and amounts drawn under the revolving credit facility under the Credit Agreement bear interest, at the Company's option, at a rate equal to (a) the highest of (i) the prime rate, (ii) the federal funds rate plus 0.50% and (iii) LIBOR for an interest period of one month plus 1% (the "Base Rate") plus an applicable margin or (b) LIBOR for an interest period of one, three or six months, at the Company's option, plus the applicable margin. The applicable margin is 0.75% to 2.25% on loans bearing interest at the Base Rate and 1.75% to 3.25% on loans bearing interest at LIBOR, in each case depending on the Company's consolidated total leverage ratio. Undrawn portions of the revolving credit facility are subject to an unused line fee at a rate per annum from 0.300% to 0.375%, depending on the Company's consolidated total leverage ratio.

The Company's obligations under the Credit Agreement are secured by a security interest in substantially all of its assets and those of its subsidiaries and are also guaranteed by its subsidiaries.

The Credit Agreement requires that the Company not permit, as of the last day of each fiscal quarter, (i) its consolidated total leverage ratio to exceed 3.00 to 1.00, (ii) its Consolidated EBITDA (as defined in the Credit Agreement) to be less than \$20.0 million, and (iii) its Consolidated Fixed Charge Coverage Ratio (as defined in the Credit Agreement) to be less than 1.50 to 1.00, in each case for the period of four consecutive fiscal quarters ending on or immediately prior to such date.

The Credit Agreement also contains certain other restrictions and covenants, which, among other things, restrict the Company's ability to acquire or merge with another entity, dispose of its assets, make investments, loans or guarantees, incur additional indebtedness, create liens or other encumbrances, or pay dividends or make other distributions.

Amounts due under the Credit Agreement may be accelerated upon an Event of Default (as defined in the Credit Agreement), such as breach of a representation, covenant or agreement, defaults with respect to certain of the Company's other material indebtedness or the occurrence of bankruptcy if not otherwise waived or cured.

The foregoing description of the Amendment, including the Credit Agreement, is a summary of the material terms, does not purport to be complete, and is qualified in its entirety by reference to the Amendment, which includes the Credit Agreement as Exhibit A to the Amendment, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On September 8, 2021, the Company issued a press release in connection with the matters discussed in this Current Report on Form 8-K. Attached hereto as Exhibit 99.1 is a copy of the press release. In accordance with General Instruction B.2 of Form 8-K, the information in this report under this heading, including Exhibit 99.1, shall not be deemed to be "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

EXHIBIT INDEX

Exhibit No.	Description
2.1	Asset Purchase Agreement, dated as of September 8, 2021 among Tactile Systems Technology, Inc., International Biophysics Corporation and H. David Shockley, Jr.
10.1	First Amendment Agreement, dated as of September 8, 2021, among Tactile Systems Technology, Inc., the Lenders signatory thereto and Wells Fargo Bank, National Association, as administrative agent
99.1	Press Release dated September 8, 2021
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

Date: September 8, 2021

TACTILE SYSTEMS TECHNOLOGY, INC.

By: /s/ Brent A. Moen

Brent A. Moen

Chief Financial Officer

ASSET PURCHASE AGREEMENT

among

TACTILE SYSTEMS TECHNOLOGY, INC.,

INTERNATIONAL BIOPHYSICS CORPORATION

and

H. DAVID SHOCKLEY, JR.

Dated September 8, 2021

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”) is dated as of September 8, 2021 among Tactile Systems Technology, Inc., a Delaware corporation (“**Buyer**”), International Biophysics Corporation, a Texas corporation (“**Seller**”), and, solely with respect to Sections 5.5 and 5.7 hereof, H. David Shockley, Jr. (the “**Shareholder**”), for the purchase and sale of substantially all of the assets of the Business (as defined below). Buyer and Seller are each sometimes also referred to herein as a “**Party**” and together as the “**Parties**.”

Recitals

- A. Seller operates an AffloVest branded high frequency chest wall oscillation vest therapy business (the “**Business**”).
- B. The Shareholder is the only holder of equity interests of Seller and stands to derive substantial benefits from the consummation of the Transactions.
- C. Buyer wishes to purchase and acquire from Seller, and Seller wishes to sell, transfer, convey, assign and deliver to Buyer, substantially all of the assets held in connection with, necessary for, or material to the business and operations of the Business, and Buyer has agreed to assume certain specified Liabilities of Seller, upon the terms and subject to the conditions set forth herein.

Agreement

In consideration of the foregoing and the representations, warranties, covenants and agreements in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Party hereby agrees as follows:

Article 1

Terms of the Transactions

1.1 Sale and Purchase of Assets. Subject to and upon the terms and conditions set forth in this Agreement, at the Closing, Seller will sell, transfer, convey, assign and deliver to Buyer, and Buyer will purchase and acquire from Seller, all right, title and interest of Seller in and to the assets, rights and properties of every nature, kind and description, both tangible and intangible (including goodwill), whether personal or mixed, whether accrued, contingent or otherwise and whether now existing or hereinafter acquired (other than the Excluded Assets) primarily or exclusively relating to, or primarily or exclusively used or held for use in connection with, the Business (collectively, the “**Assets**”), free and clear of all Liens (other than Permitted Liens), including the following:

- (a) all injection molds, machinery, tools, equipment, manufacturing fixtures, and other similar items of equipment owned or leased by Seller and used in the Business, including those items more particularly described on Schedule 1.1(a);

(b) all raw materials, work-in-progress, finished products and goods, including any software imbedded in such work-in-progress and finished products and goods, which are or might be used or consumed in connection with the Business, including any of the foregoing in transit or held at any location controlled by Seller (collectively, the “**Inventory**”);

(c) all of the rights of Seller in, to and under all contracts and purchase orders relating to the Business for the period after the Closing, including any right to receive payment for products sold or services rendered after the Closing, and to receive goods and services, pursuant to such agreements, including those contracts set forth on Schedule 1.1(c), but excluding the Excluded Contracts (collectively, the “**Assumed Contracts**”);

(d) all credits, prepaid expenses, deferred charges, advance payments, deposits and prepaid items related to the Business, but excluding any prepaid insurance;

(e) all Intellectual Property and all rights thereunder or in respect thereof primarily or exclusively relating to or used or held for use in connection with the Business, including (i) all patents and inventions used in connection with the Business; (ii) all copyrights and trade secrets used in connection with the Business; (iii) all trade names, trademarks, domain names, and email addresses (if any) which use the Business name; (iv) other Intellectual Property, in each case as set forth on Schedule 1.1(e); (v) all software used in the AffloVest products, including the firmware used in the AffloVest controller (collectively, clauses (i), (ii), (iii), (iv) and (v), the “**Intellectual Property Assets**”); and (v) all drawings and other material embodying or incorporating or constituting any of the Intellectual Property Assets;

(f) except for the Retained Records, all books, records, manuals and other materials (in any form or medium, including, subject to the Transition Services Agreement, any information included on Zendesk), in any way relating to the Business and wherever located, including customer, vendor and distribution lists, sales, marketing and advertising materials, purchasing records, personnel records, manufacturing and quality control records, research and development files, Intellectual Property disclosures, accounting records, litigation files, blueprints, plans, or plats, and all other accounting, financial, marketing, sales, supply, management and technical information, correspondence and literature relating to the Business;

(g) to the extent assignable pursuant to Applicable Law, all licenses, permits, waivers, authorizations, accreditations or approvals of any kind and any exemptions therefrom and filings or registrations relating thereto relating to the Business, including those set forth on Schedule 1.1(g) (“**Permits**”); provided that the Permits will not include any licenses, permits, waivers, authorizations, accreditations or approvals for any jurisdiction outside the United States to the extent the transfer thereof would require the consent of any Governmental Entity; provided further that, except as otherwise agreed in writing (including the Transition Services Agreement) by Buyer, the retention of any such licenses, permits, waivers, authorizations, accreditations or approvals shall not permit Seller to conduct the Business in any jurisdiction outside the United States;

(h) all causes of action, causes in action, claims, rights of recovery or rights of set-off of every kind and character and rights of recoupment relating to the Assets, including those arising under or pursuant to any warranties, guarantees or indemnities and all claims of Seller against third parties relating to the Assets, in each case whether or not asserted before the Closing Date; and

(i) all other tangible and intangible assets used by Seller in the operation of the Business, including the goodwill, franchises and privileges associated with the Business, unless excluded under Section 1.2.

Subject to the terms and conditions hereof, at the Closing, the Assets will be transferred or otherwise conveyed to Buyer free and clear of all (x) liabilities or obligations of any kind or nature, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due (collectively, "**Liabilities**"), other than the Assumed Liabilities, and (y) Liens other than Permitted Liens.

1.2 Excluded Assets. Seller will retain and not transfer, and Buyer will not purchase or acquire, the following assets or any of Seller's interest therein (collectively, the "**Excluded Assets**"):

(a) any assets and properties not used exclusively or primarily by the Business;

(b) all cash and cash equivalents of Seller;

(c) all rights to federal and state Tax refunds, income Tax deposits and other corporate Tax attributes of Seller;

(d) all corporate minute and membership interest books and records of Seller;

(e) all records (in any form or medium) solely related to any Tax refund, federal and state income Tax deposits and other Tax attributes, or refunds due thereunder or any Liabilities other than the Assumed Liabilities, or to the extent containing any Privileged Communications (collectively, the "**Retained Records**") (excluding, however, any certificates or similar documents regarding an exemption from the collection of any sales Taxes which certificates or similar documents shall be Assets);

(f) all insurance policies maintained by or on behalf of Seller for the benefit of or in connection with the Assets or the Business prior to the date hereof or any refunds due thereunder;

(g) the contracts identified on Schedule 1.2(g) (the "**Excluded Contracts**");

(h) all employment agreements, including any employment agreements with severance or change-of-control payments, all Benefit Plans, Seller Plans, and all advances to employees;

(i) all rights of Seller under this Agreement and the agreements, documents and certificates contemplated hereby, including the Bill of Sale, the Assignment and Assumption Agreement, the IP Assignment Agreement(s), the Escrow Agreement and the Transition Services Agreement (the “**Transaction Documents**”) to which Seller is a party that will survive the Closing, including Seller’s right to receive the Purchase Price;

(j) all accounts or trade receivables, notes and other receivables of the Business (collectively, the “**Receivables**”);

(k) all rights and interests of Seller in any leases or other agreements to which Seller is a party relating to real property (the “**Real Property Leases**”) or in the real property leased to the Seller pursuant to the Real Property Leases (the “**Leased Real Property**”);

(l) injection mold presses of Seller;

(m) the assets and properties identified on Schedule 1.2(m); and

(n) all assets, rights and properties of Seller primarily or exclusively relating to, or used or held for use in connection with, Seller’s business units which are unrelated to the Business (“**Retained Businesses**”).

1.3 Assumed Liabilities. Buyer will not assume or be responsible for, and will in no event be liable for, any Liabilities of or relating to the Business, except that effective as of the Effective Time on the Closing Date, Buyer hereby assumes and agrees to pay, honor, discharge or perform, as appropriate, only the following Liabilities relating to the Assets (the “**Assumed Liabilities**”):

(a) any Liabilities arising from the use of the Assets or the operation of the Business by Buyer in the Ordinary Course of Business after the Closing Date, but only to the extent that such Liabilities do not arise from or relate to any breach by Seller of any obligations, including under any provision of any of the Assumed Contracts, that occurred on or before the Closing Date;

(b) any Liabilities arising under the Assumed Contracts but only to the extent that such Liabilities (i) arise on or after the Closing Date and (ii) do not arise from or relate to any breach by Seller of any obligations under any provision of any of the Assumed Contracts that occurred on or before the Closing Date;

(c) all warranty obligations arising in the Ordinary Course of Business relating to products of the Business which are either (i) sold prior to the Closing Date and for which warranty claims are tendered on or following the second anniversary of the Closing Date or (ii) sold after the Closing Date (collectively, the “**Assumed Warranty Obligations**”); and

(d) those Liabilities of the Business that represent a prepayment by the customers of the Business for goods or services that have not been delivered by the Business as of the Closing Date and are set forth on Schedule 1.3(d) (the “**Assumed Deferred Revenue**”).

1.4 Excluded Liabilities. Without limiting the generality of the first sentence of Section 1.3 and regardless of any disclosure by Seller to Buyer, Seller will be solely responsible and liable for any and all Liabilities of Seller relating to or arising out of the operation of the Business or the ownership of the Assets prior to the Closing other than the Assumed Liabilities (the “**Excluded Liabilities**”), including the following Liabilities:

- (a) Liabilities with respect to current, former or retired employees of Seller or consultants of Seller arising out of or relating to the employment of such employees or consultants by Seller prior to the Closing Date, including any liabilities relating to vacation or paid time off for any such employees;
- (b) Liabilities for Taxes, fees and other similar items however designated, and all interest, penalties and additions to Tax, including franchise and income Taxes and all accrued property, sales, use and payroll Taxes incurred or arising on or prior to the Closing Date, or incurred or accrued after the Closing Date in connection with or relating to activities of the Business prior to the Closing Date;
- (c) Liabilities of Seller relating to the operation of the Business, including the use of the Assets, on or prior to the Closing Date, including accounts payable, trade payables and accrued operating expenses but excluding the Assumed Liabilities;
- (d) Liabilities arising out of or relating to the sale of any products or services by Seller on or prior to the Closing Date, other than the Assumed Liabilities;
- (e) litigation, whether currently pending or not, relating to the operation of the Business or use of the Assets prior to the Closing Date, or arising on or after the Closing Date to the extent that such litigation relates to activities of the Business on or prior to the Closing Date;
- (f) Liabilities under any Excluded Contracts or Real Property Leases;
- (g) Liabilities arising out of any failure by Seller to perform any obligation required to be performed by Seller or out of any default by Seller (or out of any event, fact or circumstance that, with notice or lapse of time or both, would constitute a default by Seller) on or before the Closing Date under or with respect to any Assets, including the Real Property Leases, Assumed Contracts or Permits (regardless of whether the assignment of any such Assets contains anything to the contrary or is silent on such issue) or out of Seller’s failure to comply with any Applicable Law;
- (h) Liabilities to any shareholder or other Affiliate of Seller or any owner or holder of any interest in Seller;
- (i) Liabilities of Seller with respect to (i) any Benefit Plan or Seller Plans established, maintained, sponsored or contributed to by Seller (including any 401(k) plan) or (ii) accrued pension liabilities or retiree healthcare obligations or any unfunded or underfunded liabilities relating to employee post-retirement obligations;

(j) all Liabilities under or relating to any Environmental Laws to the extent related to, arising or resulting from the ownership or operation of the Assets, the Excluded Assets (including the Leased Real Property) or the Business prior to Closing, including any Liabilities for (i) any release of or exposure to any Hazardous Substance at or from any real property or in connection with the operation of the Business, the Assets or the Excluded Assets (including the Leased Real Property) to the extent such release or exposure occurred prior to the Closing; (ii) any violation of Environmental Laws prior to the Closing in connection with the operation of the Business, the Assets or the Excluded Assets (including the Leased Real Property); or (iii) any offsite transportation and disposal of Hazardous Substances prior to the Closing in connection with the operation of the Business, the Assets or the Excluded Assets (including the Leased Real Property);

(k) any (i) outstanding indebtedness of or any obligation of Seller (whether as obligor or as guarantor) for borrowed money, whether current, short-term, or long-term, secured or unsecured, including notes payable, overdrafts, bank lines of credit and amounts owed on credit cards; (ii) deferred consideration for purchases of property which is not evidenced by trade payables, including any capital or finance leases; (iii) other financings of Seller (whether as obligor or as guarantor), including synthetic leases and project financing; (iv) payment obligations of Seller (whether as obligor or as guarantor) in respect of banker's acceptances or letters of credit (other than stand-by letters of credit in support of ordinary course trade payables); (v) Liability of Seller (whether as obligor or as guarantor) with respect to derivative financial instruments, interest rate swaps, collars, caps and similar hedging obligations; (vi) bonuses payable in connection with the transactions contemplated by this Agreement (the "**Transactions**") and accrued bonuses for any employees, including any payroll tax or benefit plan (including 401(k)) obligations relating thereto; (vii) accrued and unpaid interest or any contractual prepayment premiums, penalties or similar contractual charges resulting from the Transactions or the discharge of such obligations with respect to any of the foregoing; (viii) Liability of Seller owed to any Affiliate of Seller or which Seller is obligated to pay on behalf of any such Person; and (ix) unpaid expenses of Seller in connection with the Transactions (including attorneys', bankers', accountants' and other professionals' fees), in each case that are payable by Seller on or after Closing (items (i) through (viii), collectively, "**Debt**"); other than the Assumed Deferred Revenue;

(l) Liabilities arising out of or relating to the Retained Businesses and other Excluded Assets;

(m) Liabilities related to the Real Property Leases or the Leased Real Property;

(n) any warranty obligations relating to any products of the Business other than the Assumed Warranty Obligations, including any Liabilities related to Recalls of any products of the Business sold prior to the Closing Date, subject to Seller's obligations under the Transition Services Agreement; provided that (i) for so long as Seller is providing "Procurement/Manufacturing Services" as described on Schedule A to the Transition Services Agreement, Seller's obligations with respect to such unassumed warranty obligations will be limited to fulfillment at no cost to Buyer, and (ii) after Seller is no longer providing such "Procurement/Manufacturing Services," Seller's obligations regarding such unassumed warranty obligations shall be limited (subject to any other limitations and qualifications in this Agreement) to reimbursing Buyer for the Buyer's actual cost, consistent with Seller's historical practice, of warranty fulfillment, without markup for administration, overhead or profit; and

(o) any and all other Liabilities of Seller that Buyer is not specifically assuming pursuant to Section 1.3.

1.5 Assignment of Assets. Notwithstanding anything to the contrary in this Agreement, to the extent that any sale, conveyance, transfer or assignment of any Assets, or any claim, right or benefit arising thereunder or resulting therefrom (collectively, the “**Interests**”) contemplated hereunder is not permitted without the consent of any Person which consent has not been obtained at or prior to the Closing, this Agreement shall not be deemed to constitute a sale, conveyance, transfer or assignment of any such Interest (a “**Retained Interest**”) unless and until such consent is obtained, at which time such Retained Interest shall be deemed to be sold, conveyed, transferred and assigned in accordance with the provisions hereunder, subject to any condition or provision contained in such consent, whereupon it shall cease to be a Retained Interest. With respect to any Retained Interest, this Agreement and the Transaction Documents shall constitute an equitable assignment by Seller to Buyer of all of Seller’s rights, benefits, title and interest in and to such Retained Interest to the extent permitted by Applicable Law, and Buyer shall be deemed to be Seller’s agent for the purpose of performing, fulfilling and discharging Seller’s rights and obligations arising after the Closing Date under such Retained Interest. In furtherance of the foregoing, following Closing, until the completion of the transfer of all Retained Interests to Buyer, Seller will, and (to the extent applicable) will cause its Affiliates to: (a) provide to Buyer the benefits of each Retained Interest; (b) cooperate in reasonable and lawful arrangements designed to provide such benefits to Buyer; (c) enforce, at the request of Buyer and for the account and expense of Buyer, any rights of Seller arising from or related to such Retained Interest; and (d) promptly pay over and remit to Buyer without consideration any payments or other rights or benefits received by Seller or its Affiliates with respect to any such Retained Interests.

1.6 Purchase Price. The aggregate purchase price to be paid at the Closing in connection with the Transactions (the “**Closing Purchase Price**”) is equal to:

- (a) \$80,000,000; less
- (b) \$400,000 (the “**Indemnification Escrow Amount**”); less
- (c) \$100,000 (the “**Adjustment Escrow Amount**”).

The Closing Purchase Price, as such amount is adjusted pursuant to the terms of this Agreement, including under Section 1.8 or Section 1.9, or any amounts paid or released pursuant to Article Z, is referred to herein as the “**Purchase Price**.”

1.7 Payment of Closing Purchase Price and Escrow Amounts at Closing.

(a) Upon and subject to the terms herein, at Closing, Buyer will pay to Seller the Closing Purchase Price, by wire transfer of immediately available funds to one or more accounts, each in such amounts, as shall be designated by Seller in writing at least two Business Days before the Closing.

(b) At the Closing, Buyer will deposit the Indemnification Escrow Amount and the Adjustment Escrow Amount with Wilmington Trust, N.A. (the “**Escrow Agent**”), to be held by the Escrow Agent in two separate, segregated accounts, one for the Indemnification Escrow Amount (the “**Indemnification Escrow Account**”) and the other for the Adjustment Escrow Amount (the “**Adjustment Escrow Account**”) pursuant to the terms hereof and an escrow agreement, dated as of the Closing Date, between Buyer, Seller and the Escrow Agent, substantially in the form of **Exhibit D** (the “**Escrow Agreement**”). Buyer, on the one hand, and Seller, on the other hand, will each pay half of the costs and fees of the Escrow Agent.

1.8 Purchase Price Adjustment.

(a) **Physical Inventory.** On the day prior to the Closing Date, or at such other time prior to the Closing mutually agreed to by Buyer and Seller, Buyer and Seller shall jointly conduct and agree upon a physical count of the Inventory, which shall be conducted using the procedures set forth on **Exhibit 1.8(a)**, and a final calculation of the value of the Inventory will be prepared in accordance with generally accepted United States accounting principles, consistently applied (“**GAAP**”), in a manner consistent with the accounting principles, policies and practices that were used by Seller in connection with the Business during the six months prior to Closing. Buyer and Seller shall have the right to have present for such count of the Inventory such officers, employees, representatives and agents as each one shall deem reasonably necessary to monitor such process. Buyer and Seller shall each bear their respective costs with respect to the count of the Inventory. If Buyer and Seller are unable to agree on any count or reconciliation of any item of Inventory, then at the request of either Buyer or Seller, such disagreement shall be submitted to the Accountant for resolution pursuant to the procedures set forth in **Sections 1.9(f)** and **1.9(g)** (*mutatis mutandis*). The final determination of the physical count and value of the Inventory (whether by agreement between Buyer and Seller or as a result of resolution by the Accountant) shall be the “**Final Inventory**.”

(b) **Payment of Reconciled Inventory.** If Final Inventory exceeds Target Inventory, then on or before the tenth (10th) Business Day following the determination of Final Inventory, (i) Buyer shall pay Seller the amount by which Final Inventory exceeds Target Inventory and (ii) Buyer and Seller shall jointly instruct the Escrow Agent to disburse 100% of the Adjustment Escrow Amount from the Adjustment Escrow Account to Seller. If Target Inventory exceeds Final Inventory, then on or before the tenth (10th) Business Day following the determination of Final Inventory, (I) Seller and Buyer shall jointly instruct the Escrow Agent to disburse to Buyer that portion of the Adjustment Escrow Amount from the Adjustment Escrow Account equal to the amount of such difference, and if the amount of such difference is less than Adjustment Escrow Account, the remainder of the Adjustment Escrow Amount shall be disbursed to Seller, and (II) if the amount of such difference is greater than the Adjustment Escrow Amount, Seller shall pay the amount of such difference to Buyer.

(c) **Target Inventory Defined.** “**Target Inventory**” means the amount of \$1,597,583.18.

1.9 Earn-Out.

(a) Subject to the terms and conditions of this Section 1.9, Buyer shall pay Earn-Out Payments to Seller in an amount of up to \$10,000,000 for each Earn-Out Period, for a total amount of up to \$20,000,000. In no event will the aggregate Earn-Out Payments exceed \$20,000,000, and the total Purchase Price (exclusive of any adjustments pursuant to Section 1.8 and indemnification payments by Buyer pursuant to Article 7) exceed \$100,000,000.

(b) If the Business's Revenues for the Initial Earn-Out Period (the "**Initial Period Revenues**") are equal to or greater than the Base Revenues, Buyer will pay to Seller the amount of the Initial Earn-Out Payment in immediately available funds by wire transfer to an account designated by Seller in writing. For the avoidance of doubt, if the Business's Revenues for the Initial Earn-Out Period are less than Base Revenues, no Initial Earn-Out Payment shall be made.

(c) If the Business's Revenues for the Second Earn-Out Period are equal to or greater than the Initial Period Revenues (as determined in accordance with this Section 1.9), Buyer will pay to Seller the amount of the Second Revenue Earn-Out Payment in immediately available funds by wire transfer to an account designated by Seller in writing. For the avoidance of doubt, if the Business's Revenues for the Second Earn-Out Period are less than the Initial Period Revenues, no Second Earn-Out Payment shall be made.

(d) As soon as practicable but in no event later than 30 days following the end of each Earn-Out Period, Buyer will prepare and deliver to Seller a statement (an "**Earn-Out Statement**") detailing Buyer's calculation of the Business's Revenues for the applicable Earn-Out Period, and calculation of the Earn-Out Payment for that Earn-Out Period, in each case in accordance with this Section 1.9. A sample Earn-Out Statement is attached as Exhibit 1.9(d) hereto. On or before the 60th day following the end of such Earn-Out Period, Buyer shall pay to Seller the amount of the Earn-Out Payment set forth in that Earn-Out Statement, without prejudice to Seller's right to dispute the calculation of the Revenues for that Earn-Out Period or the calculation of the Earn-Out Payment in accordance with this Section 1.9.

(e) An Earn-Out Statement delivered by Buyer pursuant to Section 1.9(d), will become final and binding upon the Parties (and such Earn-Out Statement will evidence the Final Earn-Out Amount for such Earn-Out Period) 30 days after Buyer delivers such Earn-Out Statement to Seller, unless Seller delivers written notice of its disagreement (an “**Earn-Out Dispute Notice**”) to Buyer before the end of such 30-day period. If an Earn-Out Dispute Notice is delivered by Buyer within such 30-day period, then the Final Earn-Out Amount for the applicable Earn-Out Period (as finally determined in accordance with clause (i) and (ii) below) will become final and binding upon the Parties on the earlier of (i) the date the Parties resolve in writing any differences they have with respect to all matters specified in such Earn-Out Dispute Notice or (ii) the date any disputed matters are fully resolved in writing by an independent nationally or regionally recognized public accounting firm agreed upon by the Parties in writing (the “**Accountant**”) pursuant to Section 1.9(f); provided that the Accountant shall not have provided any tax or accounting services to either Party within the two-year period prior to its designation hereunder. If the Parties are unable to agree upon the Accountant within 30 days following Seller’s delivery of the Earn-Out Dispute Notice, either Party may apply to any state or federal court in the State of Delaware to designate the Accountant for purposes hereof. The Accountant will only resolve any such dispute based on the financial or accounting calculation of Revenues or the Earn-Out Payment for the applicable Earn-Out Period; any other disputes (including those arising under Section 1.9(i)) which are not resolved by the Parties’ mutual agreement may be resolved under Section 9.16).

(f) During the 30-day period after the delivery of an Earn-Out Dispute Notice, Buyer and Seller will seek in good faith to resolve in writing any differences that they have with respect to any matter specified in such Earn-Out Dispute Notice. If, at the end of such 30-day period, Buyer and Seller have not reached agreement on all such matters, then either Buyer or Seller may submit those matters which remain in dispute to the Accountant for review and resolution as an expert and not as an arbitrator. Buyer and Seller will jointly engage the Accountant and will enter into an engagement letter with the Accountant promptly after retention, which may include customary indemnification, confidentiality and other provisions proposed by the Accountant. Seller and Buyer will cooperate with the Accountant in good faith and in all reasonable respects as may be requested by the Accountant, including providing the Accountant reasonable access during normal business hours and on reasonable advance notice to any relevant personnel, properties, and books and records of the Business. Seller and Buyer will cause the Accountant to limit its review and determination to those items set forth on the Earn-Out Dispute Notice that remain in dispute and that relate to accounting matters, and to deliver a written report containing its calculations of each such disputed item. The final determination of the Accountant will be made in strict accordance with the terms of this Agreement (including the definitions related to the Earn-Out Payments). The Accountant will render its written report resolving such items in dispute as soon as possible after completion of written submissions to the Accountant. The Accountant will determine the items in dispute solely based on written submissions made by Seller and Buyer (and their respective representatives) consistent with the terms hereof (and not by independent review) which submissions, respectively, will be submitted to the Accountant and the other Party within 30 days after the Accountant is engaged. None of Seller, Buyer, or their respective representatives will have any *ex parte* communications or meetings with the Accountant concerning the subject matter hereof without the prior written consent of the other Party. The Accountant will not assign a value to any disputed item that is greater than the greater value for such disputed item claimed by either Party in its written submission or less than the lesser value for such item claimed by either Party in its written submission. All disputed matters resolved pursuant to a final written report of the Accountant will be final, conclusive and binding on the Parties hereto absent manifest error. Within ten (10) Business Days following the Accountant’s final determination as set forth above, Buyer shall pay Seller the amount (if any) by which the applicable Final Earn-Out Amount exceeds Earn-Out Payment paid with the Earn-Out Statement delivered under Section 1.9(d).

(g) **Allocation of Fees and Expenses.** Each of Buyer, on the one hand, and Seller, on the other hand, will pay its own costs and expenses incurred in connection with any dispute resolution pursuant to this Section 1.9. The fees and expenses of the Accountant incurred pursuant to this Section 1.9 shall be borne by Seller and Buyer in proportion to the final allocation made by such Accountant of the disputed items weighted in relation to the claims made by Seller and Buyer, such that the prevailing Party pays the lesser proportion of such fees and expenses. For example, if Seller claims that the appropriate earn-out payments are \$1,000 greater than the amount determined by Buyer and if the Accountant ultimately resolves the dispute by awarding to Seller \$300 of the \$1,000 contested amount, then the fees and expenses of the Accountant will be allocated 30% (i.e., $300 \div 1,000$) to Buyer and 70% (i.e., $700 \div 1,000$) to Seller. If a retainer is required by the Accountant, the retainer shall be split equally between the Seller and Buyer; provided, however, that the retainer shall be considered part of the fees and expenses of the Accountant and if either the Seller or Buyer has paid a portion of such retainer, such Party shall be entitled to be reimbursed by the other Party to the extent required by this Section 1.9(g).

(h) In connection with the consummation of a Change of Control Event prior to the final determination and final payment of the Earn-Out Payments, Buyer shall make appropriate provision so that the applicable successors and assigns of Buyer in such Change of Control Event shall affirmatively assume the obligations of Buyer set forth in this Section 1.9 and that Seller can rely upon and directly enforce such obligations against such successors and assigns.

(i) Buyer covenants that, during the Initial Earn-Out Period and the Second Earn-Out Period, Buyer shall:

(i) conduct the operations of the Business in good faith in the Ordinary Course of Business; and without limiting the generality of the foregoing, Buyer shall not take any action primarily intended to result in a reduction of Revenues below that which would have been achieved if such action had not been taken;

(ii) maintain books and records with respect to the business activities related to the Business separate from any other business activities and operations of Buyer as shall be necessary to substantiate each Earn-Out Statement; and

(iii) commencing for the first full quarter of the Initial Earn-Out Period, provide Seller with quarterly written reports of the Revenues no later than within thirty (30) days after the end of each quarter; provided that such reports shall be provided for informational purposes only and shall not be binding on the Parties in connection with the calculation of any Earn-Out Payments.

(j) Seller acknowledges that the payment of any Earn-Out Payment is contingent and subject to, among other things, the future performance of the Business, which cannot be predicted with accuracy. Accordingly, and except as explicitly set forth in this Section 1.9, Buyer makes no representations, warranties, covenants or guaranties as to the future performance of the Business or the likelihood of any Earn-Out Payment.

(k) The Parties acknowledge and agree that Buyer shall have the sole discretion with regard to all matters relating to the operation of the Business, the services offered by the Business and the employees providing services to the Business, except as otherwise expressly set forth in this Section 1.9. Seller understands and agrees that (i) there is no assurance that the Business will achieve Revenues in excess of amounts that would require any Earn-Out Payment to be paid to Seller and (ii) that none of Buyer or its Affiliates owes any fiduciary duty (whether express or implied) to Seller by virtue of, or with respect to, any Earn-Out Payment contemplated by this Section 1.9.

(l) Buyer and Seller will seek in good faith to mutually agree on the Revenues of Seller for the calendar month ended August 31, 2021. If Buyer and Seller cannot reach agreement on Revenues of Seller for the calendar month ended August 31, 2021 for purposes of determining Base Revenues, then either Buyer or Seller may submit those matters which remain in dispute to the Accountant for review and resolution as an expert and not as an arbitrator pursuant to the procedures set forth in Sections 1.9(f) and 1.9(g) (*mutatis mutandis*).

(m) Seller shall conduct the operations of the Business prior to Closing in good faith in the Ordinary Course of Business; and without limiting the generality of the foregoing, Seller shall not take any action primarily intended to result in a change in Base Revenues above or below that which would have been achieved if such action had not been taken. Except as explicitly set forth above or elsewhere in this Agreement, Seller makes no representations, warranties, covenants or guaranties as to the past performance of the Business or the amount of Base Revenues. The Parties acknowledge and agree that Seller has had the sole discretion with regard to all matters relating to the operation of the Business, the services offered by the Business and the employees providing services to the Business, except as otherwise expressly set forth in this Agreement. Buyer understands and agrees that none of Seller, the Shareholder or their Affiliates owes any fiduciary duty (whether express or implied) to Buyer by virtue of, or with respect to, the calculation of Base Revenues.

(n) Certain Defined Terms.

(i) “**Base Revenues**” means the sum of (A) \$15,000,401 *plus* (B) the Revenues of the Business for the calendar month ended August 31, 2021 as determined pursuant to Section 1.9(l).

(ii) “**Change of Control Event**” means the occurrence of any of the following transactions with respect to Buyer following the Closing Date: (a) a sale of all or substantially all of the assets and properties of Buyer or the Business to an unaffiliated third party; (b) a merger, consolidation, reconstitution or similar transaction involving Buyer, the result of which is that a Person other than an Affiliate of Buyer owns or controls 50% or more of the voting securities of the continuing or surviving entity immediately after such transaction; or (c) a sale or exchange, directly or indirectly, of the issued and outstanding equity interests of Buyer in a single transaction, or a series of related transactions, the result of which is that a Person other than an Affiliate of Buyer owns or controls, directly or indirectly, 50% or more of the outstanding equity interests of Buyer.

(iii) “**Earn-Out Payments**” means the Initial Earn-Out Payment and the Second Earn-Out Payment. For clarity, in no event shall either Earn-Out Payment be less than zero (-0-).

(iv) “**Earn-Out Period**” means each of the Initial Earn-Out Period and the Second Earn-Out Period.

(v) “**Final Earn-Out Amount**” means the determination of the Initial Earn-Out Payment or Second Earn-Out Payment, as applicable, that is final and binding on the Parties hereto, either through agreement by the Parties or through the action of the Accountant in the manner set forth in Section 1.9(e).

(vi) “**Initial Earn-Out Payment**” means an amount equal to (A) 1.5 multiplied by (B) the amount by which the Business’s Revenues in the Initial Earn-out Period exceed Base Revenues; provided that in no event will the Initial Earn-Out Payment exceed \$10,000,000.

(vii) “**Initial Earn-Out Period**” means the 12-month period beginning on the first day of the calendar month after the Closing Date. If Closing occurs on September 8, 2021, the Initial Earn-Out Period commences October 1, 2021 and ends September 30, 2022.

(viii) “**Revenues**” means revenues of the Business (regardless of a product’s branding), excluding revenues generated outside the United States, determined in accordance with GAAP applied on a basis consistent with the methodology used by Seller to measure and recognize revenues in the 12-month period ended as of the last day of the month prior to Closing.

(ix) “**Second Earn-Out Payment**” means an amount equal to (A) 1.5 multiplied by (B) the amount by which the Business’s Revenues in the Second Earn-out Period exceed Initial Period Revenues; provided that in no event will the Second Earn-Out Payment exceed \$10,000,000.

(x) “**Second Earn-Out Period**” means the 12-month period beginning on the day after the last day of the Initial Earn-Out Period.

1.10 Tax Withholding. Notwithstanding anything in this Agreement to the contrary, Buyer will be entitled to deduct and withhold from any amounts otherwise payable under this Agreement to Seller or any other Person such amounts as are required to be withheld or deducted under the Code, or any provision of Applicable Law with respect to the making of such payment. To the extent that amounts are so deducted and withheld and paid over to the applicable Governmental Entity, (a) such deducted and withheld amounts will be treated for all purposes of this Agreement as having been paid to Seller or such other Person in respect of which such deduction and withholding were made, and (b) Buyer will promptly provide relevant information with respect to, and copies of any supporting documents showing payment of, such tax payments. Buyer shall (i) provide Seller notice as soon as reasonably practicable prior to making any such withholding and (ii) cooperate in good faith with Seller to minimize the amount of such withholding.

1.11 Purchase Price Allocation. Within 90 days after the Closing Date, Buyer shall prepare or cause to be prepared a proposed schedule allocating the Purchase Price, as adjusted, the Assumed Liabilities, and any other relevant items among the Assets consistent with Section 1060 of the Code and the Treasury Regulations thereunder and the methodology set forth on Exhibit 1.11 (the "**Allocation Exhibit**"). Seller shall provide written notice to Buyer within 30 days of any disagreement with Buyer's proposed Allocation Exhibit. If Seller notifies Buyer in writing of any disagreement with Buyer's proposed Allocation Exhibit within such 30-day period, Buyer and Seller shall use commercially reasonable efforts to resolve any such disagreement. If Buyer and Seller are unable to resolve any such disagreement within 60 days, the dispute shall be resolved under the procedures set forth in Sections 1.9(f) and 1.9(g) (*mutatis mutandis*). Upon final determination of the Allocation Exhibit (whether by agreement between Buyer and Seller or as a result of resolution by the Accountant), Buyer, Seller and their respective Affiliates shall report, act and file Tax Returns in all respects and for all purposes consistent with such Allocation Exhibit. None of Buyer, Seller or any of their respective Affiliates shall take any position (whether in audits, tax returns or otherwise) that is inconsistent with such allocation unless required to do so by Applicable Law.

Article 2 **Closing**

2.1 Closing; Closing Date. The closing of the Transactions (the "**Closing**") will take place (a) via the electronic exchange of executed counterpart signatures pages of this Agreement and each Transaction Document or via other means (including by means of facsimile, email or other electronic transmission) on the fifth Business Day following satisfaction or waiver of the conditions to Closing set forth in Article 6 occurs (other than conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of such conditions at Closing) or (b) at such other place, date and time, and in such other manner, as the Buyer and the Seller may mutually agree (such date and time on and at which the Closing actually occurs being referred to herein as the "**Closing Date**"). Closing will be deemed to be effective as of 11:59 p.m. local time on the Closing Date (the "**Effective Time**"). All actions to be taken and all documents to be executed or delivered at Closing will be deemed to have been taken, executed and delivered simultaneously, and no action will be deemed taken and no document will be deemed executed or delivered until all have been taken, delivered and executed, except in each case to the extent otherwise stated in this Agreement or any such other document. Documents may be delivered at Closing by electronic means in accordance with Section 9.9, and the receiving Party may rely on the receipt of such documents so delivered as if the original had been received.

2.2 Closing Deliveries of Seller. At Closing, Seller will deliver, or cause to be delivered, to Buyer, the following:

(a) a bill of sale in the form attached hereto as Exhibit A with respect to the Assets (the "**Bill of Sale**"), duly executed by an authorized officer of Seller as of the Closing Date;

(b) an assignment and assumption agreement in the form attached hereto as **Exhibit B** assigning the Assumed Contracts, Permits and the Assumed Liabilities (the “**Assignment and Assumption Agreement**”), duly executed by an authorized officer of Seller as of the Closing Date;

(c) assignment agreements in the forms attached hereto as **Exhibit C** assigning the Intellectual Property Assets in a form suitable for recordation with the applicable Governmental Entity, duly executed by an authorized officer of Seller as of the Closing Date (each, an “**IP Assignment Agreement**”);

(d) an officer’s certificate of a duly authorized officer of Seller in a form approved in advance by Buyer, certifying that attached thereto are true and complete copies of: (i) the articles of incorporation and bylaws of Seller and (ii) the resolutions duly adopted by the Shareholder and the board of directors of Seller authorizing the execution, delivery, and performance by Seller of this Agreement and the other Transaction Documents and the consummation of the Transactions, as such resolutions are then in full force and effect;

(e) all consents necessary to be obtained to consummate the Transactions as required pursuant to those Material Contracts listed on **Exhibit 2.2(e)** (collectively, the “**Material Consents**”), all having been duly obtained and in full force and effect, and Seller being in compliance with each of the Material Consents;

(f) the Escrow Agreement, dated as of the Closing Date and duly executed by Seller;

(g) a transition services agreement in the form attached hereto as **Exhibit E** with respect to the Assets (the “**Transition Services Agreement**”), duly executed by an authorized officer of Seller as of the Closing Date;

(h) a certificate of Seller in form and substance reasonably satisfactory to Buyer, dated as of the Closing Date and sworn to under penalty of perjury, certifying that Seller is not a “foreign person” within the meaning of Section 1445 of the Code, such certificate to be in the form set forth in the Treasury Regulations thereunder;

(i) possession of, or right to possess, the Assets, subject to the Transition Services Agreement;

(j) evidence of the release of all mortgages, options, liens, claims, charges, restrictions, encumbrances, security interests, or other defects in title (collectively, the “**Liens**”) against the Assets, other than Permitted Liens; and

(k) such other documents and instruments necessary to consummate the Transactions (including such specific or separate assignments of certain of the Assumed Contracts as Buyer shall reasonably request) upon the terms and conditions set forth in this Agreement, in form and substance reasonably satisfactory to Buyer.

2.3 Closing Deliveries of Buyer. At Closing, Buyer will deliver, or cause to be delivered, to Seller the following:

- (a) payment of the Closing Purchase Price pursuant to Section 1.6 in the manner described in Section 1.7(a);
- (b) evidence reasonably satisfactory to Seller that Buyer has deposited the Indemnification Escrow Amount and the Adjustment Escrow Amount with the Escrow Agent in the manner described in Section 1.7(b);
- (c) the Assignment and Assumption Agreement, duly executed by an authorized officer of Buyer as of the Closing Date;
- (d) the Escrow Agreement, dated as of the Closing Date and duly executed by an authorized officer of Buyer and the Escrow Agent;
- (e) the Transition Services Agreement, dated as of the Closing Date and duly executed by an authorized officer of Buyer;
- (f) an officer's certificate of a duly authorized officer of Buyer in a form approved in advance by Seller, certifying that attached thereto is a true and correct copy of the resolutions duly adopted by the board of directors of Buyer authorizing the execution, delivery, and performance by Buyer of this Agreement and the other Transaction Documents and the consummation of the Transactions, as such resolutions are then in full force and effect; and
- (g) such other documents and items required by any term of this Agreement to be delivered, or caused to be delivered, by Buyer at Closing, or reasonably requested by Seller to facilitate the consummation of the Transactions.

Article 3
Representations and Warranties of Seller

Except for the exceptions noted in the Schedules to this Agreement, Seller represents and warrants to Buyer as follows:

3.1 Organization.

- (a) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and has all requisite corporate power and authority to own, lease, and operate the Assets and to carry on the Business as now being conducted.
- (b) Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the Assets are owned, leased or operated by it or the nature of the Business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not result in a Material Adverse Effect.
- (c) The Shareholder is the only record and beneficial owner of ownership, equity, capital or stock of Seller.

3.2 Authorization; Execution and Delivery. Seller has the corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party, and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Transaction Documents to which Seller is a party by Seller and the consummation by it of the Transactions have been duly authorized by all necessary corporate action on the part of Seller. This Agreement and the Transaction Documents to which Seller is a party have been duly and validly executed and delivered by Seller and, assuming the due and valid execution and delivery thereof by any counterparties thereto, constitute legal, valid, and binding agreements on Seller's part, enforceable against Seller in accordance with their terms, except as the enforceability hereof and thereof may be limited by bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (the "**Enforcement Exceptions**").

3.3 Non-Contravention; Antitrust Matters.

(a) Neither the execution or delivery by Seller of this Agreement or the Transaction Documents to which Seller is a party nor the consummation of the Transactions will: (i) conflict with or result in any breach of any provision of the articles of incorporation, bylaws or other organizational documents of Seller or any resolutions or consents adopted by the Seller's board of directors or the Shareholder; (ii) require Seller to obtain any consent, approval, authorization, accreditation or action of, or make any filing with or give any notice to (collectively, "**Consents, Filings, and Notices**"), any national, federal, state, provincial, county, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any entity, authority, agency, ministry, or other similar body exercising executive, legislative, judicial, regulatory or administrative authority or functions of or pertaining to government, including any authority or other quasi-governmental entity established to perform any of such functions, and any arbitrator, self-regulatory authority, trade association or accreditation body (each, a "**Governmental Entity**") or any other Person; (iii) violate, conflict with, or result in the breach of any of the terms of, or constitute a default (or give rise to any right of termination, cancellation, or acceleration) under, any of the provisions of any Material Contract to which Seller, the Business or the Assets may be subject; (iv) violate any law, statute, regulation, ordinance, rule, code, Order, governmental requirement, requirement or rule of law (including common law) enacted, promulgated or imposed by any Governmental Entity applicable to Seller, the Business or the Assets ("**Applicable Law**") or order, judgment, injunction, determination, award or decree addressed to or naming Seller (collectively, "**Orders**") of any Governmental Entity applicable to Seller, the Business or the Assets; or (v) result in the creation of any Lien on the Assets.

(b) The acquired person (as defined in 16 CFR § 801.2(b)), which includes Seller as an entity, had annual net sales and total assets (in each case calculated in accordance with 16 CFR § 801.11) as stated on the last regularly prepared annual statement of income and expense, and on the last regularly prepared balance sheet, respectively, of less than \$18,400,000.

3.4 **Financial Statements.**

(a) Seller has made available to Buyer a copy of the unaudited reviewed balance sheets and income statements of the Business as of and for the periods ended December 31, 2019 and the unaudited and unreviewed balance sheets and income statements of the Business as of and for the period ended December 31, 2020 (such financial statement as of and for the period ended December 31, 2020, the “**2020 Financial Statements**” and, collectively, the “**Annual Financial Statements**”). Copies of the Annual Financial Statements are attached hereto as Schedule 3.4(i). The Annual Financial Statements were prepared in accordance with GAAP, applied on a consistent basis through the periods involved, and present fairly in all material respects the results of operations of the Business for the fiscal years ended December 31, 2019 and 2020. Seller has also made available to Buyer the unaudited and unreviewed balance sheet and income statement of the Business (the “**Interim Financial Statements**”) for the six-month period ended June 30, 2021, a copy of which is attached hereto as Schedule 3.4(ii) (together with the Annual Financial Statements, the “**Financial Statements**”). Such Interim Financial Statements present fairly in all material respects the results of operations of the Business for the six-month period ended June 30, 2021, and in each case have been prepared on a basis consistent with the Annual Financial Statements, except that the Interim Financial Statements are subject to normal year-end adjustments, none of which will be material individually or in the aggregate. The books and other records of the Business have been maintained in accordance with commercially reasonable business practices. All material financial transactions of the Business have been recorded in the books of account of the Business and such books of account fairly and accurately provide the basis for the financial position and the revenues, expenses and results of operation of the Business set forth in the Financial Statements. All of such books and records are in the possession of the Business and will be put into Buyer’s possession at the Closing or as otherwise provided in the Transition Services Agreement.

(b) Any loan received by Seller pursuant to the Payroll Protection Program has been forgiven in full.

(c) The Business does not have any material liabilities or obligations of any kind or nature (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) (collectively, “**Liabilities**”), which, in accordance with GAAP are required to be reflected in a balance sheet, except (i) Liabilities that are accrued or reserved in the Interim Financial Statements; (ii) Liabilities which have arisen since June 30, 2021 that were incurred in the Ordinary Course of Business; (iii) Liabilities disclosed on Schedule 3.4(c); or (iv) Liabilities expressly contemplated to be incurred by this Agreement.

3.5 **Assets.**

(a) Seller has good and indefeasible title to, or a valid and binding leasehold interest in, or a valid license for, all of the Assets, free and clear of all Liens except for (A) (i) Liens for Taxes, assessments, and other governmental charges not yet due and payable; (ii) mechanics’, workmen’s, repairmen’s, warehousemen’s, carriers’, or other similar Liens incurred in the Ordinary Course of Business, consistent with past practice; and (iii) with respect to leased equipment, equipment leases with third parties entered into in the Ordinary Course of Business (all items included in clauses (i) through (iii) are referred to collectively as “**Permitted Liens**”), and (B) Liens that are released at Closing pursuant to Section 2.2(j).

(b) Except as set forth on Schedule 3.5(b), each tangible Asset (other than Inventory) is in good operating condition and repair (except normal wear and tear) and is suitable and sufficient for the purposes for which it is used and presently is proposed to be used. Seller has exclusive possession and control of each such Asset. The fixtures, equipment and any other tangible property included in the Assets have been maintained as reasonably determined to be proper by Seller, and in accordance with normal applicable industry practice.

(c) The Assets constitute all of the material assets, tangible and intangible, necessary for the operation of the Business as currently conducted, other than those Excluded Assets described in paragraphs (b), (e), (f), (g), (h), (j), (k), (l) and (m) of Section 1.2.

3.6 Compliance with Laws; Licenses and Permits.

(a) The Business is, and since January 1, 2017 has been, in material compliance with all Applicable Laws or Orders of any Governmental Entity applicable to the Business.

(b) Since January 1, 2017, no notice has been received by Seller from or, to the Knowledge of Seller, is threatened by any Governmental Entity alleging any material violation of or liability of the Business under any Applicable Law or Order.

(c) Seller has all licenses, permits, waivers, authorizations, accreditations, clearances, certificates, exemptions or approvals, and has made all registrations, listings and applications issued or required by the U.S. Food and Drug Administration (the “**FDA**”) or any other Governmental Entity with oversight over Seller, the Business or the products of the Business that are material to conduct the Business as currently conducted and as contemplated for the use of the Assets by Buyer (collectively, “**Material Permits**”). All Material Permits are in full force and effect, and no proceeding is pending or, to the Knowledge of Seller, threatened to terminate, revoke, suspend, limit or modify any Material Permit or alleging that the Business is not in material compliance with any Material Permit. To the Knowledge of Seller, no Governmental Entity is considering limiting, suspending, or revoking any such Material Permit. Seller has been, it and the Business are, and upon delivery the Assets will be, in compliance with all Material Permits. Seller has fulfilled and performed its obligations under each Material Permit and, to Seller’s Knowledge, no event has occurred or condition or state of facts exists which would constitute a breach or default under, or would cause revocation or termination of, any such Material Permit. Except as set forth on Schedule 3.6(c), the purchase of the Assets by Buyer will not result in the termination, revocation, suspension, or modification of any Material Permits. Schedule 3.6(c) identifies all Material Permits.

(d) Since January 1, 2017, neither Seller nor any officer, director, or employee of Seller, nor, to the Knowledge of Seller, any agent or representative of Seller, acting in such capacity, has in the conduct of the Business directly or indirectly violated or taken any act in furtherance of violating any provision of the Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act 2010 or any other anti-bribery or anti-corruption Applicable Laws of any applicable jurisdiction, such as by making, offering or promising, directly or indirectly, any contribution, gift, bribe, rebate, loan, payoff, influence payment, kickback or other payment, or promise of payment, of anything of value, to any Government Official for the purpose of inducing such Government Official to do any act or make any decision in his or her or its official capacity (including a decision to fail to perform his or her or its official function) or use his, her or its influence with a Governmental Entity to affect any act or decision of such Governmental Entity for the purpose of assisting any Person to obtain or retain any business, or to facilitate the Business or for any other improper purpose in connection with the Business (e.g., to obtain a tax rate lower than allowed by Applicable Law). The term “**Government Official**” means any: (i) officer or employee of a Governmental Entity (including any state-owned or state-controlled enterprise) or of a public international organization; or (ii) holder of public office, candidate for public office, political party, official of a political party or member of a royal family.

(e) Schedule 3.6(e) sets forth the status of each filing or application filed with the FDA and any other comparable non-U.S. Governmental Entity with respect to the products of the Business. The Business has not made changes to any cleared or approved and marketed medical device so as to require submission of a new 510(k) or premarket notification to the FDA or to require the equivalent application to a relevant foreign regulatory agency. Except as set forth on Schedule 3.6(e):

(i) Since January 1, 2017, the Business has been conducted in substantial compliance with all medical device Applicable Laws, including (A) the federal Food, Drug, and Cosmetic Act, as amended (including the rules and regulations promulgated thereunder, the “**FDCA**”), (B) the Quality System regulation (21 C.F.R. Part 820), ISO 13485:2016, and any other Applicable Laws regarding manufacturing requirements, including the testing of incoming components and in process product, equipment validation and maintenance, complaint file requirements, complaint investigation requirements, process validation, document retention, change controls, and master file and device history file documentation, (C) any comparable foreign Applicable Laws, and (D) state licensing, disclosure and reporting requirements.

(ii) Except as set forth on Schedule 3.6(e)(ii), to the Knowledge of Seller there has been no event that reasonably suggests that an AffloVest device may have caused or contributed to a death or serious injury, or that an AffloVest has malfunctioned in a manner in which it would be reasonably likely to cause or contribute to a death or serious injury if the malfunction were to occur.

(iii) All pre-clinical and clinical investigations conducted or sponsored by Seller relating to the Business were conducted or are being conducted in compliance in all material respects with all Applicable Laws administered or issued by the applicable Governmental Entities, including, where applicable, (A) FDA Good Laboratory Practice standards for conducting non-clinical laboratory studies contained in Title 21 part 58 of the Code of Federal Regulations and (B) applicable FDA standards for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials contained in Title 21 parts 50, 54, 56, 812 and 820 of the Code of Federal Regulations. Seller has not received any information from the FDA or any other Governmental Entity with jurisdiction over the marketing, sale, use, handling and control, safety, efficacy, reliability, or manufacturing of the products of the Business which threatened the denial of any application for marketing approval currently pending before the FDA or such other Governmental Entity.

(iv) All material reports, documents, claims, Permits and notices required to be filed, maintained or furnished to the FDA or any other Governmental Entity by Seller with respect to the Business has been so filed, maintained or furnished. All such reports, documents, claims, Permits and notices were complete and accurate in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing) such that no liability currently exists with respect to such filing. Seller has not, and no officer, employee, or, to Seller's Knowledge, agent or distributor of Seller has, made, with respect to any products of the Business, an untrue statement of a material fact or a fraudulent statement to the FDA or any other Governmental Entity, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Entity, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA or any other Governmental Entity to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy.

(v) As to the products of the Business subject to the FDCA and the regulations of the FDA promulgated thereunder, or similar foreign Applicable Laws and regulations of any other foreign jurisdiction that is or has been developed, manufactured, tested, distributed and marketed by or on behalf of Seller, each such product of the Business is being or has been developed, manufactured, tested, distributed and marketed in substantial compliance with all applicable requirements under the FDCA and the regulations of the FDA promulgated thereunder, and similar foreign Applicable Laws and regulations, including those relating to investigational use, or marketing approval to market a product of the Business, good manufacturing practices, good clinical practices, good laboratory practices, labeling, advertising, record keeping, filing of reports and security.

(vi) There have been no recalls, field notifications, field corrections, or seizures ordered or adverse regulatory actions taken or, to the Knowledge of Seller, threatened by the FDA or any other Governmental Entity with respect to any of the products of the Business ("**Recalls**"), including, to the Seller's Knowledge, during the time period of production, processing, packaging or storage for any product of the Business, any facilities where any such product is produced, processed, packaged or stored.

(vii) Seller has not received any notice or other communication that (A) the FDA or any other Governmental Entity has commenced or, to the Knowledge of Seller, threatened to initiate, any action to withdraw its investigational device exemption, premarket clearance, premarket approval, rights or other approval or request the Recall of any product of the Business or (B) alleges any violation of Applicable Law by Seller with respect to any product of the Business.

(f) Seller is conducting the Business and operations in compliance with all applicable Public Health Laws (as defined below). Seller is not subject to any obligation which negatively impacts the operations of the Business in any material way arising under an administrative or regulatory action, proceeding, investigation or inspection by or on behalf of any Governmental Entity, and, to the Knowledge of Seller, no such obligation has been threatened. All products of the Business distributed, sold or marketed by or on behalf of Seller that are subject to the jurisdiction of any Governmental Entity have been and are being distributed, sold and marketed (as applicable) in compliance with the Public Health Laws. Seller has not and is not as of the date hereof undergoing any Recall of any of the products of the Business, other than routine inspections occurring in the Ordinary Course of Business of Seller. For purposes hereof, “**Public Health Laws**” means all Applicable Laws relating to the procurement, development, manufacture, production, analysis, research, distribution, dispensing, importation, exportation, use, handling, quality, sale, or promotion of any drug, medical device, food, dietary supplement, or other product (including any ingredient or component of the foregoing products) subject to regulation under the FDCA and similar supranational, foreign or state laws, controlled substances laws, pharmacy laws, or consumer product safety laws.

3.7 Litigation. Except as set forth on Schedule 3.7, with respect to the Business, there are no (and, since January 1, 2017, there have not been any) actions, litigation, governmental investigations, administrative proceedings, arbitration or other proceedings (each a “**Legal Proceeding**”) by or before any Governmental Entity or other Person, and no Legal Proceeding is pending or, to the Knowledge of Seller, threatened against the Business or the Assets. The Business is not subject to any Orders of any court, Governmental Entity or other Person.

3.8 Absence of Certain Changes or Events.

(a) Since December 31, 2020, Seller has conducted the Business only in the Ordinary Course of Business, and there has not been any change, condition, circumstance, event, effect or occurrence that (i) has, or would reasonably be expected to have, a material adverse effect upon the financial condition, assets, liabilities, operations, or results of operations of the Business or (ii) a material adverse effect on the ability of Seller to timely perform its obligations under this Agreement, or timely consummate the Transactions; provided, that any change, event or effect to the extent (but only the extent) arising from or constituting (A) conditions affecting the United States economy generally, (B) any earthquake, hurricane or other natural disaster or any epidemic, pandemic, disease outbreak or other public health crisis or public health event, or the worsening of any of the foregoing (including unforeseen developments with respect to the COVID-19 virus outbreak (“**COVID-19**”)), (C) any national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, (D) financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index), (E) changes in GAAP, (F) changes in any Applicable Laws, or other binding directives issued by any Governmental Entity, (G) any change that is generally applicable to the industries or markets in which the Business operates, (H) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions for any period ending on or after the date of this Agreement (although the underlying facts and circumstances giving rise to such failure shall be taken into account unless otherwise excluded from the definition of Material Adverse Effect) or (I) the execution, announcement or performance of this Agreement, the consummation of the Transactions or the identity of Buyer, shall not be taken into account in determining whether a “Material Adverse Effect” has occurred; provided that, with respect to a matter described in any of the foregoing clauses (A) through (G), such matter shall only be excluded so long as such matter does not have a disproportionate effect on the Business relative to other comparable entities operating in the industry in which the Business operates; provided, further that clause (I) above shall not apply in connection with any non-contravention, no-consents or similar representation or warranty set forth in Article 3 with respect to the performance of this Agreement, or any condition as it relates to any such representation or warranty (a “**Material Adverse Effect**”).

(b) Without limiting the generality of Section 3.8(a), since December 31, 2020, and except as set forth on Schedule 3.8(b), the Business has not:

- (i) subjected any of the material Assets to any Lien;
- (ii) sold, assigned, leased, licensed or transferred any material Asset to any other Person, except inventory sold in the Ordinary Course of Business;
- (iii) suffered any extraordinary losses, whether or not covered by insurance, forgiven or canceled any material claims, or waived any right of material value;
- (iv) increased in any material respects its total number of employees or the compensation, bonuses, or benefits payable or to become payable to any employees, distributors, agents, or representatives, except for increases to its employees in the Ordinary Course of Business consistent with past practice or as required under any existing employment agreement disclosed in Schedule 3.10;
- (v) adopted, entered into, amended or terminated any bonus, profit-sharing, compensation, severance, change of control, termination, pension, retirement, deferred compensation, trust, fund or other arrangement or other Benefit Plan for the benefit or welfare of any individual;

- (vi) placed any employee on a paid or unpaid furlough, or implemented any facility closing or other layoff of employees;
- (vii) suffered any material work stoppage or labor dispute;
- (viii) entered into or amended any agreement or other arrangement with any of Seller's Affiliates;
- (ix) disclosed any confidential, proprietary or non-public information, except with Buyer or otherwise in connection with the Transactions and as otherwise has been reasonably protected under a customary non-disclosure agreement;
- (x) except in the Ordinary Course of Business, (A) paid, discharged, settled or satisfied any claim, obligation or other liability or (B) otherwise waived, released, granted, assigned, transferred, licensed or permitted to lapse any right of material value;
- (xi) failed to prepare and timely file all material Tax Returns required to be filed before Closing or timely withhold and remit any employment Taxes;
- (xii) except in the Ordinary Course of Business, (A) entered into any Material Contract or amended or terminated any Material Contract, or (B) waived, released or assigned any right or claim under any Material Contract;
- (xiii) (A) adopted or changed any accounting method or principle, except as required under GAAP, or (B) changed any annual accounting period;
- (xiv) made any capital expenditure or purchased or otherwise acquired any Asset (other than purchases of inventory in its Ordinary Course of Business and capital expenditures that do not exceed \$25,000 (individually or in the aggregate));
- (xv) other than this Agreement, entered into any agreement or commitment, whether orally or in writing, to do any of the foregoing.

3.9 Environmental Matters.

(a) The Business is and at all times since January 1, 2017 has been in material compliance with all Applicable Laws relating in any way to pollution, compensation for damage or injury caused by pollution or protection of the environment, human health, or natural resources (collectively, "**Environmental Laws**"). As used in this Agreement, an "**Environmental Claim**" shall mean any written notice by a Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (i) the presence, or release into the environment, of any material or form of energy at any location, whether or not owned or leased by the Seller or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law. There is no Environmental Claim pending or, to the Knowledge of Seller, threatened against Seller with respect to the Business.

(b) As used in this Agreement, “**Hazardous Substances**” means pollutants, contaminants, hazardous substances, hazardous or solid wastes, petroleum and fractions thereof, asbestos, PCBs and all other chemicals, wastes, substances and materials listed in, regulated by, or identified in any Environmental Laws. The Business has not stored, transported or handled Hazardous Substances except in material compliance with all Applicable Law. The Business has not released, installed, used, stored, generated, treated, disposed of or arranged for the disposal of, transported, handled, marketed, distributed, or exposed any Person to, any Hazardous Substances in any manner so as to create any liability under any Environmental Law.

(c) Seller has made available to Buyer all environmental site assessment reports (including Phase I and II environmental site assessments), if any, which Seller possesses, and all Material Permits, relating in any way to the Business or the Leased Real Property with respect to any Environmental Law.

3.10 Material Contracts.

(a) Schedule 3.10 sets forth a list, as of the date hereof, of all of the following contracts and agreements to which the Seller is a party with respect to the Business, or by which any of the Assets are subject, whether written or unwritten (collectively, the “**Material Contracts**”):

(i) any purchase order, agreement, or commitment involving more than \$25,000 entered into by the Business to sell any products under which the Business has unfulfilled obligations;

(ii) any purchase order, agreement, or commitment involving more than \$25,000 entered into by the Business to purchase any products or services that calls for performance over a period of more than one year (other than those that are terminable at will or upon not more than 90 days’ notice by the Business without any liability to the Business, except liability with respect to any supply or product purchased before the termination thereof);

(iii) any agreement for the deferred purchase of any Assets (excluding normal trade payables) or any agreement that subjects any of the Assets to any Lien (other than a Permitted Lien);

(iv) any joint venture, partnership, business affiliation or other arrangement involving a sharing of profits;

(v) any material sales agency, advertising, promotional, brokerage or distribution agreement;

- (vi) any agreement that includes provisions regarding minimum requirements or volume discounts or that contains most favored nation pricing provisions;
- (vii) any employment, consulting, independent contractor, severance, deferred compensation, retention or change of control agreement or arrangement;
- (viii) any collective bargaining agreement;
- (ix) any non-competition, non-solicitation or similar limitation that restricts or purports to restrict the Business, Seller or their Affiliates from competing in any line of business or with any Person or in any geographic area or during any period of time;
- (x) any agreement with any Affiliates of Seller;
- (xi) any agreement for the sale or lease of any material Assets, other than for the sale of obsolete equipment in the Ordinary Course of Business;
- (xii) any agreement for the sale, purchase, acquisition or development of Intellectual Property;
- (xiii) any agreement to license (either as licensor or licensee) any Intellectual Property (other than customary non-negotiated licenses of off-the-shelf computer software with annual fees of less than \$1,000);
- (xiv) any agreement for capital expenditures in excess of \$25,000;
- (xv) any agreement obligating the Business to make any rebates, discounts, promotional allowances or similar payments or arrangements or that include any deferred payment or similar arrangement;
- (xvi) any outstanding power of attorney with respect to only the Business or the Assets granted by Seller in favor of a third Person whether or not an Affiliate;
- (xvii) any agreement, including Quality Agreements, requiring suppliers or vendors to provide only those components or services to the Business that meet the Business's specifications and manufacturing quality requirements; and
- (xviii) any other agreement material to the Business.

(b) (i) All Assumed Contracts are in full force and effect and are valid, binding, and enforceable against Seller in accordance with their terms and will continue to be in full force and effect after the Closing, except to the extent such enforcement may be limited by the Enforcement Exceptions; (ii) Seller is not in material breach of any Assumed Contract; (iii) no event has occurred that constitutes, or after the giving of notice or passage of time or both, would constitute, a default or event of default under any Assumed Contract by or in respect of Seller or the Business; (iv) to the Knowledge of Seller, no other party to an Assumed Contract is in breach of any material provision of any Assumed Contract; and (v) to the Seller's Knowledge, no event has occurred that constitutes, or after the giving of notice or passage of time or both would constitute, a default or event of default under an Assumed Contract by or in respect of any other party to the Assumed Contract. Seller has not received any written or oral notice from any counterparties in connection with any of the Assumed Contracts (x) that any such party intends to terminate, not renew, cancel or materially decrease its business with Seller, or (y) for any claim for damages or indemnification with respect to the products or performance of services pursuant to any Assumed Contract.

(c) Correct and complete copies of each written Material Contract and any amendments thereto and summaries of each unwritten Material Contract have been made available to Buyer.

3.11 Business Relationships.

(a) Schedule 3.11(a) sets forth a correct and complete list of the 10 largest (by dollar volume) customers, group purchasing organizations and distributors of the Business for the fiscal years ended December 31, 2020 and December 31, 2019 and for the six-month period ended June 30, 2021. There are no material disputes outstanding with any customer listed on Schedule 3.11(a), nor has any such customer indicated any intention to terminate or materially change the terms of its relationship with the Business.

(b) Schedule 3.11(b) sets forth a correct and complete list of the 10 largest (by dollar volume) vendors and suppliers of the Business for the fiscal years ended December 31, 2020 and December 31, 2019 and for the six-month period ended June 30, 2021. There are no material disputes outstanding with any vendor or supplier listed on Schedule 3.11(b), nor has any such vendor or supplier indicated any intention to terminate or materially change the terms of its relationship with the Business.

3.12 Employees; Employee Benefits.

(a) Schedule 3.12(a) sets forth a list of each of the following with respect to the Offered Employees (collectively, the “**Benefit Plans**”):

(i) employment contracts;

(ii) union and collective bargaining or similar agreements;

(iii) commission, incentive, or bonus plans or arrangements;

(iv) employee pension benefit plans, as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), including multiemployer pension plans, as defined in ERISA Section 3(37) or individual retirement account based retirement programs;

(v) non-qualified retirement, pension (including defined benefit pension plans) or profit-sharing plans;

- (vi) deferred compensation plans;
- (vii) medical, dental, disability, life, employee welfare or health insurance plans, including plans subject to Section 125 of the Internal Revenue Code of 1986, (the “**Code**”), plans covering former employees under which Seller has any remaining liability, and multiemployer health and welfare plans to which any obligation to contribute exists under a collective bargaining or similar agreement;
- (viii) equity purchase, equity option, performance share, phantom equity, management incentive or other equity-based plans;
- (ix) severance, retention, change of control, non-compete or non-solicitation agreements, plans or policies;
- (x) employee welfare benefit plans, as defined in Section 3(1) of ERISA;
- (xi) split-dollar life insurance plans or agreements; and
- (xii) all other material employee fringe benefits.

(b) The Seller has provided to Buyer a copy of the most recent determination, opinion or advisory letter (if any) received from the Internal Revenue Service (the “**IRS**”) with respect to any Seller Plan that is intended to be qualified under Code Section 401(a).

(c) With respect to each Benefit Plan: (i) such plan has been established and administered in accordance with its terms, and is in material compliance with the applicable provisions of ERISA, the Code and other Applicable Laws; and (ii) such plan, if intended to be qualified within the meaning of Code Section 401(a), either is the subject of an unrevoked current favorable determination letter from the IRS with respect to such plan’s qualified status under the Code or is a preapproved plan entitled, under applicable IRS guidance, to rely on the favorable opinion or advisory letter issued by the IRS to the sponsor of such preapproved plan, and, in any of such cases, nothing has occurred, whether by action or failure to act, that would cause the loss of such qualification. Buyer will have no liability on or after Closing with respect to any Benefit Plan or with respect to any plan, contract or arrangement that would be a Benefit Plan if it covered any Offered Employee, including any arrangement providing benefits to any current or former employee, independent contractor or manager (or any dependent or beneficiary of such person) of Seller or any ERISA Affiliate or to which Seller or any ERISA Affiliate contributes or has an obligation to contribute, or with respect to which Seller or any ERISA Affiliate has any current or potential liability, whether written or unwritten (collectively with the Benefit Plans, the “**Seller Plans**”).

(d) Seller has complied in all material respects with its obligations related to and is not in default (and no event has occurred that, after the giving of notice or passage of time or both, would constitute a default) under, any Seller Plan. Seller is current with all contributions and premiums due with respect to any Seller Plan.

(e) No Benefit Plan or Seller Plan provides any welfare benefits to any former employee (or dependent thereof) after the employee's termination of employment, except as required by Section 4980B of the Code and the regulations thereunder or any applicable state law ("COBRA") or applicable state law, and at the participant's (or dependent's) sole expense.

(f) At no time in the past has Seller (or any trade or business that is in a controlled group of corporations or under common control with Seller within the meaning of Code Section 414 or ERISA Section 4001 (an "ERISA Affiliate")) (i) maintained or made any contributions to any employee pension benefit plan that is subject to Title IV of ERISA, or (ii) maintained or had an obligation to contribute to a "multiemployer plan" within the meaning of Section 3(37) of ERISA. No Benefit Plan is a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA.

(g) There has been no event that has occurred, and no condition that exists with respect to any plan that would subject the Business (or any Asset), either directly or by reason of affiliation with any ERISA Affiliate, to any Tax, fine, Lien, penalty or other liability imposed by ERISA, the Code or other Applicable Laws.

(h) To Seller's Knowledge, there are no pending claims by the Offered Employees for benefits under applicable workers' compensation or similar laws or under any disability plan (whether insured or self-insured) maintained by Seller, and no Offered Employee is absent from work due to a leave (whether paid or unpaid) under which the employee has reemployment rights under Applicable Law, including leaves subject to the Family and Medical Leave Act, pregnancy or parenting leaves, educational leaves or military leaves.

(i) The consummation of the Transactions will not result in any new or increased obligations to Offered Employees, including severance pay or benefits due to a change of control, increased vesting or benefit accruals (unless required by Applicable Law), or guarantees of employment or restrictions on changes in terms or conditions of employment for any period following a change of control.

(j) Seller is in compliance in all material respects with all Applicable Laws concerning labor and employment, including all Applicable Laws relating to employment discrimination, civil rights, equal pay, employee classifications, classification of workers as employees or independent contractors, wages and hours, collective bargaining and labor relations, occupational safety and health, workers' compensation, immigration or the withholding and payment of income, social security (FICA) or similar Taxes. No Legal Proceeding relating to any such Applicable Laws are pending or, to the Knowledge of Seller, threatened.

(k) Each of the Offered Employees is a United States citizen or otherwise has the lawful right to work in the United States. Seller has in its files a Form I-9 that is validly and properly completed in accordance with Applicable Law for each Offered Employee with respect to whom such form is required under Applicable Law.

(l) Except for travel advances in the Ordinary Course of Business, Seller has not loaned any money to any Offered Employees.

(m) Within the last three years, Seller has not implemented any plant closing or mass layoff of employees governed by the Worker Adjustment and Retraining Notification Act or any similar state or local law and no such plant closing or mass layoff has been announced or is planned. At no time since January 1, 2021 has an Offered Employee been on a paid or unpaid furlough or temporary layoff.

(n) Schedule 3.12(n) lists, with respect to each Offered Employee, such employee's name, position, location of employment, hire date, classification as exempt or non-exempt under the Fair Labor Standards Act, current annual salary or hourly rate of pay, current bonus or other incentive compensation eligibility, status as full-time or part-time or on disability or other leave of absence (with "full-time" being defined as at least 40 hours per week), total wages paid for prior calendar year, current accrued vacation or other paid time off balances, and any perquisites provided to the employee.

(o) Each Person whom Seller currently retains as an independent contractor or consultant or was previously retained as an independent contractor or consultant qualifies, or at all times while performing services for Seller during the past three (3) years qualified, as an independent contractor and not as an employee of Seller under Applicable Laws.

(p) Seller has followed in all material respects any orders issued by federal, state or local Governmental Entities related to COVID-19.

(q) Seller does not have a present intention to terminate the employment of any Offered Employee and, to the Knowledge of the Seller, no such employee has any present intention to terminate their employment.

(r) Since January 1, 2017, (i) no allegations of harassment have been made against or by any Offered Employee, and (ii) Seller has not entered into any settlement agreements related to specific allegations of sexual harassment or misconduct by or against any Offered Employee.

(s) Seller has made available to Buyer a true and complete copy of each employee handbook that applies to the Offered Employees, including any remote work or return-to-work policies or plans.

3.13 Intellectual Property.

(a) As used in this Agreement, "**Intellectual Property**" means all of the following in any jurisdiction throughout the world: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto and all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, divisionals, revisions, extensions, reexaminations and post-grant reviews thereof; (ii) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, Internet domain names, together with all translations, adaptations, derivations and combinations thereof (and including all goodwill associated therewith) and all applications, registrations and renewals in connection therewith; (iii) all copyrightable works and copyrights, and all applications, registrations and renewals in connection therewith; (iv) all mask works and all applications, registrations and renewals in connection therewith; (v) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals); (vi) all computer software (including source code, executable code, data, databases and related documentation); (vii) all advertising and promotional materials; (viii) all other proprietary rights; and (ix) all copies and tangible embodiments thereof (in whatever form or medium). Schedule 1.1(e) lists the Intellectual Property Assets owned by, or purported to be owned by, or exclusively licensed to Seller and used in the Business. Seller is the sole owner of, or has the exclusive perpetual right to use without consideration, all Intellectual Property Assets required to be identified on Schedule 1.1(e), free and clear of all Liens, other than Permitted Liens and Liens that are released at Closing pursuant to Section 2.2(j).

(b) Seller has taken reasonable actions to maintain, police and protect the Intellectual Property Assets, and all Intellectual Property Assets are subsisting, valid and enforceable. All registration, maintenance and renewal fees currently due in connection with any registrations or applications included in the Intellectual Property Assets (collectively, the “**Registered Intellectual Property**”) have been paid and all documents, recordations and certificates in connection with the Registered Intellectual Property currently required to be filed have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting the Registered Intellectual Property and recording the Seller’s ownership interests therein. There are no pending actions by third parties nor, to the Knowledge of Seller, threatened actions by third parties challenging the validity and enforceability of, or contesting the Seller’s rights with respect to, any Intellectual Property Assets, other than office actions in the ordinary course of prosecution. Seller has not received any notice or claim challenging the validity or enforceability of any Intellectual Property Assets, other than office actions in the ordinary course of prosecution.

(c) The Intellectual Property Assets are sufficient for the conduct of the Business in the manner in which it is currently conducted. The purchase of the Assets by Buyer will not result in the termination, revocation, suspension, or modification of any material Intellectual Property Assets. The Business has taken commercially reasonable efforts to maintain the secrecy of all of the Business’s and its customers’ confidential information and all information that Seller treats as a trade secret or proprietary information. All use and/or disclosure of any such information by or to a third party has been pursuant to the terms of a written contract between Seller and such third party. To the Knowledge of the Seller, the Seller has not experienced any breach of security or otherwise unauthorized access or use by third parties to any such information in the Seller’s possession, custody or control.

(d) The Business has not since January 1, 2017 infringed upon or misappropriated, and does not infringe upon or misappropriate any Intellectual Property rights of third parties, and, since January 1, 2017, neither Seller nor the officers (or employees with responsibility for Intellectual Property matters) of Seller have received any charge, complaint, claim, demand or notice alleging any such infringement or misappropriation (including any claim that Seller must license or refrain from using any Intellectual Property rights of any third party or any notices of patent rights that might be relevant to the Business or offers to license Intellectual Property to Seller). To the Knowledge of Seller, no third party has infringed upon or misappropriated, and no third party does interfere with, infringe upon, misappropriate or otherwise conflict with, any of the Intellectual Property Assets and, since January 1, 2017, the Business has not made any communications to a third party claiming or alleging any such interference, infringement, misappropriation or conflict.

(e) Except as set forth on Schedule 3.13(e)(i), no right, license or option has been granted to any third party and there has been no transfer or assignment of any ownership interest or exclusive licenses granted with respect to any of the Intellectual Property Assets, and there are no plans to do so. Except as disclosed on Schedule 3.13(e)(ii), Seller owns and has the right to own all Intellectual Property Assets developed by its past and current employees, contract workers, consultants and agents in connection with their services for Seller, and all such parties have executed in writing an enforceable assignment of all such Intellectual Property Assets with the Seller that (i) provides Seller with ownership of Intellectual Property Assets resulting from their services for such Seller and (ii) requires such parties to execute such additional assignments of such Intellectual Property Assets to Seller as Seller may require. Other than compensation for services performed, Seller has no obligation to pay any such party referred to above any sums for the ownership or use of Intellectual Property Asset which is the subject of this Section 3.13.

(f) Except as set forth on Schedule 3.13(f), no (i) government funding or (ii) facilities of a university, college, other educational institution or research center were used in the development of the Intellectual Property Assets. No current or former employee, consultant or independent contractor of Seller, who was involved in, or who contributed to, the creation or development of any Intellectual Property Assets, has performed services for any government, university, college or other educational institution or research center during a period of time during which such employee, consultant or independent contractor was also performing services for Seller.

3.14 Labor Disputes. Seller is not a party to or bound by any labor or collective bargaining agreement, nor has Seller experienced any strike, picketing, grievance, labor arbitration, claim of unfair labor practices or other collective bargaining dispute within the past three years. To the Seller's Knowledge, no organizational efforts are presently being made or threatened by or on behalf of any labor union or employee association with respect to employees of the Business.

3.15 Taxes.

(a) For the purposes of this Section 3.15, the "**Business**" includes Seller, the Business and any or all of their respective predecessors or past subsidiaries, whether or not in existence as of the date of this Agreement. The Business has filed or caused to be filed on a timely basis all Tax Returns required to be filed on or before the Closing Date. For purposes of this Agreement, "**Taxes**" means all (i) federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, escheat or unclaimed property, customs, duties or other taxes, fees, assessments or charges in the nature of a tax, together with any interest, additions or penalties with respect thereto (or with respect to any failure to timely and properly file a Tax Return) and any interest in respect of such additions or penalties; (ii) liability for the payment of any amounts of the type described in clause (i) for the Taxes of any other Person pursuant to Section 1.1502-6 of the Treasury Regulations (or any comparable provisions under state, local or non-U.S. Law); and (iii) liability for the payment of any amounts of the type described in clause (i) as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the liability of any other Person as a successor or transferee. "**Tax Returns**" means any and all returns, declarations, reports, statements, schedules, notices, forms or other documents or information, and any predecessor or successor forms thereto, including any schedule or attachment thereto, and including any amendment thereof, required to be filed with a Governmental Authority in respect of any Tax.

(b) All Taxes due and owing have been paid whether or not shown due on a Tax Return.

(c) The Business has deducted, withheld, and timely paid over to the applicable Governmental Entity all material Taxes the Business is obligated to deduct, withhold, and pay over from amounts owing to any employee, creditor, or third party. The Business has collected all required exemption or similar certificates required to substantiate an exemption from any sales Tax to be collected by the Business.

(d) Since January 1, 2017, no claim in writing has been received by Seller from a Governmental Authority in a jurisdiction where the Business does not file Tax Returns that the Business is or may be subject to taxation by such jurisdiction.

(e) The Business is not, nor has been, party to or the beneficiary of any Tax exemption, Tax holiday, or other Tax reduction Contract or order.

(f) There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the Assets.

(g) Seller has elected, pursuant to Section 1362 of the Code, to be treated as an "S corporation," as that term is defined in Section 1361 of the Code, for federal income tax purposes continuously since its formation, has filed similar elections with each state taxing authority requiring a separate state election to be treated as an S corporation and, since that date, and on the Closing Date, has been and will be validly treated in a similar manner for purposes of applicable state and local income Tax laws in the jurisdictions in which Seller has been subject to taxation.

3.16 Finders or Investment Bankers. Seller has not retained or engaged any investment banker, business consultant, financial advisor, broker, finder or other financial intermediary in connection with the Transactions that will require the payment of a fee by Buyer or the Business.

3.17 Insurance. Schedule 3.17 sets forth a list of all policies of insurance maintained by Seller with respect to the Assets and the Business that are currently in force. All required premiums have been paid with respect to such insurance policies through the date hereof. Seller has made available to the Buyer a true, correct and complete copy of each insurance policy listed on Schedule 3.17, together with all amendments, waivers or other changes thereto. Any insurance required to be maintained by Seller under any agreement is so maintained. Seller is not in default with respect to its obligations under any insurance policy maintained by it, and Seller has not been denied insurance coverage except to the extent that specific insurers declined to provide quotes when coverage was marketed at renewal. Seller does not have any self-insurance or co-insurance programs.

3.18 Real Estate.

(a) Seller has delivered to Buyer true, complete and correct copies of the Real Property Leases. Each Real Property Lease constitutes the entire agreement between the parties thereto, and there are no other agreements, whether oral or written, between such parties. Other than the Leased Real Property, Seller does not own or lease, and has never owned, any real property.

(b) The use and occupancy by the Seller of the Leased Real Property are in compliance in all material respects with all Applicable Laws with respect to the operation of the Business thereon.

3.19 Transactions with Affiliates. Except as set forth on Schedule 3.19:

(a) no member, officer, former officer, director, former director, employee (whether current or former), or beneficiary of, or any other Person not dealing at arm's length with, the Business, Seller or any of their respective Affiliates, is engaged in any transaction or arrangement with Seller, other than indemnification rights and similar ordinary course arrangements relating thereto; and

(b) Seller is not indebted to any of its employees or any Person not acting at arm's length with any of them in any manner whatsoever, and has not guaranteed or otherwise given security for or agreed to guarantee or give security for any liability, debt or obligation of any Person.

None of Seller, its Affiliates or its officers, directors, employees and equity holders have been involved in any business arrangement or relationship with the Business within the past 12 months (other than employment arrangements in the Ordinary Course of Business), and none of Seller, its Affiliates, its officers, employees and equity holders owns any asset, tangible or intangible, that is used in the Business.

3.20 Warranties. Schedule 3.20 contains a true, correct, and complete description of the product and service warranties provided by the Business. There have not been any material deviations from such warranties, and neither the Business nor any of its salespeople, employees, distributors, or agents is authorized to undertake obligations to any customer or to other third parties in excess of such warranties. The Business has not made any oral warranty with respect to any of their products or services. Seller has made available to Buyer a true, correct, and complete schedule of all warranty claims within the past two years against the Business. There are no claims pending against the Business alleging defects in the products or services of the Business.

3.21 Solvency. Before giving effect to the Transactions:

(a) Seller was not and, to the Knowledge of Seller, Seller will not be insolvent, as that term is used and defined in Section 101(32) of the United States Bankruptcy Code;

(b) Seller does not have unreasonably small capital nor is engaged or about to engage in a business or a transaction for which any remaining assets of Seller are unreasonably small;

(c) by executing, delivering or performing its obligations under this Agreement or Transaction Documents, Seller does not intend to hinder, delay or defraud either present or future creditors of the Business or any of its Affiliates; and

(d) at this time, Seller does not contemplate filing a petition in bankruptcy or for an arrangement or reorganization or similar Action under any Applicable Law of any jurisdiction, nor, to the Seller's Knowledge, is the Business the subject of any bankruptcy, insolvency or similar proceedings under any Applicable Law of any jurisdiction.

3.22 Product Liability. Schedule 3.22 sets forth an accurate, correct and complete list and summary description of all existing claims, duties, responsibilities, liabilities or obligations arising from or alleged to arise from any injury to person or property as a result of the ownership, possession or use of any product distributed or sold by the Business since January 1, 2017. The Business does not have any Liability (and there is no reasonable basis for any present or future Action, suit, hearing, investigation, charge, complaint, claim, or demand against the Business giving rise to any Liability) arising out of any injury to individuals or property as a result of the ownership, possession, or use of any product processed, sold, distributed, or delivered by the Business or any of its predecessors.

3.23 Data Privacy.

(a) The Business is currently, and has been in compliance with (i) the Health Insurance Portability and Accountability Act of 1996, as amended by HITECH (collectively, "HIPAA") and all other Applicable Laws or industry standards, including the Payment Card Industry Data Security Standard, concerning the privacy and security of Personal Information, and any Applicable Law regarding the protection, collection, access, use, storage, disposal, disclosure, or transfer of any information that identifies or would be reasonably linked to an identifiable individual ("Personal Information") and all regulations promulgated hereunder, including the following, only to the extent applicable to the Business: HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Federal Trade Commission Act, the Privacy Act of 1974, the CAN-SPAM Act, state privacy laws, U.S. state data security and breach notification laws, state health information privacy laws (collectively, the "Privacy and Security Laws and Standards"); and (ii) any obligations of Seller under contracts related to the Business to which Seller is a party concerning the protection, collection, access, use, storage, disposal, disclosure, or transfer of Personal Information and any related notifications. Without limiting the foregoing, Seller has entered into a business associate agreement ("BAA") with each applicable third party to the extent required by HIPAA and has posted in accordance with Privacy and Security Laws and Standards a privacy policy governing its use of Personal Information on its public websites and internally for its employees.

(b) Seller has (i) developed, implemented, and conducted the Business in compliance with, any public privacy notices, and data security or privacy policies and procedures (copies of which have been made available to Buyer); (ii) maintained commercially reasonable and necessary administrative, physical and technical safeguards designed to protect the confidentiality, integrity and availability of Personal Information in its possession or control, and to prevent the loss and unauthorized use, access, alteration, destruction or disclosure of such Personal Information; and (iii) trained those of its employees whose job duties include compliance with the laws described in Section 3.23(a) to follow these policies and procedures.

(c) Seller has not been subject to or received written or, to the Knowledge of Seller, oral notice of any Order or Action by any Governmental Entity or Person or any complaints regarding the protection, collection, access, use, storage, disposal, disclosure, or transfer of Personal Information or the violation of any applicable Privacy and Security Law or Standard by the Business. To the Knowledge of Seller, no such Action is threatened against the Business.

(d) Seller has not suffered, discovered or been notified in writing of any unauthorized acquisition, use, disclosure, access to, or breach of any Personal Information in the conduct of the Business that (i) constitutes a breach or a data security incident under any applicable Privacy and Security Law or Standard or would trigger a notification or reporting requirement under any BAA to which it is a party or any contract; or (ii) materially compromises (individually or in the aggregate) the security or privacy of such Personal Information.

(e) Seller does not have any contract obligation to maintain Personal Information in a manner that logically or physically separates data of one customer from that of another.

(f) Seller has not reported a breach or compromise of Personal Information to any Person or Governmental Entity, either voluntarily or based on contract obligations or Privacy and Security Laws and Standards.

(g) The consummation of the Transactions does not violate any Privacy and Security Laws and Standards, contract obligation related to Personal Information, or privacy policy of Seller.

3.24 No Other Representations or Warranties.

(a) Except for the representations and warranties contained in this Article 3 (including the related portions of the Disclosure Schedules) or in any other Transaction Document, neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Assets furnished or made available to Buyer and its representatives or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in law, all of the foregoing being hereby expressly disclaimed.

(b) Seller acknowledges and agrees that any claims Seller may have for breach of representation or warranty shall be based solely on the representations and warranties of Buyer set forth in Article 4 hereof. Seller has not relied on any other express or implied representation or warranty, either written or oral, on behalf of Buyer, including any representation or warranty as to the accuracy or completeness of any information regarding Buyer furnished or made available to Seller and its representatives, or any representation or warranty arising from statute or otherwise in law, all of the foregoing being hereby expressly disclaimed. The foregoing shall not be deemed to release any Person from (or otherwise mitigate) any liability for Fraud.

**Article 4
Representations and Warranties of Buyer**

Buyer represents and warrants to Seller as follows:

4.1 Organization. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware.

4.2 Authority; Non-Contravention.

(a) Buyer has the corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Transaction Documents to which Buyer is a party by Buyer and the consummation by it of the Transactions have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement and each of the Transaction Documents to which Buyer is a party have been duly and validly executed and delivered by Buyer and, assuming the due and valid execution and delivery thereof by any counterparties thereto, constitute legal, valid and binding agreements on Buyer's part, enforceable against Buyer in accordance with their terms, except as the enforceability hereof and thereof may be limited by the Enforcement Exceptions.

(b) Neither the execution or delivery by Buyer of this Agreement or the Transaction Documents to which Buyer is a party nor the consummation of the Transactions will (i) conflict with or result in any breach of any provision of the amended and restated certificate of incorporation, amended and restated bylaws or other organizational documents of Buyer or any resolutions or consents adopted by the board of directors of Buyer; (ii) require Buyer to obtain or make any Consents, Filings, or Notices of or with any Governmental Entity or any other Person; (iii) violate, conflict with, or result in the breach of any of the terms of, accelerate, result in a modification of, or cause the termination of or give any other contracting party the right to terminate or constitute a default (or give rise to any right of termination, cancellation or acceleration) under, or create a penalty under, any provision of any material contract; (iv) violate any Applicable Law or Orders applicable to the Buyer; or (v) result in the creation of any Lien on any assets of Buyer, except in the cases of clauses (ii) – (v), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the Transactions.

4.3 Pending Actions. There is no pending or, to the Knowledge of Buyer, threatened Legal Proceeding by or before any Governmental Entity against or relating to Buyer to restrain or prevent the carrying out of the Transactions or that would be reasonably likely to have a material adverse effect on the ability of Buyer to perform this Agreement.

4.4 Finders or Investment Bankers. Neither Buyer nor any of its officers or directors has retained or engaged any investment banker, business consultant, financial advisor, broker, finder or other financial intermediary in connection with the Transactions that will require the payment of any amounts by Seller.

4.5 Financing. Buyer has such funds available that will be sufficient to pay the Closing Purchase Price and satisfy all other obligations of Buyer on and after the Closing under this Agreement and each other Transaction Document. Buyer represents and warrants that its obligations under this Agreement and the other Transaction Documents are not subject to it obtaining financing in order to pay the Closing Purchase Price or to satisfy any of its other obligations under this Agreement and the other Transaction Documents.

4.6 Solvency. Before giving effect to the Transactions:

(a) Buyer was not and immediately after the Closing, to the Knowledge of Buyer, Buyer will not be insolvent, as that term is used and defined in Section 101(32) of the United States Bankruptcy Code;

(b) Buyer does not have unreasonably small capital nor is engaged or about to engage in a business or a transaction for which any remaining assets of Buyer are unreasonably small;

(c) by executing, delivering or performing its obligations under this Agreement or Transaction Documents, Buyer does not intend to hinder, delay or defraud either present or future creditors of the Business or any of its Affiliates; and

(d) at this time, Buyer does not contemplate filing a petition in bankruptcy or for an arrangement or reorganization or similar Action under any Applicable Law of any jurisdiction, nor, to the Knowledge of Buyer, is the Business the subject of any bankruptcy, insolvency or similar proceedings under any Applicable Law of any jurisdiction which are pending or threatened.

4.7 No Other Representations and Warranties.

(a) Except for the representations and warranties contained in this Article 4 or in any other Transaction Document, neither Buyer nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Buyer, including any representation or warranty as to the accuracy or completeness of any information regarding Buyer furnished or made available to Seller and its representatives, or any representation or warranty arising from statute or otherwise in law, all of the foregoing being hereby expressly disclaimed. Any claims Seller may have for breach of representation or warranty shall be based solely on the representations and warranties of Buyer set forth in this Article 4 hereof. The foregoing shall not be deemed to release any Person from (or otherwise mitigate) any liability for Fraud.

(b) Buyer acknowledges and agrees that, except for the representations and warranties contained in Article 3 (including the related portions of the Disclosure Schedules) or in any other Transaction Document, the Assets are being transferred on a “where is” and, as to condition, “as is” basis. Any claims Buyer may have for breach of representation or warranty shall be based solely on the representations and warranties of Seller set forth in Article 3 hereof (as modified by the Schedules). Buyer acknowledges that it has conducted to its satisfaction, its own independent investigation of the Assets and the Business and, in making the determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of its own independent investigation. The foregoing shall not be deemed to release any Person from (or otherwise mitigate) any liability for Fraud.

Article 5 Covenants

5.1 General, After Closing. In case at any time after the Closing any further actions are necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further actions (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under Article 7). Seller acknowledges and agrees that from and after the Closing, Buyer will be entitled to possession of all documents, books, records (including Tax records), agreements and financial data of any sort relating to the Business, other than the Retained Records. Seller shall not in any manner take any action which is designed, intended or might be reasonably anticipated to have the effect of discouraging customers, suppliers, lessors, licensors and other business associates of the Business from maintaining the same business relationships with the Business after the Closing as were maintained with the Business prior to the Closing.

5.2 Pre-Closing Conduct of Business. Except as expressly contemplated herein, as set forth on Exhibit 5.2, or as otherwise consented to in writing by Buyer (such consent not to be unreasonably withheld, conditioned or delayed), from the date hereof through Closing, Seller will conduct the Business in the Ordinary Course of Business and Seller will not do any of the following with respect to the Business or the Assets:

(a) (i) make any sale, lease to any other Person, license to any other Person or other disposition of any material Asset; (ii) make any capital expenditure or purchase or otherwise acquire any Asset (other than purchases of inventory in its Ordinary Course of Business, capital expenditures that do not exceed \$5,000 (individually or in the aggregate), and capital expenditures fully paid by Seller prior to the Closing), license any intangible asset from any other Person (other than non-exclusive licenses in its Ordinary Course of Business of commercially available off-the-shelf software with annual fees of less than \$1,000), lease any real property from any other Person or lease any tangible personal property from any other Person (other than leases of tangible personal property in its Ordinary Course of Business under which the payments do not exceed \$5,000 (individually or in the aggregate)); (iii) acquire by merging with, or by purchasing a substantial portion of the stock or assets of, or by any other manner, any business or any Person or division thereof; (iv) disclose any confidential, proprietary or non-public information (other than as is reasonably protected under a customary non-disclosure contract); or (v) adopt a plan of liquidation, dissolution, merger, consolidation, statutory share exchange, restructuring, recapitalization or reorganization;

- (b) grant or have come into existence any Lien on any material Asset, other than any Permitted Lien;
- (c) (i) except in the Ordinary Course of Business, enter into any Material Contract, or amend or terminate any Material Contract, or (ii) except in the Ordinary Course of Business, waive, release or assign any right or claim under any such Material Contract;
- (d) (i) adopt or change any accounting method or principle, except as required under GAAP, or (ii) change any annual accounting period;
- (e) fail to (i) use its commercially reasonable efforts to keep intact its business organization; (ii) use its commercially reasonable efforts to keep available its present officer and management-level employees; (iii) maintain the tangible Assets (other than Inventory) in good operating condition and repair (normal wear and tear excepted); (iv) maintain insurance with respect to such entity, its assets and properties reasonably comparable to that in effect on the date of the most recent balance sheet; (v) maintain in full force and effect the existence of all of the Intellectual Property Assets; or (vi) use its commercially reasonable efforts to preserve, and prevent any degradation in its relationship with all of its suppliers, customers and others having material business relations with the Business;
- (f) (i) adopt, enter into, amend or terminate any bonus, profit-sharing, compensation, severance, termination, pension, retirement, deferred compensation, trust, fund or other arrangement or other Benefit Plans for the benefit or welfare of any individual; (ii) enter into or amend any employment arrangement or relationship with any new or existing employee that has the legal effect of any relationship other than at-will employment; (iii) increase any compensation or fringe benefit of any member, manager, officer or employee or pay any benefit to any member, manager, officer or employee, other than pursuant to an existing Benefit Plan that is, in each case, in an amount consistent with past practice; (iv) grant any award to any member, manager, officer or employee under any bonus, incentive, performance or other Benefit Plan (including the removal of any existing restriction in any Benefit Plan or award made thereunder); (v) enter into or amend any collective bargaining agreement; or (vi) except as required by Applicable Law that exists on the date hereof, take any action to segregate any asset for, or in any other way secure, the payment of any compensation or benefit to any employee;

(g) except in the Ordinary Course of Business, (i) pay, discharge, settle or satisfy any claim or Liability, including settling any litigation, or (ii) otherwise waive, release, grant, assign, transfer, license or permit to lapse any right;

(h) (i) take any action that would or is reasonably likely to result in the Business having nexus or otherwise being subject to Tax or any Tax Return filing obligation in any jurisdiction in which the Business has not filed Tax Returns; or

(i) enter into any agreement or commitment, whether orally or in writing, to do any of the foregoing.

5.3 **Access.**

(a) From the date hereof through Closing, so long as this Agreement remains in effect, Seller will (i) afford Buyer and its representatives reasonable access, during normal business hours, without any unreasonable interference with Seller's operation of the Business in the ordinary course, and upon reasonable prior notice, to the facilities, personnel, books and records, and other documents and data of the Business, (ii) furnish Buyer and its representatives with such financial, operating and other data and information related to the Business as Buyer or its representatives may reasonably request, and (iii) cause Seller's personnel and representatives to reasonably cooperate with Buyer in its investigation of the Business, in every respect, in each case except as otherwise prohibited by Applicable Law.

(b) Throughout the three-year period after Closing, subject to the reasonable confidentiality precautions of the Party whose information is being accessed, each Party will, during normal business hours, without any unreasonable interference with the other Party's operation of the Business in the ordinary course, and upon reasonable notice from any requesting Party: (i) cause such requesting Party and such requesting Party's representatives to have reasonable access to the books and records (including financial and Tax records, Tax Returns, files, papers and related items through the year ended December 31, 2021) of such Party, and to the personnel responsible for preparing and maintaining such books and records, in each case to the extent necessary or reasonably desirable to (A) prepare or audit financial statements, (B) prepare or file Tax Returns or (C) address other Tax, accounting, financial or legal matters or respond to any investigation or other inquiry by or under the control of any Governmental Entity; and (ii) permit such requesting Party and such requesting Party's representatives to make copies of such books and records for the foregoing purposes, at such requesting Party's expense.

5.4 Litigation Support. In the event and for so long as any Party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand in connection with (i) the Transactions or (ii) any fact, situation, or circumstance on or prior to the Closing Date involving the Business, each of the other Parties will reasonably cooperate with the contesting or defending Party and its counsel in the contest or defense, make its personnel reasonably available, and provide such testimony and access to its books and records as will be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification therefor under Article 7).

5.5 Confidentiality.

(a) From and after the Closing, Seller and the Shareholder will not, directly or indirectly through any of their respective Affiliates and representatives, use or disclose (other than to or on behalf of Buyer) any Confidential Information of or relating to Buyer or the Business. From and after the Closing, Buyer will not, directly or indirectly through any of its Affiliates and representatives, use or disclose any Confidential Information of or relating to Seller or any of its Retained Businesses (provided, however, that nothing in this Agreement shall prohibit, restrict or otherwise limit the use or disclosure by Buyer and its Affiliates and their respective representatives after Closing of any information to the extent included in the Assets). For purposes of this Section 5.5, “**Disclosing Party**” means the Party (whether Seller or Buyer) whose Confidential Information has been disclosed in connection with the Transactions, and “**Recipient**” means the Party or Person (whether Buyer, Seller or the Shareholder) receiving Confidential Information from the other Party or its representatives (or, as to Confidential Information of the Business, as developed by Seller or the Shareholder); provided that, after the Closing, Buyer shall be deemed to be the Disclosing Party and Seller and the Shareholder the Recipient with respect to all Confidential Information to the extent included in the Assets.

(b) The obligations set forth in Section 5.5(a) shall not apply to: (i) any information that Recipient is required to disclose by subpoena or other mandatory legal process or pursuant to any investigation or other inquiry by or under the control of any Governmental Entity, provided that Recipient promptly gives Disclosing Party notice, to the extent legally permissible, of any request or demand for disclosure of such Confidential Information upon receipt of such request or demand along with a copy of any written correspondence, pleading or other communications concerning the request or demand, and provides reasonable cooperation, at Disclosing Party’s expense, should Disclosing Party seek to obtain an appropriate protective order; or (ii) any information that is available to the public on the date hereof or becomes available to the public other than as a result of a breach of this Section 5.5.

(c) “**Confidential Information**” means any and all technical, business and other information of or relating to Disclosing Party, their businesses or assets that derives value, actual, potential, economic or otherwise, from not being generally known to other Persons, including technical or non-technical data, compositions, devices, methods, techniques, drawings, inventions, processes, financial data, financial plans, product plans, lists of, or information relating to, actual or potential customers or suppliers, acquisition and investment plans and strategies, marketing plans, business plans or operations. Confidential Information includes information of third parties that Disclosing Party is obligated to or do keep or treat as confidential. Confidential Information also includes the terms, including Purchase Price, of this Agreement and the Transaction Documents.

(d) Notwithstanding the foregoing, nothing in this Section 5.5 will prevent any of the following at any time:

(i) If Recipient is requested or required pursuant to written or oral question or request for information or documents in any Legal Proceeding, interrogatory, subpoena, civil investigation demand, or similar process to disclose any Confidential Information, Recipient will notify Disclosing Party promptly of the request or requirement so that Disclosing Party may seek an appropriate protective order or waive compliance with the provisions of this Section 5.5. If, in the absence of a protective order or the receipt of a waiver hereunder, Recipient is, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, Recipient may disclose the Confidential Information to the tribunal; provided, however, that Recipient shall use its best efforts to obtain, at the request of Disclosing Party, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as Disclosing Party shall designate;

(ii) a Party or any of its Affiliates making a statement or disclosure (A) as part of its or any of its Affiliate’s financial statements or Tax Returns or (B) to the extent reasonably necessary to enforce or comply with this Agreement;

(iii) a Party making a statement or disclosure to (A) such Party’s (or any of its Affiliate’s) legal, accounting and financial advisers to the extent reasonably necessary for any such adviser to perform its paid legal, accounting and financial services, respectively, for such Party (or such Affiliate) or (B) any lender or prospective lender of such Party (or such Affiliate) to the extent reasonably required as part of such lending relationship; provided, however, that such Party will cause each Person to whom such statement or disclosure is made under this clause (iii) to keep confidential and not disclose to any other Person any information in such statement or disclosure; or

(iv) Buyer being permitted to communicate with employees, customers and suppliers without the consent or participation of Seller.

(e) This Section 5.5 shall survive the Closing and shall continue indefinitely; provided, however, that the restrictions in this Section 5.5 shall terminate on the fifth anniversary of the Closing with respect to any Confidential Information that does not then constitute a trade secret under Applicable Law. Nothing in this Section 5.5 shall be construed to limit or supersede the common law of torts or statutory or other protection of trade secrets where such law provides Disclosing Party or the Business with greater or longer protection than provided in this Section 5.5.

5.6 Tax Matters. The following provisions will govern the allocation of responsibility as between Buyer and Seller for certain tax matters following the Closing Date:

(a) In the case of any taxable period that includes (but does not end on) the day before the Closing Date (a “**Straddle Period**”), the amount of any Taxes based on or measured by income or receipts of the Business for the Straddle Period will be determined based on an interim closing of the books as of the close of business on the day before the Closing Date and the amount of other Taxes of the Business for a Straddle Period will 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 day before the Closing Date and the denominator of which is the number of days in such Straddle Period.

(b) Each Party will cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any audit, litigation or other Action with respect to Taxes. Such cooperation will 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 Action and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

(c) All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the Transactions will be paid 50% by Buyer and 50% by Seller when due, and the Party required by Applicable Law will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and, if required by Applicable Law, the other Party will, and will cause its Affiliates to, join in the execution of any such Tax Returns and other documentation.

5.7 Covenant Not to Compete and Related Covenants.

(a) From the Closing Date through the fifth anniversary of the Closing Date (the “**Restricted Period**”), neither Seller nor the Shareholder will, directly or indirectly (including through any Affiliates), own, operate, invest in, lend money to, consult with, manage, act as an agent for, or otherwise engage in any business anywhere in the United States that develops, manufactures, markets and sells vest products designed to provide airway clearance therapy (the “**Restricted Business**”); provided that nothing herein shall prohibit Seller, the Shareholder or any of their respective Affiliates from (i) owning or holding less than 2% of the outstanding shares of any class of stock of a publicly traded company that operates in the same industry as the Restricted Business and whose stock is traded on a recognized domestic or foreign securities exchange or over-the-counter market, or (ii) performing the Seller’s obligations under the Transition Services Agreement.

(b) During the Restricted Period, neither Seller nor the Shareholder will, directly or indirectly (including through any Affiliates), hire, employ, engage or solicit the employment of any of the Offered Employees, any sales employees of Buyer or its Affiliates, or any other employee of Buyer or its Affiliates with whom Seller, the Shareholder or their Affiliates came into direct contact or about whom any of them received Confidential Information during the course of negotiations of the Transactions; provided that this Section 5.7(b) does not prohibit Seller, the Shareholder or their respective Affiliates from conducting any general solicitation of employment that is not specifically targeted towards any such employees.

(c) During the Restricted Period, neither Seller nor the Shareholder will, directly or indirectly (including through any Affiliates), solicit or sell any products or services within the Restricted Business to any current or potential customer or supplier of the Business as of the date hereof or take any action to encourage any current or potential customer or supplier of the Business to terminate or reduce its purchases from, or sales to, the Business of any of the products or services that were purchased from or sold to the Business prior to the date hereof.

(d) During the Restricted Period, neither Seller nor the Shareholder will, directly or indirectly (including through any Affiliates), criticize or disparage in any manner or by any means (whether written or oral, express or implied) Buyer or the Business or any aspect of Buyer's or the Business' management, policies, operations, products, services, practices or personnel.

(e) Seller and the Shareholder each specifically acknowledges and agrees that (i) the foregoing paragraphs (a) through (d) of this Section 5.7 are reasonable and necessary to ensure that Buyer receives the expected benefits of acquiring the Assets and the Business, (ii) Buyer has refused to enter into this Agreement in the absence of such paragraphs in this Section 5.7, and (iii) breach of any such paragraphs in this Section 5.7 will harm Buyer to such an extent that monetary damages alone would be an inadequate remedy and Buyer would not have an adequate remedy at law. Therefore, in the event of a breach of any of paragraphs (a), (b), (c) or (d) of this Section 5.7 by Seller or the Shareholder, (A) Buyer (in addition to all other remedies Buyer may have) will be entitled to an injunction and other equitable relief (without posting any bond or other security) restraining the applicable party or parties from committing or continuing such breach and to enforce specifically such paragraphs of this Section 5.7 and their terms and (B) the duration of the Restricted Period will be extended beyond its then-scheduled termination date for a period equal to the duration of such breach.

(f) From the Closing Date through the first anniversary of the Closing Date, Buyer will not, directly or indirectly (including through any Affiliates), hire, employ, engage or solicit the employment of any of the employees of Seller or its Affiliates with whom Buyer or its Affiliates came into direct contact or about whom any of them received Confidential Information during the course of negotiations of the Transactions (other than the Offered Employees); provided that this Section 5.7(f) does not prohibit Buyer or its Affiliates from conducting any general solicitation of employment that is not specifically targeted towards any such employees.

(g) From the Closing Date through the first anniversary of the Closing Date, Buyer will not, directly or indirectly (including through any Affiliates), take any action to cause any current or potential customer or supplier of the Seller with respect to its Retained Businesses as of the date hereof to terminate or reduce its purchases from, or sales to, the Seller; *provided, however*, this Section 5.7(g) shall in no event prevent, impair or affect any action which Buyer or its Affiliates may take whatsoever in connection with any present or future products or services of Buyer or its Affiliates which compete with Seller's Retained Businesses or any other business which Seller may engage in during such one-year period.

(h) During the Restricted Period, Buyer will not, directly or indirectly (including through any Affiliates), criticize or disparage in any manner or by any means (whether written or oral, express or implied) Seller or any of the Retained Businesses or any aspect of Seller or the Retained Business' management, policies, operations, products, services, practices or personnel.

(i) Buyer specifically acknowledges and agrees that (i) the foregoing paragraphs (f) through (h) of this Section 5.7 are reasonable and necessary to ensure that Seller receives the expected benefits of selling the Assets and the Business and protects Seller's Retained Business from unfair competition as a result of Buyer's access to Confidential Information concerning them, (ii) Seller has refused to enter into this Agreement in the absence of such paragraphs of this Section 5.7, and (iii) breach of any of such paragraphs of this Section 5.7 will harm Seller to such an extent that monetary damages alone would be an inadequate remedy and Seller would not have an adequate remedy at law. Therefore, in the event of a breach of any of paragraphs (f), (g) or (h) of this Section 5.7 by Buyer, (A) Seller (in addition to all other remedies Seller may have) will be entitled to an injunction and other equitable relief (without posting any bond or other security) restraining the applicable party or parties from committing or continuing such breach and to enforce specifically such paragraphs of this Section 5.7 and their terms and (B) the duration of the applicable period will be extended beyond its then-scheduled termination date for a period equal to the duration of such breach.

5.8 Commercially Reasonable Efforts; Third Party Consents.

(a) Buyer and Seller each agrees to use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable to consummate the Transactions.

(b) Seller shall use its commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties with respect to the Material Contracts that are described in Exhibit 5.8(b).

5.9 Business Employees.

(a) On the Closing Date, Buyer will offer employment to those employees of the Business identified on Exhibit 5.9(a) (the “**Offered Employees**”), with such employment to commence immediately following the Closing Date (subject to each such Offered Employee’s satisfaction of any pre-employment conditions imposed by Buyer), and, thereafter, Seller will terminate the Offered Employees as of the Closing Date. Any such offers of employment by Buyer will be on an “at will” basis and will be contingent upon each Offered Employee accepting employment with Buyer on the terms set forth in Section 5.9(g) and such additional terms and conditions as Buyer may determine, including the satisfactory outcome of Buyer’s normal background screening process. Those Offered Employees who accept such offers of employment effective as of immediately following the Closing Date and who successfully satisfy all conditions of employment established by Buyer will be referred to herein as the “**Buyer Employees**”. Prior to and through the Closing Date, Seller will be liable for all accrued but unpaid salaries, wages, vacation or other paid time off, incentive compensation or other Liabilities related to the employment of the Offered Employees. Notwithstanding anything contained in this Section 5.9 or elsewhere, (i) Seller will remain responsible for payment of any and all wages, severance, retention, change in control or other similar compensation or benefits which are or may become payable in connection with the consummation of the Transactions; and (ii) Buyer will be responsible for the payment of compensation, bonus or other payment owed to any Buyer Employee arising after the Closing Date as a result of Buyer’s employment of such Buyer Employee.

(b) Except as expressly assumed pursuant to this Agreement, Buyer will not have any Liabilities with respect to any Offered Employee or any employee on an extended leave of absence or any Legal Proceeding thereof or related thereto.

(c) Buyer will not assume any, and Seller will retain all, responsibilities and Liabilities with respect to all Benefit Plans.

(d) Buyer shall credit service accrued by Buyer Employees with Seller as of the Closing Date (i) for eligibility and vesting purposes under the benefit plans, programs, policies and arrangement (but excluding for vesting purposes under any equity-based arrangements) of Buyer and (ii) for future benefit accrual purposes under all applicable vacation or paid time off policies; provided that in no event shall such credit result in the duplication of benefits or the funding thereof.

(e) Seller shall retain responsibility for providing continued group health plan coverage under COBRA with respect to all “M&A qualified beneficiaries” as defined in Treasury Regulation section 54.4980B-9, Q&A-4 for the maximum time period such coverage is required to be made available to M&A qualified beneficiaries under COBRA.

(f) Seller shall retain responsibility for any required notice obligation to current employees under the Worker Adjustment and Retraining Notification Act or any similar Applicable Laws; and Seller shall be responsible for any incurred liability, penalty or other charge related to such obligations.

(g) Notwithstanding any other provision of this Agreement, Buyer's offer of employment to Offered Employees shall include the following: (i) compensation that is substantially comparable in the aggregate to the compensation received by such Offered Employee immediately prior to Closing, (ii) employee benefits that are substantially comparable in the aggregate to the employee benefits received by similarly situated employees of Buyer as of the Closing Date, (iii) such other terms as set forth on Exhibit 5.9(g), and (iv) a sign-on bonus in the amount, and subject to the terms, set forth on Exhibit 5.9(g), to be paid at or promptly following Closing by Seller through Seller's payroll process.

(h) Buyer and Seller acknowledge and agree that all provisions contained in this Section 5.9 are included for the sole benefit of Buyer and Seller, and that nothing in this Agreement creates any third-party beneficiary or other right (A) in any other Person, including any employee of the Business or any Buyer Employee, or (B) to continued employment with Buyer or Seller.

5.10 AffloVest Name. Within thirty (30) days of the Closing, Seller shall take all necessary action so that Seller will no longer use any name that includes any reference to "AffloVest," or anything confusingly similar to such name.

5.11 Excluded Liabilities. Seller will, or will cause its Affiliates to, timely discharge, or make adequate provision for the timely discharge of, the Excluded Liabilities and other liabilities and obligations of Seller under this Agreement and the other Transaction Documents.

5.12 Bulk Sales Laws. Without admitting that Applicable Law relating to bulk transfer or bulk sales are applicable to the Transactions, Buyer waives compliance by Seller with such Applicable Laws. Seller shall promptly pay and discharge when due or contest or litigate all claims of creditors that are asserted against Buyer by reason of non-compliance with such Applicable Laws, without regard to the limitations expressed in Article 7.

5.13 Wrong Pockets. Seller shall, or shall cause its Affiliates to, promptly, but in any event within ten Business Days of receipt by Seller, pay or deliver to Buyer any monies or checks that have been sent to Seller or any of its Affiliates after the Closing to the extent that such monies or checks comprise a portion of the Assets or arise from the Buyer's conduct of the Business after Closing. Buyer shall, or shall cause its Affiliates to, promptly, but in any event within ten Business Days of receipt by Buyer or its Affiliates, pay or deliver to Seller any monies or checks that have been sent to Buyer or any of its Affiliates after the Closing to the extent that they are not in respect of the Assets (including the Receivables) and to the extent they are in respect of the Retained Businesses.

5.14 Exclusive Dealing. During the period from the date of this Agreement through the earlier of the Closing or the termination of this Agreement in accordance with its terms, Seller will not, and will cause its Affiliates and their respective representatives and agents not to, directly or indirectly, (a) solicit, initiate, seek or encourage any Acquisition Proposal (as defined below), (b) furnish any information to, or participate in any discussions or negotiations with, any Person (other than Buyer or any Person on Buyer's behalf) regarding any Acquisition Proposal, or (c) agree to or approve any Acquisition Proposal. As used herein, the term "Acquisition Proposal" shall mean any inquiry, proposal or offer relating to a possible acquisition of the Business, Seller or any of its subsidiaries that relate to the Business, in whole or in part, whether directly or indirectly (by merger, tender offer, purchase, statutory share exchange, joint venture or otherwise), except the sales of inventory in the Ordinary Course of Business of Seller or any of its subsidiaries; *provided, however*, that the term "Acquisition Proposal" shall not include any transaction which does not relate to or involve the sale of the Business or the Assets and shall not include the Transactions. Seller, its Affiliates and their respective representatives will immediately terminate any and all such discussions or negotiations that may be in progress as of the date hereof.

5.15 R&W Policy. At or prior to the Closing, Buyer will obtain a binding commitment for a buy-side representation and warranty insurance policy in the form attached hereto as Exhibit F (the “**R&W Policy**”) to be issued in connection with this Agreement. Seller shall cooperate with Buyer’s efforts and provide assistance as reasonably requested by Buyer to obtain and bind the R&W Policy. Buyer and Seller shall each pay or cause to be paid, 50% of the total premium and underwriting and other third-party costs and expenses of such R&W Policy. From and after the date hereof, Buyer shall not (and shall cause its Affiliates not to) amend, modify, terminate or waive any term or condition the waiver of subrogation provisions set forth in the R&W Policy in any manner that would be reasonably likely to expand any potential Liability of Seller or any of Seller’s directors, managers, officers, employees, Affiliates, shareholders, members, agents, attorneys, representatives, successors or assigns in their capacities as such under the provisions of the R&W Policy (including with respect to the subrogation provisions). Notwithstanding anything herein to the contrary, if the R&W Policy is not issued and bound as required by this Section 5.15, the provisions of Section 7.1(a), Section 7.3(i) and Section 7.7(b) will be interpreted, and the Parties will comply (and cause their applicable Affiliates and agents to comply) with such Sections, as if the R&W Policy were so issued and bound.

Article 6

Conditions to Obligation to Close

6.1 Conditions to Obligation of Buyer to Close. The obligation of Buyer to effect the closing of the Transactions is subject to the satisfaction at or before Closing of all of the following conditions, any one or more of which may be waived by Buyer, in Buyer’s sole discretion:

(a) (i) Each representation and warranty of Seller in Section 3.1, Section 3.2, Section 3.3(b), Section 3.5(a) and 3.5(c), Section 3.15, Section 3.16 and Section 3.19 and any other representation and warranty of Seller that is qualified by Material Adverse Effect will have been true and correct in all respects; and (ii) each representation and warranty of Seller in Article 3 (other than Section 3.1, Section 3.2, Section 3.5(a) and 3.5(c), Section 3.15, Section 3.16 and Section 3.19 and any representation and warranty qualified by Material Adverse Effect), disregarding all qualifications by the use of the word “material,” “materially,” or other variations of the root word “material” or by a reference regarding the occurrence or non-occurrence or possible occurrence or non-occurrence of a Material Adverse Effect or a “materially adverse effect” (a “**Materiality Qualifier**”), will have been true and correct in all material respects, in each case both as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (or, in each case, if any such representation and warranty is expressly stated to have been made as of a specific date, then, for such representation and warranty, as of such specific date).

(b) Seller will have performed and complied with, in all material respects, all covenants and agreements required by this Agreement to be performed and complied with by Seller on or before the Closing Date.

(c) Since the date of this Agreement, there will not have been any Material Adverse Effect.

(d) Seller will have delivered to Buyer a certificate duly executed by Seller, dated the Closing Date, certifying the items in Sections 6.1(a), 6.1(b) and 6.1(c).

(e) Seller will have delivered (or caused to be delivered) to Buyer each of the other items contemplated to be so delivered by this Agreement, including each item listed in Section 2.2.

(f) No Governmental Entity of competent jurisdiction will have instituted any Action to restrain, prohibit or otherwise challenge the legality or validity of the Transactions that has not been dismissed or otherwise resolved in a manner that does not materially and adversely affect the Transactions and no injunction, Order or decree of any Governmental Entity will be in effect that restrains or prohibits the consummation of the Transactions.

6.2 **Conditions to Obligation of Seller to Close.** The obligation of Seller to effect the closing of the Transactions is subject to the satisfaction at or before Closing of all of the following conditions, any one or more of which may be waived by Seller, in Seller's sole discretion:

(a) (i) Each representation and warranty of Buyer in Section 4.1, Section 4.2(a) and Section 4.4 will have been and will be true and correct in all respects, and (ii) each representation and warranty of Buyer in Article 4 (other than Section 4.1, Section 4.2(a) and Section 4.4), disregarding all Materiality Qualifiers, will have been and will be true and correct in all respects, except for any failure of any such representation and warranty to be true and correct that has not had a material adverse effect on Buyer's ability to consummate the Transactions, in each case both as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (or, in each case, if any such representation and warranty is expressly stated to have been made as of a specific date, then, for such representation and warranty, as of such specific date).

(b) Buyer will have performed and complied with, in all material respects, all covenants and agreements required by this Agreement to be performed and complied with by Buyer on or before the Closing Date.

(c) Buyer will have delivered to Seller a certificate of a duly authorized officer of Buyer, dated the Closing Date and executed by such officer certifying the items in Sections 6.2(a) and 6.2(b).

(d) Buyer will have delivered (or caused to be delivered) to Seller each of the other items contemplated to be so delivered by this Agreement, including each item listed in Section 2.3.

(e) No Governmental Entity of competent jurisdiction will have instituted any Action to restrain, prohibit or otherwise challenge the legality or validity of the Transactions that has not been dismissed or otherwise resolved in a manner that does not materially and adversely affect the Transactions and no injunction, Order or decree of any Governmental Entity will be in effect that restrains or prohibits the consummation of the Transactions.

6.3 Conditions Deemed Satisfied Upon Closing. If Closing occurs, then all of the conditions set forth in this Article 6 shall be deemed satisfied, and neither Party shall have any claim (including arising under Article 7) based on any actual or alleged failure of any such condition to be satisfied.

Article 7 Indemnification

7.1 Survival of Representations, Warranties and Covenants.

(a) The representations and warranties of the Parties provided hereunder will survive the Closing and will expire and terminate 12 months thereafter, except for (i) representations and warranties set forth in Sections 3.1, 3.2, 3.3(b), 3.5(a), 3.16, 3.19, 4.1, 4.2(a), and 4.4 (the “**Fundamental Reps**”), in any Schedule related thereto, or in any certificate delivered in connection therewith, which will survive indefinitely, (ii) representations and warranties set forth in Section 3.13 (the “**IP Reps**”), which will survive for the term of the R&W Policy, (iii) representations and warranties set forth in Section 3.12 (the “**Benefits Reps**”) and Section 3.15 (the “**Tax Reps**”), which will survive until the expiration of the statute of limitations period underlying any cause of action or claim relating to the Benefit Reps or the Tax Reps, as applicable, and (iv) claims based on Fraud (“**Fraud Claims**”), which will survive until the expiration of the statute of limitations period underlying any cause of action or claim relating to the Fraud Claims.

(b) Each covenant and agreement (i.e., other than representations and warranties) herein (other than those covenants and agreements, including Sections 5.2, 5.3(a), 5.8 and 5.14, which contemplate performance between the execution hereof and the Closing), and all associated rights to indemnification, will survive Closing and will continue in full force thereafter until all Liability hereunder relating thereto is barred by all applicable statutes of limitation.

(c) For each claim for indemnification under this Agreement regarding a breach of a representation or warranty that is made prior to expiration of such representation or warranty, such claim and associated right to indemnification will not terminate before final determination and satisfaction of such claim.

7.2 **Indemnity.**

(a) From and after the Closing, Seller will indemnify and hold harmless Buyer (and its directors, officers employees, Affiliates, successors, heirs and legal representatives) (the “**Buyer Indemnified Parties**”) against any and all losses, debts, Liabilities, damages, obligations, claims, demands, judgments, and settlements, whether asserted by third parties or incurred or sustained in the absence of third-party claims, including all costs and expenses, including interest, penalties, and reasonable attorneys’ fees, and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, “**Damages**”) incurred in connection with, resulting from or arising out of:

- (i) the breach of any representation or warranty of Seller set forth in Article 3 hereof (or in any related Schedule or certificate);
- (ii) the breach or failure to comply with any covenant or agreement on the part of Seller set forth in this Agreement herein (other than those covenants and agreements, including Sections 5.2, 5.3(a), 5.8 and 5.14, which contemplate performance between the execution hereof and the Closing);
- (iii) any Debt of Seller that is not paid by Seller;
- (iv) any Taxes of Seller for any taxable period ending on or before the Closing Date, excluding the Buyer portion of transfer and similar Taxes allocated pursuant to Section 5.6(c);
- (v) any Excluded Liabilities;
- (vi) the Retained Businesses or any other Excluded Assets;
- (vii) any costs or expenses relating to failure to pay any bulk sales Taxes;
- (viii) any fees or expenses due to any investment bankers, business consultants, financial advisors, brokers, finders or other financial intermediaries upon or in connection with the consummation of the Transactions as described under Section 3.16, and any other expenses of Seller described in Section 9.15;
- (ix) any event, matter, or circumstance occurring, existing or relating to the ownership, operation or maintenance of Seller, the Business or an Asset prior to Closing;
- (x) any liability that Seller or the Business may suffer or incur resulting from, arising out of, or relating to Seller’s participation in any federal, state or local grant, loan or other funding programs established as a result of COVID-19, including under any Provider Relief Funds (general or targeted distributions), FFCRA Uninsured Relief Funds (payment for testing for FFCRA uninsured patients), Uninsured Relief Funds (reimbursement at Medicare rates for COVID-19-related treatment of uninsured patients) or payments received pursuant to the Medicare Advance/Accelerated Payment Program (any such programs, collectively, “**COVID-Related Programs**”), or Seller’s failure to have complied with any of the terms or conditions of any COVID-Related Programs, including any investigation, audit, or claim in connection therewith or any amount not forgiven in accordance with the terms of such COVID-Related Program;
- (xi) any matter described on Exhibit 7.2(a)(x); or

- (xii) any Actions related to the foregoing.

For the purposes of this Agreement, “**Actions**” means all actions, suits, claims, proceedings, investigations, audits, examinations, demands, assessments, fines, judgments, settlements, interest, penalties, costs and remedial actions.

(b) From and after the Closing, Buyer will indemnify Seller (and its directors, officers employees, Affiliates, successors, heirs and legal representatives) against all Damages incurred in connection with or arising out of:

- (i) the breach of any representation or warranty of Buyer set forth in Article 4 hereof (or in any related certificate);

- (ii) the breach or failure to comply with any covenant or agreement on the part of Buyer set forth in this Agreement herein (other than those covenants and agreements, including Section 5.8(a), which contemplate performance between the execution hereof and the Closing);

- (iii) any expenses of Buyer described in Section 9.15;

- (iv) the ownership or operation of the Assets as of immediately following the Closing Date, but only to the extent such Damages are not within the scope of Seller’s indemnification obligations set forth in Section 7.2(a) (without regard to any limitation herein);

- (v) any Assumed Liability;

- (vi) the Buyer’s portion of transfer and similar Taxes allocated to it pursuant to Section 5.6(c); or

- (vii) any Actions related to the foregoing.

7.3 Additional Indemnity Provisions.

(a) Seller will not have any obligation under Section 7.2(a)(i) (other than regarding any breach of any Fundamental Rep, any IP Rep, any Benefits Rep or Fraud Claim, for which there is no threshold), unless and until the aggregate amount of indemnification for which Seller is obligated thereunder exceeds \$400,000 (the “**Threshold**”), and then Seller will be liable only for any amounts in excess of the Threshold.

(b) Seller’s obligation under Section 7.2(a)(i) will not exceed an amount equal to \$400,000 (the “**Cap**”), in the aggregate, other than regarding (i) any breach of any Fundamental Rep or Fraud Claim (for which the cap on Seller’s liability will be the Purchase Price actually paid to Seller), or (ii) any breach of any IP Rep (for which the Cap will be an amount equal to 10% of the Purchase Price actually paid to Seller).

(c) The maximum amount that any Buyer Indemnitee may recover from Seller in the aggregate for all Damages arising under or in connection with Section 7.2(a)(i) of this Agreement will not exceed the Purchase Price actually paid to Seller.

(d) Buyer will not have any obligation under Section 7.2(b)(i) (other than regarding any breach of any Fundamental Rep or Fraud Claim), unless and until the aggregate amount of indemnification for which Buyer is obligated thereunder exceeds the Threshold, and then Buyer will be liable only for any amounts in excess of the Threshold.

(e) Buyer's obligations under Section 7.2(b)(i), in the aggregate, will not exceed an amount equal to the Cap, in the aggregate, other than regarding any breach of any Fundamental Rep or Fraud Claim (for which the cap on Buyer's liability will be the Purchase Price).

(f) The right to indemnification, payment of Damages or other remedy based on the representations, warranties, covenants, agreements, and obligations in this Agreement will not be affected by any investigation conducted, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, agreement, or obligation.

(g) For purposes of calculating Damages in this Article 7 and for purposes of determining whether a breach of representations and warranties has occurred, all qualifications as to materiality or the occurrence of a Material Adverse Effect or similar qualifications contained in any representation or warranty will be ignored.

(h) Each Indemnitee will take, and cause its respective Affiliates to take, commercially reasonable efforts to mitigate any Damages upon becoming aware of any event or circumstance that give rise thereto.

(i) Payments by an Indemnitor pursuant to this Article 7 in respect of any Damages will be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received by the Indemnitee in respect of any such claim, net of the costs of collection of such insurance proceeds, any deductibles, retrospective premium adjustments and similar charges. Buyer shall use commercially reasonable efforts to seek recovery for any Damages under the R&W Policy.

(j) For purposes of this Agreement, "Damages" indemnifiable hereunder will be deemed to exclude any punitive damages, except to the extent awarded to a Third Party.

7.4 **Indemnification Procedures.** All claims for indemnification by a Party entitled to be indemnified under this Article 7 (an “**Indemnitee**”) by another Party hereto (an “**Indemnitor**”) will be asserted and resolved as follows:

(a) If any claim or demand for which an Indemnitee may claim indemnity is asserted against or sought to be collected from an Indemnitee by a Person other than an Indemnitee, an Indemnitor or an Affiliate thereof (each, a “**Third Party**”), the Indemnitee will notify the Indemnitor in writing as promptly as practicable following the receipt by the Indemnitee of such claim or demand specifying the nature of such claim or demand in reasonable detail, the amount or the estimated amount thereof to the extent then feasible (which estimate will not be conclusive of the final amount of such claim and demand), and including copies of all material written evidence thereof (the “**Claim Notice**”); provided, however, that the failure so to notify the Indemnitor will not relieve the Indemnitor from any liability it may have to the Indemnitee under this Article 7 unless, and only to the extent that, such failure to notify results in the loss of rights or defenses. The Claim Notice will not prejudice any claim or demand with respect to which indemnification is sought.

(b) An Indemnitor will have 30 days from the date on which the Claim Notice is duly given (the “**Notice Period**”) to notify an Indemnitee (i) whether or not it disputes the liability of the Indemnitor to the Indemnitee hereunder with respect to such claim or demand and (ii) whether or not the Indemnitor desires, at its sole cost and expense, to defend the Indemnitee against such claim or demand; provided, however, that the Indemnitee is hereby authorized to file, during the Notice Period, any motion, answer or other pleading that Indemnitee deems necessary or appropriate to protect its interests or those of the Indemnitor and that are not prejudicial to Indemnitor following notice of the same to the Indemnitor; provided, however, that if such claim or demand is from a Governmental Entity relating to Taxes, the Indemnitor may choose to defend, but is not obligated to defend, against such claim or demand, in each such case, and may settle such claim or demand in its reasonable discretion notwithstanding the procedure set forth in Section 7.4(d) hereof. Notwithstanding the foregoing, the Indemnitor shall not have the right to assume the defense of a claim or demand unless the Indemnitor acknowledges in writing that it is responsible for and will bear all monetary damages relating to such third-party claim or demand or to the extent such claim or demand (A) involves injunctive relief, specific performance or other similar equitable relief, any Recall of any of the products of the Business, or any reasonably expected damage to relations with key customers, suppliers or distributors of the Business, (B) is one in which the Indemnitor is also a party and there are legal defenses available to the Indemnitee which are different from or additional to those available to the Indemnitor, (C) seeks a finding or admission of a violation of Applicable Law or violation of the rights of any Person by the Indemnitee, or (D) is reasonably likely to result in Liabilities that, taken with other then existing claims under this Article 7, would not be fully indemnified by the Indemnitor.

(c) If an Indemnitor notifies an Indemnitee within the Notice Period that it desires to defend the Indemnitee against such third-party claim or demand, then (except as provided below) the Indemnitor will defend, at its sole cost and expense, the Indemnitee by appropriate proceedings, will use its commercially reasonable efforts to settle or prosecute such proceedings to a final conclusion in such a manner as to avoid the Indemnitee becoming subject to any injunctive or other equitable order for relief or to liability for any other matter, and will control the conduct of such defense; provided, however, that the Indemnitor will not, without the prior written consent (which consent may be withheld in the Indemnitee's sole discretion) of the Indemnitee, consent to the entry of any judgment against the Indemnitee or enter into any settlement or compromise which does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnitee of a release from all liability in respect of such claim or litigation. The Indemnitor agrees that it will not, without the prior written consent of the Indemnitee, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated hereby (if the Indemnitee is a party thereto or is reasonably likely to be made a party thereto) (i) if such settlement, compromise or consent does not include an unconditional release of the Indemnitee from all liability arising or that may arise out of such claim, action or proceeding; (ii) if such settlement, compromise or consent would involve relief other than money damages in an amount that is not in excess of the Cap (when aggregated with any Damages paid in connection with any other matters), including any type of injunctive or other equitable relief; or (iii) if such settlement, compromise or consent would result in the imprisonment of, or a criminal penalty or fine against, the Indemnitee. If the defendants in any such claim or demand include both the Indemnitor and the Indemnitee, and there are legal defenses or rights available to the Indemnitee that are different from, in actual or potential conflict with, or additional to those available to the Indemnitor, such that one firm of legal counsel may not permissibly represent both Indemnitor and Indemnitee, the Indemnitee will have the right to select one law firm to act at the Indemnitor's expense as separate counsel, on behalf of the Indemnitee. In addition, if the Indemnitee desires to participate in, but not control, any other defense or settlement, it may do so at its sole cost and expense. So long as the Indemnitor is defending in good faith any such claim or demand, the Indemnitee will not settle such claim or demand without the consent of the Indemnitor (which consent shall not be unreasonably withheld, delayed or conditioned).

(d) Before the Indemnitor's settling of any claim or demand the defense of which it has assumed control, the Indemnitor will obtain the Indemnitee's approval, confirmed in writing in accordance with the notice provisions hereof, which approval will not be unreasonably withheld, delayed or conditioned.

(e) If the Indemnitee should have a claim against the Indemnitor hereunder that does not involve a claim or demand being asserted against or sought to be collected from the Indemnitee by a Third Party, the Indemnitee will promptly send a Claim Notice with respect to such claim to the Indemnitor; provided, however, that the failure so to notify the Indemnitor will not relieve the Indemnitor from any liability it may have to the Indemnitee under this Article 7 unless, and only to the extent that, such failure so to notify results in the loss of rights or defenses. During the Notice Period, the Indemnitee shall allow the Indemnitor and its professional advisors to investigate the claim or demand being asserted against Indemnitor, and whether and to what extent any amount is payable in respect of such claim or demand and the Indemnitee shall assist the Indemnitor's investigation by giving such information and assistance (including reasonable access to the Indemnitee's premises and personnel and the right to examine and copy any accounts, documents or records during normal business hours, without any unreasonable interference with the Indemnitee's business operations) as the Indemnitor or any of its professional advisors may reasonably request. If the Indemnitor does not notify the Indemnitee within the Notice Period that it disputes such claim, the Indemnitor will be liable for the amount of any Damages related thereto.

7.5 Indemnification Adjusts Purchase Price for Tax Purposes. Each Party will, including retroactively, treat indemnification payments under this Agreement as adjustments to the Purchase Price for Tax purposes to the extent permitted under Applicable Law.

7.6 Exclusive Remedy. Notwithstanding any other term herein, except for Damages arising out of Fraud Claims, the terms in this Article 7 set forth the sole and exclusive remedies for money damages for the matters in this Agreement, including for breach of any representation, warranty, covenant, obligation or agreement in this Agreement.

7.7 Recovery. Notwithstanding anything to the contrary in this Agreement, any indemnity amounts payable to an Indemnitee in accordance with this Article 7 (after taking into account and subject to the limitations in this Article 7, including the Threshold and Cap if applicable) shall be satisfied:

(a) first, subject to Section 7.3(a), to the extent there are any funds remaining in the Indemnification Escrow Account, from the Indemnification Escrow Account, by delivery of joint written instructions from Seller and Buyer to the Escrow Agent to pay to such Indemnitee an amount equal to the lesser of (i) the funds then remaining in the Indemnification Escrow Account and (ii) the amount of such claim submitted by, and ultimately resolved in favor of, the Indemnitees in accordance with this Article 7;

(b) second, to the extent such Damages exceed the amount held in the Indemnification Escrow Account, by recovery under the R&W Policy to the extent available; and

(c) third, solely to the extent such Damages are arising from or related to Fraud, the Fundamental Reps or the IP Reps and, together with other Damages arising from or related to Section 7.2(a)(i), such Damages are not otherwise recovered under clause (a) or (b), by recovery from Seller.

7.8 Offset Rights. If, prior to the determination and payment of any Earn-Out Payments under Section 1.9, one or more Buyer Indemnified Parties have delivered a Claim Notice under Section 7.4(a) or otherwise asserted the right to indemnification under Section 7.2(a), and Buyer has reasonably and in good faith determined that Damages arising thereunder are recoverable from Seller under Section 7.7(c), then if the full amount of such Damages so claimed by Buyer under Section 7.7(c) has not been paid within 30 days after Buyer's written demand on Seller therefor, then Buyer, at its election, may set off the amount of any such unpaid claimed recovery against any Earn-Out Payments then due, or which may thereafter may become due, under Section 1.9. Buyer shall exercise such right of offset by (a) delivering written notice of its exercise of such right in accordance with this Section 7.8 to Seller after expiration of such 30-day period and (b) depositing the amount so offset against with the Escrow Agent to be held in the Indemnification Escrow Account as part of the Indemnification Escrow Amount under the Escrow Agreement. If the Escrow Agreement has by then terminated or expired (including under Section 7.9) then Buyer and Seller shall execute a new escrow agreement with the Escrow Agent on the same terms and provisions as Exhibit D, to be held until any such claims have been resolved and funds released in accordance with this Article 7 and the Escrow Agreement. The exercise of or failure to exercise such right of set off will not constitute an election of remedies or limit in any manner the enforcement of any other remedy that may be available to a Party.

7.9 Escrow. On the first Business Day after the first anniversary of the Closing Date, Buyer and Seller shall prepare and deliver a joint written instruction to the Escrow Agent instructing the Escrow Agent to release all of the remaining Indemnification Escrow Amount (and any interest thereon), remaining in the Indemnification Escrow Account held by the Escrow Agent, net of any amounts due to Seller or the subject of a pending claim, to Seller.

Article 8 Termination

8.1 Termination of Agreement. The sole and exclusive rights to terminate this Agreement before Closing (and the Party that has any such right) are as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by either Buyer, on the one hand, or Seller, on the other hand, if Closing has not occurred on or before September 15, 2021;
- (c) by Buyer, if any condition in Section 6.1 becomes incapable of fulfillment at Closing or prior to the date stated in clause (b) above; provided that Buyer has not waived such condition; or
- (d) by Seller, if any condition in Section 6.2 becomes incapable of fulfillment at Closing or prior to the date stated in clause (b) above; provided that Seller has not waived such condition.

A termination of this Agreement under any of the preceding clauses (b) through (d) will be effective two Business Days after the Party seeking termination gives to the other Party written notice of such termination. Notwithstanding any term in this Section 8.1, a Party will not have the right to terminate this Agreement (except by mutual written consent pursuant to Section 8.1(a)) if the failure to satisfy any condition to Closing or consummate the Transactions results in any material respect from the breach by such Party of any of its representations, warranties, covenants, obligations or agreements contained herein.

8.2 Effect of Termination. If this Agreement is terminated pursuant to Section 8.1, then this Agreement will be of no further force or effect, except for the terms of Section 5.5 (Confidentiality), Section 9.8 (Governing Law), Section 9.14 (Equitable Remedies), Section 9.15 (Expenses), Section 9.16 (Dispute Resolution; Jurisdiction, Venue and Waiver of Jury Trial), and this Section 8.2. Upon any termination pursuant to Section 8.1, no Party will have any further obligation or other liability hereunder, except pursuant to a Section listed in the immediately preceding sentence or for any Party's willful breach of this Agreement.

Article 9
Miscellaneous

9.1 Amendment and Modification. This Agreement may be amended, modified or supplemented only by written agreement of Buyer and Seller.

9.2 Waiver of Compliance; Consents. Any failure of a Party to comply with any obligation, covenant, agreement or condition herein, to the extent legally allowed, may be waived in writing by the others, but any such waiver or failure to insist upon strict compliance with the obligation, covenant, agreement or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, the consent will be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 9.2.

9.3 Press Releases and Public Announcements. Neither Party may issue any press release or make any public announcement relating to the subject matter hereof without the prior written approval of the other Party, which may not be unreasonably withheld; provided, however, that with prior notice to the other Party of such requirement and the text of the proposed disclosure, a Party may make any public disclosure it believes in good faith is required by Applicable Law or any listing agreement concerning its publicly traded securities.

9.4 Notices. All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given (a) on the date of service if served personally on the Party to whom notice is to be given; (b) on the day of transmission if sent via email to the email address given below during regular business hours of the recipient, if sent by overnight courier or first-class mail, registered or certified, return-receipt requested, postage prepaid and properly addressed on the date the email is sent; (c) on the Business Day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service for delivery as set forth below or if sent by email to the email address given below after the regular business hours of the recipient; or (d) on the fifth day after mailing, if mailed to the Party to whom notice is to be given, by first-class mail, registered or certified, return-receipt requested, postage prepaid and properly addressed, to the Party as follows:

(i) If to Seller, to:

International Biophysics Corporation
2101 East Street Elmo Road
Suite 275
Austin TX 78744
Attn: Mr. H. David Shockley, Jr.
Email: hdavid@biophysicscorp.com

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

Chris Schaeper
SchaeperPC
5850 San Felipe Street, Suite 500
Houston, Texas 77057
chris@schaeperpc.com

and to:

C. Walker Brierre Jr.
Holland & Knight LLP
811 Main Street
Suite 2500
Houston, Texas 77002-6129
walker.brierre@hklaw.com

(ii) if to Buyer, to:

Tactile Systems Technology, Inc.
3701 Wayzata Blvd, Suite 300
Minneapolis, MN 55416
Attn: Chief Financial Officer
Email: bmoen@tactilemedical.com

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

Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Attn: Jonathan Zimmerman
Jonathan L.H. Nygren
Email: jon.zimmerman@faegredrinker.com
jon.nygren@faegredrinker.com

9.5 Assignment; Third-Party Beneficiaries. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by any Party without the prior written consent of the other Party or Parties (except that nothing herein will be deemed to prohibit the assignment of this Agreement by Buyer to any Affiliate of Buyer, in which event Buyer will not be released or discharged from its obligations hereunder). This Agreement is not intended to confer upon any other Person except the Parties any rights or remedies hereunder.

9.6 Legal Representation. The Parties participated jointly in the negotiation and drafting of this Agreement and the documents relating hereto, and each Party was (or had ample opportunity to be) represented by legal counsel in connection with this Agreement and such other documents and each Party and each Party's counsel has reviewed and revised (or had ample opportunity to review and revise) this Agreement and such other documents; therefore, if an ambiguity or question of intent or interpretation arises, then this Agreement and such other documents will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the terms hereof or thereof.

9.7 **Rules of Interpretation; Certain Definitions.** As used in this Agreement:

- (a) “**including**” means “including without limitation”;
- (b) “**Person**” means an individual, a partnership, a limited liability company, a joint venture, a corporation, a trust, an unincorporated organization or a Governmental Entity;
- (c) “**Affiliate**” has the meaning set forth in Rule 12b-2 under the Securities Exchange Act of 1934;
- (d) “**Business Day**” means any day other than a Saturday, Sunday or a day on which commercial banks in Minneapolis, Minnesota are authorized by Applicable Law to remain closed;
- (e) “**Fraud**” means actual fraud under Delaware law with the intent to deceive, specifically excluding constructive fraud, recklessness or negligence.
- (f) “**Knowledge**” means, (i) with respect to Seller, the actual knowledge of David Shockley, Bob Ellis, Kris Frey and Geoff Marcek, after reasonable inquiry, and (ii) with respect to Buyer, the actual knowledge of Daniel Reuvers, Brent Moen, Mark Aldrige and Sunday Hoy, after reasonable inquiry;
- (g) “**Ordinary Course of Business**” means any action (which includes, for this definition, any failure to take action), condition, circumstance or status of or regarding a Person that is consistent with the past practices of such Person and is taken or exists in the ordinary course of the normal operations of such Person;
- (h) “**Privileged Communications**” means any attorney-client communications, confidences, files, work product or other communications arising in connection with the Transactions with respect to which Seller, the Shareholder or their Affiliates have engaged any of Holland & Knight (or its predecessor), SchaeperPC, Baker Tax Law, Kowert, Hood, Munyon, Rankin & Goetzl or any other counsel;
- (i) the table of contents and headings are for convenience of reference only and will not affect the meaning or interpretation of this Agreement;
- (j) all dollar amounts are expressed in United States dollars and will be paid in cash (unless expressly stated herein to the contrary) in United States currency;
- (k) all references to statutes are deemed to refer to such statutes as amended from time to time or as superseded by comparable successor statutory provisions, but in each case as in effect at the time of the relevant event;

(l) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;

(m) unless expressly stated herein to the contrary, reference to any agreement, instrument or other document means such agreement, instrument or document as amended or modified and as in effect from time to time in accordance with the terms thereof;

(n) all references to Sections or Articles are to Sections or Articles of this Agreement, unless otherwise specified;

(o) with respect to all dates and time periods in or referred to in this Agreement, time is of the essence;

(p) unless expressly stated herein to the contrary, reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and as in effect from time to time, including any rule or regulation promulgated thereunder;

(q) unless expressly stated herein to the contrary, reference to a document, including this Agreement, will be deemed to also refer to each annex, addendum, exhibit, schedule or other attachment thereto;

(r) each representation, warranty, covenant and agreement herein will have independent significance, and if any Party has breached any representation, warranty, covenant or agreement herein in any respect, the fact that there exists another representation, warranty, covenant or agreement relating to the same subject matter (regardless of the relative levels of specificity) that such Party has not breached will not detract from or mitigate the fact that such Party is in breach of such first representation, warranty, covenant or agreement; and

(s) all references to a statute of limitations will mean such statute of limitations as it may be tolled or extended by Applicable Law.

9.8 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, to the exclusion of the law of any other forum and notwithstanding any jurisdiction's choice-of-law rules to the contrary.

9.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Such counterparts may be executed and delivered by facsimile or other electronic means by any of the Parties (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com), and the receiving Party may rely on the receipt of such document so executed and delivered as if the original had been received.

9.10 Headings; Internal References. The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and will not affect the interpretation hereof.

9.11 Entire Agreement. This Agreement, including the Schedules and Exhibits hereto, embodies the entire agreement and understanding of the Parties in respect of the subject matter contained herein and supersedes all prior agreements and understandings among the Parties with respect to that subject matter. There are no restrictions, promises, representations, warranties (express or implied), covenants, or undertakings of the Parties, other than those expressly set forth or referred to in this Agreement.

9.12 Disclosure Schedules; Certificates. The disclosure schedules (the “Schedules”) attached hereto and certificates and instruments delivered hereunder are integral parts of this Agreement. All statements contained in the Schedules hereto, or in any certificate or instrument delivered by or on behalf of a Party under this Agreement at Closing, will be deemed to be representations and warranties of the applicable Party hereunder. Each item in the Schedules shall constitute an exception to the representations and warranties to which it makes reference as well as to those other representations and warranties to which it may reasonably be understood to relate.

9.13 Severability; Blue-Pencil. The terms of this Agreement will, where possible, be interpreted and enforced so as to sustain their legality and enforceability, read as if they cover only the specific situation to which they are being applied and enforced to the fullest extent permissible under Applicable Law. If any term of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced, then it is the Parties’ intent that all other terms of this Agreement will nevertheless remain in full force and effect, and such term automatically will be amended so that it is valid, legal and enforceable to the maximum extent permitted by any Applicable Law but as close to the Parties’ original intent as is permissible.

9.14 Equitable Remedies. Each Party acknowledges and agrees that each other Party would be damaged irreparably in the event any term of this Agreement is not performed in accordance with its specific terms or otherwise is breached, so that a Party will be entitled to injunctive relief to prevent breaches of this Agreement and to enforce specifically this Agreement and the terms hereof in addition to any other remedy to which such Party may be entitled, at law or in equity. In particular, each Party acknowledges that the Business is unique and recognizes and affirms that in the event any Party breaches this Agreement, money damages may be inadequate and such non-breaching Party would have no adequate remedy at law, so that such non-breaching Party will have the right, in addition to any other rights and remedies existing in its favor, to seek enforcement of its rights and each other Party’s obligations hereunder not only by action for damages but also by action for specific performance, injunctive or other equitable relief.

9.15 Expenses. Except as is expressly stated otherwise herein, whether or not the Transactions are consummated, all costs and expenses incurred in connection with this Agreement and the Transactions will be paid by the Party or Parties incurring such costs and expenses.

9.16 Dispute Resolution; Jurisdiction, Venue and Waiver of Jury Trial.

(a) The Parties hereto agree that they will attempt to resolve any disputes arising hereunder through non-binding mediation in a mutually agreeable format. If the Parties cannot agree to a mediation format, or any Party is not satisfied with the results of mediation, each Party retains its right to pursue litigation.

(b) EXCEPT IN INSTANCES WHERE THIS AGREEMENT EXPLICITLY CONTEMPLATES OTHERWISE, EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF AND VENUE OF ANY STATE OR FEDERAL COURT IN THE STATE OF DELAWARE, IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND TO THE RESPECTIVE COURTS TO WHICH AN APPEAL OF THE DECISIONS OF ANY SUCH COURTS MAY BE TAKEN, AND EACH PARTY AGREES NOT TO COMMENCE, OR COOPERATE IN OR ENCOURAGE THE COMMENCEMENT OF, ANY SUCH ACTION, SUIT OR PROCEEDING, EXCEPT IN SUCH A COURT. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE THEREIN OF SUCH AN ACTION, SUIT OR PROCEEDING. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF A COPY OF THE SUMMONS AND COMPLAINT, AND ANY OTHER PROCESS WITH RESPECT TO ANY SUCH PROCEEDING THAT MAY BE SERVED IN ANY SUCH PROCEEDING, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, BY DELIVERING A COPY THEREOF TO SUCH PARTY AT ITS RESPECTIVE ADDRESS SPECIFIED THEREFOR IN SECTION 9.4, BY THE REQUIREMENTS OF SECTION 9.4 OR BY ANY OTHER METHOD PROVIDED BY APPLICABLE LAW. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN ANY SUCH ACTION, SUIT OR PROCEEDING.

9.17 Attorneys' Fees. Should an Action be brought to enforce or interpret any part of this Agreement, the prevailing Party will be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees to be fixed by the dispute resolution body (including costs, expenses and fees on any appeal). The prevailing Party will be entitled to recover its costs of suit.

9.18 Privileged Communications

(a) The Parties acknowledge and agree that, notwithstanding any provision of this Agreement, neither Buyer nor any of its Affiliates shall have the right to obtain (and it hereby waives any right it may otherwise have with respect to) any Privileged Communications, whether or not the Closing occurs. Without limiting the generality of the foregoing, Buyer acknowledges and agrees, upon and after the Closing: (i) the Assets shall in no event include, and neither Buyer nor any of its Affiliates shall be a holder of, or have any right, title or interest to the Privileged Communications; (ii) only Seller shall hold property rights in the Privileged Communications and shall have the right to waive or modify such property rights; and (iii) Seller shall have no duty whatsoever to reveal or disclose any Privileged Communications to Buyer or any of its Affiliates; provided, however, that nothing contained herein shall prevent Buyer or its Affiliates from requesting, using or accessing any such communications in connection with document production requests or discovery in any litigation, arbitration or other legal proceeding so long as such communications would not be subject to an attorney-client privilege if they were being requested in a litigation, arbitration or other legal proceeding by an unrelated third party and such communications are produced or required to be produced in response to such document production requests or discovery.

(b) To the extent that any Privileged Communication is disclosed or made available to Buyer, the Parties hereby agree (i) that the disclosure, and receipt of such Privileged Communication is entirely inadvertent and shall not waive, modify, limit or impair in any form or fashion the protected nature of the Privileged Communications, (ii) it is their desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, work product doctrine or other applicable privilege, and (iii) Seller shall have the right in its sole discretion and at any time to require the return and/or destruction of the Privileged Communication.

9.19 Exculpation. Notwithstanding any other provision hereof or any course of dealing between the Parties or their Affiliates, in no event shall any director, manager, officer, employee, Affiliate, shareholder, member, agent, attorney or representative of either Party have any personal liability or obligations whatsoever hereunder or under any other Transaction Documents or otherwise in connection with the Transactions. Without limiting the generality of the foregoing, in no event shall the Shareholder have, and the Buyer shall not allege or claim that the Shareholder has, any such personal liability or obligations, except only insofar as the same pertains to the Shareholder's express obligations under Sections 5.5 and 5.7 hereof. The foregoing shall not be deemed to release any Person from (or otherwise mitigate) any liability for Fraud.

[Remainder of Page Intentionally Blank; Signature Pages to Follow]

In witness whereof, the Parties hereto have caused this Agreement to be executed as of the date first written above.

BUYER:

TACTILE SYSTEMS TECHNOLOGY, INC.

By: /s/ Daniel L. Reuvers

Name: Daniel L. Reuvers

Title: Chief Executive Officer

SELLER:

INTERNATIONAL BIOPHYSICS CORPORATION

By: /s/ H. David Shockley, Jr.

H. DAVID SHOCKLEY, JR., President/CEO

Solely with respect to
Sections 5.5 and 5.7:

SHAREHOLDER:

/s/ H. David Shockley, Jr.

H. DAVID SHOCKLEY, JR.

[Signature Page to Asset Purchase Agreement]

FIRST AMENDMENT AGREEMENT

This **FIRST AMENDMENT AGREEMENT** (this "Amendment"), dated as of September 8, 2021, is entered into among Tactile Systems Technology, Inc., a Delaware corporation (dba Tactile Medical) (the "Borrower"), the Lenders (as defined below) signatory hereto, and Wells Fargo Bank, National Association, a national banking association, as administrative agent for the Lenders (in such capacity, the "Administrative Agent").

RECITALS

WHEREAS, the Borrower, the financial institutions from time to time party thereto (the "Lenders") and the Administrative Agent are parties to that certain Amended and Restated Credit Agreement, dated as of April 30, 2021 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement", and as amended by this Amendment, the "Credit Agreement");

WHEREAS, the Borrower, Swelling Solutions, Inc., a Delaware corporation (the "Guarantor" and together with the Borrower, the "Grantors") and the Administrative Agent are parties to that certain Amended and Restated Security Agreement dated as of April 30, 2021 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Security Agreement", and as modified, by this Amendment, the "Security Agreement");

WHEREAS, on the date hereof, pursuant to (i) that certain Asset Purchase Agreement, dated as of the date hereof (the "IBC Acquisition Agreement") by and among the Borrower, International Biophysics Corporation, a Texas corporation ("IBC"), and H. David Shockley, Jr. and (ii) the Transaction Documents as defined in the IBC Acquisition Agreement (the "IBC Acquisition Documents"), the Borrower will acquire from IBC substantially all of the assets of IBC (the "IBC Acquisition"); and

WHEREAS, to, among other things, permit the IBC Acquisition under the Credit Agreement, the Borrower has requested that the Administrative Agent and the Lenders agree to certain amendments to the Loan Documents, consent to the IBC Acquisition, and, subject to the terms and conditions set forth in this Amendment, the Administrative Agent and the Lenders have agreed to provide certain consents and amendments.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree to be bound as follows:

Section 1. Capitalized Terms. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement, unless the context otherwise requires.

Section 2. Amendments to Existing Credit Agreement.

2.1. Effective as of the First Amendment Date (defined below), the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages attached hereto as Exhibit I. Exhibit I hereto is a copy of the Existing Credit Agreement marked, as described in the preceding sentence, to show the additions and deletions made to the Existing Credit Agreement on the First Amendment Date.

2.2. Exhibits to the Existing Credit Agreement are hereby amended by adding a new Exhibit A-3 (Form of Term Loan Note) immediately after the Exhibit A-2 (Form of Swingline Note) attached as Exhibit II hereto.

2.3. Each of Exhibit B (Notice of Borrowing), Exhibit D (Notice of Prepayment), Exhibit E (Notice of Conversion/Continuation) and Exhibit F (Form of Officer's Compliance Certificate) to the Existing Credit Agreement is hereby amended and restated in its entirety by Exhibit III, Exhibit IV, Exhibit V and Exhibit VI, respectively, attached hereto.

2.4. Schedules to the Existing Credit Agreement are hereby amended and restated in their entirety by the schedules attached as Exhibit VII hereto.

Section 3. Matters Regarding the Existing Security Agreement.

3.1. Schedule 1 (Copyrights, Patents and Trademarks) to the Existing Security Agreement is hereby amended and restated in its entirety by the schedule attached as Exhibit VIII hereto.

Section 4. Effectiveness of Amendment. The consent and amendments set forth in Sections 2 and 3 hereof shall become effective upon the delivery of, or compliance with, the following (the "First Amendment Date");

4.1. This Amendment, duly executed by the Credit Parties, the Administrative Agent, and each of the Lenders (whether the same or different copies) and delivered (including by way of facsimile or other electronic transmission (including by e-mail in .pdf format)) in each case with original signatures to follow promptly thereafter, to the Administrative Agent.

4.2. The Term Loan Note, duly executed by the Borrower and delivered (including by way of facsimile or other electronic transmission (including by e-mail in .pdf format)) with original signature to follow promptly thereafter, to the Administrative Agent.

4.3. The Assignment of Representations and Warranties (IBC), entered into by and between Borrower and the Administrative Agent.

4.4. An assignment of the representations and warranties insurance policy obtained by the Borrower in connection with the IBC Acquisition.

4.5. The Confirmatory Grant of Security Interest In Trademarks and Patents.

4.6. Completed UCC, tax lien, judgment, pending litigation, bankruptcy and intellectual property searches for the Borrower, the Guarantor and IBC reasonably satisfactory to the Administrative Agent.

4.7. A certificate of the Secretary or Assistant Secretary (or other appropriate officer) of each Credit Party each dated as of the date hereof and certifying as to the following:

- (a) A true and accurate copy of the resolutions or unanimous written consent of such Person (if such Person is party to this Amendment or any IBC Acquisition Documents (together with any Loan Documents, the "Transaction Documents") (as such term is amended hereunder)) authorizing the execution, delivery, and performance of this Amendment and each Loan Document to which such Person is a party.
- (b) The incumbency, names, titles and signatures of the officers of such Person (if such Person is party to this Amendment or any Loan Document) authorized to execute the Loan Documents to which such Person is a party.
- (c) True and accurate copies of such Person's organizational or constituent documents or a certification that any organizational or constituent documents delivered and certified to the Administrative Agent on April 30, 2021, remain in full force and effect and have not been amended, restated, replaced or otherwise modified in any way.

4.8. Certificates of current status or good standing for each Credit Party in the state of its organization, in each case as of a recent date.

4.9. Payoff letters, UCC-3 termination statements, and other related documents evidencing the termination and release of any and all Liens with respect to Indebtedness of IBC, each in form and substance reasonably acceptable to the Administrative Agent.

4.10. Evidence satisfactory to the Administrative Agent that the Borrower has paid to the Administrative Agent for its own account, an upfront fee in an amount of \$150,000.

4.11. A certificate from an Authorized Officer of the Borrower dated as of the date hereof certifying that:

- (a) A true and accurate copy of the IBC Acquisition Documents delivered in connection therewith have been duly executed and attached thereto, and are in full force and effect, without modification or amendment on the date hereof;
- (b) All material conditions to the closing of the IBC Acquisition have been, or substantially simultaneously with the effectiveness of this Amendment, the IBC Acquisition shall be consummated;

(c) The Consolidated EBITDA of the Borrower and its Subsidiaries, calculated on a consolidated basis, and calculated on a Pro Forma Basis giving effect to the IBC Acquisition, for four-quarter period ending on June 30, 2021, was not less than \$20,000,000.00;

(d) The ratio of Consolidated Total Indebtedness of the Borrower and its Subsidiaries as of the First Amendment Date to Consolidated EBITDA calculated on a Pro Forma Basis giving effect to the IBC Acquisition, all borrowings funded on the First Amendment Date and the other transactions contemplated in this Amendment, for the four-quarter period ending June 30, 2021 does not exceed 2.50 to 1.00;

(e) As of the First Amendment Date, upon giving effect to this Amendment, there exists no Default or Event of Default; and

(f) Upon giving effect to this Amendment, the representations and warranties in Article VII of the Credit Agreement are true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the First Amendment Date, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct in all material respects (without duplication of any materiality qualifier contained therein) on and as of such earlier date.

4.12. Copies of (a) projections and unaudited consolidated financial statements of the Borrower and the Subsidiaries calculated on a Pro Forma Basis giving effect to the IBC Acquisition and demonstrating, to the Administrative Agent's reasonable satisfaction, the solvency of the Borrower and the Subsidiaries and that the Borrower and the Subsidiaries are able to comply with the financial covenants in this Agreement and (b) a quality of earnings and accounting report with respect to the Borrower and the Subsidiaries after giving effect to the IBC Acquisition prepared by Grant Thornton, LLP.

4.13. The Borrower shall have requested their counsel to prepare written opinions, addressed to the Lenders and dated the First Amendment Date, in form and substance reasonably acceptable to the Administrative Agent, and such opinions shall have been delivered to the Administrative Agent.

4.14. The Administrative Agent shall have received for itself and for the account of the Lenders all reasonable and documented fees and expenses of counsel to the Administrative Agent payable pursuant to Section 12.3 of the Credit Agreement to the extent requested in advance by the Administrative Agent.

Section 5. Release, No Waiver, Representations, Warranties, Authority, No Adverse Claim.

5.1. Release of Claims. Each Credit Party, for itself and on behalf of its legal representatives, successors, and assigns, hereby (a) expressly waives, releases, and relinquishes the Administrative Agent and each of the Lenders from any and all claims, offsets, defenses, affirmative defenses, and counterclaims of any kind or nature whatsoever that such Credit Party has asserted, or might assert, against the Administrative Agent or the Lenders with respect to the Obligations, the Credit Agreement (including as affected by this Amendment), and any other Loan Document or Transaction Document, other than any such claim arising from the bad faith, gross negligence or willful misconduct of the Administrative Agent or a Lender as determined by a final non-appealable order by a court of competent jurisdiction, in each case arising on or before the date hereof, such waiver and release being with full knowledge and understanding of the circumstances and effect thereof, and (b) expressly covenants and agrees never to institute, cause to be instituted, or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against the Administrative Agent or the Lenders by reason of or in connection with any of the foregoing matters, claims, or causes of action.

5.2. No Waiver. The execution of this Amendment and acceptance of any documents related hereto shall not be deemed to be a waiver of any Default or Event of Default under the Credit Agreement or breach, default, or event of default under any Security Document or other document held by the Administrative Agent or the Lenders, whether or not known to the Administrative Agent or the Lenders and whether or not existing on the date of this Amendment.

5.3. Representations and Warranties, No Default. Each Credit Party hereby represents that after giving effect to this Amendment:

(a) It is a corporation or limited liability company, as applicable, duly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation or organization and, is duly qualified and authorized to do business in each jurisdiction in which the character of its Properties or the nature of its business requires such qualification and authorization except where the failure to be so qualified would not reasonably be expected to result a Material Adverse Effect.

(b) It has the power and authority and legal right to execute and deliver, and to perform its obligations under, this Amendment, the Credit Agreement, the Notes, and all other Loan Documents, each as amended by this Amendment, to which it is a party and the performance of its obligations thereunder have been duly authorized by proper organizational proceedings, and the Loan Documents to which such Person is a party constitute legal, valid and binding obligations of such Person enforceable against such Person in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors' right in general and the availability of equitable remedies.

(c) The execution, delivery and performance of this Amendment, the Credit Agreement, and all other Loan Documents, each as amended by this Amendment, the Extensions of Credit thereunder and the transactions contemplated hereby or thereby do not and will not, by the passage of time, the giving of notice or otherwise, (a) require any Governmental Approval or violate any Applicable Law relating to any Credit Party or any Subsidiary thereof where the failure to obtain such Governmental Approval or such violation could reasonably be expected to have a Material Adverse Effect, (b) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other organizational documents of any Credit Party or any Subsidiary thereof, (c) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument evidencing Indebtedness or a payment obligation in excess of the Threshold Amount to which such Person is a party or by which any of its properties may be bound or any Governmental Approval relating to such Person, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (d) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by such Person other than Permitted Liens or (e) require any consent or authorization of, filing with, or other act in respect of, an arbitrator or Governmental Authority and no consent of any other Person is required in connection with the execution, delivery, performance, validity or enforceability of any Transaction Document other than (i) consents, authorizations, filings or other acts or consents for which the failure to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (ii) consents or filings under the UCC, (iii) filings with the United States Copyright Office and/or the United States Patent and Trademark Office and (iv) filings of any mortgage or deed of trust with the applicable county recording office or register of deeds.

(d) Reserved.

(e) The representations and warranties in Article VII of the Credit Agreement, as amended by this Amendment, are true and correct in all material respects, without duplication as to any materiality modifiers, qualifications, or limitations set forth in Article VII of the Credit Agreement, with respect to such Credit Party and its Subsidiaries as of the First Amendment Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case they are true and correct in all material respects as of such earlier date.

(f) There will exist no Default or Event of Default under the Credit Agreement.

(g) To the Borrower's knowledge, no events have taken place and no circumstances exist at the date hereof that would give any Credit Party a basis to assert a defense, offset, or counterclaim to any claim of the Administrative Agent or any Lender with respect to the Obligations.

Section 6. Reserved.

Section 7. Affirmation of Loan Documents, Further References, Affirmation of Security Interest and Guarantee. Each of the Administrative Agent, the Lenders, and the Credit Party acknowledge and affirm that each of the Credit Agreement, any Guarantee, the Security Agreement, and each of the other Loan Documents and Transaction Documents to which it is a party is hereby ratified and confirmed in all respects except as expressly amended hereby, and all terms, conditions, and provisions of each such Loan Document and Transaction Document shall remain unmodified and in full force and effect except as expressly amended hereby. Each Credit Party confirms to the Administrative Agent and the Lenders that the Obligations are and continue to be guaranteed and secured by the security interest granted in favor of the Administrative Agent for the benefit of the Administrative Agent and the Lenders under any Guarantee and any Security Documents, as applicable, and that all of the terms, conditions, provisions, agreements, requirements, promises, obligations, duties, covenants, and representations of such Credit Party under such documents and any and all other documents and agreements entered into with respect to the obligations under the Credit Agreement are hereby ratified, assumed, and affirmed in all respects by such Credit Party, except as expressly modified hereby.

Section 8. Merger and Integration, Superseding Effect. This Amendment embodies the entire agreement and understanding among any Credit Party, the Administrative Agent, the Issuing Lender and the Lenders and supersedes all prior agreements and understandings among any Credit Party, the Administrative Agent, the Issuing Lender and the Lenders relating to the subject matter hereof or thereof.

Section 9. Severability. Any provision in this Amendment that is held to be inoperative, unenforceable or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability or validity of that provision in any other jurisdiction, and to this end the provisions of this Amendment are declared to be severable.

Section 10. Successors. This Amendment shall be binding upon the Credit Parties, the Lenders, the Administrative Agent, and their respective successors and assigns, and shall inure to the benefit of the Credit Parties, the Administrative Agent, the Lenders, and the successors and assigns of the Administrative Agent and the Lenders.

Section 11. Expenses. The Borrower shall pay the Administrative Agent, upon execution of this Amendment, the fees and expenses as provided in Section 12.3 of the Credit Agreement to the extent requested in advance by the Administrative Agent.

Section 12. Headings. Section headings in this Amendment are for convenience of reference only and shall not govern the interpretation of any of the provisions of this Amendment.

Section 13. Counterparts. This Amendment 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.

Section 14. Governing Law. THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MINNESOTA, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Consent and First Amendment Agreement to be executed as of the date and year first above written.

TACTILE SYSTEMS TECHNOLOGY, INC., as Borrower

By: /s/ Brent Moen

Name: Brent Moen

Title: Chief Financial Officer

SWELLING SOLUTIONS, INC., as Guarantor

By: /s/ Brent Moen

Name: Brent Moen

Title: Chief Financial Officer

[Signature Page to First Amendment Agreement]

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, Swingline Lender, Issuing Lender and Lender

By: /s/ Jonathan Antonio

Name: Jonathan Antonio

Title: Senior Vice President

[Signature Page to First Amendment Agreement]

~~\$25,000,000.00~~ EXHIBIT I TO
FIRST AMENDMENT AGREEMENT

\$55,000,000

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of April 30, 2021,

by and among

Tactile Systems Technology, Inc. dba Tactile Medical,
as Borrower,

the Lenders referred to herein,
as Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent and Swingline Lender

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THIS AMENDED AND RESTATED CREDIT AGREEMENT, dated as of April 30, 2021 ([as amended by that certain First Amendment Agreement to which this Agreement is attached](#)), is by and among Tactile Systems Technology, Inc., a Delaware corporation (dba Tactile Medical), as Borrower, the lenders who are party to this Agreement and the lenders who may become a party to this Agreement pursuant to the terms hereof, as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent for the Lenders.

STATEMENT OF PURPOSE

WHEREAS, the Borrower, certain financial institutions party thereto and Wells Fargo Bank, National Association, as administrative agent, are parties to that certain Credit Agreement, dated as of August 3, 2018 (as amended, modified, restated or supplemented immediately prior to the date hereof, the "Existing Credit Agreement"). ~~The~~

WHEREAS, the Borrower has requested, and subject to the terms and conditions set forth in this Agreement, the Administrative Agent and the Lenders have agreed, to amend and restate the Existing Credit Agreement pursuant to the terms hereof, including to provide to Borrower (a) a Revolving Credit Commitment in an amount not to exceed \$25,000,000, and (b) after the First Amendment Date, a Term Loan Commitment in an amount not to exceed \$30,000,000.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree that the Existing Credit Agreement shall be, and hereby is, amended and restated in its entirety as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions. The following terms when used in this Agreement shall have the meanings assigned to them below:

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which any Credit Party or any of its Subsidiaries (a) acquires any business or all or substantially all of the assets of any Person, or division thereof, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of members of the board of directors or the equivalent governing body (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.

"Administrative Agent" means Wells Fargo, in its capacity as Administrative Agent hereunder, and any successor thereto appointed pursuant to Section 11.6.

"Administrative Agent's Office" means the office of the Administrative Agent specified in or determined in accordance with the provisions of Section 12.1(c).

"Administrative Questionnaire" means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

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

“Agent Parties” has the meaning assigned thereto in Section 12.1(e).

“Agreement” means this Credit Agreement.

“Announcements” has the meaning assigned thereto in Section 1.11.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

“Anti-Money Laundering Laws” means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules related to terrorism financing, money laundering, any predicate crime to money laundering or any financial record keeping, including any applicable provision of the PATRIOT Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“Applicable Law” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of Governmental Authorities and all orders and decrees of all courts and arbitrators.

“Applicable Margin” means the corresponding percentages per annum for the Loans as set forth below based on the Consolidated Total Leverage Ratio:

Pricing Level	Consolidated Total Leverage Ratio	Commitment Facility Fee	LIBOR +	Base Rate +
I	Less than 1.00 to 1.00	0.300%	1.65% <u>1.75%</u>	0.65% <u>0.75%</u>
II	Greater than or equal to 1.00 to 1.00, but less than 1.75 to 1.00	0.325%	1.90% <u>2.25%</u>	0.90% <u>1.25%</u>
III	Greater than or equal to 1.75 to 1.00, but less than 2.50 to 1.00	0.350%	2.15% <u>2.75%</u>	1.15% <u>1.75%</u>
IV	Greater than or equal to 2.50 to 1.00	0.375%	2.40% <u>3.25%</u>	1.40% <u>2.25%</u>

The Applicable Margin shall be determined and adjusted quarterly on the date five (5) Business Days after the day on which the Borrower provides an Officer’s Compliance Certificate pursuant to Section 8.2(a) for the most recently ended fiscal quarter of the Borrower (each such date, a “Calculation Date”); provided that (a) at the time of the First Amendment Date, the Applicable Margin shall be based on Pricing Level ~~III~~ until the Calculation Date occurring after the fiscal quarter ending ~~June~~September 30, 2021 and, thereafter the Pricing Level shall be determined by reference to the Consolidated Total Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, and (b) if the Borrower fails to provide an Officer’s Compliance Certificate when due as required by Section 8.2(a) for the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, the Applicable Margin from the date on which such Officer’s Compliance Certificate was required to have been delivered shall be based on Pricing Level IV until such time as such Officer’s Compliance Certificate is delivered, at which time the Pricing Level shall be determined by reference to the Consolidated Total Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding such Calculation Date. The applicable Pricing Level shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Pricing Level shall be applicable to all Extensions of Credit then existing or subsequently made or issued.

Notwithstanding the foregoing, in the event that any financial statement or Officer's Compliance Certificate delivered pursuant to Section 8.1 or 8.2(a) is shown to be inaccurate (regardless of whether (i) this Agreement is in effect, (ii) any Commitments are in effect, or (iii) any Extension of Credit is outstanding when such inaccuracy is discovered or such financial statement or Officer's Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall immediately deliver to the Administrative Agent a corrected Officer's Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Consolidated Total Leverage Ratio in the corrected Officer's Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent the accrued additional interest and fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 5.4. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to Sections 5.1(b) and 10.2 nor any of their other rights under this Agreement or any other Loan Document. The Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

The Applicable Margins set forth above shall be increased as, and to the extent, required by Section 5.13.

"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 Wells Fargo Securities, LLC, in its capacity as sole lead arranger and sole bookrunner.

"Asset Disposition" means the sale, transfer, license, lease or other disposition of any Property (including any disposition of Equity Interests) by any Credit Party or any Subsidiary thereof, and any issuance of Equity Interests by any Subsidiary of the Borrower to any Person that is not a Credit Party or any Subsidiary thereof.

"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 12.9), and accepted by the Administrative Agent, in substantially the form attached as **Exhibit G** or any other form approved by the Administrative Agent and the Borrower.

“Attributable Indebtedness” means, on any date of determination, (a) in respect of any Capital Lease Obligation 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, the capitalized amount or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease Obligation.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if the then-current Benchmark is a term rate, any tenor for such Benchmark or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 5.8(c)(iv).

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

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” means 11 U.S.C. §§ 101 *et seq.*

“Base Rate” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) LIBOR for an Interest Period of one month plus 1%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or LIBOR (provided that clause (c) shall not be applicable during any period in which LIBOR is unavailable or unascertainable).

“Base Rate Loan” means any Loan bearing interest at a rate based upon the Base Rate as provided in Section 5.1(a).

“Benchmark” means, initially, USD LIBOR; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 5.8(c)(i).

“Benchmark Replacement” means, for any Available Tenor,

(a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment; provided, that, if the Borrower has provided a notification to the Administrative Agent in writing on or prior to such Benchmark Replacement Date that the Borrower has a Hedge Agreement in place with respect to any of the Loans as of the date of such notice (which such notification the Administrative Agent shall be entitled to rely upon and shall have no duty or obligation to ascertain the correctness or completeness of), then the Administrative Agent, in its sole discretion, may decide not to determine the Benchmark Replacement pursuant to this clause (a)(1) for such Benchmark Transition Event or Early Opt-in Election, as applicable;

(2) the sum of: (A) Daily Simple SOFR and (B) the related Benchmark Replacement Adjustment;

(3) the sum of: (A) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment; or

(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;

provided that, (i) in the case of clause (a)(1), if the Administrative Agent decides that Term SOFR is not administratively feasible for the Administrative Agent, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3) or clause (b) of this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (a)(1) and (a)(2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Available Tenor of such Benchmark;

(2) for purposes of clause (a)(3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities; and

(3) for purposes of clause (b) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of USD LIBOR with a SOFR-based rate;

provided that, (x) in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion and (y) if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement that will replace such Benchmark in accordance with Section 5.8(c)(i) will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of “Benchmark Replacement Adjustment” shall be deemed to be, with respect to each Unadjusted Benchmark Replacement having a payment period for interest calculated with reference thereto, the Available Tenor that has approximately the same length (disregarding business day adjustments) as such payment period.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(c) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Administrative Agent has provided the Term SOFR Notice to the Lenders and the Borrower pursuant to Section 5.8(c)(i)(B); or

(d) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.8(c) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.8(c).

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 CFR § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Borrower” means Tactile Systems Technology, Inc., a Delaware corporation, doing business as Tactile Medical.

“Borrower Materials” has the meaning assigned thereto in Section 8.2.

“Business Day” means (a) for all purposes other than as set forth in clause (b) below, any day other than a Saturday, Sunday or legal holiday on which banks in Minneapolis, Minnesota and New York, New York, are open for the conduct of their commercial banking business and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any LIBOR Rate Loan, or any Base Rate Loan as to which the interest rate is determined by reference to LIBOR, any day that is a Business Day described in clause (a) and that is also a London Banking Day.

“Calculation Date” has the meaning assigned thereto in the definition of Applicable Margin.

“Capital Expenditures” means, with respect to the Borrower and its Subsidiaries on a Consolidated basis, for any period, (a) the additions to property, plant and equipment and other capital expenditures that are (or would be) set forth in a consolidated statement of cash flows of such Person for such period prepared in accordance with GAAP and (b) Capital Lease Obligations during such period.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as finance leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateralize” means, to deposit in a Controlled Account or to pledge and deposit with, or deliver to the Administrative Agent, or directly to the applicable Issuing Lender (with notice thereof to the Administrative Agent), for the benefit of one or more of the Issuing Lenders, the Swingline Lender or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations or Swingline Loans, cash or deposit account balances or, if the Administrative Agent and the applicable Issuing Lender and the Swingline Lender shall agree, in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent, such Issuing Lender and the Swingline Lender, as applicable. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one hundred twenty (120) days from the date of acquisition thereof, (b) commercial paper maturing no more than one hundred twenty (120) days from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody’s, (c) certificates of deposit maturing no more than one hundred twenty (120) days from the date of creation thereof issued by commercial banks incorporated under the laws of the United States, each having combined capital, surplus and undivided profits of not less than \$500,000,000 and having a rating of “A” or better by a nationally recognized rating agency; provided that the aggregate amount invested in such certificates of deposit shall not at any time exceed \$5,000,000 for any one such certificate of deposit and \$10,000,000 for any one such bank, or (d) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card (including non-card electronic payables and purchasing cards), electronic funds transfer and other cash management arrangements.

“Cash Management Bank” means any Person that, (a) at the time it enters into a Cash Management Agreement with a Credit Party, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent, or (b) at the time it (or its Affiliate) becomes a Lender or the Administrative Agent (including on the Closing Date), is a party to a Cash Management Agreement with a Credit Party, in each case in its capacity as a party to such Cash Management Agreement.

“Change in Control” means (i) an event or series of events by which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, 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 Exchange Act directly or indirectly of more than forty percent (40%) of the Equity Interests of the Borrower entitled to vote in the election of members of the board of directors (or equivalent governing body) of the Borrower or (ii) the Borrower shall cease to own 100% of the Equity Interests of any Subsidiary other than (x) any Subsidiary that merges with an into the Borrower or another Wholly-Owned Domestic Subsidiary of the Borrower in accordance with Section 9.4 or (y) any Subsidiary that is permitted to be sold in accordance with Section 9.5.

“Change in Law” means the occurrence, after the date of this Agreement, 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, requirements or directives thereunder or issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements 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, implemented or issued.

“Class” means, when used in reference to any Loan, whether such Loan is a Revolving Credit Loan, Swingline Loan or Term Loan and, when used in reference to any Commitment, whether such Commitment is a Revolving Credit Commitment or a Term Loan Commitment.

“Closing Date” means the date of this Agreement.

“Code” means the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder.

“Collateral” means the collateral security for the Secured Obligations pledged or granted pursuant to the Security Documents.

“Commitment Fee” has the meaning assigned thereto in Section 5.3(a).

“Commitment Percentage” means, as to any Lender, such Lender’s Revolving Credit Commitment Percentage or Term Loan Percentage, as applicable.

“Commitments” means, collectively, as to all Lenders, the Revolving Credit Commitments and the Term Loan Commitments of such Lenders.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“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 any Person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

“Consolidated EBITDA” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP: (a) Consolidated Net Income for such period plus (b) the sum of the following, without duplication, to the extent deducted in determining Consolidated Net Income for such period: (i) income and franchise taxes, (ii) Consolidated Interest Expense, (iii) amortization, depreciation and other non-cash charges (including any impairment charges and inventory write-offs, except to the extent that such non-cash charges are reserved for cash charges to be taken in the future), (iv) Transaction Costs, (v) non-cash stock compensation expense for such period, (vi) any non-recurring costs and expenses included in the calculation of Consolidated EBITDA included in the Borrower’s quarterly earnings releases (including any litigation defense costs ~~and~~, executive transition costs and any business optimization expenses, other restructuring and integration costs, cost savings and expense-related synergies and other similar costs and expenses related to the IBC Acquisition (including retention, completion, recruiting, and signing bonuses and expenses, consulting fees, expansion and relocation expenses, severance payments)), provided that the aggregate amount of all such non-recurring costs and expenses shall not exceed (A) 20% of Consolidated EBITDA for the fiscal quarters ended December 30, 2021, March 31, 2022, June 30, 2022 and September 30, 2022 and (B) 15% of Consolidated EBITDA for any fiscal quarter thereafter as calculated prior to the implementation of such add-back, less (c) the sum of the following, without duplication, to the extent included in determining Consolidated Net Income for such period: (i) interest income, and (ii) any extraordinary gains. For purposes of determining Consolidated EBITDA under this Agreement, (x) Consolidated EBITDA for the fiscal quarter ending September 30, 2021 shall be deemed to be actual Consolidated EBITDA of the Borrower and its Subsidiaries for such fiscal quarter as determined on a Pro Forma Basis with respect to the IBC Acquisition and calculated in a manner consistent with the definition of Consolidated EBITDA and (y) Consolidated EBITDA for each of the fiscal quarters ending on the dates set forth below shall be deemed to be the amount set forth below opposite such date:

<u>Fiscal Quarter Ending</u>		<u>Consolidated EBITDA</u>
<u>June 30, 2021</u>	\$	<u>6,055,000.00</u>
<u>March 31, 2021</u>	\$	<u>1,474,000.00</u>
<u>December 30, 2020</u>	\$	<u>13,324,000.00</u>
<u>September 30, 2020</u>	\$	<u>7,483,000.00</u>

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDA, less federal, state, local and foreign income taxes paid in cash, less Capital Expenditures that are not financed with Indebtedness under this Agreement or other Indebtedness permitted under Section 9.1(d), in each case for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to (b) Consolidated Fixed Charges for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date; provided however, that with respect to calculation of the Consolidated Fixed Charge Coverage Ratio (i) for purposes of determining Consolidated Interest Expense for the periods ending September 30, 2021, December 31, 2021, March 31, 2022, and June 30, 2022, Interest Expense shall be deemed to be the amount of Interest Expense for such period since the First Amendment Date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days in such period since the First Amendment Date, and (ii) for purposes of calculating scheduled principal payments with respect to Indebtedness under this Agreement for each of the four-quarter periods ending September 30, 2021, December 31, 2021, March 31, 2022 and June 30, 2022, such amount shall be deemed to be \$3,000,000 for each such four-quarter period being tested on such dates.

“Consolidated Fixed Charges” means, for any period, the sum of the following determined on a Consolidated basis for such period, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP: (a) Consolidated Interest Expense paid or payable in cash, (b) scheduled principal payments with respect to Indebtedness, and (c) payments required to be made in cash for any earn-out obligations, including but not limited to any payments paid in cash related to any IBC Earn-out Payment.

“Consolidated Interest Expense” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP, interest expense attributable to Consolidated Total Indebtedness for such period.

“Consolidated Net Income” means, for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period, determined on a Consolidated basis, without duplication, in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Borrower and its Subsidiaries for any period, there shall be excluded (a) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clause (c) below), in which the Borrower or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Borrower or any of its Subsidiaries by dividend or other distribution during such period, (b) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or any of its Subsidiaries or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person’s assets are acquired by the Borrower or any of its Subsidiaries except to the extent included pursuant to the foregoing clause (a), (c) the net income (if positive), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Borrower or any of its Subsidiaries of such net income (i) is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary or (ii) would be subject to any taxes payable on such dividends or distributions, but in each case only to the extent of such prohibition or taxes and (d) any gain or loss from Asset Dispositions during such period.

“Consolidated Total Indebtedness” means, as of any date of determination with respect to the Borrower and its Subsidiaries on a Consolidated basis without duplication, the sum of all Indebtedness of the Borrower and its Subsidiaries.

“Consolidated Total Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Total Indebtedness on such date to (b) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

“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.

“Controlled Account” means each deposit account and securities account that is subject to an account control agreement in form and substance satisfactory to the Administrative Agent and each of the applicable Issuing Lenders that is entitled to Cash Collateral hereunder at the time such control agreement is executed.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Credit Facility” means, collectively, the Revolving Credit Facility, any Term Loan Facility, the Swingline Facility and the L/C Facility.

“Credit Parties” means, collectively, the Borrower and any Guarantor.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“Debt Issuance” means the issuance of any Indebtedness for borrowed money by any Credit Party or any of its Subsidiaries.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, 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 of the events specified in Section 10.1 which with the passage of time, the giving of notice or any other condition, would constitute an Event of Default.

“Defaulting Lender” means, subject to Section 5.15(b), any Lender that (a) has failed to (i) fund all or any portion of the Revolving Credit Loans, participations in Letters of Credit or participations in Swingline Loans or any Term Loan required to be funded by it hereunder within two Business Days of the date such Loans or participations were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, any Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three 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 FDIC or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 5.15(b)) upon delivery of written notice of such determination to the Borrower, each Issuing Lender, the Swingline Lender and each Lender.

“Disqualified Equity Interests” means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), in whole or in part, (c) provide for the scheduled payment of dividends in cash or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the ~~Term Loan Maturity Date~~ latest scheduled maturity date of the Loans and Commitments; provided that if such Equity Interests are issued pursuant to a plan for the benefit of the Borrower or its Subsidiaries or by any such plan to such officers or employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Dollars” or “\$” means, unless otherwise qualified, dollars in lawful currency of the United States.

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

“Early Opt-in Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of:

(a) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

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

“Electronic Record” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Electronic Signature” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 12.9(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 12.9(b)(iii)).

“Employee Benefit Plan” means (a) any employee benefit plan within the meaning of Section 3(3) of ERISA that is maintained for employees of any Credit Party or any ERISA Affiliate or (b) any Pension Plan or Multiemployer Plan that has at any time within the preceding five (5) years been maintained, funded or administered for the employees of any Credit Party or any current or former ERISA Affiliate.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to public health or the environment.

“Environmental Laws” means any and all federal, foreign, state, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of public health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

“Equity Interests” means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests, (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person and (f) any and all warrants, rights or options to purchase any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder, each as amended or modified from time to time.

“ERISA Affiliate” means any Person who together with any Credit Party or any of its Subsidiaries is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“Erroneous Payment” has the meaning assigned thereto in Section 11.11(a).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor thereto), as in effect from time to time.

“Eurodollar Reserve Percentage” means, for any day, the percentage which is in effect for such day as prescribed by the FRB (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“Event of Default” means any of the events specified in Section 10.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.

“Exchange Act” means the Securities Exchange Act of 1934 (15 U.S.C. § 77 *et seq.*).

“Excluded Swap Obligation” means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Credit Party for or the guarantee of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the guarantee of such Credit Party or the grant of such security interest becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Credit Party, including under the keepwell provisions in the Guaranty Agreement). 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 guarantee or security interest is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 5.12(b)) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 5.11, 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 5.11(g) and (d) any United States federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” has the meaning assigned thereto in the Statement of Purpose.

“Extensions of Credit” means, as to any Lender at any time, (a) an amount equal to the sum of (i) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (ii) such Lender's Revolving Credit Commitment Percentage of the L/C Obligations then outstanding, (iii) such Lender's Revolving Credit Commitment Percentage of the Swingline Loans then outstanding and (iv) the aggregate principal amount of any Term Loans made by such Lender then outstanding, or (b) the making of any Loan or participation in any Letter of Credit by such Lender, as the context requires.

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

“FCA” has the meaning assigned thereto in Section 1.11.

“FDIC” means the Federal Deposit Insurance Corporation.

“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 if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fee Letters” means (a) the separate fee letter agreement dated the Closing Date among the Borrower, Wells Fargo and the Arranger ~~and~~, (b) the fee letter agreement dated the First Amendment Date among the Borrower, Wells Fargo and the Arranger and (c) any letter between the Borrower and any Issuing Lender (other than Wells Fargo) relating to certain fees payable to such Issuing Lender in its capacity as such.

“First Amendment Date” means September 8, 2021.

“First Tier Foreign Subsidiary” means any Foreign Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code and the Equity Interests of which are owned directly by any Credit Party.

“Fiscal Year” means the fiscal year of the Borrower and its Subsidiaries ending on December 31.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“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.

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

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

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Lender, such Defaulting Lender’s Revolving Credit Commitment Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such Issuing Lender, other than such 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 and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Credit Commitment Percentage of outstanding Swingline Loans other than Swingline Loans 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, bonds and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, and all registrations and filings with or issued by, any Governmental Authorities.

“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” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation or (e) for the purpose of assuming 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 (whether in whole or in part).

“Guarantor” means any Subsidiary Guarantor from time to time and any other Person (other than the Borrower) from time to time that guarantees the Secured Obligations or any portion thereof pursuant to a written guaranty agreement in form and substance acceptable to Administrative Agent.

“Hazardous Materials” means any substances or materials (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law, (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to public health or the environment and are or become regulated by any Governmental Authority, (c) the presence of which require investigation or remediation under any Environmental Law or common law, (d) the discharge or emission or release of which requires a permit or license under any Environmental Law or other Governmental Approval, (e) which are deemed by a Governmental Authority to constitute a nuisance or a trespass which pose a health or safety hazard to Persons or neighboring properties, or (f) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

“Health Care Receivable” means any account receivable or other account that by law may not be assigned under, including, but not limited to, the Anti-Assignment Act (41 U.S.C. § 15), the Assignment of Claims Act (31 U.S.C. § 3727), the Medicare “anti-assignment” provisions (42 U.S.C. § 1395g(c) and 1395 u(b)(6)) and the Medicaid “anti-assignment” provisions (42 U.S.C. § 1396a(a)(32)) and all implementing regulations.

“Hedge Agreement” 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.

“Hedge Bank” means any Person that, (a) at the time it enters into a Hedge Agreement with a Credit Party permitted under Article IX, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent or (b) at the time it (or its Affiliate) becomes a Lender or the Administrative Agent (including on the Closing Date), is a party to a Hedge Agreement with a Credit Party, in each case in its capacity as a party to such Hedge Agreement.

“Hedge Termination Value” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements 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 Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

“IBA” has the meaning assigned thereto in Section 1.11.

“IBC” means International Biophysics Corporation, a Texas corporation.

“IBC Acquisition” means the Borrower’s purchase of substantially all of the assets of IBC pursuant to the terms of the IBC Acquisition Agreement and IBC Acquisition Documents.

“IBC Acquisition Agreement” means that certain Asset Purchase Agreement, dated as of the First Amendment Date by and among the Borrower, IBC and H. David Shockley, Jr.

“IBC Acquisition Documents” means the Transaction Documents (as defined in the IBC Acquisition Agreement).

“IBC Earn-out Payment” means any Earn-Out Payments (as defined and described in Section 1.9 of the IBC Acquisition Agreement).

“Increase Amount Date” has the meaning assigned thereto in Section 5.13(a).

“Increase Commitments” has the meaning assigned thereto in Section 5.13(a)(ii).

“Increase Facilities Limit” means ~~\$30,000,000~~ 25,000,000 less the total aggregate initial principal amount (as of the date of incurrence thereof) of all previously incurred unfunded Increase Commitments and Increase Loans.

“Increase Lender” has the meaning assigned thereto in Section 5.13(a).

“Increase Loans” has the meaning assigned thereto in Section 5.13(a)(ii).

“Increase Term Loan” has the meaning assigned thereto in Section 5.13(a)(i).

“Increase Term Loan Commitment” has the meaning assigned thereto in Section 5.13(a)(i).

“Incremental Revolving Credit Commitment” has the meaning assigned thereto in Section 5.13(a)(ii).

“Incremental Revolving Credit Increase” has the meaning assigned thereto in Section 5.13(a)(ii).

“Indebtedness” means, with respect to any Person at any date and without duplication, the sum of the following:

(a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such Person;

(b) all obligations to pay the deferred purchase price of property or services of any such Person (excluding payment obligations under non-competition, earn-out or similar agreements, including any payment obligations under any IBC Earn-out Payment, but only excluding such payment obligations until such time that the payment obligations have become due and then solely to the extent that any such payment obligations have not been paid within thirty (30) days of ~~becoming due~~when such payment is required to be made), except trade payables arising in the ordinary course of business not more than ninety (90) days past due, or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person;

(c) the Attributable Indebtedness of such Person with respect to such Person's Capital Lease Obligations and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(e) all Indebtedness of any other Person secured by a Lien on any asset owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements except trade payables arising in the ordinary course of business), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all obligations, contingent or otherwise, of any such Person relative to the face amount of letters of credit, whether or not drawn, including, without limitation, any Reimbursement Obligation, and banker's acceptances issued for the account of any such Person;

(g) all obligations of any such Person in respect of Disqualified Equity Interests;

(h) all net obligations of such Person under any Hedge Agreements; and

(i) all Guarantees of any such Person with respect to 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. In respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the amount of such Indebtedness as of any date of determination will be the lesser of (x) the fair market value of such assets as of such date and (y) the amount of such Indebtedness as of such date.

The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date.

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

"Indemnitee" has the meaning assigned thereto in Section 12.3(b).

“Information” has the meaning assigned thereto in Section 12.10.

“Initial Term Loan” means the \$30,000,000.00 term loan made, or to be made, to the Borrower on the First Amendment Date by the Term Loan Lenders pursuant to Section 4.1.

“Insurance and Condemnation Event” means the receipt by any Credit Party or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective Property.

“Interest Period” means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the date one (1), three (3), or six (6) months thereafter, in each case as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation and subject to availability; provided that:

(a) the Interest Period shall commence on the date of advance of or conversion to any LIBOR Rate Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the immediately preceding Interest Period expires;

(b) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period with respect to a LIBOR Rate Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

(c) any Interest Period with respect to a LIBOR 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 relevant calendar month at the end of such Interest Period;

(d) no Interest Period shall extend beyond the Revolving Credit Maturity Date or the Term Loan Maturity Date, as applicable, and Interest Periods shall be selected by the Borrower so as to permit the Borrower to make the quarterly principal installment payments pursuant to Section 4.3 without payment of any amounts pursuant to Section 5.9; and

(e) there shall be no more than five (5) Interest Periods in effect at any time.

“Interstate Commerce Act” means the body of law commonly known as the Interstate Commerce Act (49 U.S.C. App. § 1 *et seq.*).

“Investment” means, with respect to any Person, that such Person (a) purchases, owns, invests in or otherwise acquires (in one transaction or a series of transactions), directly or indirectly, any Equity Interests, interests in any partnership or joint venture (including, without limitation, the creation or capitalization of any Subsidiary), evidence of Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other Person or any other investment or interest whatsoever in any other Person, (b) makes any Acquisition or (c) makes or permits to exist, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of Property in, any Person.

“Investment Company Act” means the Investment Company Act of 1940 (15 U.S.C. § 80(a)(1), *et seq.*).

“IRS” means the United States Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Issuing Lender” has the meaning assigned thereto in Section 3.1(a).

“L/C Commitment” means, as to any Issuing Lender, the obligation of such Issuing Lender to issue Letters of Credit for the account of the Borrower from time to time in an amount not to exceed \$1,000,000.

“L/C Facility” means the letter of credit facility established pursuant to Article III.

“L/C Obligations” means at any time, an amount equal to the sum of (a) the aggregate undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit which have not then been reimbursed pursuant to Section 3.5.

“L/C Participants” means, with respect to any Letter of Credit, the collective reference to all the Revolving Credit Lenders other than the applicable Issuing Lender.

“Lender” means each Person executing this Agreement as a Lender on the Closing Date and any other Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Assumption or pursuant to Section 5.13, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Lending Office” means, with respect to any Lender, the office of such Lender maintaining such Lender’s Extensions of Credit.

“Letter of Credit Application” means an application requesting such Issuing Lender to issue a Letter of Credit and a reimbursement agreement, in each case in the form specified by the applicable Issuing Lender from time to time.

“Letters of Credit” means the collective reference to letters of credit issued pursuant to Section 3.1.

“LIBOR” means, subject to the implementation of a Benchmark Replacement in accordance with Section 5.8(c),

~~ARTICLE I~~(b) for any interest rate calculation with respect to a LIBOR Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period. If, for any reason, such rate is not so published then “LIBOR” shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period, and

~~(b)~~(c) for any interest rate calculation with respect to a Base Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for an Interest Period equal to one month (commencing on the date of determination of such interest rate) as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day. If, for any reason, such rate is not so published then “LIBOR” for such Base Rate Loan shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) on such date of determination for a period equal to one month commencing on such date of determination.

Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error.

Notwithstanding the foregoing, (x) in no event shall LIBOR (including, without limitation, any Benchmark Replacement with respect thereto) be less than 0%, and (y) unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 5.8(c), in the event that Benchmark Replacement with respect to LIBOR is implemented then all references herein to LIBOR shall be deemed references to such Benchmark Replacement.

“LIBOR Rate” means a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00\text{-Eurodollar Reserve Percentage}}$$

“LIBOR Rate Loan” means any Loan bearing interest at a rate based upon the LIBOR Rate as provided in Section 5.1(a).

“Lien” means, with respect to any asset, any mortgage, leasehold mortgage, lien, pledge, charge, security interest, hypothecation or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease Obligation or other title retention agreement relating to such asset.

“Loan Documents” means, collectively, this Agreement, each Note, the Letter of Credit Applications, the Security Documents, the Fee Letters, and each other document, instrument, certificate and agreement executed and delivered by the Credit Parties or any of their respective Subsidiaries in favor of or provided to the Administrative Agent or any Secured Party in connection with this Agreement or otherwise referred to herein or contemplated hereby (excluding any Secured Hedge Agreement and any Secured Cash Management Agreement).

“Loans” means the collective reference to the Revolving Credit Loans, any Term Loan and the Swingline Loans, and “Loan” means any of such Loans.

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

“Material Adverse Effect” means, with respect to the Borrower and its Subsidiaries, a material adverse effect on (a) the business, assets, properties, financial condition or operations, taken as a whole, of any such Person, (b) the ability of any such Person to perform its obligations under the Loan Documents to which it is a party, (c) the rights and remedies of the Administrative Agent or any Lender under any Loan Document or (d) the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party.

“Material Contract” means contracts, the termination or breach of which would require filing or reporting obligations with the SEC or other Governmental Agency.

“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 the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the Issuing Lenders with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 10.2(b), an amount equal to 105% of the outstanding amount of all LC Obligations and (c) otherwise, an amount determined by the Administrative Agent and each of the applicable Issuing Lenders that is entitled to Cash Collateral hereunder at such time in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which any Credit Party or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions within the preceding five (5) years, or to which any Credit Party or any ERISA Affiliate has any liability (contingent or otherwise).

“Net Cash Proceeds” means, as applicable, (a) with respect to any Asset Disposition or Insurance and Condemnation Event, the gross proceeds received by any Credit Party or any of its Subsidiaries therefrom (including any cash, Cash Equivalents, deferred payment pursuant to, or by monetization of, a note receivable or otherwise, as and when received) less the sum of (i) in the case of an Asset Disposition, all income taxes and other taxes assessed by, or reasonably estimated to be payable to, a Governmental Authority as a result of such transaction (provided that if such estimated taxes exceed the amount of actual taxes required to be paid in cash in respect of such Asset Disposition, the amount of such excess shall constitute Net Cash Proceeds), (ii) all reasonable and customary out-of-pocket fees and expenses incurred in connection with such transaction or event and (iii) the principal amount of, premium, if any, and interest on any Indebtedness secured by a Lien on the asset (or a portion thereof) disposed of that is pari passu to or senior in ranking to the Liens on such asset created by the Loan Documents, which Indebtedness is required to be repaid in connection with such transaction or event, and (b) with respect to any Debt Issuance, the gross cash proceeds received by any Credit Party or any of its Subsidiaries therefrom less all reasonable and customary out-of-pocket legal, underwriting and other fees and expenses incurred in connection therewith.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver, amendment, modification or termination that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 12.2 and (b) has been approved by the Required Lenders or the Required Facility Lenders, as applicable.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Guarantor Subsidiary” means any Subsidiary of Borrower that is not a Subsidiary Guarantor, if any.

“Notes” means the collective reference to the Revolving Credit Notes, the Swingline Note and the Term Loan Notes.

“Notice of Account Designation” has the meaning assigned thereto in Section 2.3(b).

“Notice of Borrowing” has the meaning assigned thereto in Section 2.3(a).

“Notice of Conversion/Continuation” has the meaning assigned thereto in Section 5.2.

“Notice of Prepayment” has the meaning assigned thereto in Section 2.4(c).

“Obligations” means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the L/C Obligations and (c) all other fees and commissions (including attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Credit Parties to the Lenders, the Issuing Lender or the Administrative Agent, in each case under any Loan Document, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Credit Party of any proceeding under any Debtor Relief Laws, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Officer’s Compliance Certificate” means a certificate of the chief financial officer or the treasurer of the Borrower substantially in the form attached as *Exhibit F*.

“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, 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 5.12).

“Paid in Full” means (a) with respect to the Obligations means (i) the payment in full in cash and performance of all Obligations (other than (A) L/C Obligations related to Letters of Credit that have (1) terminated or expired, (2) been Cash Collateralized in accordance with this Agreement or (3) otherwise been satisfied in a manner acceptable to the Issuing Lender in its sole discretion and (B) contingent indemnification obligations not then due) and (ii) the termination of all Commitments and (b) with respect to the Secured Obligations means (i) the payment in full in cash and performance of all Secured Obligations (other than (A) L/C Obligations related to Letters of Credit that have (1) terminated or expired, (2) been Cash Collateralized in accordance with this Agreement or (3) otherwise have been satisfied in a manner acceptable to the Issuing Lender in its sole discretion, (B) contingent indemnification obligations and (C) Obligations under any Secured Cash Management Agreements and Secured Hedge Agreement as to which arrangements have been made satisfactory to the applicable Cash Management Bank or Hedge Bank) and (ii) the termination of all Commitments.

“Participant” has the meaning assigned thereto in Section 12.9(d).

“Participant Register” has the meaning assigned thereto in Section 12.9(d).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor agency.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (a) is maintained, funded or administered for the employees of any Credit Party or any ERISA Affiliate, (b) has at any time within the preceding five (5) years been maintained, funded or administered for the employees of any Credit Party or any current or former ERISA Affiliates or (c) any Credit Party or any ERISA Affiliate has any liability (contingent or otherwise).

“Permitted Acquisition” means the IBC Acquisition and any other Acquisition that meets all of the following requirements:

(a) no less than fifteen (15) Business Days prior to the proposed closing date of such Acquisition (or such shorter period as may be agreed to by the Administrative Agent), the Borrower shall have delivered written notice of such Acquisition to the Administrative Agent and the Lenders, which notice shall include the proposed closing date of such Acquisition;

(b) the board of directors or other similar governing body of the Person to be acquired shall have approved such Acquisition (and, if requested, the Administrative Agent shall have received evidence, in form and substance reasonably satisfactory to the Administrative Agent, of such approval);

(c) the Person or business to be acquired shall be in a line of business permitted pursuant to Section 9.11 or, in the case of an Acquisition of assets, the assets acquired are useful in the business of the Borrower and its Subsidiaries as conducted immediately prior to such Acquisition;

(d) if such Acquisition is a merger or consolidation, the Borrower or a Subsidiary Guarantor shall be the surviving Person and no Change in Control shall have been effected thereby;

(e) no later than three (3) Business Days prior to the proposed closing date of such Acquisition (or such shorter period as may be agreed to by the Administrative Agent), the Borrower shall have delivered to the Administrative Agent an Officer’s Compliance Certificate for the most recent fiscal quarter end preceding such Acquisition for which financial statements are available demonstrating, in form and substance reasonably satisfactory to the Administrative Agent, (i) that the Borrower is in compliance on a Pro Forma Basis (as of the closing date of the Acquisition) with each covenant contained in Section 9.15 and (ii) that the Consolidated Total Leverage Ratio calculated on a Pro Forma Basis (as of the closing date of the Acquisition and after giving effect to the Acquisition) shall be no greater than ~~2.00~~2.50 to 1.00;

(f) no later than five (5) Business Days prior to the proposed closing date of such Acquisition (or such shorter period as may be agreed to by the Administrative Agent) the Borrower, to the extent requested by the Administrative Agent, (i) shall have delivered to the Administrative Agent promptly upon the finalization thereof copies of substantially final Permitted Acquisition Documents, which shall be in form and substance reasonably satisfactory to the Administrative Agent, and (ii) shall have delivered to, or made available for inspection by, the Administrative Agent substantially complete Permitted Acquisition Diligence Information, which shall be in form and substance reasonably satisfactory to the Administrative Agent;

(g) no Default or Event of Default shall have occurred and be continuing both before and after giving effect to such Acquisition and any Indebtedness incurred in connection therewith;

(h) reserved;

(i) the Borrower shall demonstrate, in form and substance reasonably satisfactory to the Administrative Agent, that the entity to be acquired had positive Consolidated EBITDA for the four (4) fiscal quarter period ended immediately prior to the proposed closing date of such Acquisition; and

(j) the Borrower shall have (i) delivered to the Administrative Agent a certificate of a Responsible Officer certifying that all of the requirements set forth above have been satisfied or will be satisfied on or prior to the consummation of such purchase or other Acquisition and (ii) provided such other documents and other information as may be reasonably requested by the Administrative Agent or the Required Lenders (through the Administrative Agent) in connection with such purchase or other Acquisition.

“Permitted Acquisition Diligence Information” means with respect to any applicable Acquisition, to the extent applicable, all material financial information, all material contracts, all material customer lists, all material supply agreements, and all other material information, in each case, reasonably requested to be delivered to the Administrative Agent in connection with such Acquisition (except to the extent that any such information is (a) subject to any confidentiality agreement, unless mutually agreeable arrangements can be made to preserve such information as confidential, (b) classified or (c) subject to any attorney-client privilege).

“Permitted Acquisition Documents” means with respect to any Acquisition proposed by the Borrower or any Subsidiary Guarantor, final copies or substantially final drafts if not executed at the required time of delivery of the purchase agreement, sale agreement, merger agreement or other agreement evidencing such Acquisition, including, without limitation, all legal opinions and each other document executed, delivered, contemplated by or prepared in connection therewith and any amendment, modification or supplement to any of the foregoing.

“Permitted Liens” means the Liens permitted pursuant to Section 9.2.

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

“Platform” means Debt Domain, Intralinks, SyndTrak or a substantially similar electronic transmission system.

“Prime Rate” means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“Pro Forma Basis” means, for purposes of calculating Consolidated EBITDA for any period during which one or more Specified Transactions occurs, that such Specified Transaction (and all other Specified Transactions that have been consummated during the applicable period) shall be deemed to have occurred as of the first day of the applicable period of measurement and:

(a) all income statement items (whether positive or negative) attributable to the Property or Person disposed of in a Specified Disposition shall be excluded, and all income statement items (whether positive or negative) as estimated by the Borrower in good faith by a Responsible Officer and which may include, for the avoidance of doubt, the amount of “run rate” cost savings, operating expenses and reductions and synergies reasonably expected to be realized within twelve (12) months of such Specified Transaction calculated on a basis consistent with GAAP attributable to the Property or Person acquired in a Permitted Acquisition shall be included (provided that such income statement items to be included are reflected in financial statements or other financial data reasonably acceptable to the Administrative Agent and based upon reasonable assumptions and calculations which are expected to have a continuous impact); and

(b) in the event that any Credit Party or any Subsidiary thereof incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness included in the calculations of any financial ratio or test (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable measurement period or (ii) subsequent to the end of the applicable measurement period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable measurement period and any such Indebtedness that is incurred (including by assumption or guarantee) that has a floating or formula rate of interest shall have an implied rate of interest for the applicable period determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as of the relevant date of determination.

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Equity Interests.

“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 Lenders” has the meaning assigned thereto in Section 8.2.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Lender, as applicable.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two (2) London Banking Days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

“Register” has the meaning assigned thereto in Section 12.9(c).

“Reimbursement Obligation” means the obligation of the Borrower to reimburse any Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit issued by such Issuing Lender.

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

“Relevant Governmental Body” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“Removal Effective Date” has the meaning assigned thereto in Section 11.6(b).

“Required Accounts” has the meaning assigned thereto in Section 8.21.

“Required Facility Lenders” means (a) for the Revolving Credit Facility, the Required Revolving Credit Lenders or (b) for the Term Loan Facility, the Required Term Loan Lenders, as applicable.

“Required Lenders” means, at any time, Lenders having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Required Revolving Credit Lenders” means, at any date, any combination of Revolving Credit Lenders holding more than fifty percent (50%) of the sum of the aggregate amount of the Revolving Credit Commitment or, if the Revolving Credit Commitment has been terminated, any combination of Revolving Credit Lenders holding more than fifty percent (50%) of the aggregate Extensions of Credit under the Revolving Credit Facility; provided that the Revolving Credit Commitment of, and the portion of the Extensions of Credit under the Revolving Credit Facility, as applicable, held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

“Required Term Loan Lenders” means, at any time, Lenders having outstanding Term Loans, representing more than fifty percent (50%) of the sum of the aggregate outstanding Term Loans at such time. The outstanding Term Loans of any Defaulting Lender shall be disregarded in determining Required Term Loan Lenders at any time.

“Resignation Effective Date” has the meaning assigned thereto in Section 11.6(a).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, as to any Person, the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of such Person or any other officer of such Person designated in writing by the Borrower and reasonably acceptable to the Administrative Agent; provided that, to the extent requested thereby, the Administrative Agent shall have received a certificate of such Person certifying as to the incumbency and genuineness of the signature of each such officer. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

“Restricted Payment” means the payment of any dividend by the Borrower (other than dividends payable solely in common stock of the Borrower) on, or the making of any payment or other distribution on account of, or the purchase, redemption, retirement or other acquisition (directly or indirectly) of, or the setting apart of assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of any Equity Interest of any Credit Party (whether now or hereafter outstanding), the making of any payment with respect to any earn-out or similar obligation incurred in connection with an Acquisition permitted hereunder, or the making of any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Credit Party.

“Revolving Credit Commitment” means (a) as to any Revolving Credit Lender, the obligation of such Revolving Credit Lender to make Revolving Credit Loans to, and to purchase participations in L/C Obligations and Swingline Loans for the account of, the Borrower hereunder in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender’s name on the Register, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 5.13) and (b) as to all Revolving Credit Lenders, the aggregate commitment of all Revolving Credit Lenders to make Revolving Credit Loans, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 5.13). The aggregate Revolving Credit Commitment of all the Revolving Credit Lenders on the Closing Date shall be \$25,000,000.

“Revolving Credit Commitment Percentage” means, with respect to any Revolving Credit Lender at any time, the percentage of the total Revolving Credit Commitments of all the Revolving Credit Lenders represented by such Revolving Credit Lender’s Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Revolving Credit Commitment Percentages shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments.

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

“Revolving Credit Facility” means the revolving credit facility established pursuant to Article II (including any increase in such revolving credit facility established pursuant to Section 5.13).

“Revolving Credit Lenders” means, collectively, all of the Lenders with a Revolving Credit Commitment.

“Revolving Credit Loan” means any revolving loan made to the Borrower pursuant to Section 2.1, and all such revolving loans collectively as the context requires.

“Revolving Credit Maturity Date” means the earliest to occur of (a) ~~April 30~~ September 8, 2024, (b) the date of termination of the entire Revolving Credit Commitment by the Borrower pursuant to Section 2.5, and (c) the date of termination of the Revolving Credit Commitment pursuant to Section 10.2(a).

“Revolving Credit Note” means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing the Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form attached as *Exhibit A-1*, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Revolving Credit Outstandings” means the sum of (a) with respect to Revolving Credit Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans and Swingline Loans, as the case may be, occurring on such date; plus (b) with respect to any L/C Obligations on any date, the aggregate outstanding amount thereof on such date after giving effect to any Extensions of Credit 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 of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Revolving Extensions of Credit” means (a) any Revolving Credit Loan then outstanding, (b) any Letter of Credit then outstanding or (c) any Swingline Loan then outstanding.

“S&P” means Standard & Poor’s Rating Service, a division of S&P Global Inc. and any successor thereto.

“Sanctioned Country” means at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Closing Date, Cuba, Iran, North Korea, Syria and Crimea).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

“Sanctions” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority in any jurisdiction in which (a) the Borrower or any of its Subsidiaries or Affiliates is located or conducts business, (b) in which any of the proceeds of the Extensions of Credit will be used, or (c) from which repayment of the Extensions of Credit will be derived.

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

“Secured Cash Management Agreement” means any Cash Management Agreement between or among any Credit Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Hedge Agreement between or among any Credit Party and any Hedge Bank.

“Secured Obligations” means, collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Credit Party under (i) any Secured Hedge Agreement and (ii) any Secured Cash Management Agreement; provided that the “Secured Obligations” of a Credit Party shall exclude any Excluded Swap Obligations with respect to such Credit Party.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Issuing Lenders, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 11.5, any other holder from time to time of any of any Secured Obligations and, in each case, their respective successors and permitted assigns.

“Securities Act” means the Securities Act of 1933 (15 U.S.C. § 77 *et seq.*).

“Security Agreement” means that certain Amended and Restated Security Agreement of even date herewith executed by the Credit Parties in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, which shall be in form and substance acceptable to the Administrative Agent.

“Security Documents” means the collective reference to the Security Agreement and each other agreement or writing pursuant to which any Credit Party pledges or grants a security interest in any Property or assets securing the Secured Obligations.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“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 salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Disposition” means any Asset Disposition having gross sales proceeds in excess of \$1,000,000.

“Specified Transactions” means (a) any Specified Disposition, (b) any Permitted Acquisition, (c) [the payment of a Restricted Payment](#), and (d) the Transactions.

“Subordinated Indebtedness” means the collective reference to any Indebtedness incurred by the Borrower or any of its Subsidiaries that is subordinated in right and time of payment to the Obligations on terms and conditions satisfactory to the Administrative Agent in its sole discretion.

“Subsidiary” means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to “Subsidiary” or “Subsidiaries” herein shall refer to those of the Borrower.

“Subsidiary Guarantors” means, collectively, all direct and indirect Subsidiaries of the Borrower (other than Foreign Subsidiaries to the extent that and for so long as the guaranty of such Foreign Subsidiary would have adverse tax consequences for the Borrower or any other Credit Party or result in a violation of Applicable Laws) that is also a Guarantor, if any.

“Swap Obligation” means, with respect to any Credit Party, 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.

“Sweep Arrangement” has the meaning assigned thereto in Section 2.2(a).

“Swingline Commitment” means the lesser of (a) \$1,000,000 and (b) the Revolving Credit Commitment.

“Swingline Facility” means the swingline facility established pursuant to Section 2.2.

“Swingline Lender” means Wells Fargo in its capacity as swingline lender hereunder or any successor thereto.

“Swingline Loan” means any swingline loan made by the Swingline Lender to the Borrower pursuant to Section 2.2, and all such swingline loans collectively as the context requires.

“Swingline Note” means a promissory note made by the Borrower in favor of the Swingline Lender evidencing the Swingline Loans made by the Swingline Lender, substantially in the form attached as *Exhibit A-2*, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Swingline Participation Amount” has the meaning assigned thereto in Section 2.2(b)(iii).

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP.

“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, fines, additions to tax or penalties applicable thereto.

“Term Loan Commitment” means (a) as to any Term Loan Lender, the obligation of such Term Loan Lender to make a portion of ~~any Increase~~ the Initial Term Loan and/or Incremental Term Loans, as applicable, to the account of the Borrower hereunder on the First Amendment Date (in the case of the Initial Term Loan) or the applicable borrowing date (in the case of any Incremental Term Loan) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on the Register, as such amount may be increased, reduced or otherwise modified at any time or from time to time pursuant to the terms hereof and (b) as to all Term Loan Lenders, the aggregate commitment of all Term Loan Lenders to make such ~~Increase~~ Term Loans. The aggregate Term Loan Commitment with respect to the Initial Term Loan of all Term Loan Lenders on the First Amendment Date shall be \$30,000,000.

“Term Loan Facility” means the term loan facility ~~that may be~~ established pursuant to Article IV (including any new or incremental term loan facility) established pursuant to Section 5.13).

“Term Loan Lender” means any Lender ~~that elects, pursuant to Section 5.13 to make~~with a Term Loan Commitment and/or outstanding Term Loans.

“Term Loan Maturity Date” means the ~~date set forth in an amendment to this Agreement relating to~~ first to occur of (a) September 8, 2024, and (b) the ~~maturity~~ date of ~~Increase~~ acceleration of the Term Loans, ~~as set forth in~~ pursuant to Section 5.1310.2(a).

“Term Loan Note” means a promissory note made by the Borrower in favor of a Term Loan Lender evidencing the portion of the ~~Increase~~ Term Loans ~~that may be~~ made by such Term Loan Lender ~~pursuant to Section 5.13~~, substantially in the form attached as Exhibit A-3, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Term Loan Percentage” means, with respect to any Term Loan Lender at any time, the percentage of the total outstanding principal balance of the ~~Increase~~ Term Loans represented by the outstanding principal balance of such Term Loan Lender’s ~~Increase~~ Term Loans.

“Term Loans” means the ~~Increase~~ Initial Term Loans and, if applicable, the Incremental Term Loans and “Term Loan” means any of such ~~Increase~~ Term Loans.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.8(c) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR.

“Termination Event” means the occurrence of any of the following which, individually or in the aggregate, has resulted or could reasonably be expected to result in liability of the Credit Parties in an aggregate amount in excess of the Threshold Amount: (a) a “Reportable Event” described in Section 4043 of ERISA for which the thirty (30) day notice requirement has not been waived by the PBGC, or (b) the withdrawal of any Credit Party or any ERISA Affiliate from a Pension Plan during a plan year in which it 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, or (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, or (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, or (e) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303 of ERISA, or (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or plan in endangered or critical status within the meaning of Sections 430, 431 or 432 of the Code or Sections 303, 304 or 305 of ERISA or (h) the partial or complete withdrawal of any Credit Party or any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan, or (i) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Section 4245 of ERISA, or (j) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA, or (k) 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 any Credit Party or any ERISA Affiliate.

“Threshold Amount” means \$1,000,000.

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

“Transaction Costs” means all transaction fees, charges and other amounts related to the Transactions, any Permitted Acquisitions and the issuance by the Borrower of Qualified Equity Interests (including, in each case, any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith, as applicable).

“Transactions” means, collectively, (a) the initial Extensions of Credit, ~~(b) on the Closing Date,~~ (b) [the Initial Term Loan on the First Amendment Date in connection with the IBC Acquisition,](#) (c) the Incremental Loans and (ed) the payment of the Transaction Costs incurred in connection with the foregoing.

“UCC” means the Uniform Commercial Code as in effect in the State of Minnesota.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“United States” means the United States of America.

“USD LIBOR” means the London interbank offered rate for Dollars.

“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 assigned thereto in [Section 5.11\(g\)](#).

“Wells Fargo” means Wells Fargo Bank, National Association, a national banking association.

“Wholly-Owned” means, with respect to a Subsidiary, that all of the Equity Interests of such Subsidiary are, directly or indirectly, owned or controlled by the Borrower and/or one or more of its Wholly-Owned Subsidiaries (except for directors’ qualifying shares or other shares required by Applicable Law to be owned by a Person other than the Borrower and/or one or more of its Wholly-Owned Subsidiaries).

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.2 Other Definitions and 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, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (d) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (e) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (f) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) 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, (i) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form and (j) 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”.

SECTION 1.3 Accounting Terms.

(a) 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 and in a manner consistent with that used in preparing the audited financial statements required by Section 8.1(a), except as otherwise specifically prescribed herein. Notwithstanding the foregoing or anything else to the contrary stated in this Agreement, 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) If at any time any change in GAAP (including if the Borrower elects to avail itself of any early application related to any pending change in GAAP) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, any lease that was treated as an operating lease for purposes of GAAP as of the closing date of the Existing Credit Agreement (the “Original Closing Date”) shall continue to be treated as an operating lease (and any future lease, if it were in effect on the Original Closing Date, that would be treated as an operating lease for purposes of GAAP as of the Original Closing Date shall be treated as an operating lease), in each case for purposes of this Agreement, notwithstanding any change in GAAP after the Original Closing Date.

SECTION 1.4 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.

SECTION 1.5 Rounding. Any financial ratios required to be maintained 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 or percentage is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.6 References to Agreement and Laws. Unless otherwise expressly provided herein, (a) any definition or reference to formation documents, governing documents, agreements (including the Loan Documents) and other contractual documents or instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) any definition or reference to any Applicable Law, including, without limitation, Anti-Corruption Laws, Anti-Money Laundering Laws, the Bankruptcy Code, the Code, the Commodity Exchange Act, ERISA, the Exchange Act, the PATRIOT Act, the Securities Act, the UCC, the Investment Company Act, the Trading with the Enemy Act of the United States or any of the foreign assets control regulations of the United States Treasury Department, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

SECTION 1.7 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.8 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor (at the time specified therefor in such applicable Letter of Credit or Letter of Credit Application and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

SECTION 1.9 Guarantees. Unless otherwise specified in this Agreement, the amount of any Guarantee shall be the lesser of the amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee.

SECTION 1.10 Covenant Compliance Generally. For purposes of determining compliance under Sections 9.1, 9.2, 9.3, 9.5 and 9.6, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating Consolidated Net Income in the most recent annual financial statements of the Borrower and its Subsidiaries delivered pursuant to Section 8.1(a). Notwithstanding the foregoing, for purposes of determining compliance with Sections 9.1, 9.2 and 9.3, with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no breach of any basket contained in such sections shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred; provided that for the avoidance of doubt, the foregoing provisions of this Section 1.10 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred at any time under such Sections.

SECTION 1.11 Rates. The interest rate on LIBOR Rate Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) may be determined by reference to LIBOR, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, ICE Benchmark Administration (“IBA”), the administrator of the London interbank offered rate, and the Financial Conduct Authority (the “FCA”), the regulatory supervisor of IBA, announced in public statements (the “Announcements”) that the final publication or representativeness date for the London interbank offered rate for Dollars for: (a) 1-week and 2-month tenor settings will be December 31, 2021 and (b) overnight, 1-month, 3-month, 6-month and 12-month tenor settings will be June 30, 2023. No successor administrator for IBA was identified in such Announcements. As a result, it is possible that commencing immediately after such dates, the London interbank offered rate for such tenors may no longer be available or may no longer be deemed a representative reference rate upon which to determine the interest rate on LIBOR Rate Loans or Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate). There is no assurance that the dates set forth in the Announcements will not change or that IBA or the FCA will not take further action that could impact the availability, composition or characteristics of any London interbank offered rate. Public and private sector industry initiatives have been and continue, as of the date hereof, to be underway to implement new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate or any other then-current Benchmark is no longer available or in certain other circumstances set forth in Section 5.8(c), such Section 5.8(c) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower, pursuant to Section 5.8(c), of any change to the reference rate upon which the interest rate on LIBOR Rate Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (i) the administration of, submission of, calculation of or any other matter related to the London interbank offered rate or other rates in the definition of “LIBOR” or with respect to any alternative, comparable or successor rate thereto, or replacement rate thereof (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement reference rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 5.8(c), will be similar to, or produce the same value or economic equivalence of, LIBOR or any other Benchmark, or have the same volume or liquidity as did the London interbank offered rate or any other Benchmark prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Benchmark Replacement Conforming Changes.

ARTICLE II

REVOLVING CREDIT FACILITY

SECTION 2.1 Revolving Credit Loans. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Revolving Credit Lender severally agrees to make Revolving Credit Loans in Dollars to the Borrower from time to time from the Closing Date to, but not including, the Revolving Credit Maturity Date as requested by the Borrower in accordance with the terms of Section 2.3; provided, that (a) the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (b) the Revolving Credit Exposure of any Revolving Credit Lender shall not at any time exceed such Revolving Credit Lender's Revolving Credit Commitment. Each Revolving Credit Loan by a Revolving Credit Lender shall be in a principal amount equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate principal amount of Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrower may borrow, repay and reborrow Revolving Credit Loans hereunder until the Revolving Credit Maturity Date.

SECTION 2.2 Swingline Loans.

(a) Availability. Subject to the terms and conditions of this Agreement and the other Loan Documents, including, without limitation, Section 6.2(e) of this Agreement, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, the Swingline Lender may, in its sole discretion, make Swingline Loans in Dollars to the Borrower from time to time from the Closing Date to, but not including, the Revolving Credit Maturity Date; provided, that (i) after giving effect to any amount requested, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (ii) the aggregate principal amount of all outstanding Swingline Loans (after giving effect to any amount requested) shall not exceed the Swingline Commitment. Notwithstanding any provision herein to the contrary, the Swingline Lender, in its sole discretion may agree in writing with the Borrower that the Swingline Facility may be used to automatically draw and repay Swingline Loans (subject to the limitations set forth herein) pursuant to cash management arrangements between the Borrower and the Swingline Lender (the "Sweep Arrangement"); provided however, that on and after the Closing Date, such Sweep Arrangement shall not be available to the Borrower until such time as the Swingline Lender agrees in writing. If applicable, principal and interest on Swingline Loans deemed requested pursuant to the Sweep Arrangement shall be paid pursuant to the terms and conditions agreed to between the Borrower and the Swingline Lender (without any deduction, setoff or counterclaim whatsoever). The borrowing and disbursement provisions set forth in Section 2.3 and any other provision hereof with respect to the timing or amount of payments on the Swingline Loans (other than Section 2.4(a)) shall not be applicable to Swingline Loans made and prepaid pursuant to the Sweep Arrangement. Unless sooner paid pursuant to the provisions hereof or the provisions of the Sweep Arrangement, the principal amount of the Swingline Loans shall be paid in full, together with accrued interest thereon, on the Revolving Credit Maturity Date.

(b) Refunding.

(i) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), by written notice given no later than 11:00 a.m. on any Business Day request each Revolving Credit Lender to make, and each Revolving Credit Lender hereby agrees to make, a Revolving Credit Loan as a Base Rate Loan in an amount equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate amount of the Swingline Loans outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Credit Lender shall make the amount of such Revolving Credit Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such notice. The proceeds of such Revolving Credit Loans shall be immediately made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Swingline Loans. No Revolving Credit Lender's obligation to fund its respective Revolving Credit Commitment Percentage of a Swingline Loan shall be affected by any other Revolving Credit Lender's failure to fund its Revolving Credit Commitment Percentage of a Swingline Loan, nor shall any Revolving Credit Lender's Revolving Credit Commitment Percentage be increased as a result of any such failure of any other Revolving Credit Lender to fund its Revolving Credit Commitment Percentage of a Swingline Loan.

(ii) The Borrower shall pay to the Swingline Lender on demand, and in any event on the Revolving Credit Maturity Date, in immediately available funds the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. In addition, the Borrower irrevocably authorizes the Administrative Agent to charge any account maintained by the Borrower with the Swingline Lender (up to the amount available therein) in order to immediately pay the Swingline Lender the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. If any portion of any such amount paid to the Swingline Lender shall be recovered by or on behalf of the Borrower from the Swingline Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages.

(iii) If for any reason any Swingline Loan cannot be refinanced with a Revolving Credit Loan pursuant to Section 2.2(b)(i), each Revolving Credit Lender shall, on the date such Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 2.2(b)(i), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the “Swingline Participation Amount”) equal to such Revolving Credit Lender’s Revolving Credit Commitment Percentage of the aggregate principal amount of Swingline Loans then outstanding. Each Revolving Credit Lender will immediately transfer to the Swingline Lender, in immediately available funds, the amount of its Swingline Participation Amount. Whenever, at any time after the Swingline Lender has received from any Revolving Credit Lender such Revolving Credit Lender’s Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Revolving Credit Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender’s participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Revolving Credit Lender’s pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Credit Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(iv) Each Revolving Credit Lender’s obligation to make the Revolving Credit Loans referred to in Section 2.2(b)(i) and to purchase participating interests pursuant to Section 2.2(b)(iii) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Revolving Credit Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article VI, (C) any adverse change in the condition (financial or otherwise) of the Borrower, (D) any breach of this Agreement or any other Loan Document by the Borrower, any other Credit Party or any other Revolving Credit Lender or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(v) If any Revolving Credit Lender fails to make available to the Administrative Agent, for the account of the Swingline Lender, any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.2(b) by the time specified in Section 2.2(b)(i) or 2.2(b)(iii), as applicable, the Swingline Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the applicable Federal Funds Rate, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender’s Revolving Credit Loan or Swingline Participation Amount, as the case may be. A certificate of the Swingline Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, this Section 2.2 shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 2.3 Procedure for Advances of Revolving Credit Loans and Swingline Loans.

(a) Requests for Borrowing. The Borrower shall give the Administrative Agent irrevocable prior written notice substantially in the form of **Exhibit B** (a "Notice of Borrowing") not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan and (ii) at least three (3) Business Days before each LIBOR Rate Loan, of its intention to borrow, specifying (A) the date of such borrowing, which shall be a Business Day, (B) the amount of such borrowing, which shall be, (x) with respect to Base Rate Loans (other than Swingline Loans) in an aggregate principal amount of \$500,000 or a whole multiple of \$500,000 in excess thereof, (y) with respect to LIBOR Rate Loans in an aggregate principal amount of \$500,000 or a whole multiple of \$500,000 in excess thereof and (z) with respect to Swingline Loans in an aggregate principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof, (C) whether such Loan is to be a Revolving Credit Loan or Swingline Loan, (D) in the case of a Revolving Credit Loan whether the Loans are to be LIBOR Rate Loans or Base Rate Loans, and (E) in the case of a LIBOR Rate Loan, the duration of the Interest Period applicable thereto. If the Borrower fails to specify a type of Loan in a Notice of Borrowing, then the applicable Loans shall be made as Base Rate Loans. If the Borrower requests a borrowing of LIBOR Rate Loans in any such Notice of Borrowing, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. A Notice of Borrowing received after 11:00 a.m. shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the Revolving Credit Lenders of each Notice of Borrowing.

(b) Disbursement of Revolving Credit and Swingline Loans. Not later than 1:00 p.m. on the proposed borrowing date, (i) each Revolving Credit Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, such Revolving Credit Lender's Revolving Credit Commitment Percentage of the Revolving Credit Loans to be made on such borrowing date and (ii) the Swingline Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, the Swingline Loans to be made on such borrowing date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to this Section in immediately available funds by crediting or wiring such proceeds to the deposit account of the Borrower identified in the most recent notice substantially in the form attached as **Exhibit C** (a "Notice of Account Designation") delivered by the Borrower to the Administrative Agent or as may be otherwise agreed upon by the Borrower and the Administrative Agent from time to time. Subject to Section 5.7 hereof, the Administrative Agent shall not be obligated to disburse the portion of the proceeds of any Revolving Credit Loan requested pursuant to this Section to the extent that any Revolving Credit Lender has not made available to the Administrative Agent its Revolving Credit Commitment Percentage of such Loan. Revolving Credit Loans to be made for the purpose of refunding Swingline Loans shall be made by the Revolving Credit Lenders as provided in Section 2.2(b).

SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans.

(a) Repayment on Termination Date. The Borrower hereby agrees to repay the outstanding principal amount of (i) all Revolving Credit Loans in full on the Revolving Credit Maturity Date, and (ii) all Swingline Loans in accordance with Section 2.2(b) (but, in any event, no later than the Revolving Credit Maturity Date), together, in each case, with all accrued but unpaid interest thereon.

(b) Mandatory Prepayments. If at any time the Revolving Credit Outstandings exceed the Revolving Credit Commitment, the Borrower agrees to repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Revolving Credit Lenders, Extensions of Credit in an amount equal to such excess with each such repayment applied first, to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Credit Loans and third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to such excess (such Cash Collateral to be applied in accordance with Section 10.2(b)).

(c) Optional Prepayments. The Borrower may at any time and from time to time prepay Revolving Credit Loans and Swingline Loans, in whole or in part, without premium or penalty, with irrevocable prior written notice to the Administrative Agent substantially in the form attached as **Exhibit D** (a "Notice of Prepayment") given not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan and (ii) at least three (3) Business Days before each LIBOR Rate Loan, specifying the date and amount of prepayment and whether the prepayment is of LIBOR Rate Loans, Base Rate Loans, Swingline Loans or a combination thereof, and, if of a combination thereof, the amount allocable to each. Upon receipt of such notice, the Administrative Agent shall promptly notify each Revolving Credit Lender. If any such notice is given, the amount specified in such notice shall be due and payable on the date set forth in such notice. Partial prepayments shall be in an aggregate amount of \$500,000 or a whole multiple of \$500,000 in excess thereof with respect to Base Rate Loans (other than Swingline Loans), \$500,000 or a whole multiple of \$500,000 in excess thereof with respect to LIBOR Rate Loans and \$500,000 or a whole multiple of \$100,000 in excess thereof with respect to Swingline Loans. A Notice of Prepayment received after 11:00 a.m. shall be deemed received on the next Business Day. Each such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof. Notwithstanding the foregoing, any Notice of a Prepayment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such other identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(d) [Reserved].

(e) Limitation on Prepayment of LIBOR Rate Loans. The Borrower may not prepay any LIBOR Rate Loan on any day other than on the last day of the Interest Period applicable thereto unless such prepayment is accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

(f) Hedge Agreements. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the Borrower's obligations under any Hedge Agreement entered into with respect to the Loans.

SECTION 2.5 Permanent Reduction of the Revolving Credit Commitment.

(a) Voluntary Reduction. The Borrower shall have the right at any time and from time to time, upon at least three (3) Business Days prior irrevocable written notice to the Administrative Agent, to permanently reduce, without premium or penalty, (i) the entire Revolving Credit Commitment at any time or (ii) portions of the Revolving Credit Commitment, from time to time, in an aggregate principal amount not less than \$3,000,000 or any whole multiple of \$1,000,000 in excess thereof. Any reduction of the Revolving Credit Commitment shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Revolving Credit Commitment Percentage. All Commitment Fees accrued until the effective date of any termination of the Revolving Credit Commitment shall be paid on the effective date of such termination. Notwithstanding the foregoing, any notice to reduce the Revolving Credit Commitment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(b) [Reserved].

(c) [Reserved].

(d) Corresponding Payment. Each permanent reduction permitted pursuant to this Section shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding Revolving Credit Loans, Swingline Loans and L/C Obligations, as applicable, after such reduction to the Revolving Credit Commitment as so reduced, and if the aggregate amount of all outstanding Letters of Credit exceeds the Revolving Credit Commitment as so reduced, the Borrower shall be required to deposit Cash Collateral in a Cash Collateral account opened by the Administrative Agent in an amount equal to such excess. Such Cash Collateral shall be applied in accordance with Section 10.2(b). Any reduction of the Revolving Credit Commitment to zero shall be accompanied by payment of all outstanding Revolving Credit Loans and Swingline Loans (and furnishing of Cash Collateral satisfactory to the Administrative Agent for all L/C Obligations) and shall result in the termination of the Revolving Credit Commitment and the Swingline Commitment and the Revolving Credit Facility. If the reduction of the Revolving Credit Commitment requires the repayment of any LIBOR Rate Loan, such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

SECTION 2.6 Termination of Revolving Credit Facility. The Revolving Credit Facility and the Revolving Credit Commitments shall terminate on the Revolving Credit Maturity Date.

ARTICLE III

LETTER OF CREDIT FACILITY

SECTION 3.1 L/C Facility.

(a) Availability. The Borrower may, upon written notice to the Administrative Agent, request any Revolving Credit Lender to issue, and, subject to the written approval of the Administrative Agent (not to be unreasonably withheld or delayed), such Revolving Credit Lender may, in its sole discretion it elects to do so, on the terms and conditions set forth herein and in reliance on the agreements of the Lenders set forth in Section 3.4(a), issue standby Letters of Credit (in such capacity, an "Issuing Lender"); provided (x) that the total number of Issuing Lenders shall not exceed two (2) and (y) that the aggregate amount of all Letters of Credit issued hereunder shall not exceed the L/C Commitment.

(b) Terms of Letters of Credit. Each Letter of Credit shall (i) be denominated in Dollars in a minimum amount of \$100,000, (or such lesser amount as agreed to by the applicable Issuing Lender and the Administrative Agent), (ii) expire on a date no more than twelve (12) months after the date of issuance or last renewal of such Letter of Credit (subject to automatic renewal for additional one (1) year periods (but not to a date later than the date set forth below) pursuant to the terms of the Letter of Credit Application or other documentation acceptable to the applicable Issuing Lender), which date shall be no later than the fifth (5th) Business Day prior to the Revolving Credit Maturity Date. No Issuing Lender shall at any time be obligated to issue any Letter of Credit hereunder if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Lender from issuing such Letter of Credit, or any Applicable Law applicable to such Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or request that such Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to letters of credit generally or such Letter of Credit in particular any restriction or reserve or capital requirement (for which such Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or any unreimbursed loss, cost or expense that was not applicable, in effect or known to such Issuing Lender as of the Closing Date and that such Issuing Lender in good faith deems material to it, (B) the conditions set forth in Section 6.2 are not satisfied, (C) the issuance of such Letter of Credit would violate one or more policies of such Issuing Lender applicable to letters of credit generally or (D) the proceeds of which would be made available to any Person (x) to fund any activity or business of or with any Sanctioned Person, or in any Sanctioned Country or (y) in any manner that would result in a violation of any Sanctions by any party to this Agreement or (E) any Revolving Credit Lender is at that time a Defaulting Lender, unless such Issuing Lender has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Lender (in its sole discretion) with the Borrower or such Lender to eliminate such Issuing Lender's actual or potential Fronting Exposure (after giving effect to Section 5.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion. References herein to "issue" and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires.

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, Article III shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 3.2 Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that any Issuing Lender issue a Letter of Credit by delivering to such Issuing Lender at its applicable office (with a copy to the Administrative Agent at the Administrative Agent's Office) a Letter of Credit Application therefor, completed to the satisfaction of such Issuing Lender, and such other certificates, documents and other papers and information as such Issuing Lender or the Administrative Agent may reasonably request. Upon receipt of any Letter of Credit Application, the applicable Issuing Lender shall, if in its sole discretion it elects to do so, process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall, subject to Section 3.1 and Article VI, promptly issue the Letter of Credit requested thereby (but in no event shall such Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by such Issuing Lender and the Borrower. The applicable Issuing Lender shall promptly furnish to the Borrower and the Administrative Agent a copy of such Letter of Credit and the Administrative Agent shall promptly notify each Revolving Credit Lender of the issuance and upon request by any Lender, furnish to such Revolving Credit Lender a copy of such Letter of Credit and the amount of such Revolving Credit Lender's participation therein.

SECTION 3.3 Commissions and Other Charges.

(a) Letter of Credit Commissions. Subject to Section 5.15(a)(iii)(B), the Borrower shall pay to the Administrative Agent, for the account of the applicable Issuing Lender and the L/C Participants, a letter of credit commission with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such standby Letters of Credit times the Applicable Margin with respect to Revolving Credit Loans that are LIBOR Rate Loans (determined, in each case, on a per annum basis). Such commission shall be payable quarterly in arrears on the last Business Day of each calendar quarter, on the Revolving Credit Maturity Date and thereafter on demand of the Administrative Agent. The Administrative Agent shall, promptly following its receipt thereof, distribute to the applicable Issuing Lender and the L/C Participants all commissions received pursuant to this Section 3.3 in accordance with their respective Revolving Credit Commitment Percentages.

(b) Issuance Fee. In addition to the foregoing commission, the Borrower shall pay directly to the applicable Issuing Lender, for its own account, an issuance fee with respect to each Letter of Credit issued by such Issuing Lender as set forth in the Fee Letter executed by such Issuing Lender. Such issuance fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing with the first such date to occur after the issuance of such Letter of Credit, on the Revolving Credit Maturity Date and thereafter on demand of the applicable Issuing Lender.

(c) Other Fees, Costs, Charges and Expenses. In addition to the foregoing fees and commissions, the Borrower shall pay or reimburse each Issuing Lender for such normal and customary fees, costs, charges and expenses as are incurred or charged by such Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit issued by it.

SECTION 3.4 L/C Participations.

(a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce each Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from each Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Credit Commitment Percentage in each Issuing Lender's obligations and rights under and in respect of each Letter of Credit issued by it hereunder and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit issued by such Issuing Lender for which such Issuing Lender is not reimbursed in full by the Borrower through a Revolving Credit Loan or otherwise in accordance with the terms of this Agreement, such L/C Participant shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Commitment Percentage of the amount of such draft, or any part thereof, which is not so reimbursed.

(b) Upon becoming aware of any amount required to be paid by any L/C Participant to any Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit, issued by it, such Issuing Lender shall notify the Administrative Agent of such unreimbursed amount and the Administrative Agent shall notify each L/C Participant (with a copy to the applicable Issuing Lender) of the amount and due date of such required payment and such L/C Participant shall pay to the Administrative Agent (which, in turn shall pay such Issuing Lender) the amount specified on the applicable due date. If any such amount is paid to such Issuing Lender after the date such payment is due, such L/C Participant shall pay to such Issuing Lender on demand, in addition to such amount, the product of (i) such amount, times (ii) the daily average Federal Funds Rate as determined by the Administrative Agent during the period from and including the date such payment is due to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. A certificate of such Issuing Lender with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error. With respect to payment to such Issuing Lender of the unreimbursed amounts described in this Section, if the L/C Participants receive notice that any such payment is due (A) prior to 1:00 p.m. on any Business Day, such payment shall be due that Business Day, and (B) after 1:00 p.m. on any Business Day, such payment shall be due on the following Business Day.

(c) Whenever, at any time after any Issuing Lender has made payment under any Letter of Credit issued by it and has received from any L/C Participant its Revolving Credit Commitment Percentage of such payment in accordance with this Section, such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise), or any payment of interest on account thereof, such Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, that in the event that any such payment received by such Issuing Lender shall be required to be returned by such Issuing Lender, such L/C Participant shall return to such Issuing Lender the portion thereof previously distributed by such Issuing Lender to it.

(d) Each L/C Participant's obligation to make the Revolving Credit Loans referred to in Section 3.4(b) and to purchase participating interests pursuant to Section 3.4(a) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Credit Lender or the Borrower may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article VI, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Credit Party or any other Revolving Credit Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

SECTION 3.5 Reimbursement Obligation of the Borrower. In the event of any drawing under any Letter of Credit, the Borrower agrees to reimburse (either with the proceeds of a Revolving Credit Loan as provided for in this Section or with funds from other sources), in same day funds, the applicable Issuing Lender on each date on which such Issuing Lender notifies the Borrower of the date and amount of a draft paid by it under any Letter of Credit for the amount of (a) such draft so paid and (b) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment. Unless the Borrower shall by 11:00 a.m. on the applicable reimbursement date notify such Issuing Lender that the Borrower intends to reimburse such Issuing Lender for such drawing from other sources or funds, the Borrower shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting that the Revolving Credit Lenders make a Revolving Credit Loan as a Base Rate Loan on the applicable repayment date in the amount of (i) such draft so paid and (ii) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment, and the Revolving Credit Lenders shall make a Revolving Credit Loan as a Base Rate Loan in such amount, the proceeds of which shall be applied to reimburse such Issuing Lender for the amount of the related drawing and such fees and expenses. Each Revolving Credit Lender acknowledges and agrees that its obligation to fund a Revolving Credit Loan in accordance with this Section to reimburse such Issuing Lender for any draft paid under a Letter of Credit issued by it is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Section 2.3(a) or Article VI. If the Borrower has elected to pay the amount of such drawing with funds from other sources and shall fail to reimburse such Issuing Lender as provided above, or if the amount of such drawing is not fully refunded through a Base Rate Loan as provided above, the unreimbursed amount of such drawing shall bear interest at the rate which would be payable on any outstanding Base Rate Loans which were then overdue from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full.

SECTION 3.6 Obligations Absolute. The Borrower's obligations under this Article III (including, without limitation, the Reimbursement Obligation) shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower may have or have had against the applicable Issuing Lender or any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees that the applicable Issuing Lender and the L/C Participants shall not be responsible for, and the Borrower's Reimbursement Obligation under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit issued by it, except for errors or omissions caused by such Issuing Lender's gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final nonappealable judgment. The Borrower agrees that any action taken or omitted by any Issuing Lender under or in connection with any Letter of Credit issued by it or the related drafts or documents, if done in the absence of gross negligence or willful misconduct shall be binding on the Borrower and shall not result in any liability of such Issuing Lender or any L/C Participant to the Borrower. The responsibility of any Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit issued to it shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment substantially conforms to the requirements under such Letter of Credit.

SECTION 3.7 Effect of Letter of Credit Application. To the extent that any provision of any Letter of Credit Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

SECTION 3.8 Resignation of Issuing Lenders.

(a) Any Lender may at any time resign from its role as an Issuing Lender hereunder upon not less than thirty (30) days prior notice to the Borrower and the Administrative Agent (or such shorter period of time as may be acceptable to the Borrower and the Administrative Agent).

(b) Any resigning Issuing Lender shall retain all the rights, powers, privileges and duties of an Issuing Lender hereunder with respect to all Letters of Credit issued by it that are outstanding as of the effective date of its resignation as an Issuing Lender and all L/C Obligations with respect thereto (including, without limitation, the right to require the Revolving Credit Lenders to take such actions as are required under Section 3.4). Without limiting the foregoing, upon the resignation of a Lender as an Issuing Lender hereunder, the Borrower may, or at the request of such resigned Issuing Lender the Borrower shall, use commercially reasonable efforts to, arrange for one or more of the other Issuing Lenders to issue Letters of Credit hereunder in substitution for the Letters of Credit, if any, issued by such resigned Issuing Lender and outstanding at the time of such resignation, or make other arrangements satisfactory to the resigned Issuing Lender to effectively cause another Issuing Lender to assume the obligations of the resigned Issuing Lender with respect to any such Letters of Credit.

SECTION 3.9 Reporting of Letter of Credit Information and L/C Commitment. At any time that there is an Issuing Lender that is not also the financial institution acting as Administrative Agent, then (a) on the last Business Day of each calendar month, (b) on each date that a Letter of Credit is amended, terminated or otherwise expires, (c) on each date that a Letter of Credit is issued or the expiry date of a Letter of Credit is extended, and (d) upon the request of the Administrative Agent, each Issuing Lender (or, in the case of clauses (b), (c) or (d) of this Section, the applicable Issuing Lender) shall deliver to the Administrative Agent a report setting forth in form and detail reasonably satisfactory to the Administrative Agent information (including, without limitation, any reimbursement, Cash Collateral, or termination in respect of Letters of Credit issued by such Issuing Lender) with respect to each Letter of Credit issued by such Issuing Lender that is outstanding hereunder. In addition, each Issuing Lender shall provide notice to the Administrative Agent of its L/C Commitment, or any change thereto, promptly upon it becoming an Issuing Lender or making any change to its L/C Commitment. No failure on the part of any Issuing Lender to provide such information pursuant to this Section 3.9 shall limit the obligations of the Borrower or any Revolving Credit Lender hereunder with respect to its reimbursement and participation obligations hereunder.

SECTION 3.10 Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, or to cause the applicable Subsidiary to reimburse, the applicable Issuing Lender hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any of its Subsidiaries inures to the benefit of the Borrower and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

~~ARTICLE IV~~

~~{RESERVED}~~

ARTICLE IV

TERM LOAN FACILITY

SECTION 4.1 Initial Term Loan. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Term Loan Lender severally agrees to make the Initial Term Loan to the Borrower on the First Amendment Date in a principal amount equal to such Lender's Term Loan Commitment as of the First Amendment Date.

SECTION 4.2 Procedure for Advance of Term Loan.

(a) Initial Term Loan. The Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing prior to 11:00 a.m. on the First Amendment Date requesting that the Term Loan Lenders make the Initial Term Loan as a Base Rate Loan on such date (provided that the Borrower may request, no later than three (3) Business Days prior to the First Amendment Date, that the Lenders make the Initial Term Loan as a LIBOR Rate Loan if the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 5.9 of this Agreement). Upon receipt of such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Term Loan Lender thereof. Not later than 1:00 p.m. on the First Amendment Date, each Term Loan Lender will make available to the Administrative Agent for the account of the Borrower, at the Administrative Agent's Office in immediately available funds, the amount of such Initial Term Loan to be made by such Term Loan Lender on the First Amendment Date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of the Initial Term Loan in immediately available funds by wire transfer to such Person or Persons as may be designated by the Borrower in writing.

(b) Incremental Term Loans. Any Incremental Term Loans shall be borrowed pursuant to, and in accordance with Section 5.13.

SECTION 4.3 Repayment of Term Loans.

(a) Initial Term Loan. The Borrower shall repay the aggregate outstanding principal amount of the Initial Term Loan in consecutive quarterly installments on the fifth Business Day after the end of each of March, June, September and December commencing December 31, 2021 with the payment dates as set forth below, with all unpaid amounts on the Initial Term Loan payable in full on the Term Loan Maturity Date, except as the amounts of individual installments may be adjusted pursuant to Section 4.4 hereof:

<u>PAYMENT DATE</u>	<u>PRINCIPAL INSTALLMENT</u>
<u>January 7, 2022</u>	<u>\$750,000</u>
<u>April 7, 2022</u>	<u>\$750,000</u>
<u>July 8, 2022</u>	<u>\$750,000</u>
<u>October 7, 2022</u>	<u>\$750,000</u>
<u>January 6, 2023</u>	<u>\$750,000</u>
<u>April 7, 2023</u>	<u>\$750,000</u>
<u>July 10, 2023</u>	<u>\$750,000</u>
<u>October 6, 2023</u>	<u>\$750,000</u>
<u>January 8, 2024</u>	<u>\$750,000</u>
<u>April 5, 2024</u>	<u>\$750,000</u>
<u>July 8, 2024</u>	<u>\$750,000</u>

If not sooner paid, the Initial Term Loan shall be paid in full, together with accrued interest thereon, on the Term Loan Maturity Date.

(b) Incremental Term Loans. The Borrower shall repay the aggregate outstanding principal amount of each Incremental Term Loan (if any) as determined pursuant to, and in accordance with, Section 5.13.

SECTION 4.4 Prepayments of Term Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time, without premium or penalty, to prepay the Term Loans, in whole or in part, upon delivery to the Administrative Agent of a Notice of Prepayment not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and (ii) at least three (3) Business Days before each LIBOR Rate Loan, specifying the date and amount of repayment, whether the repayment is of LIBOR Rate Loans or Base Rate Loans or a combination thereof, and if a combination thereof, the amount allocable to each and whether the repayment is of the Initial Term Loan, an Incremental Term Loan or a combination thereof, and if a combination thereof, the amount allocable to each. Each optional prepayment of the Term Loans hereunder shall be in an aggregate principal amount of at least \$3,000,000 or any whole multiple of \$1,000,000 in excess thereof (or, if less, the remaining outstanding principal amount thereof) and shall be applied to prepay the Initial Term Loan and, if applicable, any Incremental Term Loans, on a pro rata basis (each such prepayment to be applied to reduce the scheduled principal amortizations payments under Section 4.3(a) as directed by the Borrower on a pro rata basis). Each repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof. A Notice of Prepayment received after 11:00 a.m. shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the applicable Term Loan Lenders of each Notice of Prepayment. Notwithstanding the foregoing, any Notice of Prepayment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any other incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such other identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met; provided that the delay or failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9.

(b) Mandatory Prepayments.

(i) Debt Issuances. The Borrower shall make mandatory principal prepayments of the Term Loans and/or Cash Collateralize the L/C Obligations in the manner set forth in clause (iv) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Debt Issuance not otherwise permitted pursuant to Section 9.1. Such prepayment shall be made within three (3) Business Days after the date of receipt of the Net Cash Proceeds of any such Debt Issuance.

(ii) Asset Dispositions and Insurance and Condemnation Events. The Borrower shall make mandatory principal prepayments of the Loans in the manner set forth in clause (iv) below in amounts equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from (A) any Asset Disposition (other than any Asset Disposition permitted pursuant to, and in accordance with, clauses (a) through (l) of Section 9.5) or (B) any Insurance and Condemnation Event, to the extent that the aggregate amount of such Net Cash Proceeds, in the case of each of clauses (A) and (B), respectively, exceed \$1,000,000 during any Fiscal Year. Such prepayments shall be made within three (3) Business Days after the date of receipt of the Net Cash Proceeds; provided that, so long as no Default or Event of Default has occurred and is continuing, no prepayment shall be required under this Section 4.4(b)(ii) with respect to such portion of such Net Cash Proceeds that the Borrower shall have, on or prior to such date given written notice to the Administrative Agent of its intent to reinvest in accordance with Section 4.4(b)(iii).

(iii) Reinvestment Option. With respect to any Net Cash Proceeds realized or received with respect to any Asset Disposition or any Insurance and Condemnation Event by any Credit Party of any Subsidiary thereof (in each case, to the extent not excluded pursuant to Section 4.4(b)(ii)), at the option of the Borrower, the Credit Parties may (x) reinvest all or any portion of such Net Cash Proceeds in assets used or useful for the business of the Credit Parties and their Subsidiaries either within twelve (12) months following receipt of such Net Cash Proceeds or (y) enter into a binding commitment thereof for such Net Cash Proceeds within said twelve (12) months and subsequently makes such reinvestment within six (6) months after expiration of such twelve (12) month period; provided that if any Net Cash Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election, an amount equal to any such Net Cash Proceeds shall be applied within three (3) Business Days after the applicable Credit Party reasonably determines that such Net Cash Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Loans as set forth in this Section 4.4(b); provided further that any Net Cash Proceeds relating to Collateral shall be reinvested in assets constituting Collateral. Pending the final application of any such Net Cash Proceeds, the applicable Credit Party may invest an amount equal to such Net Cash Proceeds in any manner that is not prohibited by this Agreement.

(iv) Notice; Manner of Payment. Upon the occurrence of any event triggering the prepayment requirement under clauses (i) and (ii) above, the Borrower shall promptly deliver a Notice of Prepayment to the Administrative Agent and upon receipt of such notice, the Administrative Agent shall promptly so notify the Lenders. Each prepayment of the Loans under this Section shall be applied ratably between the Term Loans and (unless otherwise agreed by the applicable Incremental Lenders) any Incremental Term Loans to reduce on a pro rata basis in inverse order of maturity the remaining scheduled principal installments of the Term Loans and as determined by the Borrower and the applicable Incremental Lenders to reduce the remaining scheduled principal installments of any Incremental Term Loans pursuant to Section 4.3.

(v) Prepayment of LIBOR Rate Loans. Each prepayment shall be accompanied by any amount required to be paid pursuant to Section 5.9; provided that, so long as no Default or Event of Default shall have occurred and be continuing, if any prepayment of LIBOR Rate Loans is required to be made under this Section 4.4(b) prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 4.4(b) in respect of any such LIBOR Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into an account held at, and subject to the sole control of, the Administrative Agent until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Credit Party) to apply such amount to the prepayment of such Term Loans in accordance with this Section 4.4(b). Upon the occurrence and during the continuance of any Default or Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Credit Party) to apply such amount to the prepayment of the outstanding Term Loans in accordance with the relevant provisions of this Section 4.4(b).

~~(c)~~ No Reborrowing. Amounts prepaid under the Term Loan pursuant to this Section may not be reborrowed.

ARTICLE V

GENERAL LOAN PROVISIONS

SECTION 5.1 Interest.

(a) Interest Rate Options. Subject to the provisions of this Section, at the election of the Borrower, (i) the Revolving Credit Loans and the Term Loans shall bear interest at (A) the Base Rate plus the Applicable Margin or (B) the LIBOR Rate plus the Applicable Margin (provided that the LIBOR Rate shall not be available until three (3) Business after the Closing Date unless the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 5.9 of this Agreement) and (ii) any Swingline Loan shall bear interest at the Base Rate plus the Applicable Margin. The Borrower shall select the rate of interest and Interest Period, if any, applicable to any Loan at the time a Notice of Borrowing is given or at the time a Notice of Conversion/Continuation is given pursuant to Section 5.2.

(b) Default Rate. Subject to Section 10.3, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 10.1(i) or (j), or (ii) at the election of the Required Lenders (or the Administrative Agent at the direction of the Required Lenders), upon the occurrence and during the continuance of any other Event of Default, (A) the Borrower shall no longer have the option to request LIBOR Rate Loans, Swingline Loans or Letters of Credit, (B) all outstanding LIBOR Rate Loans shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to LIBOR Rate Loans until the end of the applicable Interest Period and thereafter at a rate equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans, (C) all outstanding Base Rate Loans and other Obligations arising hereunder or under any other Loan Document shall bear interest at a rate per annum equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans or such other Obligations arising hereunder or under any other Loan Document and (D) all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law.

(c) Interest Payment and Computation. Interest on each Base Rate Loan shall be due and payable in arrears on the last Business Day of each calendar quarter commencing June 30, 2021; and interest on each LIBOR Rate Loan shall be due and payable on the last day of each Interest Period applicable thereto, and if such Interest Period extends over three (3) months, at the end of each three (3) month interval during such Interest Period. All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime 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 provided hereunder 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 365/366-day year).

(d) Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent's option (i) promptly refund to the Borrower any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal balance of the Obligations. It is the intent hereof that the Borrower not pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by the Borrower under Applicable Law.

SECTION 5.2 Notice and Manner of Conversion or Continuation of Loans. Provided that no Default or Event of Default has occurred and is then continuing, the Borrower shall have the option to (a) convert at any time following the third Business Day after the Closing Date all or any portion of any outstanding Base Rate Loans (other than Swingline Loans) in a principal amount equal to \$500,000 or any whole multiple of \$500,000 in excess thereof into one or more LIBOR Rate Loans and (b) upon the expiration of any Interest Period, (i) convert all or any part of its outstanding LIBOR Rate Loans in a principal amount equal to \$500,000 or a whole multiple of \$500,000 in excess thereof into Base Rate Loans (other than Swingline Loans) or (ii) continue such LIBOR Rate Loans as LIBOR Rate Loans. Whenever the Borrower desires to convert or continue Loans as provided above, the Borrower shall give the Administrative Agent irrevocable prior written notice in the form attached as **Exhibit E** (a “**Notice of Conversion/Continuation**”) not later than 11:00 a.m. three (3) Business Days before the day on which a proposed conversion or continuation of such Loan is to be effective specifying (A) the Loans to be converted or continued, and, in the case of any LIBOR Rate Loan to be converted or continued, the last day of the Interest Period therefor, (B) the effective date of such conversion or continuation (which shall be a Business Day), (C) the principal amount of such Loans to be converted or continued, and (D) the Interest Period to be applicable to such converted or continued LIBOR Rate Loan. If the Borrower fails to give a timely Notice of Conversion/Continuation prior to the end of the Interest Period for any LIBOR Rate Loan, then the applicable LIBOR Rate Loan shall be converted to a Base Rate Loan. Any such automatic conversion to a Base Rate Loan shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Rate Loan. If the Borrower requests a conversion to, or continuation of, LIBOR Rate Loans, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a LIBOR Rate Loan. The Administrative Agent shall promptly notify the affected Lenders of such Notice of Conversion/Continuation.

SECTION 5.3 Fees.

(a) Commitment Fee. ~~Commencing~~Without affecting any fees or other payments made to the Administrative Agent prior to the First Amendment Date, commencing on the ~~Closing~~First Amendment Date, subject to Section 5.15(a)(iii)(A), the Borrower shall pay to the Administrative Agent, for the account of the Revolving Credit Lenders, a non-refundable commitment fee (the “Commitment Fee”) at a rate per annum equal to the rate set forth in the definition of Applicable Margin under the column entitled “Commitment Facility Fee” on the average daily unused portion of the Revolving Credit Commitment of the Revolving Credit Lenders (other than the Defaulting Lenders, if any); provided, that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment for the purpose of calculating the Commitment Fee but the amount of outstanding Letters of Credit shall be considered usage of the Revolving Credit Commitment for purpose of calculating the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar quarter during the term of this Agreement commencing June 30, 2021 and ending on the date upon which all Obligations (other than contingent indemnification obligations not then due) arising under the Revolving Credit Facility shall have been indefeasibly and irrevocably Paid In Full and the Revolving Credit Commitment has been terminated. The Commitment Fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) pro rata in accordance with such Revolving Credit Lenders’ respective Revolving Credit Commitment Percentages.

(b) [Reserved].

(c) Other Fees. The Borrower shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in their Fee ~~Letter~~Letters. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

SECTION 5.4 Manner of Payment. Each payment by the Borrower on account of the principal of or interest on the Loans or of any fee, commission or other amounts (including the Reimbursement Obligation) payable to the Lenders under this Agreement shall be made not later than 1:00 p.m. on the date specified for payment under this Agreement to the Administrative Agent at the Administrative Agent's Office for the account of the Lenders entitled to such payment in Dollars, in immediately available funds and shall be made without any setoff, counterclaim or deduction whatsoever. Any payment received after such time but before 2:00 p.m. on such day shall be deemed a payment on such date for the purposes of [Section 10.1](#), but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after 2:00 p.m. shall be deemed to have been made on the next succeeding Business Day for all purposes. Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each such Lender at its address for notices set forth herein its Commitment Percentage in respect of the relevant Credit Facility (or other applicable share as provided herein) of such payment and shall wire advice of the amount of such credit to each Lender. Each payment to the Administrative Agent on account of the principal of or interest on the Swingline Loans or of any fee, commission or other amounts payable to the Swingline Lender shall be made in like manner, but for the account of the Swingline Lender. Each payment to the Administrative Agent of any Issuing Lender's fees or L/C Participants' commissions shall be made in like manner, but for the account of such Issuing Lender or the L/C Participants, as the case may be. Each payment to the Administrative Agent of Administrative Agent's fees or expenses shall be made for the account of the Administrative Agent and any amount payable to any Lender under [Sections 5.9, 5.10, 5.11](#) or [12.3](#) shall be paid to the Administrative Agent for the account of the applicable Lender. Subject to the definition of Interest Period, if any payment under this Agreement shall be specified to be made upon a day which is not a Business Day, it shall be made on the next succeeding day which is a Business Day and such extension of time shall in such case be included in computing any interest if payable along with such payment. Notwithstanding the foregoing, if there exists a Defaulting Lender each payment by the Borrower to such Defaulting Lender hereunder shall be applied in accordance with [Section 5.15\(a\)\(ii\)](#).

SECTION 5.5 Evidence of Indebtedness.

(a) Extensions of Credit. The Extensions of Credit made by each Lender and each Issuing Lender shall be evidenced by one or more accounts or records maintained by such Lender or such Issuing Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender or the applicable Issuing Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders or such Issuing Lender to the Borrower and its Subsidiaries 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 or any Issuing 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 Revolving Credit [Note, Term](#) Note and/or Swingline Note, as applicable, which shall evidence such Lender's Revolving Credit Loans, [Term Loans](#) and/or Swingline Loans, as applicable, in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

(b) Participations. In addition to the accounts and records referred to in subsection (a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

SECTION 5.6 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 its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations (other than pursuant to Sections 5.9, 5.10, 5.11 or 12.3) 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 Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by 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 5.14 or (C) any payment obtained by a Lender as consideration for the assignment of, or sale of, a participation in any of its Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant.

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Credit Party in the amount of such participation.

SECTION 5.7 Administrative Agent's Clawback.

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender (i) in the case of Base Rate Loans, not later than 12:00 noon on the date of any proposed borrowing and (ii) otherwise, prior to the proposed date of any borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.3(b) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the daily average Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by the Borrower, the interest rate equal to the interest rate applicable to the relevant Loan. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by the 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, the Issuing Lender or the Swingline Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the Issuing Lender or the Swingline Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, the Issuing Lender or the Swingline Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, Issuing Lender or the Swingline Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(c) Nature of Obligations of Lenders. The obligations of the Lenders under this Agreement to make the Loans, to issue or participate in Letters of Credit and to make payments under this Section, Section 5.11(e), Section 12.3(c) or Section 12.7, as applicable, are several and are not joint or joint and several. The failure of any Lender to make available its Commitment Percentage of any Loan requested by the Borrower shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Commitment Percentage of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Commitment Percentage of such Loan available on the borrowing date.

SECTION 5.8 Changed Circumstances.

(a) Circumstances Affecting LIBOR Rate Availability. Subject to clause (c) below, in connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Loan, (ii) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining the LIBOR Rate for such Interest Period with respect to a proposed LIBOR Rate Loan or (iii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period, then the Administrative Agent shall promptly give notice thereof to the Borrower. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, the obligation of the Lenders to make LIBOR Rate Loans and the right of the Borrower to convert any Loan to or continue any Loan as a LIBOR Rate Loan shall be suspended, and the Borrower shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such LIBOR Rate Loan together with accrued interest thereon (subject to Section 5.1(d)), on the last day of the then current Interest Period applicable to such LIBOR Rate Loan; or (B) convert the then outstanding principal amount of each such LIBOR Rate Loan to a Base Rate Loan as of the last day of such Interest Period.

(b) Laws Affecting LIBOR Rate Availability. If, after the date hereof, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any LIBOR Rate Loan, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, (i) the obligations of the Lenders to make LIBOR Rate Loans, and the right of the Borrower to convert any Loan to a LIBOR Rate Loan or continue any Loan as a LIBOR Rate Loan shall be suspended and thereafter the Borrower may select only Base Rate Loans and (ii) if any of the Lenders may not lawfully continue to maintain a LIBOR Rate Loan to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Base Rate Loan for the remainder of such Interest Period.

(c) Benchmark Replacement Setting.

(i) (A) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Hedge Agreement shall be deemed not to be a “Loan Document” for purposes of this Section 5.8(c)) if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders of each Class.

(B) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that this clause (B) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 5.8(c)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 5.8(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 5.8(c).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a borrowing of, conversion to or continuation of LIBOR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(vi) London Interbank Offered Rate Benchmark Transition Event. On March 5, 2021, the IBA, the administrator of the London interbank offered rate, and the FCA, the regulatory supervisor of the IBA, made the Announcements that the final publication or representativeness date for (I) 1-week and 2-month London interbank offered rate tenor settings will be December 31, 2021 and (II) overnight, 1-month, 3-month, 6-month and 12-month London interbank offered rate tenor settings will be June 30, 2023. No successor administrator for the IBA was identified in such Announcements. The parties hereto agree and acknowledge that the Announcements resulted in the occurrence of a Benchmark Transition Event with respect to the London interbank offered rate pursuant to the terms of this Agreement and that any obligation of the Administrative Agent to notify any parties of such Benchmark Transition Event pursuant to clause (iii) of this Section 5.8(c) shall be deemed satisfied.

(d) Illegality. If, in any applicable jurisdiction, the Administrative Agent, any Issuer Lender or any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, any Issuer Lender or any Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund or maintain its participation in any Loan or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Extension of Credit, such Person shall promptly notify the Administrative Agent, then, upon the Administrative Agent notifying the Borrower, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Extension of Credit shall be suspended, and to the extent required by Applicable Law, cancelled. Upon receipt of such notice, the Credit Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Borrower or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by Applicable Law) and (B) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

SECTION 5.9 Indemnity. The Borrower hereby indemnifies each of the Lenders against any loss or out of pocket expense (including any loss or out of pocket expense arising from the liquidation or reemployment of funds obtained by it to maintain a LIBOR Rate Loan or from fees payable to terminate the deposits from which such funds were obtained) which may arise or be attributable to each Lender's obtaining, liquidating or employing deposits or other funds acquired to effect, fund or maintain any Loan (a) as a consequence of any failure by the Borrower to make any payment when due of any amount due hereunder in connection with a LIBOR Rate Loan, (b) due to any failure of the Borrower to borrow or continue a LIBOR Rate Loan or convert to a LIBOR Rate Loan on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation or (c) due to any payment, prepayment or conversion of any LIBOR Rate Loan on a date other than the last day of the Interest Period therefor. The amount of such loss or expense shall be determined, in the applicable Lender's sole discretion, based upon the assumption that such Lender funded its Commitment Percentage of the LIBOR Rate Loans in the London interbank market and using any reasonable attribution or averaging methods which such Lender deems appropriate and practical. A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error.

SECTION 5.10 Increased Costs.

(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 advances, loans or other credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or any Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR 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, the Issuing Lender or such other Recipient of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, such Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, such Issuing Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender, such Issuing Lender or other Recipient, the Borrower shall promptly pay to any such Lender, such Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Lender determines that any Change in Law affecting such Lender or such Issuing Lender or any Lending Office of such Lender or such Lender's or such Issuing Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or such Issuing Lender's capital or on the capital of such Lender's or such Issuing Lender's holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitment of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Lender's policies and the policies of such Lender's or such Issuing Lender's holding company with respect to capital adequacy and liquidity), then from time to time upon written request of such Lender or such Issuing Lender the Borrower shall promptly pay to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender, or an Issuing Lender or such other Recipient setting forth the amount or amounts necessary to compensate such Lender or such Issuing Lender, such other Recipient or any of their respective holding companies, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Lender or such other Recipient, 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 any Issuing Lender or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Lender's or such other Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender or an Issuing Lender or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or such Issuing Lender or such other Recipient, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or such Issuing Lender's or such other Recipient'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-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 5.11 Taxes.

(a) Defined Terms. For purposes of this Section 5.11, the term “Lender” includes any Issuing Lender and the term “Applicable Law” includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Credit Parties. The Borrower and any other Credit Party shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

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

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 12.9(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to setoff and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 5.11, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any 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 5.11(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(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 United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States 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 establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit H-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

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit H-2** or **Exhibit H-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 H-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 of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States 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 United States 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.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.11 (including by the payment of additional amounts pursuant to this Section 5.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 5.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 5.12 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 5.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, then such Lender shall, at the request of the Borrower, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.10 or Section 5.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.10, 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 5.11, and, in each case, such Lender has declined or is unable to designate a different Lending Office or assigns its rights and obligations hereunder to another of its offices, branches or affiliates in accordance with Section 5.12(a), 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 12.9), all of its interests, rights (other than its existing rights to payments pursuant to Section 5.10 or Section 5.11) 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:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.9;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in Letters of Credit and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.9) 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);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 5.10 or payments required to be made pursuant to Section 5.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

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

(c) Selection of Lending Office. Subject to Section 5.12(a), each Lender may make any Loan to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligations of the Borrower to repay the Loan in accordance with the terms of this Agreement or otherwise alter the rights of the parties hereto.

SECTION 5.13 Incremental Loans.

(a) At any time following the ClosingFirst Amendment Date the Borrower may by written notice to the Administrative Agent elect to request the establishment of:

(i) one or more incremental term loan commitments (any such incremental term loan commitment, an “Increase Term Loan Commitment”) to make one or more additional term loans (~~each, including a borrowing of an additional term loan the principal amount of which will be added to the outstanding principal amount of the existing tranche of Term Loans with the latest scheduled maturity date (any such additional term loan, an “Increase Term Loan”); or~~

(ii) one or more increases in the Revolving Credit Commitments (any such increase, an “Incremental Revolving Credit Commitment” and, together with the Increase Term Loan Commitments, the “Increase Commitments”) to make revolving credit loans under the Revolving Credit Facility (any such increase, an “Incremental Revolving Credit Increase” and, together with the Increase Term Loans, the “Increase Loans”);

provided that (1) the total aggregate initial principal amount (as of the date of incurrence thereof) of such requested Increase Commitments and Increase Loans shall not exceed the Increase Facilities Limit and (2) the total aggregate amount for each Increase Commitment (and the Increase Loans made thereunder) shall not be less than a minimum principal amount of \$5,000,000 or, if less, the remaining amount permitted pursuant to the foregoing clause (1). Each such notice shall specify the date (each, an “Increase Amount Date”) on which the Borrower proposes that any Increase Commitment shall be effective, which shall be a date not less than ten (10) Business Days after the date on which such notice is delivered to Administrative Agent (or such later date as may be approved by the Administrative Agent). The Borrower may invite any Lender, any Affiliate of any Lender and/or any Approved Fund, and/or any other Person reasonably satisfactory to the Administrative Agent, to provide an Increase Commitment (any such Person, an “Increase Lender”). Any proposed Increase Lender offered or approached to provide all or a portion of any Increase Commitment may elect or decline, in its sole discretion, to provide such Increase Commitment or any portion thereof. Any Increase Commitment shall become effective as of such Increase Amount Date; provided that each of the following conditions has been satisfied or waived as of such Increase Amount Date:

(A) no Default or Event of Default shall exist on such Increase Amount Date immediately prior to or after giving effect to (1) any Increase Commitment, (2) the making of any Increase Loans pursuant thereto and (3) any Permitted Acquisition consummated in connection therewith;

(B) the Administrative Agent shall have received from the Borrower an Officer's Compliance Certificate demonstrating, in form and substance reasonably satisfactory to the Administrative Agent, that the (1) Borrower is in compliance with the financial covenants set forth in Section 9.15 and (2) Consolidated Total Leverage Ratio will be at least 0.25 to 1.00 less than the maximum Consolidated Total Leverage Ratio in effect as of the Increase Amount Date pursuant to Section 9.15(a), in each case based on the financial statements most recently delivered pursuant to Section 8.1(a) or 8.1(b), as applicable, both before and after giving effect (on a Pro Forma Basis) to (x) any Increase Commitment, (y) the making of any Increase Loans pursuant thereto (with any Increase Commitment and the Revolving Credit Commitment being deemed to be fully funded) and (z) any Permitted Acquisition consummated in connection therewith;

(C) each of the representations and warranties contained in Article VII shall be true and correct in all material respects, except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true, correct and complete in all respects, on such Increase Amount Date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct as of such earlier date);

(D) the proceeds of any Increase Loans shall be used for general corporate purposes of the Borrower and its Subsidiaries (including Permitted Acquisitions);

(E) each Increase Commitment (and the Increase Loans made thereunder) shall constitute Obligations of the Borrower and shall be secured and guaranteed with the other Extensions of Credit on a pari passu basis;

(F) in the case of each Incremental Revolving Credit Commitment, such Incremental Revolving Credit Commitment shall (1) mature on the Revolving Credit Maturity Date, (2) bear interest and be entitled to fees, in each case, at the rate applicable to the Revolving Credit Loans, and (3) be subject to the same terms and conditions of the Revolving Credit Loans;

(G) in the case of each Increase Term Loan, the terms governing such Increase Term Loan (1) must be acceptable to Administrative Agent and each Increase Lender providing such Increase Loan in their sole discretion; and (2) will be set forth in an amendment to this Agreement in form and substance acceptable to Administrative Agent and each Increase Lender providing such Increase Loan in their sole discretion;

(H) (1) any Increase Lender making any Increase Term Loan shall (unless otherwise agreed by the applicable Increase Lenders) share payments made on each Increase Term Loan pro rata on the basis of the original aggregate funded amount thereof among each Increase Term Loan; and

(2) any Increase Lender with an Incremental Revolving Credit Increase shall be entitled to the same voting rights as the existing Revolving Credit Lenders under the Revolving Credit Facility and any Extensions of Credit made in connection with each Incremental Revolving Credit Increase shall receive proceeds of prepayments on the same basis as the other Revolving Credit Loans made hereunder;

(I) such Increase Commitments shall be effected pursuant to one or more amendments to this Agreement executed and delivered by the Borrower, the Administrative Agent and the applicable Increase Lenders (which amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the sole opinion of the Administrative Agent and the applicable Increase Lender, to effect the provisions of this [Section 5.13](#)); and

(J) the Borrower shall deliver or cause to be delivered any customary legal opinions or other documents (including, without limitation, a resolution duly adopted by the board of directors (or equivalent governing body) of each Credit Party authorizing such Increase Loan and/or Increase Commitment), as may be reasonably requested by Administrative Agent in connection with any such transaction.

(b) The Increase Lenders shall be included in any determination of the Required Lenders ~~or~~, Required Revolving Credit [Lenders or Required Term Loan](#) Lenders, as applicable, and, unless otherwise agreed, the Increase Lenders will not constitute a separate voting class for any purposes under this Agreement.

(c) (i) On any Increase Amount Date on which any Increase Term Loan Commitment becomes effective, subject to the foregoing terms and conditions, each Increase Lender with an Increase Term Loan Commitment shall make, or be obligated to make, an Increase Term Loan to the Borrower in an amount equal to its Increase Term Loan Commitment and shall become an Increase Term Loan Lender hereunder with respect to such Increase Term Loan Commitment and the Increase Term Loan made pursuant thereto.

(ii) On any Increase Amount Date on which any Incremental Revolving Credit Increase becomes effective, subject to the foregoing terms and conditions, each Increase Lender with an Incremental Revolving Credit Commitment shall become a Revolving Credit Lender hereunder with respect to such Incremental Revolving Credit Commitment.

SECTION 5.14 [Cash Collateral](#). At any time that there shall exist a Defaulting Lender, within three (3) Business Days following the written request of the Administrative Agent, any Issuing Lender (with a copy to the Administrative Agent) or the Swingline Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the Fronting Exposure of such Issuing Lender and/or the Swingline Lender, as applicable, with respect to such Defaulting Lender (determined after giving effect to [Section 5.15\(a\)\(iv\)](#)) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(a) **[Grant of Security Interest](#).** The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of each Issuing Lender and the Swingline Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans, to be applied pursuant to subsection (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, each Issuing Lender and the Swingline Lender as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, Cash Collateral provided under this [Section 5.14](#) or [Section 5.15](#) in respect of Letters of Credit and Swingline Loans shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Fronting Exposure of any Issuing Lender and/or the Swingline Lender, as applicable, shall no longer be required to be held as Cash Collateral pursuant to this [Section 5.14](#) following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, the Issuing Lenders and the Swingline Lender that there exists excess Cash Collateral; provided that, subject to [Section 5.15](#), the Person providing Cash Collateral, the Issuing Lenders and the Swingline Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents. So long as no Default or Event of Default then exists, any Cash Collateral no longer required to be so held shall be promptly returned first to the Borrower until it has received all Cash Collateral provided by it, before any such Cash Collateral is returned to the Defaulting Lender.

SECTION 5.15 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the ~~definition~~definitions of Required Lenders, [Required Revolving Credit Lenders](#), [Required Term Loan Lenders](#) and/or [Section 12.2](#).

(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 X](#) or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to [Section 12.4](#) 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 Issuing Lenders or the Swingline Lender hereunder; *third*, to Cash Collateralize the Fronting Exposure of the Issuing Lenders and the Swingline Lender with respect to such Defaulting Lender in accordance with [Section 5.14](#); *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan or funded participation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans and funded participations under this Agreement and (B) Cash Collateralize the Issuing Lenders' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with [Section 5.14](#); *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lenders or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default 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 (1) such payment is a payment of the principal amount of any Loans or funded participations in Letters of Credit or Swingline Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit or Swingline Loans were issued at a time when the conditions set forth in [Section 6.2](#) were satisfied or waived, such payment shall be applied solely to pay the Loans of, and funded participations in Letters of Credit or Swingline Loans owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or funded participations in Letters of Credit or Swingline Loans owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Credit Commitments under the applicable Revolving Credit Facility without giving effect to [Section 5.15\(a\)\(iv\)](#). 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 5.15\(a\)\(ii\)](#) 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 Commitment Fee 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 letter of credit commissions pursuant to Section 3.3 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 5.14.

(C) With respect to any Commitment Fee or letter of credit commission not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to each applicable Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's or Swingline Lender's Fronting Exposure to such Defaulting Lender (other than any portion of such Fronting Exposure that has been Cash Collateralized by the Borrower, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. Subject to Section 12.23, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, repay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize the Issuing Lenders' Fronting Exposure in accordance with the procedures set forth in Section 5.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Issuing Lenders and the Swingline Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 5.15(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.

ARTICLE VI

CONDITIONS OF CLOSING AND BORROWING

SECTION 6.1 Conditions to Closing and Initial Extensions of Credit. The obligation of the Lenders to close this Agreement and to make the initial Loans or issue or participate in the initial Letter of Credit, if any, is subject to the satisfaction of each of the following conditions:

(a) Executed Loan Documents. This Agreement, a Revolving Credit Note in favor of each Revolving Credit Lender requesting a Revolving Credit Note, a Term Loan Note in favor of each Term Loan Lender requesting a Term Loan Note (with respect to the Term Loan Lenders making the Initial Term Loan on the First Amendment Date), a Swingline Note in favor of the Swingline Lender (in each case, if requested thereby), and the Security Documents, together with any other applicable Loan Documents, shall have been duly authorized, executed and delivered to the Administrative Agent by the parties thereto, shall be in full force and effect and no Default or Event of Default shall exist hereunder or thereunder.

(b) Closing Certificates; Etc. The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) Officer's Certificate. A certificate from a Responsible Officer of the Borrower to the effect that (A) all representations and warranties of the Credit Parties contained in this Agreement and the other Loan Documents are true, correct and complete in all material respects (except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case such representation and warranty shall be true, correct and complete in all respects) as of the Closing Date; (B) none of the Credit Parties is in violation of any of the covenants contained in this Agreement and the other Loan Documents as of the Closing Date; (C) after giving effect to the Transactions, no Default or Event of Default has occurred and is continuing; (D) since December 31, 2020, no event has occurred or condition arisen, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; and (E) each of the Credit Parties, as applicable, has satisfied each of the conditions set forth in Section 6.1 and Section 6.2.

(ii) Certificate of Secretary of each Credit Party. A certificate of a Responsible Officer of each Credit Party certifying as to the incumbency and genuineness of the signature of each officer of such Credit Party executing Loan Documents to which it is a party and certifying that attached thereto is a true, correct and complete copy of (A) the articles or certificate of incorporation or formation (or equivalent), as applicable, of such Credit Party and all amendments thereto, certified as of a recent date by the appropriate Governmental Authority in its jurisdiction of incorporation, organization or formation (or equivalent), as applicable, (B) the bylaws or other governing document of such Credit Party as in effect on the Closing Date, (C) resolutions duly adopted by the board of directors (or other governing body) of such Credit Party authorizing and approving the transactions contemplated hereunder and the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and (D) each certificate required to be delivered pursuant to Section 6.1(b)(iii).

(iii) Certificates of Good Standing. Certificates as of a recent date of the good standing of each Credit Party under the laws of its jurisdiction of incorporation, organization or formation (or equivalent), as applicable, and, to the extent requested by the Administrative Agent, each other jurisdiction where such Credit Party is qualified to do business except where failure to qualify in such jurisdiction would not reasonably be expected to have a Material Adverse Effect.

(iv) Opinions of Counsel. Opinions of counsel to the Credit Parties addressed to the Administrative Agent and the Lenders with respect to the Credit Parties, the Loan Documents and such other matters as the Administrative Agent shall request (which such opinions shall expressly permit reliance, subject to customary conditions, by permitted assigns of the Administrative Agent and the Lenders).

(c) Personal Property Collateral.

(i) Filings and Recordings. The Administrative Agent shall have received all filings and recordations that are necessary to perfect the security interests of the Administrative Agent, on behalf of the Secured Parties, in the Collateral and the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that upon such filings and recordations such security interests constitute valid and perfected first priority Liens thereon (subject to Permitted Liens).

(ii) Pledged Collateral. The Administrative Agent shall have received (A) original stock certificates or other certificates evidencing the certificated Equity Interests pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof and (B) each original promissory note pledged pursuant to the Security Documents together with an undated allonge for each such promissory note duly executed in blank by the holder thereof.

(iii) Lien Search. The Administrative Agent shall have received the results of a Lien search (including a search as to judgments, pending litigation, bankruptcy, tax and intellectual property matters), in form and substance reasonably satisfactory thereto, made against the Credit Parties under the Uniform Commercial Code (or applicable judicial docket) as in effect in each jurisdiction in which filings or recordings under the Uniform Commercial Code should be made to evidence or perfect security interests in all assets of such Credit Party, indicating among other things that the assets of each such Credit Party are free and clear of any Lien (except for Permitted Liens).

(iv) Property and Liability Insurance. The Administrative Agent shall have received, in each case in form and substance reasonably satisfactory to the Administrative Agent, (A) evidence of property, business interruption and liability insurance covering each Credit Party, (B) evidence of payment of all insurance premiums for the current policy year of each policy, (C) if requested by the Administrative Agent, copies of such insurance policies, and (D) insurance certificates listing the Administrative Agent as loss payee (and mortgagee, as applicable) on all policies for property hazard insurance and as additional insured on all policies for liability insurance.

(v) [Reserved].

(vi) Other Collateral Documentation. The Administrative Agent shall have received any documents reasonably requested thereby or as required by the terms of the Security Documents to evidence its security interest in the Collateral (including, without limitation, any control agreements, landlord waivers or collateral access agreements, notices and assignments of claims required under Applicable Laws, bailee or warehouseman letters or filings with the FDA or any other applicable Governmental Authority).

(d) [Reserved].

(e) Consents; Defaults.

(i) Governmental and Third Party Approvals. The Credit Parties shall have received all material governmental, shareholder and third party consents and approvals necessary in connection with the transactions contemplated by this Agreement and the other Loan Documents and all applicable waiting periods shall have expired without any action being taken by any Person that could reasonably be expected to restrain, prevent or impose any material adverse conditions on any of the Credit Parties or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation shall be applicable which in the reasonable judgment of the Administrative Agent could reasonably be expected to have such effect.

(ii) No Injunction, Etc. No action, proceeding or investigation shall have been instituted, threatened or proposed before any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby, or which, in the Administrative Agent's sole discretion, would make it inadvisable to consummate the transactions contemplated by this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby.

(f) Financial Matters.

(i) Financial Statements. The Administrative Agent shall have received the audited Consolidated balance sheet of the Borrower and its Subsidiaries as of December 31, 2018, December 31, 2019 and December 31, 2020 and the related audited statements of income and retained earnings and cash flows for the Fiscal Year then ended.

(ii) [Reserved].

(iii) Financial Projections. The Administrative Agent shall have received pro forma Consolidated financial statements for the Borrower and its Subsidiaries, and projections prepared by management of the Borrower, of balance sheets, income statements and cash flow statements on a quarterly basis for the term of the Credit Facility, which shall not be materially inconsistent with any financial information or projections previously delivered to the Administrative Agent.

(iv) Financial Condition/Solvency Certificate. The Borrower shall have delivered to the Administrative Agent a certificate, in form and substance reasonably satisfactory to the Administrative Agent, and certified as accurate by the chief financial officer of the Borrower, that (A) after giving effect to the Transactions, the Credit Parties and each of their Subsidiaries are, on a Consolidated basis, Solvent, (B) the financial projections previously delivered to the Administrative Agent represent the good faith estimates (utilizing reasonable assumptions) of the financial condition and operations of the Borrower and its Subsidiaries and (C) attached thereto is a calculation of the Applicable Margin.

(v) Closing Leverage Ratio. The ratio of Consolidated Total Indebtedness of the Borrower and its Subsidiaries as of the Closing Date calculated on a Pro Forma Basis after giving effect to the Transactions to Consolidated EBITDA for the four-quarter period most recently ended prior to the Closing Date for which financial statements are available (calculated on a Pro Forma Basis after giving effect to the Transactions will not exceed 1.00 to 1.00 (the "Closing Leverage Ratio").

(vi) Payment at Closing. The Borrower shall have paid or made arrangements to pay contemporaneously with closing (A) to the Administrative Agent, the Arranger and the Lenders the fees set forth or referenced in Section 5.3, including the Fee Letter, and any other accrued and unpaid fees or commissions due hereunder, (B) all reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent accrued and unpaid prior to or on the Closing Date, 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 the Borrower and the Administrative Agent) and (C) to any other Person such amount as may be due thereto in connection with the transactions contemplated hereby, including all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of any of the Loan Documents.

(g) [Reserved].

(h) Miscellaneous.

(i) [Reserved].

(ii) Notice of Account Designation. The Administrative Agent shall have received a Notice of Account Designation specifying the account or accounts to which the proceeds of any Loans made on or after the Closing Date are to be disbursed.

(iii) Due Diligence. The Administrative Agent shall have completed, to its satisfaction, all legal, tax, environmental, business and other due diligence with respect to the business, assets, liabilities, operations and condition (financial or otherwise) of the Borrower and its Subsidiaries in scope and determination satisfactory to the Administrative Agent in its sole discretion.

(iv) [Reserved].

(v) [Reserved].

(vi) [Reserved].

(vii) Other Collateral Documentation. The Administrative Agent shall have received any documents reasonably requested thereby or as required by the terms of the Security Documents to evidence its security interest in the Collateral (including, without limitation, any control agreements, landlord waivers or collateral access agreements, notices and assignments of claims required under Applicable Laws, bailee or warehouseman letters or filings with the FDA or any other applicable Governmental Authority).

Without limiting the generality of the provisions of Section 11.3(c), for purposes of determining compliance with the conditions specified in this Section 6.1, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 6.2 Conditions to All Extensions of Credit. The obligations of the Lenders to make or participate in any Extensions of Credit (including the initial Extension of Credit), convert or continue any Loan and/or any Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction of the following conditions precedent on the relevant borrowing, continuation, conversion, issuance or extension date:

(a) Continuation of Representations and Warranties. The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, on and as of such borrowing, continuation, conversion, issuance or extension date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date).

(b) No Existing Default. No Default or Event of Default shall have occurred and be continuing (i) on the borrowing, continuation or conversion date with respect to such Loan or after giving effect to the Loans to be made, continued or converted on such date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.

(c) Notices. The Administrative Agent shall have received a Notice of Borrowing, Letter of Credit Application, or Notice of Conversion/Continuation, as applicable, from the Borrower in accordance with Section 2.3(a), Section 3.2, or Section 5.2, as applicable.

(d) Additional Documents. The Administrative Agent shall have received each additional document, instrument, legal opinion or other item reasonably requested by it in accordance with and required to be delivered by the terms of this Agreement.

(e) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES

To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Credit Parties hereby represent and warrant to the Administrative Agent and the Lenders both before and after giving effect to the transactions contemplated hereunder, which representations and warranties shall be deemed made on the Closing Date and/or on such other date as may be set forth in this Article VII, and as otherwise set forth in Section 6.2, that:

SECTION 7.1 Organization; Power; Qualification. Each Credit Party and each Subsidiary thereof (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the organizational power and authority to own its Properties and to carry on its business as now being conducted and (c) is duly qualified and authorized to do business in each jurisdiction in which the character of its Properties or the nature of its business requires such qualification and authorization except where the failure to be so qualified would not reasonably be expected to result a Material Adverse Effect. The jurisdictions in which each Credit Party and each Subsidiary thereof are organized as of the ClosingFirst Amendment Date are described on Schedule 7.1. No Credit Party nor any Subsidiary thereof is an EEA Financial Institution.

SECTION 7.2 Ownership. Each Subsidiary of each Credit Party as of the ClosingFirst Amendment Date is listed on Schedule 7.2. As of the ClosingFirst Amendment Date, the capitalization of each Subsidiary of a Credit Party ~~and its Subsidiaries~~ consists of the number of shares, authorized, issued and outstanding, of such classes and series, with or without par value, described on Schedule 7.2. All outstanding shares have been duly authorized and validly issued and are fully paid and nonassessable and not subject to any preemptive or similar rights, except as described in Schedule 7.2. As of the ClosingFirst Amendment Date, there are no outstanding stock purchase warrants, subscriptions, options, securities, instruments or other rights of any type or nature whatsoever, which are convertible into, exchangeable for or otherwise provide for or require the issuance of Equity Interests of any Subsidiary of a Credit Party ~~or any Subsidiary thereof~~, except as described on Schedule 7.2.

SECTION 7.3 Authorization; Enforceability. Each Credit Party has the organizational right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement and each of the other Loan Documents to which it is a party in accordance with their respective terms. This Agreement and each of the other Loan Documents have been duly executed and delivered by the duly authorized officers of each Credit Party that is a party thereto, and each such document constitutes the legal, valid and binding obligation of each Credit Party that is a party thereto, enforceable against such Credit Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

SECTION 7.4 Compliance of Agreement, Loan Documents and Borrowing with Laws, Etc. The execution, delivery and performance by each Credit Party and each Subsidiary thereof of the Loan Documents to which each such Person is a party, in accordance with their respective terms, the Extensions of Credit hereunder and the transactions contemplated hereby or thereby do not and will not, by the passage of time, the giving of notice or otherwise, (a) require any Governmental Approval or violate any Applicable Law relating to any Credit Party or any Subsidiary thereof where the failure to obtain such Governmental Approval or such violation could reasonably be expected to have a Material Adverse Effect, (b) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other organizational documents of any Credit Party or any Subsidiary thereof, (c) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument evidencing Indebtedness or a payment obligation in excess of the Threshold Amount to which such Person is a party or by which any of its properties may be bound or any Governmental Approval relating to such Person, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (d) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by such Person other than Permitted Liens or (e) require any consent or authorization of, filing with, or other act in respect of, an arbitrator or Governmental Authority and no consent of any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement other than (i) consents, authorizations, filings or other acts or consents for which the failure to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (ii) consents or filings under the UCC, (iii) filings with the United States Copyright Office and/or the United States Patent and Trademark Office and (iv) filings of any mortgage or deed of trust with the applicable county recording office or register of deeds.

SECTION 7.5 Compliance with Law; Governmental Approvals. Each Credit Party and each Subsidiary thereof (a) has all Governmental Approvals required by any Applicable Law for it to conduct its business, each of which is in full force and effect, is final and not subject to review on appeal and is not the subject of any pending or, to its knowledge, threatened attack by direct or collateral proceeding, (b) is in compliance with each Governmental Approval applicable to it and in compliance with all other Applicable Laws (including Environmental Laws) relating to it or any of its respective properties and (c) has timely filed all material reports, documents and other materials required to be filed by it under all Applicable Laws with any Governmental Authority and has retained all material records and documents required to be retained by it under Applicable Law, except in each case of clauses (a), (b) or (c) where the failure to have, comply or file could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.6 Tax Returns and Payments. Except to the extent permitted by Section 8.8, each Credit Party and each Subsidiary thereof has duly filed or caused to be filed all federal and state and material local and other tax returns required by Applicable Law to be filed, and has paid, or made adequate provision for the payment of, all federal, state, local and other taxes, assessments and governmental charges or levies upon it and its property, income, profits and assets which are due and payable (other than any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the relevant Credit Party). Such returns accurately reflect in all material respects all liability for taxes of any Credit Party or any Subsidiary thereof for the periods covered thereby. As of the Closing First Amendment Date, except as set forth on Schedule 7.6, there is no ongoing audit or examination or, to the knowledge of each of the Credit Parties and each Subsidiary thereof, other investigation by any Governmental Authority of the tax liability of any Credit Party or any Subsidiary thereof. No Governmental Authority has asserted any Lien or other claim against any Credit Party or any Subsidiary thereof with respect to unpaid taxes which has not been discharged or resolved (other than (a) any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the relevant Credit Party and (b) Permitted Liens). The charges, accruals and reserves on the books of each Credit Party and each Subsidiary thereof in respect of federal, state, local and other taxes for all Fiscal Years and portions thereof since the organization of any Credit Party or any Subsidiary thereof are in the judgment of the Borrower adequate, and the Borrower does not anticipate any additional taxes or assessments for any of such years.

SECTION 7.7 Intellectual Property Matters. Each Credit Party and each Subsidiary thereof owns or possesses rights to use all material franchises, licenses, copyrights, copyright applications, patents, patent rights or licenses, patent applications, trademarks, trademark rights, service mark, service mark rights, trade names, trade name rights, copyrights and other rights with respect to the foregoing which are reasonably necessary to conduct its business, except where the failure to own or possess such rights could not reasonably be expected to have a Material Adverse Effect. No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, and no Credit Party nor any Subsidiary thereof is liable to any Person for infringement under Applicable Law with respect to any such rights as a result of its business operations, except in each case as could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.8 [Reserved]

SECTION 7.9 Employee Benefit Matters.

(a) As of the ClosingFirst Amendment Date, no Credit Party nor any ERISA Affiliate maintains or contributes to, or has any obligation under, any Pension Plan or Multiemployer Plan other than those identified on Schedule 7.9;

(b) Each Credit Party and each ERISA Affiliate is in compliance with all applicable provisions of ERISA, the Code and the regulations and official interpretations thereunder with respect to all Employee Benefit Plans except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired and except where a failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code (i) has been determined by the IRS to be so qualified, and each trust related to such plan has been determined to be exempt under Section 501(a) of the Code except for such plans that have not yet received determination letters but for which the remedial amendment period for submitting a determination letter has not yet expired or (ii) is maintained on a pre-approved plan document for which the pre-approved plan sponsor has received an opinion or advisory letter from the IRS. No liability has been incurred by any Credit Party or any ERISA Affiliate which remains unsatisfied for any taxes or penalties assessed with respect to any Employee Benefit Plan or any Multiemployer Plan except for a liability that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(c) As of the ClosingFirst Amendment Date, no Pension Plan has been terminated, nor has any Pension Plan become subject to funding based upon benefit restrictions under Section 436 of the Code, nor has any funding waiver from the IRS been received or requested with respect to any Pension Plan, nor has any Credit Party or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by Sections 412 or 430 of the Code, Section 302 of ERISA or the terms of any Pension Plan on or prior to the due dates of such contributions under Sections 412 or 430 of the Code or Section 302 of ERISA, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA with respect to any Pension Plan;

(d) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Credit Party nor any ERISA Affiliate has: (i) engaged in a nonexempt prohibited transaction described in Section 406 of the ERISA or Section 4975 of the Code, (ii) incurred any liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid, (iii) failed to make a required contribution or payment to a Multiemployer Plan, or (iv) failed to make a required installment or other required payment under Sections 412 or 430 of the Code;

(e) No Termination Event has occurred or is reasonably expected to occur;

(f) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no proceeding, claim (other than a benefits claim in the ordinary course of business), lawsuit and/or investigation is existing or, to its knowledge, threatened concerning or involving (i) any employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by any Credit Party or any ERISA Affiliate, (ii) any Pension Plan or (iii) any Multiemployer Plan.

SECTION 7.10 Margin Stock. No Credit Party nor any Subsidiary thereof is engaged principally or as one of its activities in the business of extending credit for the purpose of “purchasing” or “carrying” any “margin stock” (as each such term is defined or used, directly or indirectly, in Regulation U of the FRB). No part of the proceeds of any of the Loans or Letters of Credit will be used for purchasing or carrying margin stock or for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X of the FRB. Following the application of the proceeds of each Extension of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 9.2 or Section 9.5 will be “margin stock”.

SECTION 7.11 Government Regulation. No Credit Party nor any Subsidiary thereof is an “investment company” or a company “controlled” by an “investment company” (as each such term is defined or used in the Investment Company Act) and no Credit Party nor any Subsidiary thereof is, or after giving effect to any Extension of Credit will be, subject to regulation under the Interstate Commerce Act, or any other Applicable Law which limits its ability to incur or consummate the transactions contemplated hereby.

SECTION 7.12 Material Contracts. Schedule 7.12 sets forth a complete and accurate list of all Material Contracts of each Credit Party and each Subsidiary thereof in effect as of the ClosingFirst Amendment Date. Other than as set forth in Schedule 7.12, as of the ClosingFirst Amendment Date, each such Material Contract is, and after giving effect to the consummation of the transactions contemplated by the Loan Documents will be, in full force and effect in accordance with the terms thereof. As of the ClosingFirst Amendment Date, no Credit Party nor any Subsidiary thereof (nor, to its knowledge, any other party thereto) is in material breach of or in material default under any Material Contract to the extent such breach or default would require filing or reporting obligations with the SEC or other Governmental Agency.

SECTION 7.13 Employee Relations. As of the ClosingFirst Amendment Date, no Credit Party nor any Subsidiary thereof is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of its employees except as set forth on Schedule 7.13. The Borrower knows of no pending, threatened or contemplated strikes, work stoppage or other collective labor disputes involving its employees or those of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 7.14 Burdensome Provisions. The Credit Parties and their respective Subsidiaries do not presently anticipate that future expenditures needed to meet the provisions of any statutes, orders, rules or regulations of a Governmental Authority will be so burdensome as to have a Material Adverse Effect. No Subsidiary is party to any agreement or instrument or otherwise subject to any restriction or encumbrance that restricts or limits its ability to make dividend payments or other distributions in respect of its Equity Interests to the Borrower or any Subsidiary or to transfer any of its assets or properties to the Borrower or any other Subsidiary in each case other than existing under or by reason of the Loan Documents or Applicable Law.

SECTION 7.15 Financial Statements. The audited and unaudited financial statements delivered pursuant to Section 6.1(f)(i) are complete and correct and fairly present in all material respects on a Consolidated basis the assets, liabilities and financial position of the Borrower and its Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods then ended (other than customary year-end adjustments for unaudited financial statements and the absence of footnotes from unaudited financial statements). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP. Such financial statements show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, material commitments, and Indebtedness, in each case, to the extent required to be disclosed under GAAP.

SECTION 7.16 No Material Adverse Change. Since December 31, 2020, there has been no material adverse change in the properties, business, operations or financial condition of the Borrower and its Subsidiaries and no event has occurred or condition arisen, either individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect.

SECTION 7.17 Solvency. The Credit Parties and their Subsidiaries are, on a Consolidated basis, Solvent.

SECTION 7.18 Title to Properties. As of the ClosingFirst Amendment Date, the real property listed on Schedule 7.18 constitutes all of the real property that is owned, leased, subleased or used by any Credit Party or any of its Subsidiaries. Each Credit Party and each Subsidiary thereof has such title to the real property owned or leased by it as is necessary or desirable to the conduct of its business and valid and legal title to all of its personal property and assets, except those which have been disposed of by the Credit Parties and their Subsidiaries subsequent to such date which dispositions have been in the ordinary course of business or as otherwise expressly permitted hereunder.

SECTION 7.19 Litigation. Except for matters existing on the ClosingFirst Amendment Date and set forth on Schedule 7.19, there are no actions, suits or proceedings pending nor, to its knowledge, threatened against or in any other way relating adversely to or affecting any Credit Party or any Subsidiary thereof or any of their respective properties in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

SECTION 7.20 Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions.

(a) None of (i) the Borrower, any Subsidiary or, to the knowledge of the Borrower or such Subsidiary, any of their respective directors, officers, employees or Affiliates, or (ii) any agent or representative of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the Credit Facility, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) has its assets located in a Sanctioned Country, (C) is under administrative, civil or criminal investigation for an alleged violation of, or received notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by a governmental authority that enforces Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws, or (D) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons.

(b) Each of the Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(c) Each of the Borrower and its Subsidiaries, and to the knowledge of the Borrower, director, officer, employee, agent and Affiliate of Borrower and each such Subsidiary, is in compliance with all Anti-Corruption Laws, Anti-Money Laundering Laws in all material respects and applicable Sanctions.

(d) No proceeds of any Extension of Credit have been used, directly or indirectly, by the Borrower, any of its Subsidiaries or any of its or their respective directors, officers, employees and agents in violation of Section 8.16(c).

SECTION 7.21 Absence of Defaults. No event has occurred or is continuing (a) which constitutes a Default or an Event of Default, or (b) which constitutes, or which with the passage of time or giving of notice or both would constitute, a default or event of default by any Credit Party or any Subsidiary thereof under any judgment, decree or order to which any Credit Party or any Subsidiary thereof is a party or by which any Credit Party or any Subsidiary thereof or any of their respective properties may be bound or which would require any Credit Party or any Subsidiary thereof to make any payment thereunder prior to the scheduled maturity date therefor that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 7.22 [Reserved].

SECTION 7.23 Disclosure. The Borrower and/or its Subsidiaries have disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which any Credit Party and any Subsidiary thereof are subject, and all other matters known to them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No financial statement, material report, material certificate or other material information furnished (whether in writing or orally) by or on behalf of any Credit Party or any Subsidiary thereof to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken together as a whole, contains any untrue statement of a material 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, pro forma financial information, estimated financial information and other projected or estimated information, such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being recognized by the Lenders that projections are not to be viewed as facts and that the actual results during the period or periods covered by such projections may vary from such projections).

ARTICLE VIII

AFFIRMATIVE COVENANTS

Until all of the Obligations have been Paid in Full and the Commitments terminated, each Credit Party will, and will cause each of its Subsidiaries to:

SECTION 8.1 Financial Statements and Budgets. Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) Annual Financial Statements. As soon as practicable and in any event within ninety (90) days (or, if earlier, on the date of any required public filing thereof) after the end of each Fiscal Year (commencing with the Fiscal Year ended December 31, 2021), an audited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such Fiscal Year and audited Consolidated statements of income, retained earnings and cash flows including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the year. Such annual financial statements shall be audited by Grant Thornton LLP or an independent certified public accounting firm of recognized national standing acceptable to the Administrative Agent, and accompanied by a report and opinion thereon by such certified public accountants prepared in accordance with generally accepted auditing standards that is not subject to any "going concern" or similar qualification or exception or any qualification as to the scope of such audit or with respect to accounting principles followed by the Borrower or any of its Subsidiaries not in accordance with GAAP.

(b) Quarterly Financial Statements. As soon as practicable and in any event within forty-five (45) days (or, if earlier, on the date of any required public filing thereof) after the end of the first three fiscal quarters of each Fiscal Year (commencing with the fiscal quarter ended March 31, 2021), an unaudited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such fiscal quarter and unaudited Consolidated statements of income, retained earnings and cash flows and a report containing management's discussion and analysis of such financial statements for the fiscal quarter then ended and that portion of the Fiscal Year then ended, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by the Borrower in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by the chief financial officer of the Borrower to present fairly in all material respects the financial condition of the Borrower and its Subsidiaries on a Consolidated basis as of their respective dates and the results of operations of the Borrower and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments and the absence of footnotes.

(c) Annual Business Plan and Budget. As soon as practicable and in any event within sixty (60) days after the end of each Fiscal Year, a business plan and operating and capital budget of the Borrower and its Subsidiaries for the ensuing one fiscal year, such plan to be prepared in accordance with GAAP and to include, on a quarterly basis, the following: a quarterly operating and capital budget, a projected income statement, statement of cash flows and balance sheet, calculations demonstrating projected compliance with the financial covenants set forth in Section 9.15, accompanied by a certificate from a Responsible Officer of the Borrower to the effect that such budget contains good faith estimates (utilizing assumptions believed to be reasonable at the time of delivery of such budget) of the financial condition and operations of the Borrower and its Subsidiaries for such period.

SECTION 8.2 Certificates; Other Reports. Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) at each time financial statements are delivered pursuant to Sections 8.1(a) or (b), a duly completed Officer's Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower and a report containing management's discussion and analysis of such financial statement;

(b) at each time a Compliance Certificate is delivered in connection with the financial statements delivered pursuant to Section 8.1(b), a certification of an applicable officer of the Borrower identifying all federally registered copyrights, copyright applications, patents, patent applications, trademarks and trademark applications included in the Collateral not previously identified on the Closing Date or in a prior delivered Compliance Certificate.

(c) promptly upon receipt thereof, copies of all reports, if any, submitted to any Credit Party, any Subsidiary thereof or any of their respective boards of directors by their respective independent public accountants in connection with their auditing function, including, without limitation, any management report and any management responses thereto;

(d) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Credit Party or any Subsidiary thereof with any Environmental Law that could reasonably be expected to have a Material Adverse Effect;

(e) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) promptly, and in any event within five (5) Business Days after receipt thereof by any Credit Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Credit Party or any Subsidiary thereof;

(g) promptly upon the request thereof, such other information and documentation required under applicable "know your customer" rules and regulations, the PATRIOT Act or any applicable Anti-Money Laundering Laws or Anti-Corruption Laws, in each case as from time to time reasonably requested by the Administrative Agent or any Lender; and

(h) such other information regarding the operations, business affairs and financial condition of any Credit Party or any Subsidiary thereof as the Administrative Agent or any Lender may reasonably request.

Documents required to be delivered pursuant to Section 8.1(a) or (b) or Section 8.2(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed in Section 12.1; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent). The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the Issuing Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on the Platform and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the Issuing Lenders and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.10); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent 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 Investor." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

SECTION 8.3 Notice of Litigation and Other Matters. Promptly (but in no event later than ten (10) days after any Responsible Officer of any Credit Party obtains knowledge thereof) notify the Administrative Agent in writing of (which shall promptly make such information available to the Lenders in accordance with its customary practice):

- (a) the occurrence of any Default or Event of Default;
- (b) the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving any Credit Party or any Subsidiary thereof or any of their respective properties, assets or businesses in each case that if adversely determined could reasonably be expected to result in a Material Adverse Effect;
- (c) any notice of any violation received by any Credit Party or any Subsidiary thereof from any Governmental Authority including, without limitation, any notice of violation of Environmental Laws which in any such case could reasonably be expected to have a Material Adverse Effect;

(d) any labor controversy that has resulted in, or threatens to result in, a strike or other work action against any Credit Party or any Subsidiary thereof;

(e) any attachment, judgment, lien, levy or order exceeding the Threshold Amount that may be assessed against or threatened against any Credit Party or any Subsidiary thereof;

(f) any event which constitutes or which with the passage of time or giving of notice or both would constitute a default or event of default under any Material Contract to which the Borrower or any of its Subsidiaries is a party or by which the Borrower or any Subsidiary thereof or any of their respective properties may be bound which could reasonably be expected to have a Material Adverse Effect;

(g) (i) any unfavorable determination letter from the IRS regarding the qualification of an Employee Benefit Plan under Section 401(a) of the Code (along with a copy thereof), (ii) all notices received by any Credit Party or any ERISA Affiliate of the PBGC's intent to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan, (iii) all notices received by any Credit Party or any ERISA Affiliate from a Multiemployer Plan sponsor concerning the imposition or amount of withdrawal liability pursuant to Section 4202 of ERISA and (iv) the Borrower obtaining knowledge or reason to know that any Credit Party or any ERISA Affiliate has filed or intends to file a notice of intent to terminate any Pension Plan under a distress termination within the meaning of Section 4041(c) of ERISA; and

(h) any other event which could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to Section 8.3 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 8.3(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

SECTION 8.4 Preservation of Corporate Existence and Related Matters. Except as permitted by Section 9.4, preserve and maintain its separate corporate existence or equivalent form and all rights, franchises, licenses and privileges necessary to the conduct of its business, and qualify and remain qualified as a foreign corporation or other entity and authorized to do business in each jurisdiction in which the failure to so qualify would reasonably be expected to have a Material Adverse Effect.

SECTION 8.5 Maintenance of Property and Licenses.

(a) In addition to the requirements of any of the Security Documents, protect and preserve all Properties necessary in and material to its business, including copyrights, patents, trade names, service marks and trademarks; maintain in good working order and condition, ordinary wear and tear excepted, all buildings, equipment and other tangible real and personal property; and from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such Property necessary for the conduct of its business, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner, in each case except as such action or inaction could not reasonably be expected to result in a Material Adverse Effect.

(b) Maintain, in full force and effect in all material respects, each and every material license, permit, certification, qualification, approval or franchise issued by any Governmental Authority required for each of them to conduct their respective businesses as presently conducted, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.6 Insurance. Maintain insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts, subject to such deductibles and covering such properties and risks, as are customarily maintained by similar businesses and as may be required by Applicable Law and as are required by any Security Documents (including, without limitation, hazard and business interruption insurance). All such insurance shall, (a) provide that no cancellation or material modification thereof shall be effective until at least 30 days after receipt by the Administrative Agent of written notice thereof, (b) name the Administrative Agent as an additional insured party thereunder and (c) in the case of each casualty insurance policy, name the Administrative Agent as lender's loss payee or mortgagee, as applicable. On the Closing Date and from time to time thereafter deliver to the Administrative Agent upon its request information in reasonable detail as to the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

SECTION 8.7 Accounting Methods and Financial Records. Maintain a system of accounting, and keep proper books, records and accounts (which shall be accurate and complete in all material respects) as may be required or as may be necessary to permit the preparation of financial statements in accordance with GAAP and in material compliance with the regulations of any Governmental Authority having jurisdiction over it or any of its Properties.

SECTION 8.8 Payment of Taxes and Other Obligations. Pay and perform (a) all taxes, assessments and other governmental charges that may be levied or assessed upon it or any of its Property and (b) all other Indebtedness, obligations and liabilities in accordance with customary trade practices; provided, that the Borrower or such Subsidiary may contest any item described in clause (a) of this Section in good faith so long as adequate reserves are maintained with respect thereto in accordance with GAAP, except where the failure to pay or perform such items described in clauses (a) or (b) of this Section could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.9 Compliance with Laws and Approvals. Observe and remain in compliance in all material respects with all Applicable Laws (including Environmental Laws) and maintain in full force and effect all Governmental Approvals, in each case applicable to the conduct of its business except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.10 Beneficial Ownership Certification. Upon request by the Administrative Agent or any Lender, the Borrower shall deliver to the Administrative Agent, and directly to any Lender requesting the same, a Beneficial Ownership Certification in relation to it (or a certification that such Borrower qualifies for an express exclusion from the "legal entity customer" definition under the Beneficial Ownership Regulations), in each case within five (5) Business Days of such request.

SECTION 8.11 Compliance with ERISA. In addition to and without limiting the generality of Section 8.9, (a) except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) comply with applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans, (ii) not take any action or fail to take action the result of which could reasonably be expected to result in a liability to the PBGC or to a Multiemployer Plan, (iii) not participate in any prohibited transaction that could result in any civil penalty under ERISA or tax under the Code and (iv) operate each Employee Benefit Plan in such a manner that will not incur any tax liability under Section 4980B of the Code or any liability to any qualified beneficiary as defined in Section 4980B of the Code and (b) furnish to the Administrative Agent upon the Administrative Agent's request such additional information about any Employee Benefit Plan as may be reasonably requested by the Administrative Agent to assess compliance with this Agreement.

SECTION 8.12 Compliance with Material Contracts. Comply in all material respects with, and maintain in full force and effect, each Material Contract, except to the extent such noncompliance or non-maintenance could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.13 Visits and Inspections. Permit representatives of the Administrative Agent (and, during the continuance of an Event of Default, any Lender), from time to time upon prior reasonable notice and at such times during normal business hours, all at the expense of the Borrower, to visit and inspect its properties; inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects; provided that excluding any such visits and inspections during the continuation of an Event of Default, the Administrative Agent shall not exercise such rights more often than one time during any calendar year at the Borrower's expense; provided further that upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender may do any of the foregoing at the expense of the Borrower at any time without advance notice.

SECTION 8.14 Additional Subsidiaries.

(a) Additional Domestic Subsidiaries. Promptly notify the Administrative Agent of the creation or acquisition of any Domestic Subsidiary and, within thirty (30) days after such creation or acquisition, as such time period may be extended by the Administrative Agent in its sole discretion, cause such Domestic Subsidiary to (i) become a Subsidiary Guarantor by delivering to the Administrative Agent a duly executed supplement to the Subsidiary Guaranty Agreement or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) grant a security interest in all Collateral (subject to the exceptions specified in the Security Agreement) owned by such Domestic Subsidiary by delivering to the Administrative Agent a duly executed supplement to each applicable Security Document or such other document as the Administrative Agent shall deem appropriate for such purpose and comply with the terms of each applicable Security Document, (iii) deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent, (iv) if such Equity Interests are certificated, deliver to the Administrative Agent such original certificated Equity Interests or other certificates and stock or other transfer powers evidencing the Equity Interests of such Person, (v) deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with respect to such Domestic Subsidiary, and (vi) deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) Additional Foreign Subsidiaries. Notify the Administrative Agent promptly after any Person becomes a First Tier Foreign Subsidiary, and promptly thereafter (and, in any event, within forty five (45) days after such notification, as such time period may be extended by the Administrative Agent in its sole discretion), cause (i) the applicable Credit Party to deliver to the Administrative Agent Security Documents pledging sixty-five percent (65%) of the total outstanding voting Equity Interests (and one hundred percent (100%) of the non-voting Equity Interests) of any such new First Tier Foreign Subsidiary and a consent thereto executed by such new First Tier Foreign Subsidiary (including, without limitation, if applicable, original certificated Equity Interests (or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction) evidencing the Equity Interests of such new First Tier Foreign Subsidiary, together with an appropriate undated stock or other transfer power for each certificate duly executed in blank by the registered owner thereof), (ii) such Person to deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent, (iii) such Person to deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with regard to such Person and (iv) such Person to deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(c) [Reserved].

(d) Merger Subsidiaries. Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to a Permitted Acquisition, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction, such new Subsidiary shall not be required to take the actions set forth in Section 8.14(a) or (b), as applicable, until the consummation of such Permitted Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 8.14(a) or (b), as applicable, within thirty (30) days of the consummation of such Permitted Acquisition, as such time period may be extended by the Administrative Agent in its sole discretion).

(e) Exclusions. The provisions of this Section 8.14 shall not apply to assets as to which the Administrative Agent and the Borrower shall reasonably determine that the costs and burdens of obtaining a security interest therein or perfection thereof outweigh the value of the security afforded thereby.

SECTION 8.15 [Reserved].

SECTION 8.16 Use of Proceeds.

(a) The Borrower shall use the proceeds of the Extensions of Credit (i) to finance Capital Expenditures, (ii) pay fees, commissions and expenses in connection with the Transactions, ~~and~~ (iii) to consummate the IBC Acquisition and (iv) for working capital and general corporate purposes of the Borrower and its Subsidiaries; provided that no part of the proceeds of any of the Loans or Letters of Credit shall be used for purchasing or carrying margin stock (within the meaning of Regulation T, U or X of the FRB) or for any purpose which violates the provisions of Regulation T, U or X of the FRB. If requested by the Administrative Agent or any Lender (through the Administrative Agent), the Borrower shall promptly furnish to the Administrative Agent and each requesting Lender a statement in conformity with the requirements of Form G-3 or Form U-1, as applicable, under Regulation U of the FRB.

(b) The Borrower shall use the proceeds of any Increase Term Loan and any Incremental Revolving Credit Increase as permitted pursuant to Section 5.13, as applicable.

(c) The Borrower will not request any Extension of Credit, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Extension of Credit, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 8.17 [Reserved].

SECTION 8.18 Compliance with Anti-Corruption Laws; Beneficial Ownership Regulation; Anti-Money Laundering Laws and Sanctions. (a) Maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification (or a certification that the Borrower qualifies for an express exclusion to the “legal entity customer” definition under the Beneficial Ownership Regulation) of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein (or, if applicable, the Borrower ceasing to fall within an express exclusion to the definition of “legal entity customer” under the Beneficial Ownership Regulation) and (c) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or directly to such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

SECTION 8.19 Corporate Governance. (a) Maintain entity records and books of account separate from those of any other entity which is an Affiliate of such entity, (b) not commingle its funds or assets with those of any other entity which is an Affiliate of such entity (except pursuant to cash management systems reasonably acceptable to the Administrative Agent) and (c) provide that its board of directors (or equivalent governing body) will hold all appropriate meetings to authorize and approve such entity’s actions, which meetings will be separate from those of any other entity which is an Affiliate of such entity. For the purposes of this Section 8.18, “Affiliate” shall not include the Borrower or any Subsidiary thereof.

SECTION 8.20 Further Assurances. Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), which may be required under any Applicable Law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Credit Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon the reasonable request by the Administrative Agent, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

SECTION 8.21 Cash Management. The Borrower and its Subsidiaries shall at all times maintain all of their deposit, cash management and operating accounts (other than as relates to credit cards) with Wells Fargo (collectively, the “Required Accounts”). The Borrower and its Subsidiaries shall use commercially reasonable efforts to direct all customers and any other Persons making payments to make payments to the Required Accounts. Any Subsidiary of the Borrower acquired or created after the Closing Date shall comply with the terms of this Section 8.21 within ninety (90) days of such acquisition or creation. The Required Accounts shall not be subject to deduction, set-off, banker’s lien, or any other right in favor of any Person other than the Administrative Agent.

SECTION 8.22 Post-Closing Obligations.

(a) Within ninety (90) days after the Borrower or any Subsidiary acquires any real property after the Closing Date with a fair market value greater than \$4,000,000, the Borrower or such Subsidiary, as applicable, shall deliver to the Administrative Agent a mortgage, deed of trust, or other similar document, together with such other collateral documents as the Administrative Agent reasonably requires, including without limitation surveys, appraisals, environmental site assessment reports, and flood certificates and evidence of flood insurance to the extent required under applicable law, and shall cooperate with the Administrative Agent in obtaining a title insurance policy with respect to such real property on such terms as the Administrative Agent reasonably requires.

(b) Within forty five (45) days after the Closing Date, if not delivered on the Closing Date, the Borrower shall deliver to the Administrative Agent security agreements duly executed by the applicable Credit Parties for all federally registered copyrights, copyright applications, patents, patent applications, trademarks and trademark applications included in the Collateral, in each case in form and substance satisfactory to the Administrative Agent and in proper form for filing with the U.S. Patent and Trademark Office or U.S. Copyright Office, as applicable.

ARTICLE IX

NEGATIVE COVENANTS

Until all of the Obligations have been Paid in Full and the Commitments terminated, the Credit Parties will not, and will not permit any of their respective Subsidiaries to.

SECTION 9.1 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except:

(a) the Obligations;

(b) Indebtedness (i) owing under Hedge Agreements with a Lender entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes and (ii) owing under Secured Cash Management Agreements with a Lender in an aggregate principal amount not to exceed \$1,000,000 at any time outstanding, unless otherwise consented to by the Administrative Agent;

(c) Indebtedness existing on the Closing Date and listed on Schedule 9.1, and the renewal, refinancing, extension and replacement (but not the increase in the aggregate principal amount) thereof;

(d) Capital Lease Obligations and Indebtedness incurred in connection with purchase money Indebtedness in an aggregate amount not to exceed \$1,000,000 at any time outstanding;

(e) [Reserved];

(f) Guarantees with respect to Indebtedness permitted pursuant to subsections (a) through (e) of this Section;

(g) unsecured intercompany Indebtedness owed by any Credit Party to another Credit Party;

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;

(i) unsecured Indebtedness incurred in the ordinary course of business with a Person other than a Lender in respect of credit cards, credit card processing services, debit cards, purchase cards and commercial cards in an aggregate amount not to exceed \$2,500,000;

(j) Indebtedness under performance bonds, surety bonds, release, appeal and similar bonds, statutory obligations or with respect to workers' compensation claims, in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing;

(k) Subordinated Indebtedness permitted pursuant to Section 9.9;

(l) ~~Reserved~~; contingent Indebtedness arising with respect to customary indemnification obligations in connection with the IBC Acquisition;

(m) unsecured Indebtedness of any Credit Party or any Subsidiary thereof not otherwise permitted pursuant to this Section in an aggregate principal amount not to exceed \$2,500,000 at any time outstanding.

SECTION 9.2 Liens. Create, incur, assume or suffer to exist, any Lien on or with respect to any of its Property, whether now owned or hereafter acquired, except:

(a) Liens created pursuant to the Loan Documents (including, without limitation, Liens in favor of the Swingline Lender and/or the Issuing Lenders, as applicable, on Cash Collateral granted pursuant to the Loan Documents);

(b) Liens in existence on the Closing Date and described on Schedule 9.2, and the replacement, renewal or extension thereof (including Liens incurred, assumed or suffered to exist in connection with any refinancing, refunding, renewal or extension of Indebtedness permitted pursuant to Section 9.1(c) (solely to the extent that such Liens were in existence on the Closing Date and described on Schedule 9.2)); provided that the scope of any such Lien shall not be increased, or otherwise expanded, to cover any additional property or type of asset, as applicable, beyond that in existence on the Closing Date, except for products and proceeds of the foregoing;

(c) Liens for taxes, assessments and other governmental charges or levies (excluding any Lien imposed pursuant to any of the provisions of ERISA or Environmental Laws) (i) not yet due or as to which the period of grace (not to exceed sixty (60) days), if any, related thereto has not expired or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(d) the claims of materialmen, mechanics, carriers, warehousemen, processors or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which (i) are not overdue for a period of more than sixty (60) days, or if more than sixty (60) days overdue, no action has been taken to enforce such Liens and such Liens are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP and (ii) do not, individually or in the aggregate, materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries;

(e) deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and other types of social security or similar legislation, or to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business, in each case, so long as no foreclosure sale or similar proceeding has been commenced with respect to any portion of the Collateral on account thereof;

(f) encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate are not substantial in amount and which do not, in any case, detract from the value of such property or impair the use thereof in the ordinary conduct of business;

(g) Liens arising from the filing of precautionary UCC financing statements relating solely to personal property leased pursuant to operating leases entered into in the ordinary course of business of the Borrower and its Subsidiaries;

(h) Liens securing Indebtedness permitted under Section 9.1(d); provided that (i) such Liens shall be created substantially simultaneously with the acquisition, repair, construction, improvement or lease, as applicable, of the related Property, (ii) such Liens do not at any time encumber any property other than the Property financed or improved by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original price for the purchase, repair, construction, improvement or lease amount (as applicable) of such Property at the time of purchase, repair, construction, improvement or lease (as applicable);

(i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 10.1(m) or securing appeal or other surety bonds relating to such judgments;

(j) [Reserved];

(k) [Reserved];

(l) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction and (ii) Liens of any depository bank in connection with statutory, common law and contractual rights of setoff and recoupment with respect to any deposit account of the Borrower or any Subsidiary thereof;

(m) (i) contractual or statutory Liens of landlords to the extent relating to the property and assets relating to any lease agreements with such landlord, and (ii) contractual Liens of suppliers (including sellers of goods) or customers granted in the ordinary course of business to the extent limited to the property or assets relating to such contract; and

(n) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any license or lease agreement entered into in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower or its Subsidiaries or materially detract from the value of the relevant assets of the Borrower or its Subsidiaries or (ii) secure any Indebtedness.

SECTION 9.3 Investments. Make any Investment, except:

(a) Investments (i) existing on the Closing Date in Subsidiaries existing on the Closing Date; (ii) existing on the Closing Date (other than Investments in Subsidiaries existing on the Closing Date) and described on Schedule 9.3; and (iii) made after the Closing Date by any Credit Party in any other Credit Party;

(b) Investments in cash and Cash Equivalents;

(c) Investments by the Borrower or any of its Subsidiaries consisting of Capital Expenditures permitted by this Agreement;

(d) deposits made in the ordinary course of business to secure the performance of leases or other obligations as permitted by Section 9.2;

(e) Hedge Agreements permitted pursuant to [Section 9.1](#);

(f) purchases of assets in the ordinary course of business;

(g) Investments by the Borrower or any Subsidiary thereof in the form of Permitted Acquisitions ([including the IBC Acquisition](#)) to the extent that (i) any Person acquired in such Acquisition is a Wholly-Owned Subsidiary of the Borrower and becomes a Subsidiary Guarantor in the manner contemplated by [Section 8.14](#) and (ii) any Property acquired in such Acquisition is acquired by the Borrower or a Subsidiary Guarantor or a Subsidiary that becomes a Subsidiary Guarantor in the manner contemplated by [Section 8.14](#);

(h) [\[Reserved\]](#).

(i) Investments in the form of Restricted Payments permitted pursuant to [Section 9.6](#);

(j) Guarantees permitted pursuant to [Section 9.1](#);

(k) Investments not otherwise permitted pursuant to this Section in an aggregate amount not to exceed \$2,500,000 at any time outstanding; [provided](#) that immediately before and immediately after giving pro forma effect to any such Investments and any Indebtedness incurred in connection therewith, no Default or Event of Default shall have occurred and be continuing.

For purposes of determining the amount of any Investment outstanding for purposes of this [Section 9.3](#), such amount shall be deemed to be the amount of such Investment outstanding at any time when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such Investment) [less](#) any amount returned, distributed, realized or otherwise received in cash in respect of such Investment (not to exceed the original amount invested).

SECTION 9.4 [Fundamental Changes](#). Merge, consolidate or enter into any similar combination with, or enter into any Asset Disposition of all or substantially all of its assets (whether in a single transaction or a series of transactions) with, any other Person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except:

(a) (i) any Wholly-Owned Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into the Borrower ([provided](#) that the Borrower shall be the continuing or surviving entity) or (ii) any Wholly-Owned Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into any Subsidiary Guarantor ([provided](#) that the Subsidiary Guarantor shall be the continuing or surviving entity or simultaneously with such transaction, the continuing or surviving entity shall become a Subsidiary Guarantor and the Borrower shall comply with [Section 8.14](#) in connection therewith);

(b) (i) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Non-Guarantor Subsidiary and (ii) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Non-Guarantor Subsidiary that is a Domestic Subsidiary;

(c) any Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to the Borrower or any Subsidiary Guarantor; [provided](#) that, with respect to any such disposition by any Non-Guarantor Subsidiary, the consideration for such disposition shall not exceed the fair value of such assets;

(d) (i) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to any other Non-Guarantor Subsidiary and (ii) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to any other Non-Guarantor Subsidiary that is a Domestic Subsidiary;

(e) Asset Dispositions permitted by Section 9.5 (other than clause (b) thereof);

(f) any Wholly-Owned Subsidiary of the Borrower may merge with or into the Person such Wholly-Owned Subsidiary was formed to acquire in connection with any acquisition permitted hereunder (including, without limitation, any Permitted Acquisition permitted pursuant to Section 9.3(g)); provided that in the case of any merger involving a Wholly-Owned Subsidiary that is a Domestic Subsidiary, (i) a Subsidiary Guarantor shall be the continuing or surviving entity or (ii) simultaneously with such transaction, the continuing or surviving entity shall become a Subsidiary Guarantor and the Borrower shall comply with Section 8.14 in connection therewith; and

(g) any Person may merge into the Borrower or any of its Wholly-Owned Subsidiaries in connection with a Permitted Acquisition permitted pursuant to Section 9.3(g); provided that (i) in the case of a merger involving the Borrower or a Subsidiary Guarantor, the continuing or surviving Person shall be the Borrower or such Subsidiary Guarantor and (ii) the continuing or surviving Person shall be the Borrower or a Wholly-Owned Subsidiary of the Borrower.

SECTION 9.5 Asset Dispositions. Make any Asset Disposition except:

(a) the sale of inventory in the ordinary course of business;

(b) the transfer of assets to the Borrower or any Subsidiary Guarantor pursuant to any other transaction permitted pursuant to Section 9.4;

(c) the write-off, discount, sale or other disposition of defaulted or past-due receivables and similar obligations in the ordinary course of business and not undertaken as part of an accounts receivable financing transaction;

(d) the disposition of any Hedge Agreement;

(e) dispositions of Investments in cash and Cash Equivalents;

(f) the transfer by any Credit Party of its assets to any other Credit Party;

(g) the transfer by any Non-Guarantor Subsidiary of its assets to any Credit Party (provided that in connection with any new transfer, such Credit Party shall not pay more than an amount equal to the fair market value of such assets as determined in good faith at the time of such transfer);

(h) the transfer by any Non-Guarantor Subsidiary of its assets to any other Non-Guarantor Subsidiary;

(i) the sale of obsolete, worn-out or surplus assets no longer used or usable in the business of the Borrower or any of its Subsidiaries;

(j) non-exclusive licenses and sublicenses of intellectual property rights in the ordinary course of business not interfering, individually or in the aggregate, in any material respect with the conduct of the business of the Borrower and its Subsidiaries;

(k) leases, subleases, licenses or sublicenses of real or personal property granted by the Borrower or any of its Subsidiaries to others in the ordinary course of business not detracting from the value of such real or personal property or interfering in any material respect with the business of the Borrower or any of its Subsidiaries;

(l) Asset Dispositions in connection with Insurance and Condemnation Events; and

(m) Asset Dispositions not otherwise permitted pursuant to this Section; provided that (i) at the time of such Asset Disposition, no Default or Event of Default shall exist or would result from such Asset Disposition, (ii) such Asset Disposition is made for fair market value and the consideration received shall be no less than 75% in cash, and (iii) the aggregate fair market value of all property disposed of in reliance on this clause (m) shall not exceed \$2,500,000 in any Fiscal Year.

SECTION 9.6 Restricted Payments. Declare or pay any Restricted Payments; provided that:

(a) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower or any of its Subsidiaries may pay dividends in shares of its own Qualified Equity Interests;

(b) any Subsidiary of the Borrower may pay cash dividends to the Borrower or any Subsidiary Guarantor;

(c) (i) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may make Restricted Payments to any other Non-Guarantor Subsidiary that is a Domestic Subsidiary (and, if applicable, to other holders of its outstanding Equity Interests on a ratable basis) and (ii) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may make Restricted Payments to any other Non-Guarantor Subsidiary (and, if applicable, to other holders of its outstanding Equity Interests on a ratable basis);

(d) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, including that the Borrower is in compliance on a Pro Forma Basis (after giving effect to the Restricted Payment) with each covenant contained in Section 9.15, the Borrower or any of its Subsidiaries may pay earn-out obligations (including but not limited to the IBC Earn-Out Payment), whether existing on the date of this Agreement or incurred in the future; and

(e) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, redeem, retire or otherwise acquire shares of its Equity Interests or options or other equity or phantom equity in respect of its Equity Interests from present or former officers, employees, directors or consultants (or their family members or trusts or other entities for the benefit of any of the foregoing), including any deemed redemptions or acquisitions upon the withholding of a portion of such Equity Interests to cover tax withholding obligations of such Persons.

SECTION 9.7 Transactions with Affiliates. Directly or indirectly enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate, other than:

- (a) transactions permitted by Sections 9.1, 9.3, 9.4, 9.5, and 9.6;
- (b) transactions existing on the Closing Date and described on Schedule 9.7;
- (c) transactions among Credit Parties not prohibited hereunder;
- (d) other transactions in the ordinary course of business on terms at least as favorable as would be obtained by it on a comparable arm's-length transaction with an independent, unrelated third party as determined in good faith by the board of directors (or equivalent governing body) of the Borrower;
- (e) employment and severance arrangements (including equity incentive plans and employee benefit plans and arrangements) with their respective officers and employees in the ordinary course of business; and
- (f) payment of customary fees and reasonable out of pocket costs to, and indemnities for the benefit of, directors, officers and employees of the Borrower and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Subsidiaries.

SECTION 9.8 Accounting Changes.

- (a) Change its Fiscal Year end, or make (without the consent of the Administrative Agent) any material change in its accounting treatment and reporting practices except as required by GAAP.
- (b) Amend, modify or change its articles of incorporation (or corporate charter or other similar organizational documents) or amend, modify or change its bylaws (or other similar documents) in any manner materially adverse to the rights or interests of the Lenders.

SECTION 9.9 Incurrence of and Payments and Modifications of Subordinated Indebtedness.

- (a) Incur any Subordinated Indebtedness without the prior written consent of the Administrative Agent and the Required Lenders, such consent to be provided in the sole discretion of the Administrative Agent and the Required Lenders.
- (b) Amend, modify, waive or supplement (or permit the modification, amendment, waiver or supplement of) any of the terms or provisions of any Subordinated Indebtedness permitted to be incurred hereunder in any respect which would materially and adversely affect the rights or interests of the Administrative Agent and Lenders hereunder or would violate the subordination terms thereof.
- (c) Cancel, forgive, make any payment or prepayment on, or redeem or acquire for value (including, without limitation, (x) by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due and (y) at the maturity thereof) any Subordinated Indebtedness incurred hereunder other than pursuant to the terms of any subordination agreement as agreed with the Administrative Agent in its sole discretion.

SECTION 9.10 No Further Negative Pledges; Restrictive Agreements.

- (a) Enter into, assume or be subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon any material portion of its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (i) pursuant to this Agreement and the other Loan Documents, (ii) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 9.1(d) (provided that any such restriction contained therein relates only to the asset or assets financed thereby), (iii) customary restrictions contained in the organizational documents of any Non-Guarantor Subsidiary as of the Closing Date, and (iv) customary restrictions in connection with any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien).

(b) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Credit Party or any Subsidiary thereof to (i) pay dividends or make any other distributions to any Credit Party or any Subsidiary on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Credit Party or (iii) make loans or advances to any Credit Party, except in each case for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents and (B) Applicable Law.

(c) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Credit Party or any Subsidiary thereof to (i) sell, lease or transfer any of its properties or assets to any Credit Party or (ii) act as a Credit Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except in each case for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents, (B) Applicable Law, (C) any document or instrument governing Indebtedness incurred pursuant to Section 9.1(d) (provided that any such restriction contained therein relates only to the asset or assets acquired in connection therewith), (D) any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (E) obligations that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower, so long as such obligations are not entered into in contemplation of such Person becoming a Subsidiary, (F) customary restrictions contained in an agreement related to the sale of Property (to the extent such sale is permitted pursuant to Section 9.5) that limit the transfer of such Property pending the consummation of such sale, (G) customary restrictions in leases, subleases, licenses and sublicenses or asset sale agreements otherwise permitted by this Agreement so long as such restrictions relate only to the assets subject thereto and (H) customary provisions restricting assignment of any agreement entered into in the ordinary course of business.

SECTION 9.11 Nature of Business. Engage in any business other than (a) the business conducted by the Borrower and its Subsidiaries as of the Closing Date and business activities reasonably related or ancillary thereto, and (b) the business conducted by IBC immediately prior to the First Amendment Date and business activities reasonably related or ancillary thereto.

SECTION 9.12 Amendments of Other Documents. Amend, modify, waive or supplement (or permit modification, amendment, waiver or supplement of) any of the terms or provisions of any Material Contract, in any respect which would materially and adversely affect (a) the ability of the Borrower or any Guarantor to fulfill their Obligations to the Administrative Agent and the Lenders; or (b) the Administrative Agent's rights in or Liens on the Collateral.

SECTION 9.13 Sale Leasebacks. Directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a capital lease, of any Property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which any Credit Party or any Subsidiary thereof has sold or transferred or is to sell or transfer to a Person which is not another Credit Party or Subsidiary of a Credit Party or (b) which any Credit Party or any Subsidiary of a Credit Party intends to use for substantially the same purpose as any other Property that has been sold or is to be sold or transferred by such Credit Party or such Subsidiary to another Person which is not another Credit Party or Subsidiary of a Credit Party in connection with such lease.

~~SECTION 9.14 Capital Expenditures Reserved . Permit the aggregate amount of all Capital Expenditures in any Fiscal Year to exceed the amount set forth below for such Fiscal Year (or for the 2024 Fiscal Year, from January 1, 2024 through April 30, 2024):~~

Fiscal Year	Amount
2021	\$ 6,500,000
2022	\$ 7,500,000
2023	\$ 7,500,000
2024	\$ 7,500,000

SECTION 9.15 Financial Covenants.

(a) Consolidated Total Leverage Ratio. As of the last day of any fiscal quarter, permit the Consolidated Total Leverage Ratio to be greater than 3.00 to 1.00 for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

(b) Minimum Liquidity Consolidated EBITDA. As of the last day of any fiscal quarter, permit the ~~amount of unrestricted cash and Cash Equivalents of the Borrower and its Subsidiaries~~ EBITDA to be less than ~~\$5,000,000~~ 20,000,000 for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

(c) Consolidated Fixed Charge Coverage Ratio. As of the last day of any fiscal quarter, permit the Consolidated Fixed Charge Coverage Ratio to be less than 1.50 to 1.00 for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

SECTION 9.16 Disposal of Subsidiary Interests. Permit any Domestic Subsidiary to be a non-Wholly-Owned Subsidiary except as a result of or in connection with a dissolution, merger, amalgamation, consolidation or disposition permitted by Section 9.4 or 9.5.

ARTICLE X

DEFAULT AND REMEDIES

SECTION 10.1 Events of Default. Each of the following shall constitute an Event of Default:

(a) Default in Payment of Principal of Loans and Reimbursement Obligations. The Borrower shall default in any payment of principal of any Loan or Reimbursement Obligation when and as due (whether at maturity, by reason of acceleration or otherwise) or fail to provide Cash Collateral pursuant to Section 2.4(b), Section 2.5(d), Section 5.14 or Section 5.15(a)(v).

(b) Other Payment Default. The Borrower shall default in the payment when and as due (whether at maturity, by reason of acceleration or otherwise) of interest on any Loan or Reimbursement Obligation or the payment of any other Obligation, and such default shall continue for a period of three (3) Business Days.

(c) Misrepresentation. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party or any Subsidiary thereof in this Agreement, in any other Loan Document, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party or any Subsidiary thereof in this Agreement, any other Loan Document, or in any document delivered in connection herewith or therewith that is not subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any material respect when made or deemed made.

(d) Default in Performance of Certain Covenants. Any Credit Party or any Subsidiary thereof shall default in the performance or observance of any covenant or agreement contained in Sections 8.1, 8.2(a), 8.3(a), 8.4, 8.14, 8.16, 8.18, or 8.21 or Article IX.

(e) Default in Performance of Other Covenants and Conditions. Any Credit Party or any Subsidiary thereof shall default in the performance or observance of any term, covenant, condition or agreement contained in this Agreement (other than as specifically provided for in this Section) or any other Loan Document and such default shall continue for a period of thirty (30) days after the earlier of (i) the Administrative Agent's delivery of written notice thereof to the Borrower and (ii) a Responsible Officer of the Borrower having obtained knowledge thereof.

(f) Indebtedness Cross-Default. Any Credit Party shall (i) default in the payment of any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount beyond the period of grace if any, provided in the instrument or agreement under which such Indebtedness was created, or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice and/or lapse of time, if required, any such Indebtedness to (A) 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 (any applicable grace period having expired) or (B) be cash collateralized.

(g) Other Cross-Defaults. Any Credit Party or any Subsidiary thereof shall default in the payment of any material amount when due, or in the performance or observance, of any material obligation or condition of any Material Contract, except to the extent such nonpayment or nonperformance could not reasonably be expected to have a Material Adverse Effect.

(h) Change in Control. Any Change in Control shall occur.

(i) Voluntary Bankruptcy Proceeding. Any Credit Party or any Subsidiary thereof shall (i) commence a voluntary case under any Debtor Relief Laws, (ii) file a petition seeking to take advantage of any Debtor Relief Laws, (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under any Debtor Relief Laws, (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign, (v) admit in writing its inability to pay its debts as they become due, (vi) make a general assignment for the benefit of creditors, or (vii) take any corporate action for the purpose of authorizing any of the foregoing.

(j) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against any Credit Party or any Subsidiary thereof in any court of competent jurisdiction seeking (i) relief under any Debtor Relief Laws, or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like for any Credit Party or any Subsidiary thereof or for all or any substantial part of their respective assets, domestic or foreign, and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

(k) Failure of Agreements. Any provision of this Agreement or any provision of any other Loan Document shall for any reason cease to be valid and binding on any Credit Party or any Subsidiary thereof party thereto or any such Person shall so state in writing, or any Loan Document shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on, or security interest in, any of the Collateral purported to be covered thereby, in each case other than in accordance with the express terms hereof or thereof, except as a result of the release of any Credit Party pursuant to the terms of the Loan Documents.

(l) ERISA Events. The occurrence of any of the following events: (i) any Credit Party or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or Sections 412 or 430 of the Code, any Credit Party or any ERISA Affiliate is required to pay as contributions thereto and such unpaid amounts are in excess of the Threshold Amount, (ii) a Termination Event or (iii) any Credit Party or any ERISA Affiliate makes a complete or partial withdrawal from any Multiemployer Plan and the Multiemployer Plan notifies such Credit Party or ERISA Affiliate that such entity has incurred a withdrawal liability requiring payments in an amount exceeding the Threshold Amount.

(m) Judgment. One or more judgments, orders or decrees shall be entered against any Credit Party or any Subsidiary thereof by any court and continues without having been discharged, vacated or stayed for a period of thirty (30) consecutive days after the entry thereof and such judgments, orders or decrees are either (i) for the payment of money, individually or in the aggregate (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage), equal to or in excess of the Threshold Amount or (ii) for injunctive relief and could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(n) Subordination Terms. (i) Any of the Secured Obligations for any reason shall cease to be “senior debt,” “senior indebtedness,” “designated senior debt” or “senior secured financing” (or any comparable term) under, and as defined in, any documentation governing any Subordinated Indebtedness that is subordinated (in terms of payment or lien priority) to the Secured Obligations, (ii) the subordination provisions set forth in the documentation for any Subordinated Indebtedness that is subordinated (in terms of payment or lien priority) to the Secured Obligations shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of any Subordinated Indebtedness, if applicable, or (iii) any Credit Party or any Subsidiary of any Credit Party, shall assert any of the foregoing in writing.

SECTION 10.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower:

(a) Acceleration; Termination of Credit Facility. Terminate the ~~Revolving Credit Commitment~~Commitments and declare the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all other amounts owed to the Lenders and to the Administrative Agent under this Agreement or any of the other Loan Documents and all other Obligations, to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate the Credit Facility and any right of the Borrower to request borrowings or Letters of Credit thereunder; provided, that upon the occurrence of an Event of Default specified in Section 10.1(i) or (j), the Credit Facility shall be automatically terminated and all Obligations shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(b) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, demand that the Borrower deposit in a Cash Collateral account opened by the Administrative Agent an amount equal to the Minimum Collateral Amount. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Secured Obligations in accordance with Section 10.3. After all such Letters of Credit shall have expired or been fully drawn upon, the Reimbursement Obligation shall have been satisfied and all other Secured Obligations shall have been Paid in Full, the balance, if any, in such Cash Collateral account shall be returned to the Borrower.

(c) General Remedies. Exercise on behalf of the Secured Parties all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Secured Obligations.

SECTION 10.3 Rights and Remedies Cumulative; Non-Waiver; etc.

(a) The enumeration of the rights and remedies of the Administrative Agent and the Lenders set forth in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent and the Lenders of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Administrative Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between the Borrower, the Administrative Agent and the Lenders or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Loan Documents or to constitute a waiver of any Event of Default.

(b) 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 Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.2 for the benefit of all the Lenders and the Issuing Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Lender or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 12.4 (subject to the terms of Section 5.6), 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 Credit 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 10.2 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 5.6, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 10.4 Crediting of Payments and Proceeds. In the event that the Obligations have been accelerated pursuant to Section 10.2 or the Administrative Agent or any Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received on account of the Secured Obligations and all net proceeds from the enforcement of the Secured Obligations shall, subject to the provisions of Sections 5.14 and 5.15, be applied by the Administrative Agent as follows:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees (other than Commitment Fees and Letter of Credit fees payable to the Revolving Credit Lenders), indemnities and other amounts (other than principal and interest) payable to the Lenders, the Issuing Lender and the Swingline Lender under the Loan Documents, including attorney fees, ratably among the Lenders, the Issuing Lender and the Swingline Lender in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid Commitment Fees, Letter of Credit fees payable to the Revolving Credit Lenders and interest on the Loans and Reimbursement Obligations, ratably among the Lenders, the Issuing Lender and the Swingline Lender in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, Reimbursement Obligations and payment obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the Issuing Lenders, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to the Administrative Agent for the account of the Issuing Lenders, to Cash Collateralize any L/C Obligations then outstanding; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly Paid in Full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, 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 XI for itself and its Affiliates as if a "Lender" party hereto.

SECTION 10.5 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lenders and the Administrative Agent under Sections 3.3, 5.3 and 12.3) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 3.3, 5.3 and 12.3.

SECTION 10.6 Credit Bidding.

(a) The Administrative Agent, on behalf of itself and the Secured Parties, shall have the right, exercisable at the discretion of the Required Lenders, to credit bid and purchase for the benefit of the Administrative Agent and the Secured Parties all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with Applicable Law. Such credit bid or purchase may be completed through one or more acquisition vehicles formed by the Administrative Agent to make such credit bid or purchase and, in connection therewith, the Administrative Agent is authorized, on behalf of itself and the other Secured Parties, to adopt documents providing for the governance of the acquisition vehicle or vehicles, and assign the applicable Secured Obligations to any such acquisition vehicle in exchange for Equity Interests and/or debt issued by the applicable acquisition vehicle (which shall be deemed to be held for the ratable account of the applicable Secured Parties on the basis of the Secured Obligations so assigned by each Secured Party); provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 12.2.

(b) Each Lender hereby agrees, on behalf of itself and each of its Affiliates that is a Secured Party, that, except as otherwise provided in any Loan Document or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any of the Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

ARTICLE XI

THE ADMINISTRATIVE AGENT

SECTION 11.1 Appointment and Authority.

(a) Each of the Lenders and each Issuing Lender hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as provided in Sections 11.6 and 11.9, the provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lenders, and neither the Borrower nor any Subsidiary thereof shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacity as a potential Hedge Bank or Cash Management Bank) and the Issuing Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such Issuing Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto (including, without limitation, to enter into additional Loan Documents or supplements to existing Loan Documents on behalf of the Secured Parties). In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to this Article XI for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of Articles XI and XII (including Section 12.3, 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.

SECTION 11.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 11.3 Exculpatory Provisions.

(a) The 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 and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of 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 the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries or Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.2 and Section 10.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower, a Lender or an Issuing Lender.

(c) The Administrative Agent shall not be responsible for or have any duty 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 (including, without limitation, any report provided to it by an Issuing Lender pursuant to Section 3.9), (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 or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vi) the utilization of any Issuing Lender's L/C Commitment (it being understood and agreed that each Issuing Lender shall monitor compliance with its own L/C Commitment without any further action by the Administrative Agent).

SECTION 11.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the 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.

SECTION 11.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 11.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower and subject to the consent (not to be unreasonably withheld or delayed) of the Borrower (provided no Event of Default has occurred and is continuing at the time of such resignation), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower and subject to the reasonable consent (not to be unreasonably withheld or delayed) of the Borrower (provided no Event of Default has occurred and is continuing at the time of such appointment), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Lenders 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 owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. 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 12.3 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by, or removal of, Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Lender and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, if in its sole discretion it elects to, and Swingline Lender, (ii) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Lender, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

SECTION 11.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each Issuing Lender acknowledges that it has, independently and without reliance upon the 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 each Issuing Lender also acknowledges that it will, independently and without reliance upon the 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.

SECTION 11.8 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the syndication agents, documentation agents, co-agents, arrangers or bookrunners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Lender hereunder.

SECTION 11.9 Collateral and Guaranty Matters.

(a) Each of the Lenders (including in its or any of its Affiliate's capacities as a potential Hedge Bank or Cash Management Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent, for the ratable benefit of the Secured Parties, under any Loan Document (A) upon the termination of the Revolving Credit Commitment and Payment in Full of all Secured Obligations and the expiration or termination of all Letters of Credit, (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition to a Person other than a Credit Party permitted under the Loan Documents, or (C) if approved, authorized or ratified in writing in accordance with Section 12.2;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document to the holder of any Permitted Lien; and

(iii) to release any Subsidiary Guarantor from its obligations under any Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty Agreement pursuant to this Section 11.9. In each case as specified in this Section 11.9, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Subsidiary Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 11.9. In the case of any such sale, transfer or disposal of any property constituting Collateral in a transaction constituting an Asset Disposition permitted pursuant to Section 9.5 to a Person other than a Credit Party, the Liens created by any of the Security Documents on such property shall be automatically released without need for further action by any person.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 11.10 Secured Hedge Agreements and Secured Cash Management Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 10.4 or any Collateral by virtue of the provisions hereof or of any Security 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 XI to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Secured Cash Management Agreements and Secured Hedge Agreements, 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.

SECTION 11.11 Erroneous Payments.

(a) Each Lender and each Issuing Lender hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender or Issuing Lender from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender or Issuing Lender (whether or not known to such Lender or Issuing Lender) or (ii) it receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, (y) that was not preceded or accompanied by a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment or (z) that such Lender or Issuing Lender otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) then, in each case an error in payment has been made (any such amounts specified in clauses (i) or (ii) of this Section 11.11(a), whether received as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, an “Erroneous Payment”) and the Lender or Issuing Lender, as the case may be, is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment and to the extent permitted by applicable law, such Lender or Issuing Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Lender and each Issuing Lender agrees that, in the case of clause (a)(ii) above, it shall promptly (and, in all events, within one Business Day of its knowledge (or deemed knowledge) of such error) notify the Administrative Agent in writing of such occurrence and, in the case of either clause (a)(i) or (a)(ii) above upon demand from the Administrative Agent, it shall promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender or Issuing Lender to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower and each other Credit Party hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender or Issuing Lender that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender or Issuing Lender with respect to such amount, (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the applicable Lender, Issuing Lender, Administrative Agent or other Secured Party, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(d) Each party's obligations under this Section 11.11 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Borrower:

Tactile Systems Technology, Inc.
3701 Wayzata Boulevard, Suite 300
Minneapolis, MN 55416
Attention of: Brent Moen, Chief Financial Officer
Telephone No.: (612) 540-5333
E-mail: bmoen@tactilemedical.com

If to Wells Fargo as
Administrative Agent:

Wells Fargo Bank, National Association
MAC R4057-01R
7711 Plantation Road, 1st Floor
Roanoke, Virginia 24019
Attention: Loan Documentation

With copies to:

Wells Fargo Bank, National Association
3100 West End Avenue, 9th Floor
Nashville, TN 37203-1320
MAC W1021-090
Attention of: John Teasley
Telephone No.: (615) 279-4650
E-mail: John.teasley@wellsfargo.com

and to:

Wells Fargo Bank, National Association
~~171 17th St. NW~~
~~Atlanta, GA 30363~~
~~MAC: G0128-032~~
[550 S Tryon Street, 12th floor](#)
[Charlotte, NC 28202-4200](#)
[MAC D1086-126](#)
Attention of: ~~Sara Barton~~
[Brandon Moss](#)
Telephone No.: ~~(Tel 704) 516-2017-410-2680~~
Email: ~~sara.r.barton~~brandon.moss@wellsfargo.com

and to:

Wells Fargo Bank, National Association
700 Hampton Green, Floor #2
Duluth, GA 30096-5554
MAC G0226-023
Attention of: Bidhu Joseph
Telephone No.: (404) 735-0905
Fax No.: (855) 860-3951
Email: bidhu.joseph@wellsfargo.com

and to:

Wells Fargo Bank, National Association
5340 Kietzke Lane Ste 102
Reno, NV 89511
MAC A4649-018
Attention of: Connie Martinmaas
Telephone No.: (775) 689-6181
Fax No.: (775) 689-6171
Email: connie.a.martinmaas@wellsfargo.com

If to any Lender:

To the address of such Lender set forth on the Register with respect to deliveries of notices and other documentation that may contain material non-public information.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any Issuing Lender pursuant to Article II or III if such Lender or such Issuing Lender, as applicable, has notified the Administrative Agent that is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Administrative Agent's Office. The Administrative Agent hereby designates its office located at the address set forth above, or any subsequent office which shall have been specified for such purpose by written notice to the Borrower and Lenders, as the Administrative Agent's Office referred to herein, to which payments due are to be made and at which Loans will be disbursed and Letters of Credit requested.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, any Issuing Lender or the Swingline Lender may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. Any Lender may change its address or facsimile number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, each Issuing Lender and the Swingline Lender.

(e) Platform.

(i) Each Credit Party agrees that the Administrative Agent may, but shall not be obligated to, make the Borrower Materials available to the Issuing Lenders and the other Lenders by posting the Borrower Materials on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform, and expressly disclaim liability for errors or omissions in the Borrower Materials. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Credit Party, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Credit Party's or the Administrative Agent's transmission of communications through the Internet (including, without limitation, the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to any Credit Party, any Lender, the Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages, losses or expenses (as opposed to actual damages, losses or expenses).

(f) Private Side Designation. Each Public Lender agrees to cause at least one 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 Applicable 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 Applicable Laws.

SECTION 12.2 Amendments, Waivers and Consents. Except as set forth below or as specifically provided in any Loan Document, any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrower; provided, that no amendment, waiver or consent shall:

(a) without the prior written consent of the Required Revolving Credit Lenders, amend, modify or waive (i) Section 6.2 or any other provision of this Agreement if the effect of such amendment, modification or waiver is to require the Revolving Credit Lenders (pursuant to, in the case of any such amendment to a provision hereof other than Section 6.2, any substantially concurrent request by the Borrower for a borrowing of Revolving Credit Loans or issuance of Letters of Credit) to make Revolving Credit Loans when such Revolving Credit Lenders would not otherwise be required to do so, or (ii) the amount of the Swingline Commitment.

(b) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 10.2) or increase the amount of Loans of any Lender, in any case, without the written consent of such Lender;

(c) waive, extend or postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clauses (iv) and (viii) of the proviso set forth in the paragraph below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided that (i) only the consent of the Required Facility Lenders shall be necessary (+) to waive any obligation of the Borrower to pay interest at the rate set forth in Section 5.1(b) during the continuance of an Event of Default ~~or (ii) with respect to the applicable Class and (ii) only the consent of the Required Lenders shall be necessary~~ 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 Obligation or to reduce any fee payable hereunder;

(e) change Section 5.6 or Section 10.4 in a manner that would alter the pro rata sharing of payments or order of application required thereby without the written consent of each Lender directly and adversely affected thereby;

(f) [reserved];

(g) except as otherwise permitted by this Section 12.2 change any provision of this Section or reduce the percentages specified in the definitions of “Required Lenders;” or “Required Revolving Credit Lenders” or “Required Facility Lenders” or “Required Term Loan 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 directly and adversely affected thereby;

(h) consent to the assignment or transfer by any Credit Party of such Credit Party's rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to [Section 9.4](#)), in each case, without the written consent of each Lender;

(i) release (i) all of the Subsidiary Guarantors or (ii) Subsidiary Guarantors comprising substantially all of the credit support for the Secured Obligations, in any case, from any Guaranty Agreement (other than as authorized in [Section 11.9](#)), without the written consent of each Lender;

(j) release all or substantially all of the Collateral or release any Security Document (other than as authorized in [Section 11.9](#) or as otherwise specifically permitted or contemplated in this Agreement or the applicable Security Document) without the written consent of each Lender;

provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each affected Issuing Lender in addition to the Lenders required above, affect the rights or duties of such Issuing Lender under this Agreement (including, without limitation, [Section 11.9\(c\)](#)) or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document or modify [Section 12.24](#) hereof; (iv) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (v) each Letter of Credit Application may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; provided that a copy of such amended Letter of Credit Application shall be promptly delivered to the Administrative Agent upon such amendment or waiver, (vi) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time, (vii) the Administrative Agent and the Borrower shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error, ambiguity, defect or inconsistency or omission of a technical or immaterial nature in any such provision and (viii) the Administrative Agent may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to implement any Benchmark Replacement or any Benchmark Replacement Conforming Changes or otherwise effectuate the terms of [Section 5.8\(c\)](#) in accordance with the terms of [Section 5.8\(c\)](#). Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (A) the **Revolving Credit** Commitment of such Lender may not be increased or extended without the consent of such Lender, and (B) any amendment, waiver, or consent hereunder which requires the consent of all Lenders or each affected Lender that by its terms disproportionately and adversely affects any such Defaulting Lender relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent of any Lender (but with the consent of the Borrower and the Administrative Agent), to (x) amend and restate this Agreement 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 (y) enter into amendments or modifications to this Agreement (including, without limitation, amendments to this Section 12.2) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 5.13 (including, without limitation, as applicable, (1) to permit the Increase Term Loans and the Incremental Revolving Credit Increases to share ratably in the benefits of this Agreement and the other Loan Documents, ~~and~~ (2) to include the Increase Term Loan Commitments and the Incremental Revolving Credit Increase, as applicable, or outstanding Increase Term Loans and outstanding Incremental Revolving Credit Increase, as applicable, in any determination of (i) Required Lenders or Required Revolving Credit Lenders, as applicable or (ii) similar required lender terms applicable thereto); provided that no amendment or modification shall result in any increase in the amount of any Lender's Commitment or any increase in any Lender's Commitment Percentage, in each case, without the written consent of such affected Lender, and (3) to make amendments to any outstanding tranche of Term Loans to permit any Increase Term Loan Commitments and Increase Term Loans to be "fungible" (including for purposes of the Code) with such tranche of Term Loans, including increases in the Applicable Margin or any fees payable to such outstanding tranche of Term Loans or providing such outstanding tranche of Term Loans with the benefit of any call protection or covenants that are applicable to the proposed Increase Term Loan Commitments or Increase Term Loans; provided that any such amendments or modifications to such outstanding tranche of Term Loans shall not directly adversely affect the Lenders holding such tranche of Term Loans without their consent.

SECTION 12.3 Expenses; Indemnity.

(a) Costs and Expenses. The Borrower and any other Credit Party, jointly and severally, shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of one counsel for the Administrative Agent), in connection with the syndication of the Credit Facility, 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 any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out of pocket expenses incurred by the Administrative Agent, any Lender or any Issuing Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any Issuing Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all losses, claims (including, without limitation, any Environmental Claims), penalties, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Credit Party), arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (including, without limitation, the Transactions), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Credit Party or any Subsidiary thereof, or any Environmental Claim related in any way to any Credit Party or any Subsidiary, (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 any Credit Party or any Subsidiary thereof, and regardless of whether any Indemnitee is a party thereto, or (v) any claim (including, without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant’s fees, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. This Section 12.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposure at such time, or if the Total Credit Exposure has been reduced to zero, then based on such Lender’s share of the Total Credit Exposure immediately prior to such reduction) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to any Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Credit Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Credit Lenders’ Revolving Credit Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought or, if the Revolving Credit Commitment has been reduced to zero as of such time, determined immediately prior to such reduction); provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 5.7.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower and each other Credit Party shall not assert, and hereby waives, 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 clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

SECTION 12.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Lender, the Swingline Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party against any and all of the obligations of the Borrower or such Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, such Issuing Lender or the Swingline Lender or any of their respective Affiliates, irrespective of whether or not such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender, such Issuing Lender, the Swingline Lender or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender or any Affiliate thereof shall exercise any such right of setoff, (x) all amounts so setoff shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 5.15 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate of a Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lenders, the Swingline Lender and the Lenders, and (y) the Defaulting Lender or its Affiliate shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender or any of its Affiliates as to which such right of setoff was exercised. The rights of each Lender, each Issuing Lender, the Swingline Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Lender, the Swingline Lender or their respective Affiliates may have. Each Lender, such Issuing Lender and the Swingline Lender agree to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application. Notwithstanding the provisions of this Section, if at any time any Lender, any Issuing Lender or any of their respective Affiliates maintains one or more deposit accounts for the Borrower or any other Credit Party into which Medicare or Medicaid receivables are deposited, such Person shall waive the right of setoff set forth herein. Notwithstanding anything to the contrary in this Section 12.4, such right of set off shall not apply to, and the Administrative Agent and the Lenders hereby waive such right of set off with respect to any Health Care Receivables.

SECTION 12.5 Governing Law; Jurisdiction, Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claim, 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 Minnesota.

(b) Submission to Jurisdiction. The Borrower and each other Credit Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, any Issuing Lender, the Swingline Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of Minnesota sitting in Hennepin County, and of the United States District Court of the District of Minnesota, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive 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 Minnesota 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, any Issuing Lender or the Swingline Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any other Credit Party or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Borrower and each other Credit Party irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 12.6 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 12.7 Reversal of Payments. To the extent any Credit Party makes a payment or payments to the Administrative Agent for the ratable benefit of any of the Secured Parties or to any Secured Party directly or the Administrative Agent or any Secured Party receives any payment or proceeds of the Collateral or any Secured Party exercises its right of setoff, which payments or proceeds (including any proceeds of such setoff) or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Secured Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent, and each Lender and each Issuing Lender severally agrees to pay to the Administrative Agent upon demand its applicable ratable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent plus interest thereon at a per annum rate equal to the Federal Funds Rate from the date of such demand to the date such payment is made to the Administrative Agent.

SECTION 12.8 Injunctive Relief. The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower agrees that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

SECTION 12.9 Successors and Assigns; Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder (other than by any Credit Party (other than the Borrower) pursuant to a transaction permitted under Section 9.4) without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans at the time owing to it); provided that, in each case with respect to any Credit Facility, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent shall not be less than \$2,500,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that the Borrower shall be deemed to have given its consent five (5) Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by the Borrower prior to such fifth (5th) Business Day;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund or (z) the assignment is made in connection with the primary syndication of the Credit Facility and during the period commencing on the Closing Date and ending on the date that is ninety (90) days following the Closing Date; provided, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Credit Facility;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Credit Facility if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consents of the Issuing Lenders and the Swingline Lender shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 for each assignment; provided that (A) only one such fee will be payable in connection with simultaneous assignments to two or more related Approved Funds by a Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of its Subsidiaries or Affiliates or (B) 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).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the 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 Issuing Lenders, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Credit Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.8, 5.9, 5.10, 5.11 and 12.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section (other than a purported assignment to a natural Person or the Borrower or any of the Borrower's Subsidiaries or Affiliates, which shall be null and void).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Charlotte, North Carolina, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (but only to the extent of entries in the Register that are applicable to such 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, or the Borrower or any of the Borrower's Subsidiaries or Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 12.3(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 12.2(b), (c), (d) or (e) that directly and adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.9, 5.10 and 5.11 (subject to the requirements and limitations therein, including the requirements under Section 5.11(g) (it being understood that the documentation required under Section 5.11(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.12 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 5.10 or 5.11, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.12(b), with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 5.6 and Section 12.4 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 of (and stated interest on) each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation 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) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

SECTION 12.10 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing Lender agrees to maintain the confidentiality of the Information (as defined below) and to use such Information solely for the purpose of evaluating, administering or enforcing the Loan Documents and otherwise complying with all Applicable Laws and any related regulations, except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective Related Parties in connection with the Credit Facility, this Agreement, the transactions contemplated hereby or in connection with marketing of services by such Affiliate or Related Party to the Borrower or any of its Subsidiaries (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), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar 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) or in accordance with the Administrative Agent's, the Issuing Lender's or any Lender's regulatory compliance policy if the Administrative Agent, the Issuing Lender or such Lender, as applicable, deems such disclosure to be necessary for the mitigation of claims by those authorities against the Administrative Agent, the Issuing lender or such Lender, as applicable, or any of its Related Parties (in which case, the Administrative Agent, the Issuing Lender or such Lender, as applicable, shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent practicable and otherwise permitted by Applicable Law), (c) as to the extent required by Applicable Laws or regulations or in any legal, judicial, administrative proceeding or other compulsory process, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any Secured Hedge Agreement or Secured Cash Management Agreement, or any action or proceeding relating to this Agreement, any other Loan Document or any Secured Hedge Agreement or Secured Cash Management Agreement, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (iii) to an investor or prospective investor in an Approved Fund that also agrees that Information shall be used solely for the purpose of evaluating an investment in such Approved Fund, (iv) to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in an Approved Fund in connection with the administration, servicing and reporting on the assets serving as collateral for an Approved Fund, or (v) to a nationally recognized rating agency that requires access to information regarding the Borrower and its Subsidiaries, the Loans and the Loan Documents in connection with ratings issued with respect to an Approved Fund, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Credit Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facility, (h) with the consent of the Borrower, (i) deal terms and other information customarily reported to Thomson Reuters, other bank market data collectors and similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of the Loan Documents, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, any Issuing Lender or any of their respective Affiliates from a third party that is not, to such Person's knowledge, subject to confidentiality obligations to the Borrower, (k) to the extent that such information is independently developed by such Person, or (l) for purposes of establishing a "due diligence" defense. For purposes of this Section, "Information" means all information received from any Credit Party or any Subsidiary thereof relating to any Credit Party or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Lender on a nonconfidential basis prior to disclosure by any Credit Party or any Subsidiary thereof; provided that, in the case of information received from a Credit Party or any Subsidiary thereof after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 12.11 Performance of Duties. Each of the Credit Party's obligations under this Agreement and each of the other Loan Documents shall be performed by such Credit Party at its sole cost and expense.

SECTION 12.12 All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Obligations remain unpaid or unsatisfied, any of the Commitments remain in effect or the Credit Facility has not been terminated.

SECTION 12.13 Survival.

(a) All representations and warranties set forth in Article VII and all representations and warranties contained in any certificate, or any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date and the First Amendment Date (except those that are expressly made as of a specific date), shall survive the Closing Date and First Amendment Date, and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of this Article XII and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before.

SECTION 12.14 Titles and Captions. Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

SECTION 12.15 Severability of Provisions. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction. In the event that any provision is held to be so prohibited or unenforceable in any jurisdiction, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such provision to preserve the original intent thereof in such jurisdiction (subject to the approval of the Required Lenders).

SECTION 12.16 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, the Issuing Lender, the Swingline Lender and/or the Arranger, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 6.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution. The words “execute,” “execution,” “signed,” “signature,” “delivery” and words of like import in or related to this Agreement, any other Loan Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Agreement or any other Loan Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by the Administrative Agent, deliveries 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 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. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature from any party hereto, the Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and any of the Credit Parties, electronic images of this Agreement or any other Loan Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.

SECTION 12.17 Term of Agreement. This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations have been Paid in Full and the Commitments have been terminated. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

SECTION 12.18 USA PATRIOT Act; Anti-Money Laundering Laws. The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act or any other Anti-Money Laundering Laws, each of them is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the PATRIOT Act or such Anti-Money Laundering Laws.

SECTION 12.19 Independent Effect of Covenants. The Borrower expressly acknowledges and agrees that each covenant contained in Articles VIII or IX hereof shall be given independent effect. Accordingly, the Borrower shall not engage in any transaction or other act otherwise permitted under any covenant contained in Articles VIII or IX, before or after giving effect to such transaction or act, the Borrower shall or would be in breach of any other covenant contained in Articles VIII or IX.

SECTION 12.20 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby, each Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) in connection with the process leading to such transaction, each of the Administrative Agent, the Arrangers and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Administrative Agent, the Arrangers or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Arranger or Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Administrative Agent, the Arrangers or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Administrative Agent, the Arrangers or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Administrative Agent, the Arrangers and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Credit Party acknowledges and agrees that each Lender, the Arrangers and any Affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of the Borrower, any Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender, Arranger or Affiliate thereof were not a Lender or Arranger or an Affiliate thereof (or an agent or any other person with any similar role under the Credit Facilities) and without any duty to account therefor to any other Lender, the Arrangers, the Borrower or any Affiliate of the foregoing. Each Lender, the Arrangers and any Affiliate thereof may accept fees and other consideration from the Borrower or any Affiliate thereof for services in connection with this Agreement, the Credit Facilities or otherwise without having to account for the same to any other Lender, the Arrangers, the Borrower or any Affiliate of the foregoing.

SECTION 12.21 Amendment and Restatement; No Novation. This Agreement constitutes an amendment and restatement of the Existing Credit Agreement, as amended, effective from and after the Closing Date (as defined herein). The execution and delivery of this Agreement shall not constitute a novation of any indebtedness or other obligations owing to the Lenders or the Administrative Agent under the Existing Credit Agreement based on facts or events occurring or existing prior to the execution and delivery of this Agreement. On the Closing Date (as defined herein), the credit facilities described in the Existing Credit Agreement, as amended, shall be amended, supplemented, modified and restated in their entirety by the facilities described herein, and all loans and other obligations of the Borrower outstanding as of such date under the Existing Credit Agreement, shall be deemed to be loans and obligations outstanding under the corresponding facilities described herein, without any further action by any Person, except that the Administrative Agent shall make such transfers of funds as are necessary in order that the outstanding balance of such Loans, together with any Loans funded on the Closing Date (as defined herein), reflect the respective Commitment of the Lenders hereunder.

SECTION 12.22 Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Security Documents which imposes additional burdens on the Borrower or any of its Subsidiaries or further restricts the rights of the Borrower or any of its Subsidiaries or gives the Administrative Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

SECTION 12.23 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 12.24 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, 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 Credit Party, that none of the Administrative Agent, the Arranger and their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 12.25 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and, each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the FDIC under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 12.24, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, all as of the day and year first written above.

TACTILE SYSTEMS TECHNOLOGY, INC., as Borrower

By: _____

Name: Brent Moen

Title: Chief Financial Officer

Signature Page to Credit Agreement

AGENTS AND LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, Swingline Lender, Issuing Lender and Lender

By: _____

Name: John Teasley

Title: Managing Director

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TACTILE MEDICAL ANNOUNCES ACQUISITION OF AFFLOVEST®

- *Further expands the Company's position as a leader in treating patients with underserved chronic conditions in the home*
- *Transaction aligns with Tactile Medical's growth & margin goals, including 20%+ revenue growth, gross margins above 70% and expanding adjusted EBITDA margins*

MINNEAPOLIS, MN, September 8, 2021 – Tactile Systems Technology, Inc. (“Tactile Medical” or the “Company”) (Nasdaq: TCMD), a medical technology company focused on developing medical devices for the treatment of underserved chronic diseases at home, today announced it has acquired the assets of the AffloVest respiratory therapy business from International Biophysics Corporation, a privately-held company which developed and manufactures AffloVest.

AffloVest is a portable, wearable vest that treats patients with chronic respiratory conditions such as COPD-associated breathing conditions like bronchiectasis, or conditions resulting from neuromuscular disorders and cystic fibrosis, by managing airway clearance. AffloVest is the first truly portable, battery-powered, High Frequency Chest Wall Oscillation (HFCWO) device. Its use has been shown to reduce antibiotic use, emergency room visits and hospitalizations.

Management Commentary

“The addition of AffloVest represents an ideal strategic fit for Tactile Medical as it aligns well with our focus of treating patients with underserved chronic conditions in the home,” said Dan Reuvers, President and CEO of Tactile Medical. “We expect to promote AffloVest’s patented, portable design, demonstrated clinical outcomes, and established reimbursement within the Durable Medical Equipment (DME) channel to drive AffloVest to contribute to our overall company goal of 20%+ revenue growth going forward. Like lymphedema, the chronic pulmonary disease market represents a large, and still underpenetrated opportunity. Importantly, multiple members of our management team have significant experience in this category, which gives us confidence in our ability to execute our commercial strategy for AffloVest. We look forward to welcoming the AffloVest sales team to Tactile Medical and intend to maintain their strategy of partnering with DME companies to promote the proven therapy. The sales representatives at these DME companies are uniquely positioned to provide valuable access to chronic respiratory providers and patients through their complementary product and service offerings such as oxygen, nebulizers and ventilators.”

Reuvers continued, “Longer term, we believe adding a mobile, wearable therapy to our portfolio invites synergy within our R&D roadmap as we advance our goals within ease-of-use and digital engagement. We believe this is a compelling transaction as it expands Tactile Medical’s annual addressable market opportunity in the U.S. to more than \$10 billion, fits our long-term revenue and margin growth profile, enhances our long-term profitability, and is expected to generate an attractive return on investment.”

Financing Details

- Tactile Medical has financed the transaction through a combination of cash on hand and \$55 million of borrowings under its existing credit facility, which is being amended in connection with this transaction. The credit facility is being exclusively provided by Wells Fargo Bank, NA. Tactile Medical expects its net leverage ratio as of year-end 2021 to be approximately 1.4x and anticipates its net leverage ratio as of year-end 2022 to be less than 1.0x.

Strategic Rationale

- **Provides access to a differentiated and clinically validated, HFCWO technology:** AffloVest was developed to treat patients with serious chronic respiratory disorders. AffloVest's patient-friendly design provides freedom and mobility intended to increase patient adherence. It has been shown to reduce related healthcare costs including antibiotics, emergency room visits, and hospitalizations.
 - **Adds \$5 billion annual addressable market opportunity in the U.S.:** Bronchiectasis is one of the most common respiratory diseases with 500,000 U.S. adults diagnosed, growing in the high single-digits annually. The U.S. market remains underpenetrated with more than 16 million living with COPD, over 4 million of whom may be affected by bronchiectasis.
 - **Proven commercial strategy supports the opportunity for continued market share gains:** AffloVest has demonstrated strong growth and market share gains by partnering with respiratory DME companies to commercialize the product. Significant opportunities for further growth exist with a universe of more than 4,000 respiratory DME sales representatives in the U.S.
 - **AffloVest business features an attractive profitability profile:** Expected AffloVest gross margins above 70% and adjusted EBITDA margins of more than 30%.
 - **Transaction aligns with Tactile Medical's growth and margin goals:** Transaction aligns with the Company's growth and margin goals, including 20%+ revenue growth, gross margins above 70% and expanding adjusted EBITDA margins. Calendar year 2021 revenues of AffloVest are expected to be approximately \$17 million and the transaction is expected to contribute approximately \$5.0 million to \$5.5 million of revenue from the closing date of September 8, 2021 to December 31, 2021. Further, the acquisition is expected to be accretive to the Company's adjusted EBITDA, excluding purchase accounting, non-cash amortization and transaction costs, by the end of year one post-closing. The Company intends to provide additional financial information related to the AffloVest acquisition during its third quarter 2021 earnings call in November.
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About Tactile Systems Technology, Inc. (DBA Tactile Medical)

Tactile Medical is a leader in developing and marketing at-home therapy devices that treat chronic swelling conditions such as lymphedema and chronic venous insufficiency. Tactile Medical's Mission is to help people suffering from chronic diseases live better and care for themselves at home. The Company's unique offering includes advanced, clinically proven pneumatic compression devices, as well as continuity of care services provided by a national network of product specialists and trainers, reimbursement experts, patient advocates and clinicians. This combination of products and services ensures that tens of thousands of patients annually receive the at-home treatment necessary to better manage their chronic conditions. Tactile Medical takes pride in the fact that its solutions help increase clinical efficacy, reduce overall healthcare costs and improve the quality of life for patients with chronic conditions.

About International Biophysics Corporation

International Biophysics Corporation brings to market innovative, disruptive medical devices and technologies that improve treatment therapies and patient outcomes. The company has a strong history of developing and launching innovative and disruptive technologies. Centered in a precision ISO 13485 certified, FDA registered, state of the art manufacturing facility, International Biophysics Corporation continues to research and develop advanced solutions for physicians and patients.

Legal Notice Regarding Forward-Looking Statements

This release contains forward-looking statements, including, without limitation, statements related to the Company's growth and margin goals and related to the acquisition of AffloVest, such as expected revenues and revenue growth of AffloVest and the related impact on the Company's revenues, the impact on the Company's long-term profitability profile, AffloVest's expected gross margins and adjusted EBITDA margins, the expected accretive impact of the acquisition, the results of anticipated leveraging and commercial strategies, including potential market share gains, the annual addressable market opportunity for AffloVest and the Company, and the expected net leverage ratio of the Company in the future, as well as attractive return on investment. Forward-looking statements are generally identifiable by the use of words like "may," "will," "should," "could," "expect," "anticipate," "estimate," "believe," "intend," "continue," "confident," "outlook," "guidance," "project," "goals," "look forward," "poised," "designed," "plan," "return," "focused," "prospects" or "remain" or the negative of these words or other variations on these words or comparable terminology. The reader is cautioned not to put undue reliance on these forward-looking statements, as these statements are subject to numerous factors and uncertainties outside of the Company's control that can make such statements untrue, including, but not limited to, whether and when the Company will be able to realize the expected financial results and accretive effect of the acquisition, and how customers, competitors, suppliers and employees will react to the acquisition, the impacts of the COVID-19 pandemic on the Company's business, financial condition and results of operations; the course of the COVID-19 pandemic and its impact on general economic, business and market conditions; the Company's inability to execute on its plans to respond to the COVID-19 pandemic; the adequacy of the Company's liquidity to pursue its business objectives; the Company's ability to obtain reimbursement from third party payers for its products; loss or retirement of key executives, including prior to identifying a successor; adverse economic conditions or intense competition; loss of a key supplier; entry of new competitors and products; adverse federal, state and local government regulation; technological obsolescence of the Company's products; technical problems with the Company's research and products; the Company's ability to expand its business through strategic acquisitions; the Company's ability to integrate acquisitions and related businesses; price increases for supplies and components; the effects of current and future U.S. and foreign trade policy and tariff actions; or the inability to carry out research, development and commercialization plans. In addition, other factors that could cause actual results to differ materially are discussed in the Company's filings with the SEC. Investors and security holders are urged to read these documents free of charge on the SEC's website at <http://www.sec.gov>. The Company undertakes no obligation to publicly update or revise its forward-looking statements as a result of new information, future events or otherwise.

Non-GAAP Financial Measures

This press release includes the non-GAAP financial measure of expected adjusted EBITDA margin of AffloVest, which differs from financial measures calculated in accordance with U.S. generally accepted accounting principles ("GAAP").

Expected adjusted EBITDA margin in this release represents AffloVest's expected net income, plus interest expense or less interest income, less income tax benefit or plus income tax expense, plus depreciation and amortization, plus stock-based compensation expense, plus impairment charges and inventory write-offs, plus litigation defense costs, plus executive transition costs, plus transaction costs, plus purchase accounting charges, plus business optimization expenses, and plus other restructuring and integration costs, on a percentage of revenue basis. This non-GAAP financial measure is presented because the Company believes it is a useful indicator of AffloVest's projected operating performance. Such non-GAAP financial measure is supplemental only, and should not be considered superior to, as a substitute for, or as an alternative to, and should be considered in conjunction with, net margin. This non-GAAP financial measure may differ from similar measures used by other companies.

The Company cannot reconcile AffloVest's expected adjusted EBITDA margin to expected net income margin without unreasonable effort because certain items that impact net income and other reconciling metrics are out of the Company's control and/or cannot be reasonably predicted at this time. Such unavailable information could have a significant impact on the GAAP financial results.

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