UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-K

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

For The Fiscal Year Ended September 30, 2020
or

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

Commission File Number: 001-38289

AVAYA HOLDINGS CORP.

(Exact name of registrant as specified in its charter)

Delaware	**26-1119726**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2605 Meridian Parkway, Suite 200 **Durham, North Carolina**	**27713**
(Address of Principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (908) 953-6000
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	AVYA	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

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

Large accelerated filer	☒	Accelerated filer	☐	Non-accelerated filer	☐	Smaller Reporting Company	☐	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. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

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

The aggregate market value of the registrant's Common Stock held by non-affiliates on March 31, 2020, the last business day of the registrant's most recently completed second quarter, was $662 million.

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes ☒ No ☐

As of October 31, 2020, 83,392,096 shares of Common Stock, $.01 par value, of the registrant were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Annual Report on Form 10-K will be incorporated by reference from certain portions of the registrant's definitive proxy statement for its 2021 Annual General Meeting of Stockholders, or will be included in an amendment hereto, to be filed with the Securities and Exchange Commission not later than 120 days after the close of the registrant's fiscal year ended September 30, 2020.

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When we use the terms "we," "us," "our," "Avaya" or the "Company," we mean Avaya Holdings Corp., a Delaware corporation, and its consolidated subsidiaries taken as a whole, unless the context otherwise indicates.

This Annual Report on Form 10-K contains the registered and unregistered trademarks or service marks of Avaya and are the property of Avaya Holdings Corp. and/or its affiliates. This Annual Report on Form 10-K also contains additional trade names, trademarks or service marks belonging to us and to other companies. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

Cautionary Note Regarding Forward-looking Statements

Certain statements in this Annual Report on Form 10-K, including statements containing words such as "anticipate," "believe," "estimate," "expect," "intend," "plan," "project," "target," "model," "can," "could," "may," "should," "will," "would" or similar words or the negative thereof, constitute "forward-looking statements." These forward-looking statements, which are based on our current plans, expectations, estimates and projections about future events, should not be unduly relied upon. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance and achievements to materially differ from any future results, performance and achievements expressed or implied by such forward-looking statements. We caution you therefore against relying on any of these forward-looking statements.

The forward-looking statements included herein are based upon our assumptions, estimates and beliefs and involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond our control. Although we believe that the expectations reflected in such forward-looking statements are based on reasonable assumptions, our actual results and performance could differ materially from those set forth in the forward-looking statements and may be affected by a variety of risks, uncertainties and other factors, which may cause our actual results, performance or achievements to differ materially from any future results, performance or achievements expressed or implied by these forward-looking statements. Risks, uncertainties and other factors that may cause these forward-looking statements to be inaccurate include, among others: the risks and factors discussed in Part I, Item 1A "Risk Factors" and Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" to this Annual Report on Form 10-K.

All forward-looking statements are made as of the date of this Annual Report on Form 10-K and the risk that actual results will differ materially from the expectations expressed in this Annual Report will increase with the passage of time. Except as otherwise required by the federal securities laws, we undertake no obligation to publicly update or revise any forward-looking statements after the date of this Annual Report, whether as a result of new information, future events, changed circumstances or any other reason. In light of the significant uncertainties inherent in the forward-looking statements included in this Annual Report, the inclusion of such forward-looking statements should not be regarded as a representation by us or any other person that the objectives and plans set forth in this Annual Report will be achieved.

Marketing, Ranking and Other Industry Data

This Annual Report on Form 10-K includes industry and trade association data, forecasts and information that we have prepared based, in part, upon data, forecasts and information obtained from independent trade associations, industry publications and surveys and other information available to us. Some data is also based on our good faith estimates, which are derived from management’s knowledge of the industry and independent sources. Industry publications and surveys and forecasts generally state that the information contained therein has been obtained from sources believed to be reliable. We have not independently verified any of the data from third-party sources, nor have we ascertained the underlying economic assumptions relied upon therein. In particular, the Aragon reports described below represent research opinion or viewpoints published, as part of a syndicated subscription service, by Aragon Research, Inc., ("Aragon") and are not representations of fact. Each of the Aragon reports speaks as of its original publication date (and not as of the date of this filing) and the opinions expressed in the Aragon reports are subject to change without notice. Aragon does not endorse any vendor, product or service depicted in its research publications, and does not advise technology users to select only those vendors with the highest ratings or other designation. Aragon research publications consist of the opinions of Aragon's research organizations and should not be construed as statements of fact. Aragon disclaim all warranties, expressed or implied, with respect to this research, including any warranties of merchantability or fitness for a particular purpose. Statements as to our market position are based on market data currently available to us. Our estimates involve risks and uncertainties and are subject to change based on various factors, including those discussed under the heading Item 1A, "Risk Factors" in this Annual Report on Form 10-K. Certain information in the text of this Annual Report on Form 10-K is contained in industry publications or data compiled by a third-party. The sources of these industry publications and data are provided below:

- Aragon Report: The Aragon Research Globe™ for Unified Communications and Collaboration, 2020, Jim Lundy, et al., April 2020
- Aragon Report: The Aragon Research Globe™ for Intelligent Contact Center, 2020, Jim Lundy, June 2020

PART I

Item 1. ***Business***

Our Company

Avaya is a global leader in digital communications products, solutions and services for businesses of all sizes delivering most of its technology through software and services. We enable organizations around the globe to succeed by creating intelligent communications experiences for our clients, their employees and their customers. Avaya builds open, converged and innovative solutions to enhance and simplify communications and collaboration in the cloud, on-premise or a hybrid of both. Our global, experienced team of professionals delivers award-winning services from initial planning and design, to seamless implementation and integration, to ongoing managed operations, optimization, training and support.

Businesses are built by the experiences they provide, and everyday Avaya delivers millions of those experiences globally through its software and solutions. Avaya is shaping the future of businesses and workplaces, with innovation and partnerships that deliver significant, tangible business results. Our cloud communications solutions and multi-cloud software ecosystem power tailored, intelligent, and effortless customer and employee experiences that enable our clients to effectively engage and interact with their customers.

During fiscal 2020, Avaya shifted its entire comprehensive portfolio of capabilities to Avaya OneCloud, which offers significant capabilities across contact center, unified communications and collaboration, and communications platform as a service (“CPaaS”). We believe Avaya OneCloud uniquely positions us to address a customer’s needs in creating a Digital Workplace for their campus-based and remote employees through Unified Communications and Collaboration and the Customer Experience Center, our name for contact centers, helping clients deliver tangible business results.

Avaya offers a range of sales and licensing models that can be deployed on-premise or via a public, private, or hybrid cloud. During fiscal 2020, our investments to transform our revenue generation model from one that was legacy on-premise to one that is cloud-facing began positively contributing to our financial performance. Avaya offers an open, extensible development platform, enabling customers and third parties to easily create custom applications and automated workflows for their unique needs, integrating Avaya’s capabilities into the customer's existing infrastructure and business applications. Our solutions enable a seamless communications experience that adapts to how employees work instead of changing how they work.

Avaya also offers one of the broadest portfolios of business devices in the industry, including handsets, video conferencing units and headsets to meet the needs of every type of worker across a customer’s organization and help them get the most out of their communications investments. Avaya IP-enabled handsets, multimedia devices and conferencing systems enhance collaboration and productivity, and position organizations to incorporate future technological advancements.

Operating Segments

Our business has two operating segments: **Products & Solutions** and **Services.**

Products & Solutions

Products & Solutions encompasses our unified communications and contact center software platforms, applications and devices.

- *Unified Communications and Collaboration ("UCC"):* Avaya's UCC solutions enable organizations to reimagine collaborative work environments and help companies increase employee productivity, improve customer service and reduce costs. With Avaya's UCC solutions, organizations can provide their workers with a single application, or “app,” for all-channel calling, messaging, meetings and team collaboration with the same ease of use as existing consumer apps. Avaya embeds communications directly into the apps, browsers and devices employees use every day giving them a more natural, efficient and flexible way to connect, engage, respond and share - where and how they want. During fiscal 2020, we expanded our UCC portfolio to include cloud-based solutions.
- *Contact Center ("CC"):* Avaya’s industry-leading digital contact center solutions enable clients to build a customized portfolio of applications to drive stronger customer engagement and higher customer lifetime value. Our reliable, secure and scalable communications solutions include voice, email, chat, social media, video, performance management and third-party integration that can improve customer service and help companies compete more effectively. Like the UCC business, Avaya is evolving CC solutions for cloud deployment and, in fiscal 2020, we expanded our CC portfolio to include cloud-based solutions.
- We are also focused on ensuring an outstanding experience for mobile callers by integrating transformative technologies, including Artificial Intelligence ("AI"), mobility, big data analytics and cybersecurity into our CC solutions. As our customers use these solutions to gain a deeper understanding of their customer needs, we believe that their teams become more efficient and effective and, as a result, their customer loyalty grows.

Services

Complementing our product and solutions portfolio is a global, award-winning services portfolio, delivered by Avaya and our extensive partner ecosystem. Our services portfolio consists of our global support services, enterprise cloud and managed services and professional services. We also classify customers who upgrade and acquire new technology through our subscription offerings as part of our Services segment.

- *Global Support Services* provide offerings that help businesses protect their technology investments and address the risk of system outages. We help our customers gain a competitive edge through proactive problem prevention, rapid resolution and continual solution optimization. Most of our global support services revenue is recurring in nature.
- *Enterprise Cloud and Managed Services* enable customers to take advantage of our technology via the cloud, on-premise, or a hybrid of both, depending on the solution and the needs of the customer. Most of our enterprise cloud and managed services revenue is recurring in nature and based on multi-year services contracts.
- *Professional Services* enable our customers to take full advantage of their IT and communications solution investments to drive measurable business results. Our experienced consultants and engineers partner with customers along each step of the solution lifecycle to deliver services that add value and drive business transformation. Most of our professional services revenue is non-recurring in nature.

With these comprehensive services, customers can leverage communications technology to help them maximize their business results. We help our customers use communications to minimize the risk of outages, drive employee productivity and deliver a differentiated customer experience.

Our services teams also help our customers transition at their desired pace to next generation communications technology solutions. Our customers can choose the level of support for their communications solutions best suited for their needs, which may include deployment, training, monitoring, solution management, optimization and more. Our systems and service team's performance monitoring can quickly identify and address issues before they arise. Remote diagnostics and resolutions focus on fixing existing problems and avoiding potential issues in order to help our customers save time and reduce the risk of an outage.

Avaya OneCloud Deployment Options and Capabilities

Cloud and Software-as-a-Service ("SaaS") models generally refer to the products and services that allow organizations to move from owning, managing and running solutions to paying only for the capabilities they need. Avaya OneCloud provides an option for customers to access all of this and customize as they see fit.

Avaya OneCloud provides the full spectrum of deployment options, including via private, public and hybrid cloud, as well as on-premise. This enables organizations to deploy our solutions in the way that best serves their business requirements and complements their existing investments, while moving with the speed and agility they require.

Avaya OneCloud, delivered as Private, Public, Hybrid or On-Premise

- ***Private cloud:*** Each organization has its own instance of the software, although the platform is shared across multiple organizations.
- ***Public cloud*****:** Each organization has a tenant of a shared instance of the software on a shared platform.
- ***Hybrid cloud:*** In a hybrid deployment, customers are able to leverage private cloud features that are already performing to their specifications and then integrate newly developed capabilities from the broader public cloud portfolio.

Avaya's solutions are addressing the convergence of private and public cloud deployments observed across the industry. Used in conjunction with our private cloud solution, a customer can use a public cloud to provide capability at the edge of their network in a cost effective manner. Avaya's investments in data-driven intelligent automation mean that if an organization needs to deploy an advanced, integrated, value-focused solution via a private cloud but needs it deployed in just hours, Avaya can deliver such a solution on the requested timeline. The benefit to the organization is "always available" access to the latest capabilities and innovation, quickly and at scale.

Avaya OneCloud, delivered as Subscription

Subscription begins the customer's journey to the cloud by changing the commercial model from an ownership model with an existing on-premise solution to a usage model, with monthly or annual subscription payments. The customer only pays for the software and solutions that they need as opposed to buying an off the shelf solution that cannot be easily tailored to their needs, while providing access to the latest software.

Avaya OneCloud, delivered as a Managed Service

An organization can leverage its existing technology infrastructure investments without having to operate them. In this model, the organization will transition from a commercial model to a usage model and engage Avaya or a business partner to operate its investments on their behalf. The customer receives a tailored solution using the latest software with standardized cloud contracts.

Avaya OneCloud Migration

We believe our migration methodology differentiates us from many other cloud vendors in the market because of our range of services and ability to seamlessly migrate our customers to the cloud. We provide a range of cloud-facing deployment options best suited to a customer's business and the capabilities to help our customers deploy these options. Our approach also provides flexible options based on standardized methodologies, a range of services, enterprise software expertise and tools to help organizations along every step of their journey to the cloud, by reducing transition complexities and risks as they move from their current deployment to a cloud-based one.

With our comprehensive Avaya OneCloud portfolio and a long-term technology development roadmap in place, we are helping our customers build state-of-the-art digital workplaces and contact centers. Our customers can take advantage of public, private and hybrid cloud solutions at any stage in their journey, and leverage new capabilities and innovations from Avaya and its ever-expanding partner ecosystem by consuming these software capabilities from the cloud, over-the-top of their on-premise solutions.

On-Premise

While a growing portion of our business is transitioning to our private, public and hybrid cloud-facing consumption models, there are customers that have business models and/ or requirements that mandate a premise-based infrastructure and therefore we will continue to support such solutions.

Application Developer Products

Along with off-the-shelf integrations with frequently used business applications used across an organization, Avaya's unified communications platform simplifies the embedding of Avaya One Cloud communications and collaboration capabilities into business applications, including customer relationship management and enterprise resources planning. Our platform enables customers, third parties to work with Avaya to create customized engagement applications and to meet the unique operating requirements of a customer with unified communications and contact center capabilities including voice, video, messaging and meetings. Avaya also offers a cloud-based execution and test environment for developing proof-of-concept applications.

Avaya Client SDK provides a developer-friendly set of tools that enables the building of innovative user experiences for vertical or business specific applications. Any functionality Avaya uses in its own clients and applications is available to developers through the SDK. Developers can mix and match functionality from both our unified communications and contact center solutions.

Avaya has an extensive developer program boasting over one million active developers. Avaya DevConnect enables third parties to support and extend the capabilities of Avaya solutions to address business challenges. Thousands of companies around the world are program members, including developers, system integrators, service providers and Avaya customers.

Cloud, Alliance Partner and Subscription Revenues ("CAPS")

We measure our success in transforming our business to the cloud and our ability to reduce our dependence on premise-based perpetual licensing models by analyzing the contribution of our "CAPS revenue" to total consolidated revenue. CAPS revenue refers to revenue from cloud based solutions, together with revenues from our Strategic Alliance Partnerships and Subscription revenue. Our CAPS revenue as a percentage of total consolidated revenue, excluding the impact of fresh start accounting adjustments recognized upon the Company's emergence from bankruptcy, has grown over the past three fiscal years, representing 26%, 15% and 14% of total consolidated revenue for fiscal 2020, 2019 and 2018, respectively.

Alliances and Partnerships

Avaya has formed commercial and partnering arrangements through global alliances to expand the availability of our products and services, enhance the value derived by customers and grow our revenue opportunity.

Global Alliances

Avaya global alliances are strategically oriented technical and commercial relationships with key partners that we believe enhance both companies' go-to-market strategy. We have three primary types of global alliances: Global Service Provider alliances, Global Systems Integrator alliances and Ecosystem alliances.

- ***Global Service Provider alliances:*** Through these partnering arrangements with leading telecommunications service providers, we pursue sell-to and sell-through opportunities for Avaya solutions and services. These alliances are integral in selling and implementing our cloud-based services. We also see them as a principal route to market for our UCaaS and CCaaS solutions. During fiscal 2020, we entered a strategic partnership with RingCentral, Inc. (“RingCentral") and began deployment of Avaya Cloud Office, our OneCloud UCaaS solution.
- ***Global Systems Integrator alliances:*** These are similar to our Global Service Provider alliances, but refer to arrangements with systems integrator partners, as well as key channel partners with strong professional services and systems integration capabilities.
- ***Ecosystem alliances:*** These partnering arrangements are with industry leaders and leading technology companies. They feature deeper, R&D-led integrations and/or expanded go-to-market efforts, such as the DevConnect Select Product Program or the Avaya & Friends Program for international markets.

Channel Partners

Our channel partners serve our customers worldwide through Avaya Edge, our business partner program. Through certifications, the Avaya Edge program positions Value Added Reseller partners to sell, implement and maintain our communications systems, applications and services. Avaya Edge offers clearly defined partner categories with financial, technical, sales and marketing benefits that grow with levels of certification and revenue contribution. We support partners in the program by providing our comprehensive Avaya OneCloud portfolio of solutions in addition to sales, marketing and technical support. Although the terms of individual channel partner agreements may deviate from our standard program terms, our standard program agreements for resellers generally provide for a term of one year, with automatic renewal for successive one-year terms. Agreements may generally be terminated by either party for convenience upon 30-days' prior notice, and our standard program agreements for distributors may generally be terminated by either party for convenience upon 90 days prior notice. Certain of our contractual agreements with our largest distributors and resellers, however, permit termination of the relationship by either party for convenience upon prior notice of 180 days. Our partner agreements generally provide for responsibilities, conduct, order and delivery, pricing and payment, and include customary indemnification, warranty and other similar provisions. The Company's largest distributor, ScanSource Inc., is also its largest customer and represented 8% of the Company's total consolidated revenue for fiscal 2020. See Item 1A, "Risk Factors-Risks Related to Our Business-Our Operations, Markets and Competition-Our strategy depends in part on our reliance on our indirect sales channel" for additional information on the Company's reliance on its indirect sales channel.

Our Business Today

Our solutions address the needs of a diverse range of businesses, including large multinational enterprises, small and medium-sized businesses and government organizations. Our customers operate in a broad range of industries, including financial services, healthcare, hospitality, education, government, manufacturing, retail, transportation, energy, media and communications. We employ a flexible go-to-market strategy with direct or indirect presence in approximately 190 countries. As of September 30, 2020, we had more than 4,000 active channel partners and for fiscal 2020 our product revenue from indirect sales through our channel partners represented 67% of our total Products & Solutions segment revenue.

For fiscal 2020, 2019 and 2018 (on a combined basis), we generated revenue of $2,873 million, $2,887 million and $2,851 million, of which 37%, 42% and 44% was generated by Products & Solutions and 63%, 58% and 56% by Services, respectively. Revenue by business area is presented in the following table for the periods indicated:

(In millions)	Successor			Predecessor [1]	Non-GAAP Combined
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017	Fiscal year ended September 30, 2018
	2020	2019			
Products & Solutions:					
Unified Communications and Collaboration	$ 710	$ 863	$ 718	$ 180	$ 898
Contact Center	363	359	271	73	344
	1,073	1,222	989	253	1,242
Services:					
Global Support Services	1,238	1,086	786	244	1,030
Enterprise Cloud and Managed Services	282	297	245	57	302
Professional Services	280	282	227	50	277
	1,800	1,665	1,258	351	1,609
	$ 2,873	$ 2,887	$ 2,247	$ 604	$ 2,851

(1) Upon our emergence from bankruptcy on December 15, 2017, we adopted fresh start accounting, which resulted in a new basis of accounting and the Company became a new entity for financial reporting purposes. For additional information on the effects of adopting fresh start accounting, see "Emergence from Bankruptcy" below.

One of our key focuses is increasing our recurring revenue. We define recurring revenue as revenue from products and services that are delivered pursuant to multi-period contracts including recurring subscription-based software revenue, maintenance, global support services and enterprise cloud and managed services. Non-recurring revenue consists of hardware, non-recurring perpetual-based software and one-time professional services. Hardware predominantly consists of endpoints, which include phones, video conferencing equipment and headsets. Non-recurring software is predominantly comprised of perpetual licenses. One-time professional services include installation services, as well as project-based deployment, design and optimization services.

Trends Shaping Our Industry

We believe several trends are shaping our industry, creating a substantial opportunity for us and other market participants to capitalize on these trends. These trends include:

- Unified Communications and Collaboration, CPaaS and Contact Center are converging to become part of an integrated services offering delivering next-generation communications capabilities across a host of devices and channels. Avaya already has more than 10,000 customers that range in size from 10 seats to 250,000 seats on a converged premise-based UCC and CC platform.
- Businesses will continue to invest in more than one unified communications platform as they build a collaboration portfolio to be used by their employees to address use cases specific to their ability to service their end customers.
- Remote worker and workforce mobility requirements are growing as the needs to work from home, or from anywhere, accelerate—driving increased usage of mobile devices by consumers and employees. These trends are further amplified as business leaders shift IT priorities to digitally transform their companies and take advantage of disruptive technologies like cloud-based solutions and delivery models, big data, IoT, cybersecurity and AI.
- Preference for cloud delivery of applications and management of multiple and varied devices continues to grow, all of which must be handled with the security their business demands.
- Demand for multi-experience as an evolution of omnichannel customer service continues to become an increasingly critical element of contact center solutions as consumers embrace new technologies and devices in creative ways.
- The Experience Economy will drive decision making in the future. These experience expectations mean that communications in serving the customer are continuing to become an increasingly critical element in contact center solutions, as consumers embrace new technologies and devices in creative ways and at an accelerating pace. Avaya is continuing to invest in AI-derived solutions delivered through cloud and subscription models to create "Experiences that Matter" for customers, employees and agents. This increased adoption and deployment of AI is providing significant new opportunities for enhanced UCC and CC solutions that improve the customer experience and transform the Digital Workplace. By expanding the use of AI, we can potentially reduce adoption costs, increase solution effectiveness and offer expanded alternatives to traditional methods for rendered services.

Our Market Opportunity

We believe that these trends create significant market opportunity for the next-generation UCaaS, Collaboration, CCaaS and CPaaS solutions that Avaya has brought to the market in fiscal 2020. The limitations of traditional premise-based communications solutions and services and capital-intensive buying models present an opportunity for differentiated vendors to gain market share in the cloud. We believe that the total available market for these solutions includes spending on communications applications, and the business devices that improve the application experience, as well as spending on one-time and recurring professional, enterprise cloud and managed services, and support services to implement, maintain and manage these solutions.

We are expanding our business in several of these areas, primarily with cloud-facing and subscription-based consumption models for customers, as well as providing them with managed services offerings. We are also growing in the customer segments that we serve, including large enterprises with more than 1,000 employees, as well as midmarket enterprises with between 50 and 250 agents in the contact center market and between 100 and 1,000 employees for customers using our UCC solutions. The growth opportunity in these markets comes from the need for enterprises to increase productivity and upgrade their unified communications and collaboration and contact center strategy to a more integrated approach, to account for the accelerated work from home / work from anywhere trend, increased mobility, and a host of devices and multiple communications channels. In response to these needs, we expect that aggregate total spending on UCC, CPaaS, CC, services and support, and enterprise cloud and managed services to grow, with the majority of growth coming from cloud services.

Although the decision makers for our solutions and services have traditionally been senior IT leadership, up to and including Chief Information Officers ("CIOs"), our research finds that now more of the buying decisions are being influenced by business units and the broader C-suite, including Chief Executive Officers ("CEOs"), Chief Marketing Officers ("CMOs") and Chief Digital Officers ("CDOs"). They have become more involved as digital transformation has expanded beyond the data center and IT infrastructure to encompass lines of business operations and customer experiences. CEOs, CMOs and CDOs are recognizing growing customer and employee demand for better interactions across multiple channels of their choosing, and they see an opportunity to differentiate their companies and lines of business by providing their employees with an opportunity to deliver a superior customer experience.

We believe that due to the increasing importance of technology as both an internal and external-facing presence of the enterprise, as well as the high stakes of data breaches, CEOs are increasingly engaged in the decision-making process. CMOs and CDOs are gaining additional budget authority as they are tasked with managing customer experience and marketing activities using sophisticated communications technology and rich data. We believe that because of the shifts in decision-making roles, the focus of customer experience solutions should be to provide businesses with better ways to engage with end users securely across multiple platforms and channels, creating better customer experiences, and ultimately, higher revenues for the business.

In our experience, decision makers have three critical priorities:

- *Shift to cloud-based solutions:* Companies today seek technology that helps them lower Total Cost of Ownership ("TCO") and increase deployment speed and application agility, including a variety of public, private and hybrid cloud solutions. They are also shifting away from a complex, proprietary capital-intensive consumption model to one that is more flexible and efficient in gaining access to the latest technology.
- *Leverage existing technology infrastructure while positioning for the future:* The speed at which new technology enters the market is challenging companies to rapidly adopt and install new technology. We believe this pressure creates strong demand for scalable systems that do not require enterprise-wide overhauls of existing technology to implement newer solutions and technologies. Instead, it favors incremental, flexible, extensible technologies that are easy to adopt and compatible with, existing infrastructures.
- *Manage the reliable and secure integration of an increasing number and variety of devices and endpoints:* Today, business users leverage laptops, smartphones and tablets just as often – if not more than – desk-based devices. The ability to communicate seamlessly and securely across devices, applications and endpoints must be managed as part of an integrated communications infrastructure.

Our Answer

Position Avaya as the leader in cloud-based Digital Workplace and Customer Experience Solutions. To accomplish this, we plan to:

- Define innovation in our core market segments by delivering powerful AI-enabled cloud communications solutions,
- Win with global services capabilities that support customer cloud adoption and drive expansion, and

- Activate, convert and transform our installed base by providing a customer journey that enables them to effortlessly migrate to, and consume Avaya cloud services.

In addition, Avaya intends to:

- ***Increase our Midmarket Capabilities and Market Share:*** We believe our market opportunity for the portion of the midmarket segment that Avaya serves is growing. We define the midmarket as firms with between 50 and 250 agents for CC and between 100 and 1,000 employees for UCC. Not only do we believe this segment is growing, but we also believe midmarket businesses are underserved and willing to invest in IT enhancements. We intend to continue to invest in our midmarket offerings and go-to-market resources to increase market share and meet the growing demands of this segment.
- ***Increase Sales to Existing Customers and Pursue New Customers:*** We believe that we have a significant opportunity to increase our sales to our existing customers by offering new solutions from our Avaya OneCloud portfolio. This set of cloud capabilities is supported by our market leadership, global scale and extensive customer interaction, including at the C-suite level, and creates a strong platform from which to drive and shape the evolution of enterprise communications. Our track record with our customers has earned us credibility that we believe provides us with a competitive advantage in helping them cope with this evolution.

  We also believe our refreshed product and services portfolio provides increased potential for acquiring new customers.

  We have worked to become both HIPAA and PCI DSS compliant as we believe the ability to service these two areas will significantly expand our potential customer base and total addressable market. These certifications allow for market penetration into otherwise restrictive and difficult markets, including healthcare and pharmaceuticals.
- ***Invest in Sales and Distribution Capabilities:*** Our flexible go-to-market strategy consists of both a direct sales force and indirect sales through our alliances and channel partners, allowing us to reach customers across industries and around the globe. We believe our channel partner network is a valuable competitive differentiator. We intend to continue investing in our channel partners and sales force in order to optimize their market focus and enter new vertical segments. We provide our channel partners, including master agents and sales agents, with training, marketing programs and technical support through our Avaya Edge program that helps to further differentiate our offerings. These agents are our primary distribution channel for small to midmarket customers. Under our master agent program, small to midmarket sales agents connect potential customers with us and we then handle the rest of the transaction including contracting, provisioning, managing and billing the Avaya services for the business. The master agent program provides an option that rounds out the available choices for customers, channel partners and sales agents to access Avaya's industry-leading communications solutions.
  We also leverage our sales and distribution channels to accelerate customer adoption of our cloud-based solutions and generate an increasing percentage of our revenue from our new high-value software products, video collaboration, midmarket offerings and user experience applications.
- ***Expand Margins and Profitability:*** We maintain a tight focus on profitability levels and are continually evaluating the efficacy of our cost-saving initiatives. These initiatives have contributed to improvements in our gross margin and we expect to pursue additional cost-reduction opportunities. While we anticipate margin and profitability growth to increase over the long-term as a result of these cost-saving initiatives, we expect slight decreases in margin during fiscal 2021 as we invest in our new Avaya OneCloud offerings.

Our Competitive Strengths

We believe the following competitive strengths position us to capitalize on the opportunities created by the market trends affecting our industry.

A Leading Position across our Primary Markets

With a full suite of UCC and CC solutions offered under Avaya OneCloud and our expansive go-to-market capability, we are a leader in business communications. We maintain a leading market share in worldwide contact center agents and are among the leaders in unified communications and collaboration seats. We were recognized as a Leader in the Aragon Research Globe for Unified Communications and Collaboration and Aragon Research Globe for Unified Communications and Collaboration 2020 reports. Additionally, we believe that we are a leading provider of private cloud and managed services and that our market leadership and incumbent position within our customer base provides us with a superior opportunity to cross-sell to existing customers and position ourselves to win over new customers.

Our Open Standards Technology Supports Multi-vendor, Multi-platform Environments

Our open, standards-based technology is designed to accommodate customers with multi-vendor environments seeking to leverage existing investments. Providing enterprises with strong integration capabilities allows them to take advantage of new UCC and CC technology as it is introduced. It does not limit customers to a single vendor or add to the backlog of integration work. We also continue to invest in our developer ecosystem, Avaya DevConnect, which has grown to include more than 119,000 members as of September 30, 2020. Avaya DevConnect, together with our Application Programming Interfaces ("APIs"), which are a set of routines, protocols and tools for building software applications and applications development environments, allow our customers to derive unique and additional value from our architecture.

Building on our Leading Service Capabilities for a Significant Recurring Revenue Stream

Avaya services relationships have long been significant contributors to our large recurring revenue base, and provide us with significant visibility into our customers' future collaboration needs. Our global support services and enterprise cloud and managed services are typically provided to customers through recurring contracts. These contracts generally have terms that range from one- to five-years for support services, and one- to seven-years terms for enterprise cloud and managed services. The launch of our Avaya OneCloud Subscription offer is a further evolution of our global support services business and provides our customers with flexibility in how they consume our solutions.

In addition to insights into their ongoing operational needs, our professional services team engages in migration planning, security services, custom application integration and other consulting activities that position us to understand our customers' business needs today and in the future.

- *Support Services:* Avaya is a leading provider of recurring support services for business communications solutions. Our worldwide services-delivery infrastructure and capabilities help customers address critical business communications needs from initial planning and design through implementation, maintenance and day-to-day operation, monitoring and solution management. With more than 4,000 trained and certified services professionals worldwide, we can help customers find and implement the right communications solutions.

  We believe the Avaya support services team continues to be well-positioned for success due to our close collaboration between our R&D and service planning teams in advance of new product releases. We offer high levels of automation to onboard and manage a customer's communications infrastructure, delivering faster, more effective deployments from proof of concept to production. This includes a robust communications automation platform with full event orchestration leveraging advanced AI functionality. As a pioneer of the omnichannel support experience in enterprise support, Avaya also gives customers the option to interact with our "Ava" virtual agent, to access immediate support answers online. Customers can also connect with one of our experts via web chat, web talk or web video. When necessary, Avaya Services can also directly access our R&D teams to resolve customer issues. All combined, these capabilities position Avaya to provide the highest-quality service for Avaya products.
- *Professional Services:* Avaya offers a broad portfolio of capabilities through its professional services, including implementation/enablement services, system optimization, innovation services, partner solution integration and custom applications development.
- *Enterprise Cloud and Managed Services:* With a focus on customer performance and growth, Avaya's enterprise cloud solutions and managed services solutions range from managing software releases, to operating customer cloud, premise or hybrid-based communication systems, to helping customers migrate to next-generation business communications environments. We believe that our deep understanding of application management supporting unified communications, collaboration and contact center solutions positions us to best manage and operate cloud-based communications systems for our customers.

We believe our employees and consultants are among the best in our industry because they are trained and supported by the best in the industry. The high level of customer satisfaction ratings we receive for support transactions is a testament to the expertise of our people. These dedicated professionals are focused on satisfying customer needs, driving a proactive and preventive agenda to help customers maintain optimum levels of service.

We continue to broaden the options for cloud-based service offerings, expanding our consulting services capabilities and upselling our existing customers to our cloud-based and managed services offerings. We are investing to provide additional options along the spectrum of support service offerings, constantly developing our tools and infrastructure to improve our service levels. In addition, as our custom applications development team complete customer-funded application development engagements, they identify opportunities to monetize those solutions across our broader customer base.

Expanding Cloud Offerings and Capabilities

In our experience, technology and business leaders are increasingly turning to cloud-based technologies and business models that help enterprises cut costs, increase productivity, simplify IT environments and shift, when possible, to subscription-based models. We are investing in the expansion of our cloud and hybrid cloud solutions and through our Avaya OneCloud portfolio, offer solutions and technologies that span on-premise, private, public and hybrid cloud development models. Avaya Cloud Office, launched in fiscal 2020, will position us to further meet market demand for cloud-based unified communications and collaboration applications, while the launch of our next-generation CCaaS offering will support customer demand in contact center applications.

Open Standards, Product Differentiation and Innovation

Avaya's open architecture provides a competitive advantage for us as potential customers consider migrating to our solutions and services because we can integrate with incumbent competitor systems and provide a path for gradual transition, while immediately achieving overall cost savings and improved functionality.

Throughout fiscal 2020, we enhanced our Avaya OneCloud portfolio by rolling out new solutions to address growing demand for our CCaaS, CPaaS, UCaaS and Subscription offerings, as customers transition to cloud-based and subscription consumption models to support public, private and hybrid cloud or on-premise deployments.

We expect to continue investing in innovation across the portfolio to bring further enhancements and breakthroughs to market, encouraging customers to continue to add innovative new capabilities to their systems. As we expand our cloud and mobility opportunities, we are also identifying new ways to leverage virtual desktop infrastructure to securely deliver business communications to users. We are developing AI solutions internally and with partners to help organizations transform customer experiences. We are deploying these disruptive solutions to drive incremental value for our customers, and their customers.

Research and Development ("R&D")

Avaya makes substantial investments in R&D to develop new systems, solutions and software in support of business communications, including, but not limited to, converged communications systems, communications applications, multimedia contact center innovations, collaboration tools, messaging applications, video, speech-enabled applications, business infrastructure and architecture, converged mobility systems, cloud offerings, web services, artificial intelligence, communications-enabled business processes and applications, and services for our customers. Over the past three fiscal years, we have invested approximately $780 million in R&D, including technology acquisitions.

We invested 19.3%, 16.7% and 16.9% in R&D as a percentage of product revenue in fiscal 2020, 2019 and 2018, respectively, reflecting a consistent investment in R&D as a percentage of product revenue and evidencing our commitment to innovation. Our investments in fiscal 2020 focused on driving innovative cloud solutions across our portfolio and new releases of our UCC and CC solutions.

Patents, Trademarks and Other Intellectual Property

We own a significant number of patents important to our business and we expect to continue to file patent applications to protect our R&D investments in new products and services across all areas of our business. As of September 30, 2020, we had more than 4,400 patents and pending patent applications, including foreign counterpart patents and foreign applications. These patents and pending patent applications cover a wide range of products and services involving a variety of technologies. For the U.S., patents terms may be 20 years from the date of the patent's filing, depending upon term adjustments made by the patent office. In addition, we hold numerous trademarks in the U.S. and in other countries. We also have licenses to intellectual property for the manufacture, use and sale of our products.

We obtain patent and other intellectual property rights used in connection with our business when practicable and appropriate. Historically, we have done so both organically, through commercial relationships, and in connection with acquisitions.
We manage our patent portfolio to maximize return on investment by selectively selling patents at market prices and cross licensing with other parties when such sales or licensing are in best our interests. These monetization programs are conducted in a manner that helps to preserve Avaya's freedom to operate and to help ensure that Avaya retains patents needed for defensive use.

From time to time, assertions of infringement of certain patents or other intellectual property rights of others have been made against us, and certain pending claims are in various stages of litigation. Based on our experience and customary industry practice, we believe that any licenses or other rights that might be necessary for us to continue with our current business could be obtained on commercially reasonable terms. For more information concerning the risks related to patents, trademarks and other intellectual property, see Item 1A, "Risk Factors-Risks Related to Our Business-Intellectual Property and Information Security-We may be subject to litigation and infringement claims, which could cause us to incur significant expenses or prevent us from selling our products or services."

Customers

Avaya employs a flexible, go-to-market strategy to support our diverse customer base, ranging in size from small businesses employing a few employees to large government agencies and multinational companies with more than 100,000 employees. Our customers operate in a broad range of industries, including financial services, manufacturing, retail, transportation, energy, media and communications, hospitality, health care, education and government. Our customers include leading Forbes Global 2000 companies across all these industries. For more information concerning the risks related to contracts with the U.S. federal government, see Item 1A, "Risk Factors - Risks Related to Our Business-Our Operations, Markets and Competition-Contracting with government entities can be complex, expensive and time-consuming."

Sales and Distribution

Our global go-to-market strategy is designed to focus and strengthen our reach and impact on large multinational enterprises, midmarket and regional enterprises and small businesses. Our go-to-market strategy is intended to serve our customers in the way they prefer to work with us, either directly with Avaya or indirectly through our sales channel, which includes our global network of strategic alliances, channel partners, distributors, dealers, value-added resellers, telecommunications service providers, system integrators, master agents and sub-agents. Our sales organizations are equipped to sell our comprehensive Avaya OneCloud portfolio complemented by services offerings including product support, integration and other professional services, and enterprise cloud and managed services.

We continue to focus on efficient deployment of Avaya sales resources, both directly and indirectly through our channel partners, for maximum market penetration and global growth. Our investment in our sales organization includes fully integrated curricula on the sales process, guided selling, sales enablement and our solutions for all roles within our sales organization.

Seasonal trends impact the sale of our products. Typically, our second fiscal quarter is our weakest and our fourth fiscal quarter is our strongest, see Item 1A, "Risk Factors - Risks Related to Our Financial Results, Finances and Capital Structure-In addition to experiencing some seasonal trends, our quarterly and annual revenues and operating results have historically fluctuated and the results of one period may not provide a reliable indicator of our future performance."

Development Partnerships

The Avaya DevConnect program is designed to promote the development, compliance-testing and co-marketing of innovative third-party products that are compatible with Avaya's standards-based products. Member organizations have expertise in a broad range of technologies, including IP telephony, contact center and unified communications and collaboration applications.

As of September 30, 2020, over 32,000 companies have registered with the program, including over 280 companies operating at higher program levels, eligible for technical support and to submit their products or services for compatibility testing through the program by the Avaya Solution Interoperability and Test Lab ("Avaya Test Lab"). Avaya DevConnect engineers work in concert with each submitting member company to develop comprehensive test plans for each application to validate the product integrations.

Manufacturing and Suppliers

We have outsourced substantially all of our manufacturing operations to several contract manufacturers. Our contract manufacturers produce the vast majority of our products in facilities located in southern China, with other products manufactured in facilities located in Mexico, Taiwan, Germany, Ireland and the U.S. All manufacturing of our products is performed in accordance with detailed specifications and product designs, furnished or approved by Avaya, and is subject to rigorous quality control standards. We periodically review our product manufacturing operations and consider changes we believe may be necessary or appropriate. We also purchase certain hardware components and license certain software components from third-party Original Equipment Manufacturers ("OEMs"), which we then resell separately or as part of our products under the Avaya brand.

In some cases, certain components are available only from a single source or from a limited number of suppliers. Delays or shortages associated with these components could cause significant disruption to our operations, although we have not yet had any such event have a material impact on us. We have also outsourced substantially all our warehousing and distribution logistics operations to several providers of such services on a global basis, and any delays or material changes in such services could cause significant disruption to our operations, although many alternative suppliers are active in the market today. For more information on risks related to products, components and logistics, see Item 1A, "Risk Factors-Risks Related to Our Business-Our Operations, Markets and Competition-We rely on third-party contract manufacturers, component suppliers and partners (some of which are sole source and limited source suppliers) and warehousing and distribution logistics providers. If these relationships are disrupted and we are unable to obtain substitute manufacturers, suppliers or partners, on favorable terms or at all, our business, operating results and financial condition may be harmed."

The Company has not experienced any material impacts from the tariffs levied by the U.S. Government on goods manufactured in China and sold into U.S. markets.

Competition

Although we believe we are differentiated from any single competitor, the following represent the Company's primary competitors in various lines of our business:

- **Enterprise UCC**: Cisco, Microsoft, NEC, Atos Unify, Alcatel-Lucent Enterprise and Huawei.
- **Midmarket UCC**: Mitel, NEC, Cisco and Microsoft.
- **Cloud Products and Services:** Cisco, Microsoft, RingCentral, 8x8, Mitel, Google, LogMeIn, Fuze, Zoom and Twilio.
- **Video Products and Solutions:** Cisco, Microsoft, Zoom, LogMeIn, Google, Poly, Huawei, ZTE, Ring Central, BlueJeans, and LifeSize.
- **Enterprise Contact Center Products and Services:** Genesys, Cisco, Aspect Software, Huawei, NEC and Enghouse Interactive.
- **Midmarket Contact Center Products and Services:** Genesys, Cisco, Five9, NICE InContact, Amazon, Twilio, Talkdesk and Vonage.

We also face competition in certain geographies with companies that have a particular strength and focus in these regions, such as Huawei in China and Intelbras in Latin America.

While we believe our global, in-house end-to-end services organization as well as our indirect channel provide us with a competitive advantage, we face competition from companies offering products and services directly or indirectly through their channel partners, as well as resellers, consulting and systems integration firms and network service providers.

For more information on risks related to our competition, see Item 1A, "Risk Factors-Risks Related to Our Business-Our Operations, Markets and Competition-We face formidable competition from providers of unified communications and contact center solutions and services, including cloud-based solutions, and this competition may negatively impact our business and limit our growth."

Employees and Human Capital Management

As of September 30, 2020, we had 8,266 employees with 2,774 located in the U.S. and 5,492 located outside the U.S. There were 7,941 employees not represented by unions or similar organizations and 325 that were represented and covered by collective bargaining agreements. Of the 325 full-time employees covered by collective bargaining agreements, 310 were located in the U.S. Over recent years, we have assembled a new senior management team that is action-oriented with a disruptive mindset and the willingness to move the business forward to achieve our objectives.

The Compensation Committee of our Board of Directors is responsible for monitoring our human capital management, including, among other aspects, management depth and strength assessment, leadership development, talent assessment, diversity, equality and inclusion and our employee survey results. While human capital management is overseen at the highest level of our Company, it is woven into the everyday fabric of Avaya's culture.

At Avaya, our people – and the richness of their ethnicities, perspectives, experiences and skills - are the driving force behind our every success. We established cultural principles that are the foundation of our success and put these into action by living our cultural principles in everything we do. Our cultural principles are: simplicity, accountability, teamwork, trust and empowerment. These cultural principles serve as the framework in which we hire, train and manage and assess the performance our global employee population. We believe these principles help differentiate us and, in part, allowed us to retain 96.4% of our top-rated employees throughout fiscal 2020. This represents a 2.1 point increase year over year.

As part of Avaya's overall dedication and investment in its employees and consistent with its people first strategy, we conduct employee engagement surveys. The surveys in each of fiscal 2018 and fiscal 2019 focused on a variety of different areas, including employee trust in the leadership, effectiveness of leadership communication, and personal and professional employee development. As a result of our transition to a largely work from home workforce in response to global efforts to contain the impact of the COVID-19 pandemic, our engagement survey in fiscal 2020 focused on remote working, including topics such as the employees' continued effectiveness in a remote environment, access to the necessary resources to be successful in their roles, continued customer focus in a virtual environment and gauging our employees' health and wellbeing. Avaya intends to continue to monitor engagement through different surveys.

Lastly, Avaya continues to strive to make diversity, equality and inclusion a priority. As of September 30, 2020, 22% of the global employee headcount was female and 26% of our employees in the United States self-identified as part of a minority group. For additional information on the workplace elements of Avaya's Corporate Responsibility Program see "--Corporate Responsibility and Culture at Avaya."

Corporate Responsibility and Culture at Avaya

Creating experiences that matter not only defines how Avaya does business, but how we aspire to impact the world. The Avaya OneCloud portfolio of communications solutions contributes to environmental sustainability, supporting remote working initiatives through unified communications solutions such as video, collaboration and team rooms. Our company and our associates also drive positive change by taking action and building partnerships to address pressing environmental and community issues as part of our commitment to Corporate Responsibility. We are leveraging sustainability as an opportunity for innovation, such as developing new initiatives to eliminate single-use plastics in our operations and supply chain. Our employees, customers, partners and suppliers continue to make meaningful and lasting differences in the world, including donating their time and money to support charities and non-profit organizations worldwide. And we are advancing awareness of diversity and inclusion by engaging in dialogue with our employees and leaders.

Avaya's Corporate Responsibility Program incorporates four key elements: Environment, Community, Marketplace and Workplace. For the Environment element, Avaya looks to implement environmental stewardship practices at our global locations. Community represents Avaya working to positively impact society and supporting the communities where we are located. Marketplace includes engaging in fair and ethical business dealings with our customers, our partners and our supply chain. Workplace focuses on developing a desirable place to work for our employees across the globe.

- With 8,266 global employees, diversity, inclusion and equity have been fundamental to Avaya's core values. Avaya is a member of the CEO Action for Diversity & Inclusion program to work toward a more inclusive and progressive workplace that values differences and evolves understanding and is also a signatory to the statement from the Silicon Valley Leadership Group standing up for racial justice and equality. This statement is available on www.avaya.com. Information on our website is not a part of this report.
- Avaya has also made a commitment to a newly established Avaya Diversity & Inclusion Council. This council, which is to be created by Avaya employees, aims to build a workplace where individuality is celebrated and harnessed, creating a culture of engagement, innovation and inclusivity.
- Avaya has also created new employee resource groups, including the WIN@A (Women Inspired Network @ Avaya) group focused on women, and ABLE (Avaya Blacks Leading Empowerment) and is also creating new groups for Veterans, LGBTQ employees, Hispanics/Latinos and other employee-defined priority groups.
- These Company-sponsored groups provide the global Avaya team with an opportunity to share open dialogue around issues, promote a culture of Diversity and Inclusion, and provide new business and audience insights into the Company's diverse customer base.
- Avaya conducts unconscious bias training for all employees. This is not a new program, but has been accelerated to allow for more timely discussions and a greater sense of urgency.
- The Company's Talent Acquisition program has led to steady year-over-year increases in female and minority representation in leadership positions across Avaya, and the team is currently implementing a series of new tools and practices to further increase diversity in the Company's candidate pools for hiring and advancement.

The Company has taken an employee-first view of diversity and inclusion, and employees are encouraged to support each other and Avaya communities in light of recent events. We are closely tracking progress on these key items, while exploring other initiatives, from corporate social responsibility, to investments in non-profit organizations, to supporting employee efforts and supporting the global communities where Avaya employees live and work.

Environmental, Health and Safety Matters

Avaya is subject to a wide range of governmental requirements relating to safety, health and environmental protection, including:

- certain provisions of environmental laws governing the cleanup of soil and groundwater contamination;
- various local, federal and international laws and regulations regarding the material content and electrical design of our products that require us to be financially responsible for the collection, treatment, recycling and disposal of those products; and
- various employee safety and health regulations that are imposed in various countries within which we operate.

We are currently involved in a few remediations at currently or formerly owned or leased sites, which we do not believe will have a material impact on our business or results of operations. See Item 1A, "Risk Factors-Risks Related to Our Business-Global Operations and Regulations-We may be adversely affected by environmental, health and safety laws, regulations, costs and other liabilities" for a discussion of the potential impact such governmental requirements and climate change risks may have on our business.

Cybersecurity

Avaya has a vigorous, risk-based cybersecurity program, dedicated to protecting our data as well as data belonging to our customers and partners. We utilize a defensive in-depth strategy, with multiple layers of security controls to protect our data and solutions. Organizationally, we have a Product Security Council, cross-functional Cyber Incident Response teams, Security Operations Centers, and strong governance to ensure compliance with our security policies and protocols. These teams are comprised of experts across our enterprise, as well as outside experts, to ensure that we are monitoring the effectiveness of our cybersecurity governance and vulnerability management programs.

For more information on risks related to data security, see Item 1A, "Risk Factors-Risks Related to Our Business-Intellectual Property and Information Security- A breach of the security of our information systems, products or services or of the information systems of our third-party providers could adversely affect our business, operating results and financial condition."

Corporate Information

Our principal executive offices are located at 2605 Meridian Parkway, Suite 200, Durham, North Carolina. Our corporate telephone number is (908) 953-6000. Our website address is www.avaya.com. Information contained in, and that can be accessed through our website is not incorporated into and does not form a part of this Annual Report on Form 10-K.

Avaya Holdings is a holding company with no stand-alone operations and has no material assets other than its ownership interest in Avaya Inc. and its subsidiaries. All of the Company’s operations are conducted through its various subsidiaries, which are organized and operated according to the laws of their jurisdiction of incorporation or formation, as applicable, and consolidated by the Company.

The Company's corporate governance documents, including the Board of Directors' Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee charters are available, free of charge, on Avaya’s website at https://investors.avaya.com.

All of the Company's periodic reports filed with the Securities and Exchange Commission ("SEC") pursuant to Section 13(a), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, are available, free of charge, on Avaya’s website, including its Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, Proxy Statements and any amendments to those reports. These reports and amendments are available on Avaya’s website as soon as reasonably practicable after the Company electronically files the reports or amendments with the SEC. The SEC maintains a website (www.sec.gov) that contains these reports, proxy and information statements and other information.

Emergence from Bankruptcy

On January 19, 2017 (the "Petition Date"), Avaya Holdings Corp., together with certain of its affiliates (collectively, the "Debtors"), filed voluntary petitions for relief (the "Bankruptcy Filing") under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). On November 28, 2017, the Bankruptcy Court entered an order confirming the Second Amended Joint Plan of Reorganization filed by the Debtors on October 24, 2017 (the "Plan of Reorganization"). On December 15, 2017 (the "Emergence Date"), the Plan of Reorganization became effective and the Debtors emerged from bankruptcy.

Beginning on the Emergence Date, the Company applied fresh start accounting, which resulted in a new basis of accounting and the Company becoming a new entity for financial reporting purposes. As a result of the application of fresh start accounting and the effects of the implementation of the Plan of Reorganization, the Consolidated Financial Statements after December 15, 2017 are not comparable with the Consolidated Financial Statements on or prior to that date. Our financial results for the period from October 1, 2017 through December 15, 2017 are referred to as those of the "Predecessor" period. Our financial results for the period from December 16, 2017 through September 30, 2018 are referred to as those of the "Successor" period or periods. Our results of operations as reported in our Consolidated Financial Statements for these periods are in accordance with accounting principles generally accepted in the United States of America ("GAAP"). Although GAAP requires that we report on our results for the period from October 1, 2017 through December 15, 2017 and the period from December 16, 2017 through September 30, 2018 separately, we have in certain instances in this report presented operating results for the fiscal year ended September 30, 2018 by combining the results of the Predecessor and Successor periods because such presentation provides the most meaningful comparison of our results to prior periods.

For a more detailed discussion of our bankruptcy proceedings (the "Restructuring"), see Part II, Item 7 "Management’s Discussion and Analysis of Financial Condition and Results of Operations" and Part II, Item 8, Note 24, "Fresh Start Accounting," to our Consolidated Financial Statements.

Item 1A. ***Risk Factors***

Summary of Risk Factors

The risk factors summarized and detailed below could materially harm our business, operating results and/or financial condition, impair our future prospects and/or cause the price of our common stock to decline. These are not all of the risks we face and other factors not presently known to us or that we currently believe are immaterial may also affect our business if they occur. Material risks that may affect our business, operating results and financial condition include, but are not necessarily limited to, those relating to:

Risks Related to our Business

- executing our strategic operating plan, including our strategic partnership with Ring Central, Inc.;
- shifting more of our business to a subscription-based operating expense model which may harm our cash flows;
- the novel coronavirus ("COVID-19") pandemic and other future epidemics and public health crises;
- completing acquisitions and/or strategic alliances, including those needed to increase our share of the cloud communications industry and integrating such acquired businesses and alliances;
- market opportunities may not develop for our solutions and services in ways that we anticipate and we may not succeed in developing new innovative solutions and services to keep pace with rapidly changing technology, evolving industry standards and customer preferences;
- industry consolidation and competition from providers of unified communications and contact center solutions and services, including cloud-based solutions;
- our ability to continue to expand our cloud-based solutions and services offerings;
- our reliance on our indirect sales channel;
- disruptions to our third-party contract manufacturers, component suppliers and partners (some of which are sole source and limited source suppliers) and warehousing and distribution logistics providers;
- changes in U.S. trade policy, including the imposition of tariffs;
- compliance with laws and regulations relating to the formation, administration, performance and pricing of contracts with government entities;
- the ability to detect and correct design defects, errors, failures or "bugs" in our products and services;
- disruptions to our business due to catastrophic disasters or events, including health epidemics;
- protection of our proprietary rights to our intellectual property;
- some of our products contain software from open source code sources;
- litigation, intellectual property, infringement claims and the protection of our intellectual property;
- failure to comply with laws and contractual obligations related to data privacy and protection;
- security breaches of our information systems, products or services or of the information systems of our third-party providers;
- operational, logistical, economic and/or political challenges in a specific country or region, which could negatively affect our revenue, costs, expenses and financial condition or those of our channel partners and distributors;
- compliance with certain telecommunications or other rules and regulations, which could subject us to enforcement actions, fines, loss of licenses and possibly restrictions on our ability to operate or offer certain of our services;
- compliance with U.S. and foreign government laws and regulations, including environmental, health, safety and data privacy laws and regulations and economic sanctions;

Risks Related to Our Financial Results, Finances and Capital Structure

- our revenues and operating results have historically fluctuated and may not be a reliable indicator of our future performance;
- shifts in the mix of sizes or types of organizations that purchase our solutions or the mix of products, solutions and services purchased by our customers could affect our gross margins and operating results;
- not realizing the expected benefit from cost-reduction initiatives;

- we may be required to record a significant charge to earnings if our goodwill or intangible assets become impaired;
- our degree of leverage;
- restrictions included in our financing agreements and indentures;
- our ability to service all of our indebtedness and other ongoing liquidity needs and to raise additional capital to fund our operations;
- the price of our common stock may be volatile and fluctuate substantially;
- potential for significantly dilutive issuance of common stock, including upon the conversion of our convertible notes and preferred stock;
- our intention not to pay dividends on our common stock for the foreseeable future; and
- the holders of our Series A Preferred Stock have certain consent rights over charter amendments and issuances of senior equity and they may exercise their redemption or put rights.

Risks Related to Our Business

Our Operations, Markets and Competition

If we do not successfully execute our strategic operating plan, or if our strategic operating plan is flawed, our business, operating results and financial condition could be materially and adversely affected.

Each year, we develop our strategic operating plan that serves as a roadmap for implementing our business strategy and the basis for the allocation of resources, capital, investment decisions, product life cycles, process improvements and strategic alliances and acquisitions. In developing the strategic plan, we make certain assumptions including, but not limited to, those related to the market environment, customer demand, evolving technologies, competition, market consolidation, the global economy and our overall strategic priorities for the upcoming fiscal year. We sell business communications solutions and services in markets where the technology available and the utilized go-to-market models are rapidly changing. Actual economic, market and other conditions may be different from our assumptions and we may not be able to successfully execute our strategic operating plan. Moreover, because we deliver sophisticated products and solutions, our sales process for a portion of our business is complex, lengthy and complicated. If we do not successfully execute our strategic operating plan, or if actual results vary significantly from our assumptions, our business, operating results and financial condition could be adversely impacted. Potential adverse impacts include, but are not limited to, investments made in research and development that do not develop into commercially successful products, operating inefficiencies, unsuccessful strategic alliances or acquisitions or lower revenues due to our sales focus being misaligned with customer demand or an inability to compete effectively against competitors. In addition, unforeseen events, such as the COVID-19 pandemic, could have a significant effect on our ability to execute our strategic plan.

The timing of our cash flows may be negatively impacted as we shift more of our business to a subscription-based model.

We intend to increase our recurring revenue by shifting more of our business to a subscription-based model instead of a perpetual license model. To do this, we need to offer relevant cloud-enabled unified communications and contact center solutions and services at competitive prices, which will both attract new customers and which we can bundle and upsell to existing customers. If we successfully increase our subscription revenues, we expect that it will result in more of our cash receipts being deferred relative to our historical perpetual license model as payments are spread over a pre-determined time period (e.g. monthly or annually) rather than being received upfront.

The COVID-19 pandemic could have a material adverse effect on the Company's business, results of operations and financial condition and/or cash flows.

On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic. The COVID-19 pandemic, and the responses of governments worldwide to COVID-19, are having a negative impact on regional, national and global economies, disrupting supply chains and reducing international trade and business activity. The pandemic has caused many governments throughout the world to implement stay-at-home orders, quarantines, significant restrictions on travel and other social distancing measures including restrictions that prohibit many employees from commuting to their customary work locations and require these employees to work remotely if possible. Many of these restrictions have remained in place for months and in light of recent resurgences in the outbreak may continue in one fashion or another for the foreseeable future.

The impact of the COVID-19 pandemic has and may continue to adversely impact our financial condition and results of operations in a variety of ways, including, but not limited to:

- Our ability to operate, as well as our partners' and/or customers' ability to operate in affected areas, has been and may continue to be hindered, which may cause our business and operating results to decline.
- The inability of our employees to access customers' sites has and will continue to hinder our ability to offer services that can only be provided on site, as well as our ability to make in person sales visits and demonstrations.
- Clients and customers have had and may continue to have difficulty meeting their payment obligations to us, resulting in late or non-payment of amounts owed.
- We may experience significant reductions or volatility in demand for our solutions as customers may not be able to enter into new purchase commitments or otherwise invest in their business due to financial downturns or general economic uncertainty.
- We may experience temporary or long-term disruptions in our supply chain, which may significantly impact our distribution network, results of operations (including sales) or business.
- The effects of shelter-in-place orders may negatively disrupt our business as a number of our employees, customers and partners, work remotely, the magnitude of which will depend, in part, on the length and severity of the restrictions and other limitations on our ability to conduct our business in the ordinary course.

- To the extent a number of our employees, including our executive officers and other members of our management team, are impacted in significant numbers by the outbreak of the pandemic and are not available to conduct work, our business and operating results may be negatively impacted.
- We may not be able to ensure business continuity in the event our continuity of operations and crisis management plans are not effective or are improperly implemented.
- The significant disruption of global financial markets, which has impacted the value of our common stock and could further materially impact the value of our stock in the future, may reduce our ability to access further capital, which could in the future negatively affect our liquidity and could affect our business in the near and long-term.

The extent of the impact of the COVID-19 pandemic on our business, financial performance and liquidity, including our ability to execute our near-term and long-term business strategies and initiatives in the expected time frame, will depend on future developments, including the duration and severity of the pandemic, as well the timing of the development of vaccines and other therapeutic measures, none of which can be predicted. Any of the foregoing factors, or other cascading effects of the COVID-19 pandemic that are not currently foreseeable, could have a material adverse effect on our business, results of operations, financial condition and/or cash flows. Some economists are predicting that the recession caused by the COVID-19 pandemic, including as a result of the actions by governments to slow the spread of the disease will be steep and severe. The effectiveness of economic stabilization efforts, including government stimulus efforts, is not assured. Additionally, as pandemic conditions wane, we cannot predict how quickly the marketplaces in which we operate will return to normal.

Furthermore, our business could be adversely affected in the future by the effects of other health epidemics and the widespread outbreak of different contagious diseases other than COVID-19. Any outbreak of contagious diseases, and other adverse public health developments, could have a material and adverse effect on our business operations. These could include supply-chain disruptions, restrictions on our ability to distribute our products and restrictions on our abilities to provide services in the regions affected. Any prolonged and significant supply-chain disruptions or inability to provide products or services would likely impact our sales in the affected region, increase our costs and negatively affect our operating results. In addition, as we have seen in fiscal 2020, a significant outbreak of a contagious disease in the human population could result in a widespread health crisis that could adversely affect the economies and financial markets of many countries, resulting in an economic downturn that could affect demand for our products and services and likely impact our operating results.

There is no assurance that we will be able to successfully complete acquisitions and/or strategic alliances, including those needed to increase our share of the cloud communications market, so that we may accelerate the execution of our growth strategy.

Our strategic operating plan requires continued investments in acquisitions and strategic alliances with other companies in various areas, specifically, with respect to, accelerating the development, sales and delivery of our cloud-based solutions and services. Identifying and evaluating potential strategic alternatives and/or partners may be time consuming and divert the attention and focus of management and other key personnel. In addition, we may incur substantial expenses as part of that process. Any potential transaction would be dependent upon a number of factors that may be beyond our control, including among other things, economic conditions, market consolidation, industry trends and competing bidders. There is no assurance that we will be able to complete any acquisition or strategic alliance even if we expend significant sums and efforts in connection with a potential transaction. Without such transactions it may be challenging for us to execute on our strategic operating plan in our desired time frame and our business, operating results and financial condition could be harmed.

Our strategic operating plan relies in part upon the successful execution of our strategic partnership with RingCentral, Inc. ("RingCentral"), which may not be successful.

Our strategy relies on market acceptance of our cloud-based solutions and investing in being at the forefront of offering these solutions. Our ability to implement this strategy relies, at least in part, on our strategic partnership with RingCentral. A strategic partnership between two independent businesses is a complex, costly, and time-consuming process that will require significant management attention and resources. Realizing the benefits of our strategic partnership with RingCentral will depend in part on our ability to work with RingCentral to develop, market and sell Avaya Cloud Office by RingCentral ("Avaya Cloud Office" or "ACO"). Setting up the operations and processes under which we and RingCentral will work together may disrupt our business and, if implemented ineffectively, would limit the expected benefits to us. While the efforts of our strategic partnership and the launch of ACO has been successful to date, this alliance is still in a nascent stage and unforeseen challenges may arise, which could impact the ultimate benefits achieved from the alliance. In addition, the process of bringing ACO to market in additional countries may take longer than anticipated, which could negate some of our anticipated benefits and revenue opportunities.

The failure to meet the challenges involved in having two businesses work together could harm our ability to realize the anticipated benefits of this partnership and cause an interruption of, or a loss of momentum in, our business activities in a way that could adversely affect our results of operations. Due to this, as well as the potential that we may incur significant costs

associated with this partnership but our revenues may not increase as anticipated, our business, operating results and financial condition may be materially and adversely affected.

If we are unable to integrate acquired businesses effectively, our business, operating results and financial condition may be adversely affected.

Our strategic operating plan requires continued investments in acquisitions, such as our acquisition of Intellisist, Inc. (d/b/a Spoken), a U.S. based private technology company, which provides cloud-based CCaaS solutions and customer experience management and automation applications, in March 2018. We may not be able to successfully integrate acquired businesses and, where desired, their product portfolios into ours, resulting in the failure to realize the intended benefits. If we fail to successfully integrate acquisitions or product portfolios, or if they fail to perform as we anticipate, our existing businesses and our revenue and operating results could be adversely affected. If the due diligence of the operations and customer arrangements of acquired businesses performed by us and by third parties on our behalf is inadequate or flawed, or if we later discover unforeseen financial or business liabilities, acquired businesses and their assets may not perform as expected or we may come to realize that our initial investment was too large or unwarranted. Additionally, acquisitions could result in difficulties integrating acquired operations and, where deemed desirable, transitioning overlapping products into a single product line, thereby resulting in the diversion of capital and the attention of management and other key personnel away from other business issues and opportunities. We may fail to retain employees acquired through acquisitions, which may negatively impact our integration efforts. Consequently, the failure to integrate acquired businesses effectively may adversely impact our business, operating results and financial condition.

The market opportunity for business communications solutions and services may not develop in the ways that we anticipate, and we may not succeed in developing new, innovative solutions and services, which could harm our business, operating results and financial condition.

The demand for our solutions and services can change quickly and in ways that we may not anticipate because the market in which we operate is characterized by rapid, and sometimes disruptive, technological developments, evolving industry standards, frequent new product introductions and enhancements, changes in customer requirements and a limited ability to accurately forecast future customer orders. Our operating results may be adversely affected if the market opportunity for our solutions and services does not develop in the ways that we anticipate or if other technologies become more accepted or standard in our industry or disrupt our technology platforms.

Our solutions and services may fail to keep pace with rapidly changing technology, evolving industry standards and customer preferences.

Both traditional and new competitors are investing heavily in our markets and competing for customers. As next-generation business communications technology continues to evolve, including, without limitation, cloud-based communications solutions, we must keep pace in order to maintain or expand our market leading position. We are increasingly focused on new, high value software solutions to drive revenue. If we are not able to successfully develop and bring these new solutions to market in a timely manner, achieve market acceptance of our solutions and services or identify new market opportunities for our solutions and services, our business, operating results and financial condition may be materially and adversely affected.

In addition, our solutions need to keep pace with new smart devices and the release of new operating systems so that our customers may continue to use and manage our cloud-based solutions on smart devices. The creation, support and maintenance of our mobile applications may require significant resources and requires us to maintain good relations with the application developers and users. If we are unable to support the mobile platforms which our customers use or maintain good working relationships with these developers and users, our growth, business and operating results may be impacted.

We face formidable competition from providers of unified communications and contact center solutions and services, including cloud-based solutions, and this competition may negatively impact our business and limit our growth.

The markets for our solutions and services are characterized by rapid changes in customer demands, ongoing technological changes, evolving industry standards, new product introductions, and evolving methods of building and operating networks. Both traditional and new competitors are investing heavily in this market and competing for customers. As these markets evolve, we expect competition to intensify and to expand to include companies that do not currently compete against us.

Because we offer solutions for contact centers and unified communications which are cloud-based, on-premise or hybrid, we face a wide range of competitors. Some of our competitors include:

- **Enterprise UCC:** Cisco, Microsoft, NEC, Atos Unify, Alcatel-Lucent Enterprise and Huawei.
- **Midmarket UCC:** Mitel, NEC, Cisco and Microsoft.
- **Cloud Products and Services:** Cisco, Microsoft, RingCentral, 8x8, Mitel, Google, LogMeIn, Fuze, Zoom and Twilio.

- **Video Products and Solutions:** Cisco, Microsoft, Zoom, LogMeIn, Google, Poly, Huawei, ZTE, RingCentral, BlueJeans and LifeSize.
- **Enterprise Contact Center Products and Services:** Genesys, Cisco, Aspect Software, Huawei, NEC and Enghouse Interactive.
- **Midmarket Contact Center Products and Services:** Genesys, Cisco, Five9, NICE InContact, Amazon, Twilio, Talkdesk and Vonage.

We also face competition in certain geographies with companies that have a particular strength and focus in some of the geographic regions in which we operate, such as Huawei in China and Intelbras in Latin America.

Several of our existing competitors have, and many of our future competitors may have, greater financial, personnel, technical, R&D and other resources, more well-established brands or reputations and broader customer bases than we do and, as a result, these competitors may be in a stronger position to respond quickly to potential acquisitions and other market opportunities, new or emerging technologies and changes in customer requirements. On the other hand, smaller competitors may be able to respond to technological evolution and changes in customer demand with more speed and agility than we can. In addition, some competitors may have customer bases that are more geographically balanced than ours and, therefore, may be less affected by an economic downturn in a particular region. Other companies may have relationships with channel partners, distributors, resellers, consulting and systems integration firms and/or network service providers which pose a competitive threat to us. Moreover, other competitors may have deeper expertise in a particular stand-alone technology that develops more quickly than we anticipate. Competitors with greater resources may also be able to offer lower prices, additional products or services or other incentives that we cannot match or do not offer.

In addition, because the business communications market continues to evolve and technology continues to develop rapidly, we may face competition in the future from companies that do not currently compete against us, but whose current business activities may bring them into competition with us in the future. In particular, this may be the case as business, information technology and communications applications deployed on converged networks become more integrated to support business communications. We may face increased competition from current leaders in IT infrastructure, consumer products, personal and business applications and the software that connects the network infrastructure to those applications. With respect to services, we may also face competition from companies that seek to sell remotely hosted services or software as a service directly to end customers. Competition from these potential market entrants may take many forms, including offering products and solutions similar to those that we offer. In addition, certain of these technologies continue to move from a proprietary environment to an open standards-based environment.

We cannot predict which competitors may enter our markets, what forms such competition may take or whether we will be able to respond effectively to new competitors or to the rapid evolution in technology and product development that has characterized our businesses. In addition, in order to effectively compete with any new technology or a new market entrant, we may need to make additional investments in our business, use more capital resources than our business currently requires or reduce prices, any of which may materially and adversely affect particular parts of our business, or our business as a whole.

Industry consolidation may lead to stronger competition and may harm our business, operating results and financial condition.

There has been a trend toward industry consolidation in the markets in which we compete and companies which provide unified communications are purchasing contact center providers. We expect this trend to continue as companies attempt to strengthen or hold their positions in an evolving market and as companies are acquired or sell businesses because they are unable to continue all or a portion of their operations. Companies that are strategic alliance partners in some areas of our business may acquire or form alliances with our competitors, thereby reducing their business with us. Furthermore, rapid consolidation, particularly in the value-added reseller ("VAR") and service provider markets, will lead to fewer customers, with the effect that loss of a major customer could have a material impact on our business.

We also believe that industry consolidation may result in stronger competitors that are better able to compete as sole-source vendors for customers. This could lead to more variability in our operating results and could have a material adverse effect on our business, operating results and financial condition.

Our growth strategy depends on our ability to continue to expand our cloud-based solutions and services offerings and grow our share of the cloud communications market for such offerings through customer acceptance.

An important element of our growth strategy is our ability to significantly increase revenues generated from sales of our cloud-based communications solutions and related services. To increase our revenue, we must continue to expand and develop new cloud-based solutions and services offerings as the market rapidly develops and changes. Our cloud enabled unified communications and contact center solutions and services must offer relevant features and provide consistent high-quality services at competitive prices to attract new customers and to migrate existing customers to such solutions and services. While

we have entered into a strategic partnership with RingCentral that enhances our cloud-based offerings, there is no assurance that this partnership will provide us with the desired long-term growth opportunities and results as there are a number of dependencies, including customer acceptance of ACO.

The cloud communications industry is competitive and rapidly evolving, and we expect competition to increase. The functionality, relevance and customer acceptance of our cloud-based solutions and services will depend, in part, on our ability and our partners' ability to integrate these with third-party applications and platforms, including enterprise collaboration, enterprise resource planning, customer relationship management, human capital management and other proprietary application suites.

As is typical of any new solution introduced in a rapidly evolving market, the level of demand for, and market acceptance of these new solutions is uncertain. If we successfully expand and develop our cloud-based solutions and services, including, without limitation, Avaya OneCloud Private and Avaya Cloud Office, our business will remain dependent on customer decisions to migrate their legacy communications infrastructures to cloud solutions based on newer technology. While these investment decisions are often driven by macroeconomic factors, customers may also delay the purchase of newer technology due to a range of other factors, including prioritization of other IT projects, delays or failures to meet customers' certification requirements, the weighing of the costs and benefits of deploying new infrastructures and devices and the need to deploy capital to respond to unforeseen circumstances, such as COVID-19. In addition, customers' focus on the architecture, management and integration of such new technologies, possible cyber breaches and other security considerations could also affect market acceptance of new solutions. If the market for cloud-based communications fails to develop, develops more slowly than we anticipate, or develops in a manner different than we expect, or if we are not able to successfully develop and expand our cloud-based solutions and services offerings, our cloud-based solutions and services could fail to achieve market acceptance, which in turn could impact our growth strategy and materially and adversely affect our business, operating results and financial condition.

Our strategy depends in part on our reliance on our indirect sales channel.

An important element of our go-to-market strategy to expand sales coverage, penetrate new markets and increase market absorption of new solutions is the use of our global network of alliance partners, distributors, dealers, value-added resellers, telecommunications service providers and system integrators, who are collectively referred to as our "channel partners". Our financial results could be adversely affected if our relationships with these channel partners were to deteriorate, if our support pricing or other services strategies conflict with those of our channel partners, if any of our competitors were to enter into strategic relationships with or acquire any of our channel partners, if some or all of our channel partners do not become enabled to sell new solutions and services or if the financial condition of some or all of our channel partners were to weaken. In addition, we may expend time, money and other resources on developing and maintaining channel relationships that are ultimately unsuccessful. Furthermore, despite the benefits of a robust indirect channel, our channel partners have direct contact with our customers, which may foster independent relationships between them and may lead to a loss of certain services agreements for us.

There can be no assurance that we will be successful in maintaining, expanding or developing relationships with channel partners. If we are not successful, we may lose sales opportunities, customers or market share. Although the terms of individual channel partner agreements may deviate from our standard program terms, our standard program agreements for resellers generally provide for a term of one year with automatic renewals for successive one-year terms and generally may be terminated by either party for convenience upon 30 days' notice. Our standard program agreements for distributors generally may be terminated by either party for convenience upon 90 days' prior written notice. Certain of our contractual agreements with our largest distributors and resellers, however, permit termination of the relationship by either party for convenience upon prior notice of 180 days. In addition, our alliance partners (including RingCentral), distributors and resellers are permitted to work with other vendors, including our competitors, and most of them do so. See Part I, Item 1, "Business-Alliances and Partnerships" to this Annual Report on Form 10-K for more information on our global channel partner program and the standard terms of our program agreements.

We rely on third-party contract manufacturers, component suppliers and partners (some of which are sole source and limited source suppliers) and warehousing and distribution logistics providers. If these relationships are disrupted and we are unable to obtain substitute manufacturers, suppliers or partners, on favorable terms or at all, our business, operating results and financial condition may be harmed.

We have outsourced substantially all of our manufacturing operations to several contract manufacturers. Our contract manufacturers produce the vast majority of our products in facilities located in southern China, with other products manufactured in facilities located in Mexico, Taiwan, Germany, Ireland and the U.S. All manufacturing of our products is performed in accordance with detailed specifications and product designs furnished or approved by us and is subject to rigorous quality control standards. We periodically review our product manufacturing operations and consider changes we believe may be necessary or appropriate. Although we closely manage the transition process when manufacturing changes are required, we

could experience disruption to our operations during any such transition. Any such disruption could negatively affect our reputation and our operating results. We also purchase certain hardware components and license certain software components and resell them separately or as part of our products under the Avaya brand. In some cases, certain components are available only from a single source or from a limited source of suppliers. These sole source and limited source suppliers may stop selling their components at commercially reasonable prices or at all. Interruptions, delays or shortages associated with these components could cause significant disruption to our operations. We may not be able to make scheduled product deliveries to our customers in a timely fashion. We could incur significant costs to redesign our products or to qualify alternative suppliers, which would reduce our realized margins. We have also outsourced substantially all of our warehousing and distribution logistics operations to several providers of such services on a global basis, and any delays or material changes in such services could cause significant disruption to our operations. If any of our providers of outsourced services were to experience financial difficulty or seek protection under bankruptcy laws it could also affect their ability to perform services for us.

In addition, we rely on third parties to provide certain services to us or to our customers, including hosting partners and providers of other cloud-based services. If these third-party providers do not perform as expected, our customers may be adversely affected, resulting in potential liability and negative exposure for us. If it is necessary to migrate these services to other providers due to poor performance, cyber breaches or other security considerations, or other financial or operational factors, it could result in service disruptions to our customers and significant time and expense to us, any of which could adversely affect our business, operating results and financial condition.

Changes in U.S. trade policy, including the imposition of tariffs and the resulting consequences, may have a material adverse impact on our business, operating results and financial condition.

The U.S. government has adopted a new approach to trade policy, including in some cases renegotiating and terminating certain existing bilateral or multi-lateral trade agreements, such as the North American Free Trade Agreement ("NAFTA"). The U.S. government has also initiated tariffs on certain foreign goods from a variety of countries and regions, most notably China, and has raised the possibility of imposing significant, additional tariff increases or expanding the tariffs to capture other types of goods. In response, many of these foreign governments have imposed retaliatory tariffs on goods that their countries import from the U.S. Changes in U.S. trade policy have and may continue to result in one or more foreign governments adopting responsive trade policies that make it more difficult or costly for us to do business in or import our products from those countries. This in turn could require us to increase prices to our customers, which may reduce demand, or, if we are unable to increase prices, result in lowering our margin on products sold.

We cannot predict the extent to which the U.S. or other countries will impose new or additional quotas, duties, tariffs, taxes or other similar restrictions upon the import or export of our products in the future, nor can we predict future trade policy or the terms of any renegotiated trade agreements and their impact on our business. The adoption and expansion of trade restrictions, the occurrence of a trade war, or other governmental action related to tariffs or trade agreements or policies has the potential to adversely impact demand for our products, our costs, our customers, our suppliers, and the U.S. economy, which in turn could have a material adverse effect on our business, operating results and financial condition.

Contracting with government entities can be complex, expensive and time-consuming.

In fiscal 2020, the Company’s revenue from contracts including the U.S. federal government was approximately $230 million. The procurement process for government entities is in many ways more challenging than contracting in the private sector. We must comply with laws and regulations relating to the formation, administration, performance and pricing of contracts with government entities, including U.S. federal, state and local governmental bodies. These laws and regulations may impose added costs on our business or prolong or complicate our sales efforts, and failure to comply with these laws and regulations or other applicable requirements could lead to claims for damages from our customers, penalties, termination of contracts and other adverse consequences. Any such damages, penalties, disruptions or limitations in our ability to do business with government entities could have a material adverse effect on our business, operating results and financial condition.

Government entities often require highly specialized contract terms that may differ from our standard arrangements. Government entities often impose compliance requirements that are complicated, require preferential pricing or “most favored nation” terms and conditions, or are otherwise time-consuming and expensive to satisfy. Compliance with these special standards or satisfaction of such requirements could complicate our efforts to obtain business or increase the cost of doing so. Even if we do meet these special standards or requirements, the increased costs associated with providing our solutions to government customers could harm our margins.

Business communications solutions are complex, and design defects, errors, failures or "bugs" may be difficult to detect and correct and could harm our reputation, result in significant costs to us and cause us to lose customers.

Business communications products are complex, integrating hardware, software and many elements of a customer’s existing network and communications infrastructure. Despite testing conducted prior to the release of solutions to the market and quality assurance programs, hardware may malfunction and software may contain "bugs" that are difficult to detect and fix. Any such

issues could interfere with the expected operation of a solution, which might negatively impact customer satisfaction, reduce sales opportunities or affect gross margins.

Depending upon the size and scope of any such issue, remediation may have a material impact on our business. Our inability to cure an application or product defect, should one occur, could result in the failure of an application or product line, the temporary or permanent withdrawal from an application, product or market, damage to our reputation, an increase in inventory costs, an increase in warranty claims, lawsuits by customers or customers' or channel partners' end users, or application or product reengineering expenses. Our insurance may not cover or may be insufficient to cover claims that are successfully asserted against us.

Intellectual Property and Information Security

We are dependent on our intellectual property. If we are not able to protect our proprietary rights or if those rights are invalidated or circumvented, our business may be adversely affected.

Our business is primarily dependent on our technology and our ability to innovate in business communications and, as a result, we are reliant on our intellectual property. We generally protect our intellectual property through patents, trademarks, trade secrets, copyrights, confidentiality and nondisclosure agreements and other measures to the extent our budget permits. There can be no assurance that patents will be issued from pending applications that we have filed or that our patents will be sufficient to protect our key technology from misappropriation or falling into the public domain, nor can assurances be made that any of our patents, patent applications, trademarks or our other intellectual property or proprietary rights will not be challenged, invalidated or circumvented. In addition, our business is global and the level of protection of our proprietary technology varies by country and may be particularly uncertain in countries that do not have well developed judicial systems or laws that adequately protect intellectual property rights. Patent litigation and other challenges to our patents and other proprietary rights are costly and unpredictable and may prevent us from marketing and selling a product in a particular geographic area. Financial considerations also preclude us from seeking patent protection in every country where infringement litigation could arise and a cost-benefit analysis may lead us to conclude that under certain circumstances enforcing our rights does not merit the expending of efforts and capital. Our inability to predict our intellectual property requirements in all geographies and affordability constraints also impact our intellectual property protection investment decisions. If we are unable to protect our proprietary rights, we may be at a disadvantage to others who do not incur the substantial time and expense we incur to create our products.
Preventing unauthorized use or infringement of our intellectual property rights is inherently difficult. Moreover, it may be difficult or practically impossible to detect theft, unauthorized use of our intellectual property or the production and sale of counterfeit versions of our products and solutions. For example, we actively combat software piracy as we enforce our intellectual property rights and we actively pursue counterfeiters and their distributors, but we nonetheless may lose revenue due to illegal or unauthorized use of our software. While counterfeiters often aim their sales at customers who might not have otherwise purchased our solutions due to lack of verifiability of origin and service, such counterfeit sales, to the extent they replace otherwise legitimate sales, could adversely affect our operating results. If piracy activities continue at historical levels or increase, they may further harm our business. Enforcement of our intellectual property rights also depends on our legal actions being successful against these infringers, but these actions may not be successful, even when our rights have been infringed.

In addition, our business is global and the level of protection of our proprietary technology varies by country and may be particularly uncertain in countries that do not have well developed judicial systems or laws that adequately protect intellectual property rights. The level of protection afforded our intellectual property may also be particularly uncertain in countries that require the transfer of technology as a condition to market access. Our partnerships with foreign entities sometimes require us to transfer technology and/or certain intellectual property rights in countries that afford less protection of intellectual property rights than other countries. While we believe such technology and intellectual property transfer requirements have not adversely affected our business, such requirements may change over time and become detrimental to our ability to protect our technology or intellectual property in certain foreign countries. Patent litigation and other challenges to our patents and other proprietary rights are costly and unpredictable and may prevent us from marketing and selling a product in a particular geographic area. Financial considerations also preclude us from seeking patent protection in every country where infringement litigation could arise. Our inability to predict our intellectual property requirements in all geographies and affordability constraints also impact our intellectual property protection investment decisions. If we are unable to protect our proprietary rights, we may be at a disadvantage to others who do not incur the substantial time and expense we incur to create our products.

Certain software we use is from open source code sources, which, under certain circumstances, may lead to unintended consequences and, therefore, could materially adversely affect our business, operating results and financial condition.

Some of our products contain software from open source code sources. The use of such open source code may subject us to certain conditions, including the obligation to offer our products that use open source code to third parties for no cost. We monitor our use of such open source code to avoid subjecting our products to conditions we do not intend. However, the use of such open source code may ultimately subject some of our products to unintended conditions, which could require us to take remedial action that may divert resources away from our development efforts and, therefore, could materially adversely affect

our business, operating results and financial condition.

We may be subject to litigation and infringement claims, which could cause us to incur significant expenses or prevent us from selling our products or services.

From time to time, we receive notices and claims from third parties asserting that our proprietary or licensed products, systems and software infringe their intellectual property rights. There can be no assurance that the number of these notices and claims will not increase in the future or that we do not in fact infringe those intellectual property rights. Irrespective of the merits of these claims, any resulting litigation could be costly and time consuming and could divert the attention of management and key personnel from other business issues. The complexity of the technology involved and the uncertainty of intellectual property litigation increase these risks. These matters may result in any number of outcomes for us, including entering into licensing agreements, redesigning our products to avoid infringement, being enjoined from selling products or solutions that are found to infringe intellectual property rights of others, paying damages if products are found to infringe and indemnifying customers from infringement claims as part of our contractual obligations. Royalty or license agreements may be very costly and we may be unable to obtain royalty or license agreements on terms acceptable to us or at all. Such agreements may cause operating margins to decline.

In addition, some of our employees previously have been employed at other companies that provide similar products and services. We may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. These claims and other claims of patent or other intellectual property infringement against us could materially adversely affect our business, operating results and financial condition.

We have made and will likely continue to make investments to license and/or acquire the use of third-party intellectual property rights and technology as part of our strategy to manage this risk, but there can be no assurance that we will be successful or that any costs relating to such activity will not be material. We may also be subject to additional notice, attribution and other compliance requirements to the extent we incorporate open source software into our applications. In addition, third parties have claimed, and may in the future claim, that a customer's use of our products, systems or software infringes the third-party's intellectual property rights. Under certain circumstances, we may be required to indemnify our customers for some of the costs and damages related to such an infringement claim. Any indemnification requirement could have a material adverse effect on our business, operating results and financial condition. Additionally, any insurance that we have may not be sufficient to cover all amounts related to such indemnification.

Failure to comply with laws and contractual obligations related to data privacy and protection could have a material adverse effect on our business, operating results and financial condition.

We are subject to the data privacy and protection laws and regulations adopted by federal, state and foreign governmental agencies, including the European Union's ("EU") GDPR and California's Consumer Privacy Act ("CCPA"). Data privacy and protection is highly regulated and GDPR imposes new obligations on companies, including us, who process personal data of data subjects who are in the EU, regardless of whether or not that processing takes place in the EU. These requirements substantially increase potential liability for all such companies for failure to comply with data protection rules.

Privacy laws restrict our storage, use, processing, disclosure, transfer and protection of personal information, including credit card data, provided to us by our customers as well as data we collect from our customers and employees. We strive to comply with all applicable laws, regulations, policies and legal obligations relating to privacy and data protection. Our privacy compliance program is based on our binding corporate rules which have been approved by EU regulatory authorities. Through the application of these rules we endeavor to apply uniform data handling practices, based on GDPR standards, on a global basis throughout all Avaya entities which process personal data, which entities have signed on to our binding corporate rules. We have dedicated significant time, capital and other resources to obtain binding corporate rules and meet GDPR requirements, as well as requirements from other laws such as CCPA. We expect that as privacy laws continue to evolve and become more prevalent throughout the world, we will be required to dedicate additional resources to ensure compliance.

From time to time we have notified the Hessen authorities, our lead supervisory authority in the EU, of certain personal data breaches and privacy issues. If the authorities determine that we have not complied with applicable laws and regulations, we may be subject to fines, penalties and lawsuits, and our reputation may suffer. In particular, fines imposed on other companies by various data privacy regulatory authorities from the EU for violations of the GDPR have been significant in amount. Furthermore, we may be subject to increased scrutiny going forward and we may also be required to make modifications to our data practices that could have an adverse impact on our business.

These data privacy risks are especially relevant and applicable to us as a technology company because we process vast amounts of personal and non-personal data on behalf of our customers and we also host significant and increasing amounts of data in our cloud solutions. We believe that regulation will continue to increase around the world with respect to the solicitation, collection, processing, and/or use of personal, financial, and consumer information. In addition, the interpretation and application of existing consumer and data protection laws and industry standards in the U.S., Europe and elsewhere is often uncertain and in

flux. The application of existing laws to cloud-based solutions is particularly uncertain and cloud-based solutions may be subject to further regulation, the impact of which cannot be fully understood at this time. Moreover, it is possible that these laws may be interpreted and applied in a manner that is inconsistent with our data and privacy practices. Complying with these various laws and regulations may cause us to incur substantial costs or require us to change our business practices in a manner adverse to our business.

We are also subject to the privacy and data protection-related obligations in our contracts with our customers, channel partners and other third parties. Any failure, or perceived failure, by us to comply with federal, state, or international laws, including laws and regulations regulating privacy, data or consumer protection, or to comply with our contractual obligations related to privacy, could result in proceedings or actions against us by governmental entities, contractual parties or others, which could result in significant liability to us as well as harm to our reputation. Additionally, third parties on which we rely enter into contracts to protect and safeguard our customers' data. Should such parties violate these agreements or suffer a security breach, we could be subject to proceedings or actions against us by governmental entities, contractual parties or others, which could result in significant liability to us as well as harm to our reputation.

A breach of the security of our information systems, products or services or of the information systems of our third-party providers could adversely affect our business, operating results and financial condition.

We rely on the security of our information systems and, in certain circumstances, those of our third-party providers, such as channel partners, vendors, consultants and contract manufacturers, to protect our proprietary information and information of our customers. In addition, the growth of bring your own device ("BYOD") programs has heightened the need for enhanced security measures. IT security system failures, including a breach of our or our third-party providers' data security, could disrupt our ability to function in the normal course of business by potentially causing, among other things, delays in the fulfillment or cancellation of customer orders, disruptions in the manufacture or shipment of products or delivery of services or an unintentional disclosure of customer, employee or our information. Additionally, despite our security procedures or those of our third-party providers, information systems and our products and services may be vulnerable to threats such as computer hacking, cyber-terrorism or other unauthorized attempts by third parties to access, modify or delete our or our customers' proprietary information. In recent years, these attacks and similar threats have become more sophisticated and numerous and we expect that trend to continue.

We take cybersecurity seriously and devote significant resources and tools to protect our systems, products and data from unwanted intrusions and to ensure we meet our contractual and regulatory obligations. However, these security efforts are costly to implement and may not be successful. There can be no assurance that we will be able to prevent, detect and adequately address or mitigate such cyber-attacks or security breaches. We investigate potential data breach issues identified through our security procedures and terminate, mitigate and remediate such issues as appropriate. Past incidents have involved outside actors and internal issues stemming from certain configuration and migration issues of our internal applications to other platforms. Any such breach could have a material adverse effect on our operating results and our reputation as a provider of business communications products and services and could cause irreparable damage to us or our systems regardless of whether we or our third-party providers are able to adequately recover critical systems following a systems failure. In addition, regulatory or legislative action related to cybersecurity, privacy and data protection worldwide, such as the European GDPR, which went into effect in May 2018, may increase the costs to develop, implement or secure our products and services. We expect cybersecurity regulations to continue to evolve and be costly to implement. Furthermore, we may need to increase or change our cybersecurity systems and expenditures to support expansion of sales into new industry segments or new geographic markets. If we violate or fail to comply with such regulatory or legislative requirements, we could be fined or otherwise sanctioned and such fines or penalties could have a material adverse effect on our business and operations.

We rely on third parties to provide certain data hosting services to us or to our customers, and interruptions or delays in those services could harm our business.

Our cloud-based solutions rely on uninterrupted connection to the Internet through data centers and networks. To provide such service for our customers, we utilize data center hosting facilities located in the United States and Europe, as well as in our Asia Pacific region and our Central America and Latin America region. We also use facilities provided by Google, Amazon and Microsoft as we migrate to cloud solutions. We do not control the operation of these facilities, and they are vulnerable to service interruptions or damage from floods, earthquakes, fires, power loss, telecommunications failures and similar events. They may also be subject to acts of vandalism or terrorism, sabotage, similar misconduct and/or human error. Moreover, if any of these data centers and networks cease operations, we would need to migrate our solutions and our customers to other providers. The occurrence of these or other unanticipated problems at these facilities could result in lengthy interruptions in the ability to use our solutions efficiently or at all, which could harm our business, operating results and financial condition.

Global Operations and Regulations

Since we operate internationally, operational, logistical, economic and/or political challenges in a specific country or region could negatively affect our revenue, costs, expenses and financial condition or those of our channel partners and distributors.

We do business in approximately 190 countries. We conduct significant sales and customer support operations and significant amounts of our R&D activities in countries outside of the U.S., and we also depend on non-U.S. operations of our contract manufacturers and our channel partners. For fiscal 2020, we derived 43% of our revenue from sales outside of the U.S., with the most significant portions generated from Germany, the United Kingdom and Canada. In addition, we intend to continue to grow our business internationally. The vast majority of our contract manufacturing also takes place outside the U.S., primarily in southern China.

Accordingly, our results could be materially and adversely affected by a variety of uncontrollable and changing factors relating to international business operations, including:

- economic conditions and geopolitical developments, including trade sanctions, changes to significant trading relationships such as the United Kingdom's ongoing process of withdrawal from the EU, and the negotiation of new or revised international trade arrangements;
- political or social unrest, economic instability or corruption or sovereign debt risks in a specific country or region;
- legal and regulatory constraints, such as international and local laws and regulations related to trade compliance, anti-corruption, information security, data privacy and protection, labor and other requirements;
- protectionist and local security legislation;
- difficulty in enforcing intellectual property rights, such as protecting against the counterfeiting of our products;
- less established legal and judicial systems necessary to enforce our rights;
- relationships with employees and works councils, as well as difficulties in finding qualified employees, including skilled design and technical employees, as companies expand their operations offshore;
- unfavorable tax and currency regulations;
- military conflict, terrorist activities and health pandemics or similar issues;
- future government shutdowns or uncertainties which could affect the portion of our revenues which comes from the U.S. federal government sector;
- natural disasters, such as earthquakes, hurricanes or floods, anywhere we and/or our channel partners and distributors have business operations; and
- other matters in any of the countries or regions in which we and our contract manufacturers and business partners currently operate or intend to operate, including in the U.S.

Any or all of these factors could materially adversely affect our business, operating results or financial condition. In addition, the various risks inherent in doing business in the U.S. generally also exist when doing business outside of the U.S., and they may be exaggerated by the difficulty of doing business in numerous sovereign jurisdictions due to differences in culture, laws and regulations. Furthermore, our prospective effective tax rate could be adversely affected by, among other things, changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of our deferred tax assets and liabilities or changes in tax laws, regulations, accounting principles or interpretations thereof.

If we do not comply with certain telecommunications or other rules and regulations, we could be subject to enforcement actions, fines, loss of licenses and possibly restrictions on our ability to operate or offer certain of our services.

Certain of our cloud-based communications and collaboration solutions are regulated in the U.S. by the Federal Communications Commission and various state and local agencies, and across the globe by governments of various foreign countries. Furthermore, we are subject to existing or potential regulations relating to privacy, protection of customer information, disability access, porting of numbers, Universal Service and Telecommunications Relay Service Fund contributions, emergency access, law enforcement intercept, and other requirements. In addition, government agencies in other countries impose their own regulatory requirements on those solutions. If we do not comply with applicable federal, state, local and foreign rules and regulations, we could be subject to enforcement actions, fines, loss of licenses and possible restrictions on our ability to operate or offer certain of our solutions or requirements to modify certain solutions, which could have a material adverse effect on our operating results and financial condition. Moreover, changes in telecommunications requirements, or

regulatory requirements in other industries in which we operate now or in the future, could have a material adverse effect on our business, operating results and financial condition.

We may be adversely affected by environmental, health and safety laws, regulations, costs and other liabilities.

We are subject to a wide range of federal, state, local and international governmental requirements relating to the discharge of substances into the environment, protection of the environment and worker health and safety. If we violate or fail to comply with these requirements, we could be fined or otherwise sanctioned by regulators, lose customers and damage our reputation, which could have an adverse effect on our business. The Federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), and comparable state statutes impose liability, without regard to fault or legality of the original conduct, on classes of persons that are considered to have contributed to the release of a hazardous substance into the environment. Such classes of persons include the current and past owners or operators of sites where a hazardous substance was released, and companies that disposed or arranged for disposal of hazardous substances at off-site locations such as landfills. Under CERCLA, these persons may be subject to strict, joint and several liability for the costs of cleaning up the hazardous substances that have been released into the environment and for damages to natural resources, and it is not uncommon for neighboring landowners and other third parties to file claims for personal injury and property damage allegedly caused by the hazardous substances released into the environment.

We currently own or formerly owned several properties or facilities that for many years were used for industrial activities, including the manufacture of electronics equipment. These properties and the substances disposed or released on them may be subject to CERCLA, the Resource Conservation and Recovery Act and analogous state or foreign laws. For example, we are presently involved in remediation efforts at several currently or formerly owned sites related to historical site use which we do not believe will have a material impact on our business or operations, although no assurance can be given that these remediation efforts or remediation efforts we are required to undertake in the future will not have a material adverse effect on our business or operations.

We are also subject to various local, federal and international laws and regulations regarding the materials content and electrical design of our products that require us to be financially responsible for the collection, treatment, recycling and disposal of those products. For example, the EU has adopted the Restriction on Hazardous Substances and Waste Electrical and Electronic Equipment Directive, with similar laws and regulations being enacted in other regions. Since May 2014, the U.S. requires companies to publicly disclose their use of conflict minerals that originated in the Democratic Republic of the Congo, or an adjoining country. Additionally, requirements such as the EU Energy Labelling Directive, impose requirements relating to the energy efficiency of our products. Our failure or the undetected failure of our supply chain to comply with existing or future environmental, health and safety requirements could subject us to liabilities exceeding our reserves or adversely affect our business, operating results or financial condition.

A growing number of climate change regulations and initiatives are either in force or pending at the local, federal and international levels as part of a transition to a lower-carbon economy that is underway globally. With growing awareness of climate change, the demand for lower emissions products and services is increasing. As we continue to shift our products and services to the cloud, this creates an opportunity to serve customers' needs and requirements. The lower-carbon economy may also entail extensive policy, legal, technology and market changes to address mitigation and adaptation requirements related to climate change. Depending on the nature, speed and focus of these changes, transition risks may pose varying levels of financial and reputational risk to our organization. Our operations and supply chain could face increased climate change-related regulations, modifications to transportation to meet lower emission requirements, changes to types of materials used for products and packaging to reduce emissions, increased utility costs to address cleaner energy technologies, increased costs related to severe weather events, and emissions reductions associated with operations, business travel or products. These costs and changes to operations could have a financial impact on our business and result in an adverse impact on our operating results or reputation.

Risks Related to Our Financial Results, Finances and Capital Structure

Financial Performance

In addition to experiencing some seasonal trends, our quarterly and annual revenues and operating results have historically fluctuated and the results of one period may not provide a reliable indicator of our future performance.

Our quarterly and annual revenues and operating results have historically fluctuated and are not necessarily indicative of results to be expected in future periods. Fluctuations in our financial results from period to period are caused by many factors, including, but not limited to, the size and timing of new logos, changes in foreign currency exchange rates, the mix of products sold by us and general economic conditions. In addition, execution of sales opportunities sometimes traverses from the intended fiscal quarter to the next.

We also experience some seasonal trends in the sale of our products that also may produce variations in quarterly results and financial condition. Typically, our second fiscal quarter is our weakest and our fourth fiscal quarter is our strongest. Many of the factors that create and affect seasonal trends are beyond our control.

In addition, the Company applied fresh start accounting upon its emergence from bankruptcy. As a result, assets and liabilities were adjusted to fair value as of the Emergence Date. Accordingly, our financial condition and operating results after the Emergence Date are not comparable to the financial condition and operating results reflected in our historical Consolidated Financial Statements prior to the Emergence Date.

Shifts in the mix of sizes or types of organizations that purchase our solutions or changes in the components of our solutions purchased by our customers could affect our gross margins and operating results.

Our gross margins and our operating results can vary depending on numerous factors related to the implementation and use of our solutions, including the sizes and types of organizations that purchase our solutions, the mix of software and hardware they purchase and the level of professional services and support they require. We provide our solutions to a broad range of companies, from small businesses to large multinational enterprises and government organizations. Sales to larger enterprises generally result in greater revenue but may take longer to negotiate and finalize than sales to small businesses. Conversely, sales to small businesses may be faster to execute than sales to larger enterprises, but they may involve greater credit risk and fewer opportunities to sell additional services. Moreover, an important element of our growth strategy is to continue to evolve from a traditional telecommunications hardware company into a software and services company, focused on expanding our cloud- and mobile-enabled contact center, unified communications and innovative next-generation workflow automation solutions. As we increase the proportion of our revenue coming from software solutions as opposed to hardware solutions, we expect to see improvement in our gross margins and operating results. Overall, if the mix of companies that purchase our solutions, or the mix of solution components purchased by our customers, changes unfavorably, our revenues and gross margins could decrease and our operating results could be harmed.

We are a holding company and rely on dividends, distributions and other payments, advances and transfers of funds from our subsidiaries to meet our obligations.

We have no direct operations and derive all of our operating cash flow from our subsidiaries. Because we conduct our operations through our subsidiaries, we depend on those entities for dividends and other payments or distributions to meet our obligations. The deterioration of the earnings from, or other available assets of, our subsidiaries for any reason could limit or impair their ability to pay dividends or other distributions to us.

We may not realize the benefits we expect from our cost-reduction initiatives.

From time to time we may initiate cost savings programs designed to streamline operations. As discussed in Part II, Item 7, "Management’s Discussion and Analysis of Financial Condition and Results of Operations-Factors and Trends Affecting Our Results of Operations," we have initiated such programs historically, and we will continue to evaluate similar opportunities to the extent the business need arises. These types of cost-reduction activities are complex. Even if we carry out these strategies in the manner we expect, we may not be able to achieve the efficiencies or savings we anticipate or on the timetables we anticipate. Any expected efficiencies and benefits might be delayed or not realized, and, as a result, our operations and business could be disrupted. Our ability to realize gross margin improvements and other efficiencies expected to result from these initiatives is subject to many risks, including delays in the anticipated timing of activities, lack of sustainability in cost savings over time, unexpected costs associated with operating our business, our success in reinvesting any savings arising from these initiatives, time required to complete planned actions, absence of material issues associated with workforce reductions and avoidance of unexpected disruptions in service. A failure to implement these types of initiatives or realize expected benefits could have an adverse effect on our financial condition that could be material.

If our goodwill or intangible assets become impaired, we may be required to record a significant charge to earnings.

At September 30, 2020, the Company had $2,556 million of intangible assets and $1,478 million of goodwill on its Consolidated Balance Sheet. The intangible assets are principally composed of technology and patents, customer relationships, and trademarks and trade names. Goodwill and intangible assets with indefinite lives are tested for impairment on an annual basis and also when events or changes in circumstances indicate that impairment may have occurred. Intangible assets with determinable lives, which were $2,223 million at September 30, 2020, are tested for impairment only when events or changes in circumstances indicate that an impairment may have occurred. Determining whether an impairment exists can be difficult and requires management to make significant estimates and judgments. During fiscal 2020 and 2019, the Company recorded goodwill impairment charges of $624 million and $657 million, respectively. The fiscal 2020 goodwill impairment charge resulted in the write-down of the full carrying value of the goodwill related to the Company's Products & Solutions segment primarily due to a reduction in the Company's long-term forecast to reflect increased risk from higher market uncertainty and the accelerated reduction of product sales related to the Company’s historical on-premises perpetual licenses. The fiscal 2019 goodwill impairment charge also related to the Company’s Products & Solutions segment and was primarily due to a sustained

decrease in the Company's stock price and a reduction in the Company's long-term forecast. To the extent that business conditions deteriorate further, or if changes in key assumptions and estimates differ significantly from management's expectations, it may be necessary to record additional impairment charges in the future. See Note 7, "Goodwill," and Note 8, "Intangible Assets," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information.

Levels of returns on pension and post-retirement benefit plan assets, changes in interest rates and other factors affecting the amounts to be contributed to fund future pension and post-retirement benefit plan liabilities could adversely affect our cash flows, operating results and financial condition in future periods.

We sponsor a number of defined benefit plans for employees in the United States, Canada, and various foreign locations. Pension and other post-retirement plan costs and required contributions are based upon a number of actuarial assumptions, including an expected long-term rate of return on pension plan assets, level of employer contributions, the expected life span of pension plan beneficiaries and the discount rate used to determine the present value of future pension obligations. Any of these assumptions could prove to be wrong, resulting in a shortfall of our pension and post-retirement benefit plan assets compared to obligations under our pension and post-retirement benefit plans. Future pension funding requirements, and the timing of funding payments, may also be subject to changes in legislation.

In addition, our major defined benefit pension plans in the U.S. are funded with trust assets invested in a globally diversified portfolio of securities and other investments. These assets are subject to market fluctuations, will yield uncertain returns and cause volatility in the net periodic benefit cost and future funding requirements of the plans. A decline in the market value of the pension and post-retirement benefit plan assets below our projected return rates will increase the funding requirements under our pension and post-retirement benefit plans if the actual asset returns do not recover these declines in value in the foreseeable future. We are responsible for funding any shortfall of our pension and post-retirement benefit plans' assets compared to obligations under the pension and post-retirement benefit plans, and a significant increase in our pension liabilities could have a material adverse effect on our cash flows, operating results and financial condition.

We are exposed to risks inherent in our defined benefit pension plans in Germany.

We operate several defined benefit plans in Germany (collectively, the "German Plans") and as of September 30, 2020, the total projected benefit obligation for the German Plans of $527 million exceeded plan assets of $4 million, resulting in an aggregate pension liability for the German Plans of $523 million. Under the German Plans, which were closed to new members in 2006, retirees generally benefit from the receipt of a perpetual annuity at retirement, based on their years of service and ending salary. The total projected benefit obligation is based on actuarial valuations, which themselves are based on assumptions and estimates about the long-term operation of the plans, including mortality rates of members, the performance of financial markets and interest rates. Our funding requirements for future years may increase from current levels depending on the net liability position of these plans. In addition, if the actual experience of the plans differs from our assumptions, the net liability could increase and additional contributions may be required. Changes to pension legislation in Germany may also adversely affect our funding requirements. Increases in the net pension liability or increases in future cash contributions could have a material adverse effect on our cash flows, operating results and financial condition.

Risks Related to Our Indebtedness

Our degree of leverage could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry, expose us to interest rate risk on our variable rate debt and prevent us from meeting obligations on our indebtedness.

We have a significant amount of debt outstanding. As of September 30, 2020, we had $1,643 million of loans outstanding under the Term Loan Credit Agreement, $41 million issued and outstanding letters of credit and guarantees under the ABL Credit Agreement, $350 million of 2.25% convertible senior notes due June 15, 2023 (the "Convertible Notes") and $1,000 million of 6.125% senior first lien notes due September 15, 2028 (the "Senior Notes") outstanding (all as defined in Part II, Item 8, Note 11, "Financing Arrangements" of this Annual Report on Form 10-K). In addition, as of September 30, 2020 we could have borrowed an additional $153 million under our ABL Credit Agreement.

Our degree of leverage could have consequences, including:

- making it more difficult for us to make payments on our indebtedness;
- increasing our vulnerability to general economic and industry conditions;
- requiring a substantial portion of cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, thereby reducing our ability to use our cash flow to fund our operations, capital expenditures, research and development and future business opportunities;
- exposing us to the risk of increased interest rates under Avaya Inc.'s credit facilities to the extent such facilities

have variable rates of interest;

- limiting our ability to make strategic acquisitions and investments;
- limiting our ability to refinance our indebtedness as it becomes due; and
- limiting our ability to adjust quickly or at all to changing market conditions and placing us at a competitive disadvantage compared to our competitors who are less highly leveraged.

Our ability to continue to fund our obligations and to reduce debt may be affected by general economic, financial market, competitive, legislative and regulatory factors, among other things. An inability to fund our debt requirements or reduce debt could have a material adverse effect on our business, operating results, cash flows and financial condition.

Despite our level of indebtedness, we and our subsidiaries may be able to incur additional indebtedness. This could further exacerbate the risks associated with our degree of leverage.

We and our subsidiaries may be able to incur additional indebtedness in the future. Although our Term Loan and ABL Credit Agreements and the indenture for our Senior Notes contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions, and any indebtedness incurred in compliance with these restrictions could be substantial. In addition, the indenture for the Convertible Notes does not restrict us from incurring additional debt. To the extent new debt is added to our and our subsidiaries' currently anticipated debt levels, the related risks that we and our subsidiaries face could intensify.

Our financing agreements contain restrictions that limit, in certain respects, our flexibility in operating our business.

Our financing agreements contain various covenants that limit our ability to engage in specific types of transactions. These covenants limit our and our subsidiaries' ability to:

- incur or guarantee additional debt and issue or sell certain preferred stock;
- pay dividends on, redeem or repurchase our capital stock;
- make certain acquisitions or investments;
- incur or assume certain liens;
- enter into transactions with affiliates; and
- sell assets to, or merge or consolidate with, another company.

A breach of any of these covenants could result in a default under our debt instruments.

There is no assurance we will be able to repay or refinance all or any portion of our or our subsidiaries' debt in the future. If we were unable to repay or otherwise refinance these borrowings and loans when due, the applicable secured lenders could proceed against the collateral granted to them to secure that indebtedness, which could force us into bankruptcy or liquidation. In the event our lenders accelerate the repayment of our or our subsidiaries' borrowings, we and our subsidiaries may not have sufficient assets to repay that indebtedness.

We may not be able to generate sufficient cash to service all of our indebtedness and our other ongoing liquidity needs, and we may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.

Our ability to make scheduled payments on or to refinance our debt obligations and to fund our planned capital expenditures, acquisitions and other ongoing liquidity needs depends on our financial condition and operating performance, which are subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. In particular, we intend to increase our recurring revenue by shifting more of our business to a subscription-based model. If we successfully increase our subscription revenues, we expect this will result in more of our cash receipts being deferred relative to our historical perpetual license model as payments are spread over a pre-determined time period (e.g., annually) rather than being received upfront, which may defer cash flows needed to service our debt. There can be no assurance that we will maintain a level of cash flow from operating activities in an amount sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness. If our cash flow and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay investments and capital expenditures, or to seek additional capital or restructure or refinance our indebtedness. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. Our credit facilities and the indenture for our Senior Notes restrict the ability of Avaya Inc. and certain of its subsidiaries to dispose of assets and use the proceeds from the disposition. Accordingly, we may not be able to consummate those dispositions or to obtain any proceeds on terms acceptable to us or at all, and any such proceeds may not be adequate to meet any debt service obligations when due.

A ratings downgrade or other negative action by a ratings organization could adversely affect our cost of capital.

Credit rating agencies continually revise their ratings for companies they follow. The condition of the financial and credit markets and prevailing interest rates have been, and will continue to be, subject to fluctuation. In addition, any adverse developments in our business and operations could lead to a ratings downgrade for Avaya Holdings Corp., Avaya Inc. or any of our rated debt securities. Any such fluctuation in our credit rating may impact our ability to access debt markets in the future or increase our cost of future debt which could have a material adverse effect on our operating results and financial condition, which in return may adversely affect the trading price of shares of our common stock.

Risks Related to Ownership of Our Common Stock, Preferred Stock and Convertible Notes

The price of our common stock and/or Convertible Notes may be volatile and fluctuate substantially.

Our common stock is listed on the New York Stock Exchange and the price for our common stock has historically been volatile. The market price of our common stock, as well as our Convertible Notes (as they are convertible into our common stock), may continue to be highly volatile and may fluctuate substantially due to the following factors (in addition to the other risk factors described in this section):

- general economic conditions;
- political dynamics in the countries we operate in;
- fluctuations in our operating results;
- variances in our financial performance from the expectations of equity and/or debt research analysts;
- conditions and trends in the markets we serve;
- announcements of significant new services or products by us or our competitors;
- additions of or changes to key employees;
- changes in market valuations or earnings of our competitors;
- trading volumes of our common stock and/or Convertible Notes;
- future sales of our equity securities and/or future issuances of indebtedness;
- changes in the estimation of the future sizes and growth rates of our markets;
- legislation or regulatory policies, practices or actions;
- hedging or arbitrage trading activity by third parties, including by the counterparties to the note hedge and warrant transactions that we entered into in connection with the issuance of the Convertible Notes; and
- dilution that may occur upon any conversion of shares of our Series A Preferred Stock or the Convertible Notes or the exercise of the warrants we issued in connection with the issuance of the Convertible Notes.

In addition, the stock markets in general have experienced extreme price and volume fluctuations that have at times been unrelated or disproportionate to the operating performance of the particular companies affected. These market and industry factors may materially harm the market price of our common stock and/or Convertible Notes irrespective of our operating performance.

We currently do not intend to pay dividends on our common stock.

We do not anticipate paying any cash dividends on shares of our common stock for the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors and will depend on operating results, financial condition, contractual restrictions, restrictions imposed by applicable law and other factors our board of directors deems relevant.

The issuance of shares of our Series A Convertible Preferred Stock dilutes the relative voting power and ownership of holders of our common stock and may adversely affect the market price of our common stock.

Pursuant to an Investment Agreement, dated as of October 3, 2019, by and between us and RingCentral, we sold 125,000 shares of our newly designated Series A Convertible Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock") to RingCentral on October 31, 2019 (the "Closing").

The shares sold to RingCentral at the Closing represent approximately 9% of our outstanding common stock on an as-converted basis as of September 30, 2020. The Series A Preferred Stock is convertible at the option of the holder at any time into shares of common stock at an initial conversion price of $16.00 per share, subject to adjustment as set forth in the Certificate of Designations which details the terms and conditions of the Series A Preferred Stock.

The holders of our Series A Preferred Stock are entitled to vote, on an as-converted basis, together with holders of our common stock on all matters submitted to a vote of the holders of our common stock. In any such vote, RingCentral's aggregate voting power of the Series A Preferred Stock and other shares of our common stock which may be issued to them under that certain

Framework Agreement, dated as of October 3, 2019, by and between Avaya Inc. and RingCentral (the "Framework Agreement"), will be limited, prior to our receipt of an approval by our stockholders as required under New York Stock Exchange Listed Company Manual Rule 312.03 (“Stockholder Approval”), to the voting power equivalent to no more than 19.9% of our outstanding common stock. If Stockholder Approval is obtained, this limitation will no longer apply. Notwithstanding that limit, the issuance of the Series A Preferred Stock to RingCentral effectively reduces the relative voting power of the holders of our common stock. The conversion of the Series A Preferred Stock into common stock would dilute the ownership interest of existing holders of our common stock.

For a period of eighteen months following issuance of Series A Preferred Stock, the sale or transfer of the Series A Preferred Stock and the common stock issuable upon conversion thereof is subject to certain lock-up provisions that, subject to exceptions, prohibit sale or transfer. Following expiration of RingCentral’s eighteen-month lock-up period, any sales in the public market of the common stock issuable upon conversion of the Series A Preferred Stock could adversely affect prevailing market prices of our common stock. We granted RingCentral customary registration rights in respect of any shares of common stock issued upon conversion of the Series A Preferred Stock and have filed a registration statement permitting the resale by RingCentral of the common stock underlying the Series A Preferred Stock in compliance with this obligation. As a result, subject to certain exceptions, RingCentral will be able to freely sell common stock upon expiration of the lock-up. Sales by RingCentral of a substantial number of shares of our common stock in the public market, or the perception that such sales might occur, could have a material adverse effect on the price of our common stock.

Our Series A Preferred Stock has rights, preferences and privileges that are not held by, and are preferential to, the rights of our common stockholders, which could adversely affect our liquidity and financial condition and result in the interests of RingCentral differing from those of our common stockholders.

As a holder of our Series A Preferred Stock, RingCentral is entitled to:

- receive dividends, in preference and priority to holders of our common stock or other series of Company stock, which will accrue on a daily basis at the rate of 3% per annum of the stated value of the Series A Preferred Stock. The stated value of the Series A Preferred Stock is initially $1,000 per share and it will be increased by the sum of any dividends on such shares not paid in cash. These dividends are cumulative, compound quarterly and are paid quarterly in arrears.
- participate in any dividends we pay on our common stock, equal to the dividend which holders would have received if their Series A Preferred Stock had been converted into common stock on the date such common stock dividend was determined.
- receive, in the event our Company is liquidated or dissolved, before any distribution is made to holders of our common stock, an amount equal to the liquidation preference (which equals the stated value referenced above plus any accrued and unpaid dividends) for each share of Series A Preferred Stock held.

RingCentral also has certain redemption rights or put rights to require us to repurchase all or any portion of the Series A Preferred Stock after the termination of the Framework Agreement or upon the occurrence of certain events.

These dividend and share repurchase obligations could impact our liquidity and reduce the amount of cash flows available for working capital, capital expenditures, growth opportunities, acquisitions and other general corporate purposes and could limit our ability to obtain additional financing or increase our borrowing costs, which could have an adverse effect on our financial condition.

As a holder of our Series A Preferred Stock, RingCentral has certain consent rights over charter amendments and issuances of senior equity and the ability to designate a member of our Board of Directors.

The transaction documents entered into in connection with the sale of the Series A Preferred Stock to RingCentral grant to RingCentral customary consent rights with respect to certain actions by us, including:

- amending our organizational documents in a manner that would have an adverse effect on the Series A Preferred Stock; and
- issuing securities that are senior to, or equal in priority with, the Series A Preferred Stock.

In addition, pursuant to an Investor Rights Agreement, until such time when RingCentral and its affiliates hold or beneficially own less than 4,759,339 shares of our common stock (on an as-converted basis), RingCentral has the right to nominate one person for election to our Board of Directors and our Board of Directors will recommend that our stockholders vote in favor of such nominee.

The director designated by RingCentral is entitled to attend meetings of our Board’s Audit, Compensation, and Nominating and Governance Committees as a non-voting observer, or such director may choose to serve on the Audit Committee and Nominating and Corporate Governance Committees of our Board, subject to applicable law and stock exchange rules. Such director is also entitled to be an observer to the Compensation Committee of our Board.

To the extent that we seek to raise capital in the form of senior preferred stock, for instance because it is the most efficient or only form of capital available to us, or we need to amend our organizational documents for whatever reason and RingCentral does not provide its consent to any such issuance or amendment, it could have a material adverse effect on our business and/or liquidity.

RingCentral has certain redemption or put rights to require us to repurchase all or any portion of the Series A Preferred Stock for cash. We may not be able to raise the funds necessary to finance such a required repurchase.

RingCentral has certain redemption or put rights to require us, to repurchase all or any portion of the Series A Preferred Stock for cash. RingCentral can exercise such redemption rights, upon at least 21 days' notice, after the termination of the Framework Agreement or upon the occurrence of certain events. If and to the extent this redemption right is exercised, we would have to purchase each share of Series A Preferred Stock at the per share price equal to the stated value of the Series A Preferred Stock, which is initially $1,000 per share and which will be increased by the sum of any dividends on such shares, plus all accrued but unpaid dividends.

It is possible that we would not have sufficient funds to make any required repurchase of Series A Preferred Stock. Moreover, we may not be able to arrange financing, to pay the repurchase price.

The conditional conversion feature of the Convertible Notes, if triggered, may adversely affect our financial condition and operating results and/or the market for our common stock.

In the event the conditional conversion feature of our Convertible Notes is triggered, holders of Convertible Notes will be entitled to convert the Convertible Notes at any time during specified periods at their option. If one or more holders elect to convert their Convertible Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. If we elect to satisfy this obligation by delivering common stock it would have a dilutive effect on our other stockholders. In addition, even if holders do not elect to convert their Convertible Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

The convertible note hedge and warrant transactions may affect the value of the Convertible Notes and our common stock.

In connection with the pricing of the Convertible Notes, we entered into a convertible note hedge ("Bond Hedge") transaction with each of Barclays Bank PLC, Credit Suisse Capital LLC and JPMorgan Chase Bank, National Association (the "Call Spread Counterparties"). The Bond Hedge transactions reduced the potential dilution upon conversion of the Convertible Notes. We also entered into a warrant ("Call Spread Warrant") transaction with each of the Call Spread Counterparties. The Call Spread Warrant transactions could separately have a dilutive effect on our earnings per share to the extent that the market price per share of our common stock exceeds the applicable strike price of the Call Spread Warrants.

Each of the Call Spread Counterparties (or an affiliate) may modify its initial hedge position by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions following the pricing of the Convertible Notes and prior to the maturity of the Convertible Notes (and is likely to do so during any observation period related to a conversion of the Convertible Notes). This activity could also cause or avoid an increase or a decrease in the market price of our common stock or the Convertible Notes, which could affect the ability to convert the Convertible Notes and, to the extent the activity occurs during any observation period related to a conversion of the Convertible Notes, it could affect the number of shares and value of the consideration that holders of the Convertible Notes will receive upon conversion of the Convertible Notes.

Significant exercises of equity awards or warrants or conversion of preferred stock or convertible debt could adversely affect the market price of the Company's common stock.

As of September 30, 2020, we had 83,278,383 shares of common stock issued and outstanding. The total number of shares of our common stock issued and outstanding does not include 5,078,773 shares and 5,645,200 shares that may be issued upon the exercise or vesting of equity awards and warrants issued upon emergence from bankruptcy, respectively. In addition, we have the ability to issue an additional 14,407,473 equity awards tied to our common stock under our currently authorized equity incentive plans. Furthermore, the maximum number of shares of common stock issuable upon conversion of our Convertible Notes is 16,393,440 and our Series A Preferred Stock issued to RingCentral is convertible into 8,029,990 shares of common stock as of September 30, 2020. The exercise of equity awards and warrants and the conversion of our convertible debt instruments and preferred stock could adversely affect the price of the Company's common stock, will reduce the percentage of common stock held by the Company's current stockholders and may cause its current stockholders to suffer significant dilution, which may adversely affect the market.

Our amended and restated certificate of incorporation and our amended and restated bylaws may impede or discourage a takeover, which could reduce the market price of our common stock and the value of the preferred stock and the Convertible Notes.

Certain provisions in our amended and restated certificate of incorporation and our amended and restated bylaws may delay or prevent a third party from acquiring control of us, even if a change in control would be beneficial to our existing stockholders. Our governing documents include provisions that:

- authorize our board of directors to create and issue, without stockholder approval, up to 55,000,000 shares of undesignated preferred stock, which could be used to dilute the ownership of a hostile acquirer;
- grant the board of directors the exclusive right to fill a vacancy on the board of directors, whether such vacancy is due to an increase in the number of directors or death, resignation or removal of a director, which prevents stockholders from being able to fill such vacancies on the board of directors; and
- require stockholders to follow certain advance notice procedures to bring a proposal before an annual meeting, including proposing nominees for election as directors, which may discourage a potential acquirer from soliciting proxies to elect the acquirer's own director or slate of directors.

These provisions could impede a merger, takeover or other business combination involving us or discourage a potential acquirer from making a tender offer for our common stock, which, under certain circumstances, could reduce the market price of our common stock and the value of our preferred stock and Convertible Notes. In addition, our amended and restated certificate of incorporation requires, to the fullest extent permitted by law, that derivative actions brought in the name of the Company, actions against our directors, officers and employees for breach of fiduciary duty and other similar actions may be brought only in the Court of Chancery in the State of Delaware.

Our amended and restated certificate of incorporation includes a forum selection clause, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.

Our amended and restated certificate of incorporation requires that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Company to the Company or the Company's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or (iv) any action asserting a claim governed by the internal affairs doctrine.

This exclusive forum provision will not apply to claims under the Securities Exchange Act of 1934, but will apply to other state and federal law claims including actions arising under the Securities Act of 1933 (although our stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder). Section 22 of the Securities Act of 1933, however, creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act of 1933 or the rules and regulations thereunder. Accordingly, there is uncertainty as to whether a court would enforce such a forum selection provision as written in connection with claims arising under the Securities Act of 1933. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have notice of and consented to the foregoing provisions. This forum selection provision in our Amended and Restated Certificate of Incorporation may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us. It is also possible that, notwithstanding the forum selection clause included in our certificate of incorporation, a court could rule that such a provision is inapplicable or unenforceable.

General Risk Factors

Our ability to retain and attract key personnel is critical to the success of our business and execution of our growth strategy.

The success of our business depends on the skill, experience and dedication of our employee base. If we are unable to retain and recruit sufficiently experienced and capable employees, including those who can help us increase revenues generated from our cloud-based solutions and services, our business and financial results may suffer. Experienced and capable employees in the technology industry remain in high demand, and there is continual competition for their talents. If executives, managers or other key personnel resign, retire or are terminated, or their service is otherwise interrupted, we may not be able to replace them in a timely manner and we could experience significant declines in productivity and/or errors due to insufficient staffing or managerial oversight. Moreover, turnover of senior management and other key personnel can adversely impact, among other things, our operating results, our customer relationships and lead us to incur significant expenses related to executive transition costs that may impact our operating results. In addition, our ability to adequately staff our R&D efforts in the U.S. may be inhibited by changes to U.S. immigration policies that restrain the flow of professional and technical talent. While we strive to

maintain our competitiveness in the marketplace, there can be no assurance that we will be able to successfully retain and attract the employees that we need to achieve our business objectives.

Business interruptions, whether due to catastrophic disasters or other events, could adversely affect our operations.

Our operations and those of our contract manufacturers and outsourced service providers are vulnerable to interruption by fire, earthquake, hurricane, flood or other natural disasters, power loss, computer viruses, computer systems failure, telecommunications failure, quarantines, national catastrophe, terrorist activities, war and other events beyond our control. For instance, we have operations in the Silicon Valley area of California near known earthquake fault zones, which are vulnerable to damage from earthquakes. Our disaster recovery plans may not be sufficient to address these interruptions. If any disaster were to occur, our ability and the ability of our contract manufacturers and outsourced service providers to operate could be seriously impaired and we could experience material harm to our business, operating results and financial condition. Because our ability to attract and retain customers depends on our ability to provide customers with highly reliable service, even minor interruptions in our operations could harm our reputation as a reliable solutions provider. In addition, the coverage or limits of our business interruption insurance may not be sufficient to compensate for any losses or damages that may occur.

The United Kingdom's withdrawal from the EU may adversely impact our operations in the United Kingdom and elsewhere.

In June 2016, voters in the United Kingdom approved an advisory referendum to withdraw from the EU, commonly referred to as "Brexit". The political and economic instability created by the Brexit vote has caused and may continue to cause significant volatility in global financial markets and the value of the Pound Sterling currency and other currencies, including the Euro. Depending on the terms reached regarding the United Kingdom's exit from the EU, it is possible that there may be adverse practical and/or operational implications on our business.

Currently, the most immediate impact may be to the relevant regulatory regimes under which our United Kingdom subsidiaries operate, including the offering of communications services, as well as data privacy. Since the vote to withdraw from the EU, negotiations and arrangements between the United Kingdom, the EU and other countries outside of the EU have been, and will continue to be, complex and time consuming. The potential withdrawal could adversely impact our United Kingdom subsidiaries and add operational complexities that did not previously exist.

The United Kingdom formally left the EU on January 31, 2020 and immediately entered into an 11-month transition period during which all EU rules and trading agreements remain as they were. Discussions between the EU and the United Kingdom on securing a trade deal are ongoing with a December 2020 deadline. The impact on regulatory regimes remains uncertain if a trade deal is not reached. At this time, we cannot predict the impact of the EU and the United Kingdom failing to secure a trade deal may have on our business generally and our United Kingdom subsidiaries more specifically, and no assurance can be given that our operating results, financial condition and prospects would not be adversely impacted.

A violation of the FCPA may adversely affect the Company's business and operations.

As a U.S. corporation, we are subject to the regulations imposed by the Foreign Corrupt Practices Act (the "FCPA"), which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or maintaining business. We have adopted stringent procedures to enforce compliance with the FCPA. Nevertheless, we do business and may do additional business in the future in countries and regions where strict compliance with anti-bribery laws may not be customary and we may be held liable for actions taken by our strategic or local partners even though these partners may not be subject to the FCPA. Our personnel and intermediaries, including our local operators and strategic partners, may face, directly or indirectly, corrupt demands by government officials, political parties and officials, tribal or insurgent organizations, or private entities in the countries in which we operate or may operate in the future. As a result, we face the risk that an unauthorized payment or offer of payment could be made by one of our employees or intermediaries, even if such parties are not always subject to our control or are not themselves subject to the FCPA or other similar laws to which we may be subject. Any allegation or determination that we have violated the FCPA could have a material adverse effect on our business, financial position, results of operations and cash flows.

We are exposed to the credit risk of some of our clients and customers, which may harm our operating results and financial condition.

Most of our sales in the United States have standard payment terms of 30 days and, because of local customs or conditions, longer in some markets outside the United States. We believe customer financing is a competitive factor in obtaining business, particularly in serving customers involved in significant infrastructure projects. Our financing arrangements may include not only financing the acquisition of our solutions and services but also providing additional funds for other costs associated with installation and integration of our solutions and services.

We have a thorough credit process for extending credit limits to our customers, which considers the financial profile of our end user customers in addition to that of the direct customer, distributor or channel partner. We evaluate numerous factors in extending credit, which may include credit ratings, financial performance and discussions with customers. Notwithstanding

that, our exposure to the credit risks relating to our financing activities described above may increase if our customers are adversely affected by periods of economic uncertainty or a global economic downturn. For instance, due to the impact of the COVID-19 pandemic, certain clients and customers have had and may continue to have difficulty meeting their payment obligations to us, resulting in late or non-payment of amounts owed. Although these losses have not been material to date, future losses, if incurred, could harm our business and have a material adverse effect on our operating results and financial condition.

The Company could be subject to changes in its tax rates, the adoption of new U.S. or international tax legislation or exposure to additional tax liabilities, which could have a material and adverse impact on the Company's operating results, cash flows and financial condition.

The Company is subject to taxes in the U.S. and numerous foreign jurisdictions, where a number of the Company's subsidiaries are organized or the Company's solutions and devices are sold. Due to economic and political conditions, tax rates in various jurisdictions including the U.S. may be subject to change. The Company's future effective tax rates could be affected by changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities and changes in tax laws or their interpretation.

U.S. tax reform legislation enacted in December 2017 known colloquially as the "Tax Cuts and Jobs Act," among other things, makes significant changes to the rules applicable to the taxation of corporations, such as changing the corporate tax rate to a flat 21% rate, modifying the rules regarding limitations on certain deductions for executive compensation, introducing a capital investment deduction in certain circumstances, placing certain limitations on the interest deduction, modifying the rules regarding the usability of certain net operating losses, implementing a minimum tax on the "global intangible low-taxed income" of a "United States shareholder" of a "controlled foreign corporation," modifying certain rules applicable to U.S. shareholders of controlled foreign corporations, imposing a deemed repatriation tax on certain earnings and adding certain anti-base erosion rules. It is possible that any amendment to these new rules, or clarification as to the application thereof, may have a material and adverse impact on our operating results, cash flows and financial condition.

Tax examinations and audits could have a material and adverse impact on the Company's cash flows and financial condition.

The Company is subject to the examination of its tax returns and other tax matters by the U.S. Internal Revenue Service and other tax authorities and governmental bodies. The Company regularly assesses the likelihood of an adverse outcome resulting from such examinations to determine the adequacy of its provision for taxes. There can be no assurance as to the outcome of any such examinations.

If the Company's effective tax rates were to increase, or if the ultimate determination of the Company's taxes owed were for an amount in excess of amounts previously accrued, the Company's operating results, cash flows and financial condition could be materially and adversely affected.

Fluctuations in foreign currency exchange rates and interest rates could negatively impact our operating results, financial condition and cash flows.

We are a global company with significant international operations and we transact business in many currencies. As a result of our foreign operations, we are exposed to adverse movements in foreign currency exchange rates. The majority of our revenues and expenses are denominated in U.S. dollars. However, we are exposed to foreign currency exchange rate fluctuations related to certain revenues and expenses denominated in foreign currencies. Our primary currency exposures relate to net operating expenses denominated in Euro, Indian Rupee and Mexican Peso. These exposures may change over time as business practices evolve and the geographic mix of our business changes. In addition, a portion of our borrowings bears interest at prevailing interest rates based upon the LIBOR Rate plus an applicable margin. Therefore, we are subject to risk from changes in interest rates on the variable component of the rate. From time to time we use derivative instruments to hedge foreign currency risks associated with certain monetary assets and liabilities, primarily accounts receivable, accounts payable and certain intercompany obligations, as well as to hedge risks associated with changes in interest rates. The measures we have taken to help mitigate these risks are discussed in Part II, Item 7A, "Quantitative and Qualitative Disclosures about Market Risk," of this Annual Report on Form 10-K. However, any attempts to hedge against foreign currency exchange rate and/or interest rate fluctuation risk may be unsuccessful and result in an adverse impact to our operating results, financial condition and cash flows.

If we fail to maintain proper and effective internal control over financial reporting, our operating results and our ability to operate our business could be harmed.

Section 404 of the Sarbanes-Oxley Act of 2002 requires that we establish and maintain internal control over financial reporting and we are also required to establish disclosure controls and procedures under applicable SEC rules. An effective internal control environment is necessary to enable us to produce reliable financial reports and is an important component of our efforts to prevent and detect financial reporting errors and fraud. Management is required to provide an annual assessment on the effectiveness of our internal control over financial reporting and our independent registered public accounting firm is also

required to attest to the effectiveness of our internal control over financial reporting. Our and our auditor's testing may reveal significant deficiencies in our internal control over financial reporting that are deemed to be material weaknesses and render our internal control over financial reporting ineffective. In the past, these assessments and similar reviews have led to the discovery of material weaknesses, all of which have been remediated. However, no assurance can be given that we will not discover material weaknesses in the future. We have incurred and we expect to continue to incur substantial accounting and auditing expense and expend significant management time in complying with the requirements of Section 404.

While an effective internal control environment is necessary to enable us to produce reliable financial reports and is an important component of our efforts to prevent and detect financial reporting errors and fraud, disclosure controls and internal control over financial reporting are generally not capable of preventing or detecting all financial reporting errors and all fraud. A control system, no matter how well-designed and operated, is designed to reduce rather than eliminate the risk of material misstatements in our financial statements. There are inherent limitations on the effectiveness of internal controls, including collusion, management override and failure in human judgment. A control system can provide only reasonable, not absolute, assurance of achieving the desired control objectives and the design of a control system must reflect the fact that resource constraints exist.

If we are not able to comply with the requirements of Section 404, or if we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses:

- we could fail to meet our financial reporting obligations;
- our reputation may be adversely affected and our business and operating results could be harmed;
- the market price of our stock could decline; and
- we could be subject to litigation and/or investigations or sanctions by the Securities and Exchange Commission (the "SEC"), the New York Stock Exchange or other regulatory authorities.

An active trading market for our common stock may not be sustained.

Although our common stock is currently quoted on the New York Stock Exchange, an active trading market for our common stock may not be sustained. If the market is not sustained, it may be difficult for shareholders to sell shares of our common stock at a price that is attractive or at all. In addition, an inactive market may impair our ability to raise capital by selling shares and may impair our ability to acquire other companies by using our shares as consideration, which, in turn, could materially adversely affect our business.

If securities or industry analysts discontinue publishing research or reports about our business, or publish negative reports about our business, our share price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about us, our business, our market and our competitors. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Item 1B. ***Unresolved Staff Comments***

None.

Item 2. ***Properties***

As of September 30, 2020, we had 126 leased facilities located in 58 countries. These included 9 primary research and development facilities located in Canada, Czech Republic, India, Ireland, Israel, Italy and the U.S. Our real property portfolio consists of aggregate floor space of 2.1 million square feet, substantially all of which is leased. Our lease terms range from monthly leases to 10 years. We believe that all of our facilities are in good condition and are well maintained. Our facilities are used for the current operations of both of our operating segments. For additional information regarding obligations under operating leases, see Note 5, "Leases," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

Item 3. ***Legal Proceedings***

The information concerning legal proceedings set forth under Note 22, "Commitments and Contingencies," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K, is incorporated by reference in response to this item.

Item 4. ***Mine Safety Disclosures***

Not applicable.

PART II

Item 5. ***Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities***

Market Information

The common stock of Avaya Holdings Corp. are listed on the New York Stock Exchange ("NYSE") and began trading on the NYSE on January 17, 2018, under the symbol "AVYA."

Number of Holders of Common Stock

The number of record holders of the common stock as of October 31, 2020 was 153. That number does not include the beneficial owners of shares held in "street" name or held through participants in depositories, such as The Depository Trust Company.

Dividends

No dividends were paid by Avaya Holdings Corp. on its common stock over the past three fiscal years and the Company does not anticipate paying cash dividends on its common stock in the foreseeable future. Holders of the Company's Series A Preferred Stock are entitled to receive dividends at the rate of 3% per annum of the stated value of the Series A Preferred Stock. The Company has the option of paying such dividends in cash or by increasing the stated value of the Series A Preferred Stock. Since the issuance of the Series A Preferred Stock in October 2019, the Company has increased the stated value of the Series A Preferred Stock for dividends accrued and does not expect to pay dividends on the Series A Preferred Stock in cash for the foreseeable future.

Purchases of Equity Securities by the Issuer

The following table provides information with respect to purchases by the Company of shares of common stock during the three months ended September 30, 2020:

Period	Total Number of Shares (or Units) Purchased[1]	Average Price Paid per Share (or Unit)	Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares (or Units) That May Yet Be Purchased Under Plans or Programs[2][3]
July 1 - 31, 2020	71,985	$ 12.5598	—	$ 185,000,003
August 1 - 31, 2020	46,958	$ 16.4200	—	$ 185,000,003
September 1 - 30, 2020	—	$ —	—	$ 185,000,003
Total	118,943		—	

[1] All repurchases included in the column for the periods indicated represent shares of common stock withheld for taxes on restricted stock units that vested.

[2] On November 14, 2018, the Company's Board of Directors approved a warrant repurchase program, authorizing the Company to repurchase the Company's outstanding warrants to purchase shares of the Company's common stock for an aggregate expenditure of up to $15 million. The repurchases may be made from time to time in the open market, through block trades or in privately negotiated transactions.

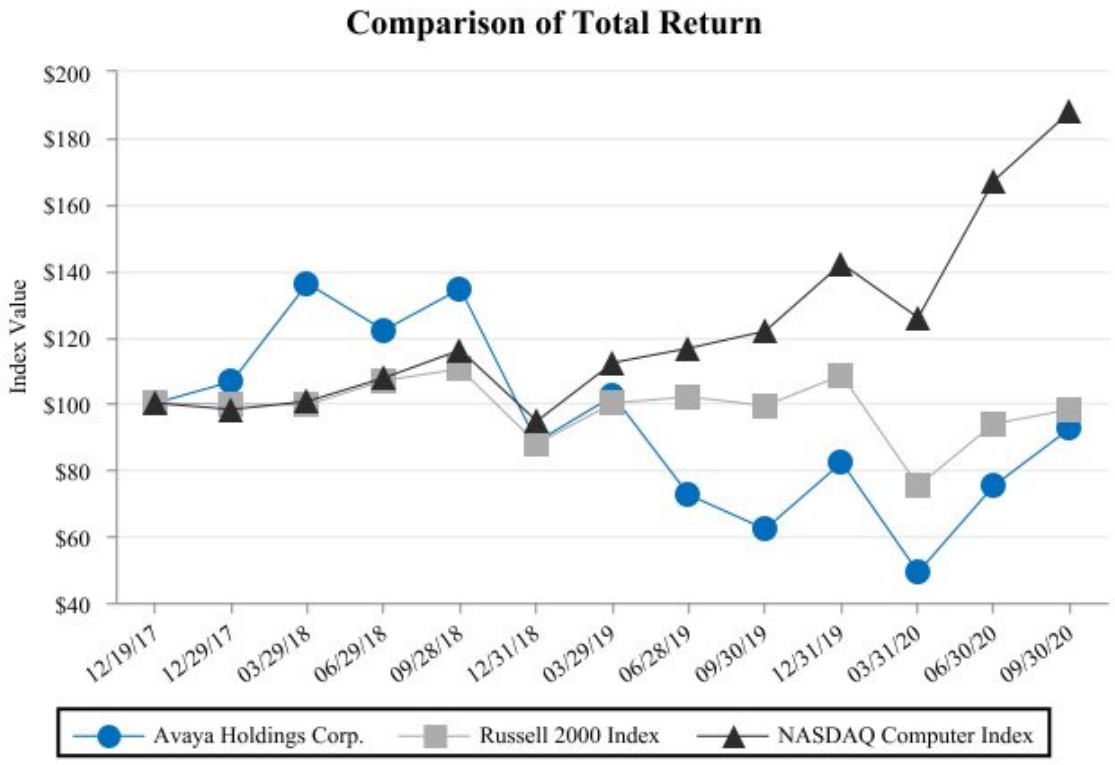
[3] On October 1, 2019, the Company's Board of Directors approved a share repurchase program, authorizing the Company to repurchase the Company's common stock for an aggregate expenditure of up to $500 million. The repurchases may be made from time to time in the open market, through block trades or in privately negotiated transactions.

Recent Sales of Unregistered Securities

None.

Stock Performance Graph

The following graph compares the cumulative total return on our common stock for the period from December 19, 2017, the date the common stock began trading, through September 30, 2020, with the total return over the same period on the Russell 2000 Index and the NASDAQ Computer Index. The graph assumes that $100 was invested on December 19, 2017 in the Company's common stock and in each of the indices and assumes reinvestment of dividends, if any. The graph is based on historical data and is not necessarily indicative of future price performance.



	12/19/17	12/29/17	03/29/18	06/29/18	09/28/18	12/31/18	03/29/19	06/28/19	09/30/19	12/31/19	03/31/20	06/30/20	09/30/20
Avaya Holdings Corp.	$ 100.00	$ 106.69	$ 136.17	$ 122.07	$ 134.59	$ 88.51	$ 102.31	$ 72.40	$ 62.19	$ 82.07	$ 49.18	$ 75.14	$ 92.41
Russell 2000 Index	$ 100.00	$ 99.92	$ 99.52	$ 106.92	$ 110.40	$ 87.75	$ 100.19	$ 101.94	$ 99.13	$ 108.57	$ 75.03	$ 93.79	$ 98.11
NASDAQ Computer Index	$ 100.00	$ 98.21	$ 100.68	$ 107.76	$ 116.13	$ 94.59	$ 112.28	$ 116.62	$ 121.79	$ 142.21	$ 125.93	$ 167.07	$ 187.82

This Performance Graph will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporates it by reference. In addition, the Performance Graph will not be deemed to be "soliciting material" or to be "filed" with the SEC or subject to Regulation 14A or 14C, other than as provided in Regulation S-K, or to the liabilities of section 18 of the Securities Exchange Act of 1934, except to the extent that the Company specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.

Item 6. ***Selected Financial Data***

The selected Consolidated Statements of Operations data for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor) and the selected Consolidated Balance Sheets data as of September 30, 2020 and 2019 (Successor), are derived from our audited Consolidated Financial Statements included in this Form 10-K. The selected Consolidated Statements of Operations data for fiscal 2017 and 2016, and the selected Consolidated Balance Sheets data as of September 30, 2018, 2017 and 2016, are derived from our audited Consolidated Financial Statements that are not included in this Form 10-K. The information set forth below is not necessarily indicative of results of future operations, and should be read in conjunction with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements and related notes included in Part II, Item 8, "Consolidated Financial Statements and Supplementary Data" in this Annual Report on Form 10-K.

	Successor			Predecessor		
Statement of Operations Data:	Fiscal years ended September 30,		Period from December 16, 2017 through	Period from October 1, 2017 through	Fiscal years ended September 30,	
(In millions, except per share amounts)	2020	2019	September 30, 2018	December 15, 2017	2017	2016
Revenue	2,873	2,887	$ 2,247	$ 604	$ 3,272	$ 3,702
Net (loss) income	(680)	(671)	287	2,977	(182)	(730)
(Loss) earnings per share:						
Basic	$ (7.45)	$ (6.06)	$ 2.61	$ 5.19	$ (0.43)	$ (1.54)
Diluted	$ (7.45)	$ (6.06)	$ 2.58	$ 5.19	$ (0.43)	$ (1.54)

	Successor			Predecessor	
Balance Sheet Data:	As of September 30,			As of September 30,	
(In millions)	2020	2019	2018	2017	2016
Cash and cash equivalents	$ 727	$ 752	$ 700	$ 876	$ 336
Total assets	6,231	6,950	7,679	5,898	5,821
Total debt (including current and long-term portion)	2,886	3,119	3,126	725	6,018
Liabilities subject to compromise	—	—	—	7,705	—
Finance leases	17	19	31	26	56
Convertible series A preferred stock	128	—	—	—	—
Total stockholders' equity (deficit)	236	1,300	2,051	(5,013)	(5,023)

	Successor			Predecessor		
Other Financial Data:	Fiscal years ended September 30,		Period from December 16, 2017 through	Period from October 1, 2017 through	Fiscal years ended September 30,	
(In millions)	2020	2019	September 30, 2018	December 15, 2017	2017	2016
Cash provided by (used for) operating activities	$ 147	$ 241	$ 202	$ (414)	$ 301	$ 113
EBITDA[(a)]	25	(3)	289	3,479	370	125
Adjusted EBITDA[(a)]	710	706	611	135	866	940

[(a)] Each of EBITDA and Adjusted EBITDA are non-GAAP financial measures. See "Management's Discussion and Analysis of Financial Condition and Results of Operations-EBITDA and Adjusted EBITDA" for a definition and explanation of EBITDA and Adjusted EBITDA and reconciliation of net (loss) income to EBITDA and Adjusted EBITDA.

The following are significant items affecting the comparability of the selected consolidated financial data for the periods presented:

- On December 15, 2017, the Company emerged from bankruptcy and applied fresh start accounting, which required the allocation of its reorganization value to its individual assets based on their estimated fair values. As a result of the application of fresh start accounting and the effects of the implementation of the Plan of Reorganization, our Consolidated Financial Statements after December 15, 2017 are not comparable with our Consolidated Financial

Statements as of or prior to that date. See Note 24, "Fresh Start Accounting," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for a more detailed discussion.

- The Company adopted ASU No. 2014-09, "Revenue from Contracts with Customers (Topic 606)" and its related amendments (collectively "ASC 606"), on October 1, 2018 using the modified retrospective transition method. As a result, the reported results for fiscal 2020 and 2019 reflect the application of ASC 606, while the reported results for prior fiscal years are not adjusted and continue to be reported under prior guidance ("ASC 605").
- The Company adopted ASU No. 2016-02, "Leases (Topic 842)", on October 1, 2019 using the modified retrospective transition method as of the beginning of the period of adoption. As a result, the Consolidated Balance Sheet as of September 30, 2020 reflects the application of ASC 842, while the Consolidated Balance Sheets for prior fiscal years are not adjusted and continue to be reported under ASC 840. The adoption of ASC 842 resulted in the recognition of $190 million of operating lease right-of-use assets and $194 million of operating lease liabilities on October 1, 2019.
- In fiscal 2020 and 2019 (Successor), and fiscal 2017 and 2016 (Predecessor), the Company recorded pre-tax impairment charges of $624 million, $659 million, $117 million and $542 million, respectively, related to goodwill and indefinite-lived intangible assets. See Note 7, "Goodwill, net" and Note 8, "Intangible Assets, net," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information.
- During the period from October 1, 2017 through December 15, 2017 (Predecessor) and fiscal 2017 (Predecessor), the Company recorded pre-tax reorganization, net credits (costs) of $3,416 million and $(98) million, respectively. The period from October 1, 2017 through December 15, 2017 (Predecessor) primarily consists of the net gain from the consummation of the Plan of Reorganization and the related settlement of liabilities. The period from October 1, 2017 through December 15, 2017 (Predecessor) and fiscal 2017 (Predecessor) also include amounts incurred subsequent to the Bankruptcy Filing as a direct result of the Bankruptcy Filing and are comprised of professional service fees and contract rejection fees.
- The Company acquired Spoken on March 9, 2018. Spoken has been included in the Company's results of operations since the acquisition date. See Note 6, "Business Combinations and Strategic Partnerships and Investments," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for a more detailed discussion.
- The Company sold its Networking business on July 14, 2017 which resulted in a pre-tax gain of $2 million in fiscal 2017 (Predecessor). See Note 23, "Emergence from Voluntary Reorganization under Chapter 11 Proceedings," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information.
- On December 22, 2017, the Tax Cuts and Jobs Act (the "Act") was signed into law, which lowered the U.S. federal corporate tax rate from 35% to 21% effective January 1, 2018. During the period from December 16, 2017 through September 30, 2018, the Company recorded an income tax benefit of $245 million to adjust deferred tax balances to reflect the new rates. See Note 14, "Income Taxes," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information.
- Restructuring charges, net were $30 million, $22 million, $81 million, $14 million, $30 million and $105 million on a pre-tax basis for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor), the period from October 1, 2017 through December 15, 2017 (Predecessor) and fiscal 2018, 2017 and 2016 (Predecessor), respectively. See Note 10, "Business Restructuring Reserves and Programs," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information.
- In fiscal 2017 (Predecessor), the Company recorded non-cash interest expense of $61 million related to the accelerated amortization of debt issuance costs and accretion of debt discount related to the Company’s Bankruptcy Filing. In addition, effective January 19, 2017, the Company ceased recording interest expense on outstanding pre-petition debt classified as Liabilities subject to compromise. Contractual interest expense represented amounts due under the contractual terms of outstanding debt, including debt subject to compromise. For the period from October 1, 2017 through December 15, 2017 (Predecessor) and the period from January 19, 2017 through September 30, 2017 (Predecessor), contractual interest expense of $94 million and $316 million was not recorded as interest expense, as it was not an allowed claim under the Bankruptcy Filing.
- As of September 30, 2017 (Predecessor), Liabilities subject to compromise included $5,832 million of Predecessor debt and $12 million of Predecessor capital lease obligations.

Item 7. *Management's Discussion and Analysis of Financial Condition and Results of Operations*

This "Management's Discussion and Analysis of Financial Condition and Results of Operations" should be read in conjunction with the Consolidated Financial Statements and related notes thereto included in Part II, Item 8 of this Annual Report on Form 10-K. The matters discussed in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" contain certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements involve significant risks and uncertainties. See the "Cautionary Note Regarding Forward-looking Statements" above and Part 1, Item 1A, "Risk Factors" in this Annual Report on Form 10-K for additional information regarding forward-looking statements and the factors that could cause actual results to differ materially from those anticipated in the forward-looking statements.

Overview

Avaya is a global leader in digital communications products, solutions and services for businesses of all sizes delivering most of its technology through software and services. We enable organizations around the globe to succeed by creating intelligent communications experiences for our clients, their employees and their customers. Avaya builds open, converged and innovative solutions to enhance and simplify communications and collaboration in the cloud, on-premise or a hybrid of both. Our global, experienced team of professionals delivers award-winning services from initial planning and design, to seamless implementation and integration, to ongoing managed operations, optimization, training and support.

During fiscal 2020, the Company shifted its entire comprehensive portfolio of capabilities to Avaya OneCloud, which offers significant capabilities across contact center, unified communications and collaboration, and communications platform as a service. Avaya OneCloud provides the full spectrum of cloud and on-premise deployment options. This enables organizations to deploy the Company's solutions in the way that best serves their business requirements and complements their existing investments, while moving with the speed and agility they require.

The Company also offers one of the broadest portfolios of business devices in the industry, including handsets, video conferencing units and headsets to meet the needs of every type of worker across a customer's organization and help them get the most out of their communications investments. Avaya IP-enabled handsets, multimedia devices and conferencing systems enhance collaboration and productivity, and position organizations to incorporate future technological advancements.

Our business has two operating segments: **Products & Solutions** and **Services.**

Products & Solutions

Products & Solutions encompasses our unified communications and contact center platforms, applications and devices.

The Company's unified communications and collaboration ("UCC") solutions enable organizations to reimagine collaborative work environments and help companies increase employee productivity, improve customer service and reduce costs. With Avaya's UCC solutions, organizations can provide their workers with a single app for all-channel calling, messaging, meetings and team collaboration with the same ease of use they receive from consumer apps. Avaya embeds communications directly into the apps, browsers and devices employees use every day giving them a more natural, efficient and flexible way to connect, engage, respond and share - where and how they want. During fiscal 2020, the Company expanded its UCC portfolio to include cloud-based solutions.

The Company's industry-leading digital contact center ("CC") solutions enable the Company's clients to build a customized portfolio of applications, driving stronger customer engagement and higher customer lifetime value. Our reliable, secure and scalable communications solutions include voice, email, chat, social media, video, performance management and third-party integration that can improve customer service and help companies compete more effectively. Like the UCC business, the Company is evolving CC solutions for cloud deployment and, in fiscal 2020, the Company expanded its CC portfolio to include cloud-based solutions.

Avaya also focuses on ensuring an outstanding experience for mobile callers by integrating transformative technologies, including Artificial Intelligence, mobility, big data analytics and cybersecurity into our CC solutions. As organizations use these solutions to gain a deeper understanding of their customer needs, we believe that their teams become more efficient and effective and, as a result, their customer loyalty grows.

Services

Services consists of a portfolio of offerings to help customers achieve better business outcomes, including global support services, enterprise cloud and managed services and professional services. We also classify customers who upgrade and acquire new technology through the Company's subscription offerings as part of our Services segment.

The Company's global support services provide offerings that help businesses protect their technology investments and address the risk of system outages. We help our customers gain a competitive edge through proactive problem prevention, rapid resolution and continual solution optimization. Most of our global support services revenue is recurring in nature.

Enterprise cloud and managed services enable customers to take advantage of our technology via the cloud, on-premise, or a hybrid of both, depending on the solution and the needs of the customer. Most of our enterprise cloud and managed services revenue is recurring in nature and based on multi-year services contracts.

The Company's professional services enable our customers to take full advantage of their IT and communications solution investments to drive measurable business results. Our experienced consultants and engineers partner with customers along each step of the solution lifecycle to deliver services that add value and drive business transformation. Most of our professional services revenue is one-time in nature.

Together, these comprehensive services enable clients to leverage communications technology to help them maximize their business results. Our global team of professionals delivers services from initial planning and design, to seamless implementation and integration, to ongoing managed operations, optimization, training and support. We help our customers use communications to minimize the risk of outages, enable employee productivity and deliver a differentiated customer experience.

Our services teams also help our customers transition at their desired pace to next generation communications technology solutions, either via the cloud, on-premise, or a hybrid of both. Customers can choose the levels of support for their communications solutions best suited for their needs, which may include deployment, training, monitoring, solution management optimization, and more. Our systems and service team's performance monitoring can quickly identify and address issues before they arise. Remote diagnostics and resolutions focus on fixing existing problems and avoiding potential issues in order to help our customers save time and reduce the risk of an outage.

Factors and Trends Affecting Our Results of Operations

There are a number of trends and uncertainties affecting our business. Most importantly, we are dependent on general economic conditions, the willingness of our customers to invest in technology and the manner in which they procure such technologies and services.

Industry Trends

As a result of a growing market trend preferring cloud consumption, more customers are exploring subscription and pay-per-use based models, rather than capex models, for procuring technology. The shift to subscription and pay-per-use models enables customers to manage costs and efficiencies by paying a subscription or a per minute or per message fee for business communications services rather than purchasing the underlying products and services, infrastructure and personnel, which are owned and managed by the equipment vendor or a cloud and managed services provider. We believe the market trend toward these flexible consumption models will continue as we see an increasing number of opportunities and requests for proposals based on subscription and pay-per-use models. This trend has driven an increase in the proportion of total Company revenues attributable to software and services. In addition, we believe customers are moving away from owned and operated infrastructure, preferring cloud offerings and virtualized server defined networks, which reduce our associated maintenance support opportunities. We continue to evolve into a software and services business and focus our go-to-market efforts by introducing new solutions and innovations, particularly on workflow automation, multi-channel customer engagement and cloud-enabled communications applications. The Company is focused on growing products and services with a recurring revenue stream. Recurring revenue includes products and services that are delivered pursuant to multi-period contracts and include revenue from sales of its software, global support services, enterprise cloud and managed services and other cloud offerings.

Novel Coronavirus Disease ("COVID-19") Pandemic

Instability in the geopolitical environment of our customers, instability in the global credit markets and other disruptions, such as the COVID-19 pandemic, has put pressure on the global economy causing uncertainties. The COVID-19 pandemic, and the responses of governments worldwide to COVID-19, are having a negative impact on regional, national and global economies, are disrupting supply chains and reducing international trade and business activity. The ultimate impact of the COVID-19 pandemic on our business, financial performance and liquidity, including our ability to execute our near-term and long-term business strategies and initiatives in the expected time frame, will depend on future developments, including the duration and severity of the pandemic, as well as the severity of resurgences of the virus and related government responses, all of which are uncertain and cannot be predicted. Although the COVID-19 pandemic did not have a material impact on the Company's revenue and gross margin during fiscal 2020, the Company did recognize a significant goodwill impairment charge during fiscal 2020 as a result of the COVID-19 pandemic, as described in more detail in the Financial Results Summary below. If the pandemic continues to have a significant adverse effect on regional, national and global economies, we may be required to recognize additional impairments in the future. The ultimate impact the COVID-19 pandemic will have on the Company's

future operating results, financial position and cash flows, as well as the demand for the Company's products and services, is uncertain and unpredictable and, as a result, current results and financial condition discussed herein may not be indicative of future operating results, financial condition and related trends. For further discussion of the uncertainties and business risks associated with the COVID-19 pandemic, refer to Part I, Item 1A "Risk Factors" to this Annual Report on Form 10-K.

The health and safety of our employees has been our highest priority throughout the COVID-19 pandemic, and we have implemented several preventative and protective measures, including requiring, to the extent possible, all employees to work remotely, and cancelling conventions and conferences where social distancing would not be possible. We have also implemented business continuity plans and have continued to support our clients primarily by providing our services remotely instead of onsite.

While the pandemic and related effect on the global economy have not materially impacted the Company or its financial condition, the Company has implemented cost containment and cash management initiatives to mitigate any potential impact of the COVID-19 pandemic on its business and liquidity and will continue to evaluate its financial position in light of future developments.

We believe that the current macroeconomic environment has accelerated a developing trend in the way people work, with more employees working remotely, and believe this could increase demand for certain products and services of the Company.

The Company has maintained its focus on profitability levels and investing in future results and has implemented programs designed to streamline its operations, generate cost savings and eliminate overlapping processes and resources. The Company continues to evaluate opportunities to streamline its operations and identify cost savings globally in addition to those implemented in response to the COVID-19 pandemic and may take additional restructuring actions in the future. The costs of those actions could be material.

Financial Results Summary

Fiscal year ended September 30, 2020 Results Compared with Fiscal year ended September 30, 2019

The section below provides a comparative discussion of our consolidated results of operations between fiscal 2020 and 2019. See Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2019 filed on November 29, 2019 for comparative discussion of our consolidated results of operations between fiscal 2019 and 2018 (combined).

The following table displays our consolidated net loss for the periods indicated:

(In millions)	Fiscal years ended September 30, 2020	2019
REVENUE		
Products	$ 1,073	$ 1,222
Services	1,800	1,665
	2,873	2,887
COSTS		
Products:		
Costs	405	442
Amortization of technology intangible assets	174	174
Services	714	696
	1,293	1,312
GROSS PROFIT	1,580	1,575
OPERATING EXPENSES		
Selling, general and administrative	1,013	1,001
Research and development	207	204
Amortization of intangible assets	161	162
Impairment charges	624	659
Restructuring charges, net	30	22
	2,035	2,048
OPERATING LOSS	(455)	(473)
Interest expense	(226)	(237)
Other income, net	63	41
LOSS BEFORE INCOME TAXES	(618)	(669)
Provision for income taxes	(62)	(2)
NET LOSS	$ (680)	$ (671)

The following table displays the impact of the fair value adjustments resulting from the Company's application of fresh start accounting upon emergence from bankruptcy, excluding those related to the amortization of intangible assets, on the Company's operating loss for the periods indicated:

(In millions)	Fiscal years ended September 30, 2020	2019
REVENUE		
Products	$ (1)	$ (6)
Services	(5)	(15)
	(6)	(21)
COSTS		
Products	—	5
Services	1	11
	1	16
GROSS PROFIT	(7)	(37)
OPERATING EXPENSES		
Selling, general and administrative	2	1
Research and development	(1)	(4)
	1	(3)
OPERATING LOSS	$ (6)	$ (40)

Revenue

Revenue for fiscal 2020 was $2,873 million compared to $2,887 million for fiscal 2019. The decrease was primarily driven by lower demand for the Company's on-premise solutions, partially offset by revenue from the Company's new subscription offerings and revenue from the fulfillment of certain obligations related to a new government contract.

The following table displays revenue and the percentage of revenue to total sales by operating segment for the periods indicated:

	Fiscal years ended September 30,		Percentage of Total Revenue Fiscal years ended September 30,		Yr. to Yr. Percentage Change	Yr. to Yr. Percentage Change, net of Foreign Currency Impact
(In millions)	2020	2019	2020	2019		
Products & Solutions	$ 1,074	$ 1,228	37 %	43 %	(13)%	(12)%
Services	1,805	1,680	63 %	58 %	7 %	8 %
Unallocated amounts	(6)	(21)	— %	(1)%	(1)	(1)
Total revenue	$ 2,873	$ 2,887	100 %	100 %	— %	— %

(1) Not meaningful

Products & Solutions revenue for fiscal 2020 was $1,074 million compared to $1,228 million for fiscal 2019. The decrease was primarily attributable to lower demand for the Company's on-premise solutions, partially offset by revenue from the fulfillment of certain obligations related to a new government contract and higher demand for remote agent licenses for the Company's contact center solutions as a result of the COVID-19 pandemic.

Services revenue for fiscal 2020 was $1,805 million compared to $1,680 million for fiscal 2019. The increase was primarily driven by revenue from the Company's new subscription offerings and revenue from the fulfillment of certain obligations related to a new government contract, partially offset by the planned declines in hardware maintenance and software support services which continue to face headwinds driven by lower new product sales over the past several years.

Unallocated amounts for fiscal 2020 and 2019 represent the fair value adjustment to deferred revenue recognized upon emergence from bankruptcy which is excluded from segment revenue.

The following table displays revenue and the percentage of revenue to total sales by location for the periods indicated:

	Fiscal years ended September 30,		Percentage of Total Revenue Fiscal years ended September 30,		Yr. to Yr. Percentage Change	Yr. to Yr. Percentage Change, net of Foreign Currency Impact
(In millions)	2020	2019	2020	2019		
U.S.	$ 1,640	$ 1,553	57 %	54 %	6 %	6 %
International:						
Europe, Middle East and Africa	714	753	25 %	26 %	(5)%	(5)%
Asia Pacific	296	327	10 %	11 %	(9)%	(9)%
Americas International - Canada and Latin America	223	254	8 %	9 %	(12)%	(10)%
Total International	1,233	1,334	43 %	46 %	(8)%	(7)%
Total revenue	$ 2,873	$ 2,887	100 %	100 %	— %	— %

Revenue in the U.S. for fiscal 2020 was $1,640 million compared to $1,553 million for fiscal 2019. Revenue from the Company's new subscription offerings; revenue from the fulfillment of certain obligations related to a new government contract; and higher demand for remote agent licenses for the Company's contact center solutions as a result of the COVID-19 pandemic were partially offset by lower demand for the Company's on-premise solutions and lower professional services revenue. Revenue in Europe, Middle East and Africa ("EMEA") for fiscal 2020 was $714 million compared to $753 million for fiscal 2019. The decrease in EMEA revenue was primarily attributable to lower demand for the Company's on-premise solutions, partially offset by higher professional services revenue. Revenue in Asia Pacific ("APAC") for fiscal 2020 was $296 million compared to $327 million for fiscal 2019. The decrease in APAC revenue was primarily attributable to lower demand for the Company's on-premise solutions. Revenue in Americas International for fiscal 2020 was $223 million compared to $254 million for fiscal 2019. The decrease in Americas International was primarily attributable to lower demand for the Company's on-premise solutions and the unfavorable impact of foreign currency exchange rates.

Gross Profit

The following table sets forth gross profit and gross margin by operating segment for the periods indicated:

	Fiscal years ended September 30,		Gross Margin Fiscal years ended September 30,		Change	
(In millions)	2020	2019	2020	2019	Amount	Percent
Products & Solutions	$ 669	$ 791	62.3 %	64.4 %	$ (122)	(15)%
Services	1,092	996	60.5 %	59.3 %	96	10 %
Unallocated amounts	(181)	(212)	(1)	(1)	31	(1)
Total	$ 1,580	$ 1,575	55.0 %	54.6 %	$ 5	— %

(1) Not meaningful

Gross profit for fiscal 2020 was $1,580 million compared to $1,575 million for fiscal 2019. The increase was primarily driven by revenue growth from the Company's new subscription offerings, partially offset by lower demand for the Company's on-premise UCC solutions.

Products & Solutions gross profit for fiscal 2020 was $669 million compared to $791 million for fiscal 2019. Products & Solutions gross margin decreased from 64.4% to 62.3% in fiscal 2020 mainly driven by less favorable product mix.

Services gross profit for fiscal 2020 was $1,092 million compared to $996 million for fiscal 2019. Services gross margin increased from 59.3% to 60.5% in fiscal 2020 mainly due to the favorable impact of revenue from the Company's new subscription offerings.

Unallocated amounts for fiscal 2020 and 2019 include the amortization of technology intangibles; fair value adjustments recognized upon emergence from bankruptcy and excluded from segment gross profit; and costs that are not core to the measurement of segment performance, but rather are controlled at the corporate level.

Operating Expenses

The following table sets forth operating expenses and the percentage of operating expenses to total revenue for the periods indicated:

	Fiscal years ended September 30,		Percentage of Total Revenue Fiscal years ended September 30,		Change	
(In millions)	2020	2019	2020	2019	Amount	Percent
Selling, general and administrative	$ 1,013	$ 1,001	35.3 %	34.7 %	$ 12	1 %
Research and development	207	204	7.2 %	7.1 %	3	1 %
Amortization of intangible assets	161	162	5.6 %	5.5 %	(1)	(1)%
Impairment charges	624	659	21.7 %	22.8 %	(35)	(5)
Restructuring charges, net	30	22	1.0 %	0.8 %	8	36 %
Total operating expenses	$ 2,035	$ 2,048	70.8 %	70.9 %	$ (13)	(1)%

Selling, general and administrative expenses for fiscal 2020 were $1,013 million compared to $1,001 million for fiscal 2019. The increase was primarily attributable to higher incentive compensation; higher advisory fees associated with executing the strategic partnership with RingCentral; and higher channel compensation mainly driven by higher subscription revenue. The increases were partially offset by lower travel costs as a result of the COVID-19 pandemic; lower consulting costs; the favorable impact of foreign currency exchange rates and lower headcount-related costs.

Research and development expenses for fiscal 2020 were $207 million compared to $204 million for fiscal 2019. The increase was primarily attributable to higher incentive compensation.

Amortization of intangible assets for fiscal 2020 was $161 million compared to $162 million for fiscal 2019.

Impairment charges for fiscal 2020 were $624 million. During fiscal 2020, the Company performed an interim impairment test of its goodwill and indefinite-lived intangible assets due to (i) the impact of the COVID-19 pandemic on the macroeconomic environment which led to revisions to the Company's long-term forecast during the second quarter of fiscal 2020 and (ii) the sustained decrease in the Company's stock price since the advent of the pandemic which was caused by the resulting volatility in the financial markets. The results of the Company's interim goodwill impairment test as of March 31, 2020 indicated that the estimated fair value of the Company's Services reporting unit exceeded its carrying amount. The carrying amount of the Company's Products & Solutions reporting unit exceeded its estimated fair value primarily due to a reduction in the Company's

long-term forecast to reflect increased risk from higher market uncertainty and the accelerated reduction of product sales related to the Company's historical on-premise perpetual licenses. The Company anticipates a continued shift and acceleration of customers upgrading and acquiring new technology innovation through the utilization of the Company's subscription offering, which is included in the Services reporting unit. As a result, the Company recorded a goodwill impairment charge of $624 million to write down the full carrying amount of the Products & Solutions goodwill. The results of the indefinite-lived intangible asset impairment test as of March 31, 2020 indicated that no impairment existed. The Company also performed its annual impairment test for goodwill and indefinite-lived intangible assets as of July 1, 2020 and determined no impairment existed. The Company determined that no events occurred or circumstances changed during the three months ended September 30, 2020 that would indicate that it is more likely than not that its goodwill or indefinite-lived intangible asset was impaired. The Company's long-term forecast includes significant estimates and assumptions, including management's estimate of the potential impact of the COVID-19 pandemic on the Company's operating results. Due to the uncertainty surrounding the impact of the COVID-19 pandemic on the macroeconomic environment and, more specifically, the Company's future operating results, it is reasonably possible that the pandemic could have a more adverse impact than what is currently contemplated by the Company's long-term forecast. To the extent that business conditions deteriorate or if changes in key assumptions and estimates differ significantly from management's expectations, it may be necessary to record additional impairment charges in the future.

Impairment charges for fiscal 2019 were $659 million. During fiscal 2019, the Company performed an interim impairment test of its goodwill and indefinite-lived intangible assets due to a sustained decrease in the Company’s stock price and lower than planned financial results which led to revisions to the Company's long-term forecast during the third quarter. The results of the Company’s interim goodwill impairment test as of June 30, 2019 indicated that the carrying amount of the Company’s Contact Center (“CC”) reporting unit, which was subsequently aggregated into the Products & Solutions reporting unit on October 1, 2019, exceeded its estimated fair value primarily due to a reduction in the Company's long-term forecast. As a result, the Company recorded a goodwill impairment charge of $657 million, representing the amount by which the carrying amount of the CC reporting unit exceeded its fair value. During fiscal 2019, the Company also elected to abandon an in-process research and development project that no longer aligned with the Company's technology roadmap. As a result, the Company recorded an impairment charge of $2 million to write down the full carrying amount of the acquired in-process research and development project.

Restructuring charges, net, for fiscal 2020 were $30 million compared to $22 million for fiscal 2019. Restructuring charges during fiscal 2020 consisted of $24 million for facility exit costs primarily in the U.S. and $6 million for employee severance actions in EMEA. Restructuring charges during fiscal 2019 included employee separation costs of $19 million primarily associated with employee severance actions in the U.S., EMEA and Canada and lease obligations of $3 million primarily in the U.S.

Operating loss

Operating loss for fiscal 2020 was $455 million compared to $473 million for fiscal 2019. Our operating results for fiscal 2020 as compared to fiscal 2019 reflect, among other things, the following items which are described in more detail above:

- higher gross profit for fiscal 2020; and
- lower impairment charges during fiscal 2020; offset by
- higher selling, general and administrative expenses in fiscal 2020; and
- higher restructuring charges for fiscal 2020

Interest Expense

Interest expense for fiscal 2020 was $226 million compared to $237 million for fiscal 2019. The decrease was mainly driven by lower average principal amounts outstanding during fiscal 2020 and lower average interest rates, partially offset by $9 million of new debt issuance costs and underwriting discounts related to the Company's fiscal 2020 debt transactions described in the "Liquidity and Capital Resources" section below and a $7 million partial write-off of the original underwriting discount on the Term Loan Credit Agreement due to the prepayments.

Other Income, Net

Other income, net for fiscal 2020 was $63 million as compared to $41 million for fiscal 2019. Other income, net for fiscal 2020 consisted of gains of $59 million from the sale of shares of RingCentral common stock, which were received by the Company upon entry into the strategic partnership in October 2019; other pension and post-retirement benefit credits of $22 million; interest income of $6 million; and sublease income of $5 million, partially offset by net foreign currency losses of $16 million; an impairment of an investment in debt securities of $10 million, as a result of the decline in the macroeconomic environment due to the COVID-19 pandemic and a decline in the expected operating results and cash flows for the investment company; and an increase in the fair value of the Emergence Date Warrants of $3 million. Other income, net for fiscal 2019 consisted of a decrease in the fair value of the Emergence Date Warrants of $29 million; interest income of $14 million; and other pension and

post-retirement benefit credits of $7 million, partially offset by net foreign currency losses of $8 million and other, net of $1 million.

Provision for Income Taxes

The provision for income taxes was $62 million for fiscal 2020 compared to $2 million for fiscal 2019.

The Company's effective income tax rate for fiscal 2020 differed from the U.S. federal tax rate primarily due to: (1) income and losses taxed at different foreign tax rates, (2) deferred taxes (including losses) generated for which no benefit was recorded because it is more likely than not that the tax benefits would not be realized, (3) U.S. state and local income taxes, (4) the impact of the Tax Cuts and Jobs Act (the "Act") and associated regulations, (5) the goodwill impairment charges recorded in fiscal 2020, and (6) foreign tax credits.

The Company's effective income tax rate for fiscal 2019 differed from the U.S. federal tax rate primarily due to: (1) income and losses taxed at different foreign tax rates, (2) losses generated within certain foreign jurisdictions for which no benefit was recorded because it is more likely than not that the tax benefits would not be realized, (3) non-U.S. withholding taxes on foreign earnings, (4) current period changes to unrecognized tax positions, (5) U.S. state and local income taxes, (6) the impact of the Tax Cuts and Jobs Act (the "Act"), (7) the goodwill impairment charges recorded in fiscal 2019, (8) current period elections taken in submitted tax filings, and (9) foreign tax credits.

Net Loss

Net loss was $680 million for fiscal 2020 compared to $671 million for fiscal 2019 as a result of the items discussed above.

Liquidity and Capital Resources

We expect our existing cash balance, cash generated by operations and borrowings available under our ABL Credit Agreement to be our primary sources of short-term liquidity. Our ability to meet our cash requirements will depend on our ability to generate cash in the future, which is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. Based on our current level of operations, as well as our current estimates of the impact that the COVID-19 pandemic will have on our business and cash flow, we believe these sources will be adequate to meet our liquidity needs for at least the next twelve months.

Cash Flow Activity

The following table provides a summary of the statements of cash flows for the periods indicated:

	Fiscal years ended September 30,	
(In millions)	**2020**	**2019**
Net cash provided by (used for):		
Operating activities	$ 147	$ 241
Investing activities	314	(124)
Financing activities	(489)	(61)
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	3	(4)
Net (decrease) increase in cash, cash equivalents, and restricted cash	(25)	52
Cash, cash equivalents, and restricted cash at beginning of period	756	704
Cash, cash equivalents, and restricted cash at end of period	$ 731	$ 756

Operating Activities

Cash provided by operating activities for fiscal 2020 and 2019 was $147 million and $241 million, respectively. The decrease was primarily due to higher advisory fees associated with executing the strategic partnership with RingCentral; higher income tax payments; third-party debt modification fees associated with the fiscal 2020 debt transactions described below; and the timing of vendor and customer payments, partially offset by lower contributions to the Company's pension and post-retirement benefit plans; lower severance payments under the Company's restructuring programs; and lower interest payments.

Investing Activities

Cash provided by investing activities for fiscal 2020 was $314 million compared to cash used for investing activities of $124 million for fiscal 2019. The change was primarily due to proceeds received from the sale of shares of RingCentral common stock during fiscal 2020, which were received by the Company upon entry into the strategic partnership in October 2019, and lower capital expenditures for facility improvements and IT-related projects.

Financing Activities

Cash used for financing activities for fiscal 2020 and 2019 was $489 million and $61 million, respectively.

Cash used for financing activities for fiscal 2020 included:

- repayment of the Term Loan Credit Agreement of $1,643 million as part of the refinancing described below less proceeds received in the refinancing of $1,627 million;
- principal prepayments under the Term Loan Credit Agreement of $1,231 million, consisting of a repayment of $250 million in November 2019 and $981 million in September 2020 with proceeds from the senior notes issuance discussed below;
- repurchases of shares of common stock under the Company's share repurchase program of $330 million;
- debt issuance costs of $14 million related to the Company's new senior notes which are described below;
- repayments in connection with financing leases of $10 million;
- payment of acquisition-related contingent consideration of $5 million; and
- other financing activities, net of $7 million; partially offset by
- proceeds from the issuance of the Company's new senior notes of $1,000 million described below;
- proceeds from the issuance of Series A Preferred Stock to RingCentral upon entry into the strategic partnership in October 2019, net of issuance costs, of $121 million; and
- proceeds from the Company's Employee Stock Purchase Plan of $3 million.

Cash used for financing activities for fiscal 2019 included:

- scheduled debt repayments under the Term Loan Credit Agreement of $29 million;
- repayments in connection with financing leases of $14 million;
- payment of acquisition-related contingent consideration of $9 million; and
- other financing activities, net of $9 million.

Senior Notes Issuance

On September 25, 2020, the Company issued $1,000 million in aggregate principal amount of its Senior 6.125% First Lien Notes (the “Senior Notes”). The Senior Notes were issued under an indenture, among the Company, the Company's subsidiaries that guaranteed the Senior Notes on the issuance date and Wilmington Trust, National Association, as trustee and notes collateral agent. The Senior Notes mature on September 15, 2028. The Company used the net proceeds from the issuance of the Senior Notes after debt issuance costs to prepay $981 million in principal amount of certain first lien term loans under its Term Loan Credit Agreement.

Term Loan Credit Agreement Refinancing

On September 25, 2020, the Company amended the Term Loan Credit Agreement, pursuant to which the maturity of $800 million in principal amount of the first lien term loans outstanding under the Term Loan Credit Agreement was extended from December 2024 to December 2027. The amendment also made certain other changes to the Term Loan Credit Agreement, including with respect to the change of control provisions.

ABL Credit Agreement Refinancing

On September 25, 2020, the Company also amended its ABL Credit Agreement to, among other things, extend its maturity to September 25, 2025, subject to customary adjustments to the extent certain of the Company's indebtedness matures prior to such date. The total commitments under the ABL Credit Agreement were also reduced from $300 million to $200 million, subject to borrowing base availability.

As of September 30, 2020, the Company was in compliance with all covenants and other requirements under its debt agreements.

See Note 11, "Financing Arrangements," and Note 12, "Derivative Instruments and Hedging Activities," to our Consolidated Financial Statements for further details about our financing arrangements and hedging activities, including summaries of the material provisions of the Company's Term Loan Credit Agreement, ABL Credit Agreement, Senior Notes, Convertible Notes and interest rate swap agreements.

Contractual Obligations and Sources of Liquidity

Contractual Obligations

The following table summarizes the Company's contractual obligations as of September 30, 2020:

	Payments due by period				
(In millions)	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Total debt[1]	$ 2,993	$ —	$ 350	$ 843	$ 1,800
Interest payments due on debt[2]	1,169	190	385	312	282
Purchase obligations with contract manufacturers and product suppliers[3]	87	87	—	—	—
Other purchase obligations[4]	525	444	54	27	—
Operating lease obligations[5]	204	58	85	39	22
Finance lease obligations[6]	18	9	7	2	—
Pension benefit obligations[7]	604	53	107	96	348
Total	$ 5,600	$ 841	$ 988	$ 1,319	$ 2,452

(1) Represents principal payments only.

(2) The interest payments due on debt give effect to the impact of the Company's interest rate swap agreements. The interest payments for the unhedged portion of the Company's Term Loan Credit Agreement were calculated by applying an applicable margin to a projected LIBOR rate. The interest payments for the Company's 6.125% senior notes and its 2.25% convertible senior notes were based on their contractual coupon rates. An estimated unused facility fee was calculated for the ABL Credit Agreement using the contract rate.

(3) During the normal course of business, in order to manage manufacturing lead times and to help assure adequate component supply, the Company enters into agreements with contract manufacturers and product suppliers that allow them to produce and procure inventory based upon forecasted requirements. If the Company does not meet the specified minimum purchase commitments under these agreements, it could be required to purchase the inventory.

(4) Other purchase obligations represent an estimate of contractual obligations in the ordinary course of business, other than commitments with contract manufacturers and product suppliers, for which the Company had not received the goods or services as of September 30, 2020. Although contractual obligations are considered enforceable and legally binding, the terms generally allow the Company to cancel, reschedule and adjust its requirements based on the Company's business needs prior to the delivery of goods or performance of services.

(5) Operating lease obligations represent the undiscounted future minimum lease payments for the Company's operating leases.

(6) Finance lease obligations represent the undiscounted future minimum lease payments for the Company's finance leases.

(7) The Company sponsors non-contributory defined pension and post-retirement plans covering certain employees and retirees. The Company's general funding policy with respect to qualified pension plans is to contribute amounts at least sufficient to satisfy the minimum amount required by applicable law and regulations, or to directly pay benefits where appropriate. Most post-retirement medical benefits are not pre-funded. Consequently, the Company makes payments as these retiree medical benefits are disbursed. The amounts presented represent estimated minimum funding requirements for the Company's defined pension plans through fiscal 2030 and estimated payments for medical benefits under the Company's post-retirement plans.

As of September 30, 2020, the Company's unrecognized tax benefits ("UTBs") associated with uncertain tax positions were $140 million and interest and penalties related to these amounts were an additional $25 million. The UTBs and related interest and penalties are not reflected in the table above due to the uncertainty of the timing of payments.

Future Cash Requirements

Our primary future cash requirements will be to fund operations, debt service, capital expenditures, benefit obligations and restructuring payments. In addition, we may use cash in the future to make strategic acquisitions.

Specifically, we expect our primary cash requirements for fiscal 2021 to be as follows:

- *Debt service*—We expect to make payments of approximately $190 million during fiscal 2021 in interest associated with the Term Loan Credit Agreement, Senior Notes and Convertible Notes, and interest and fees associated with our ABL Credit Agreement. In the ordinary course of business, we may from time to time borrow and repay amounts under our ABL Credit Agreement.
- *Capital expenditures*—We expect to spend approximately $95 million to $105 million for capital expenditures during fiscal 2021.
- *Benefit obligations*—We estimate we will make payments under our pension and post-retirement benefit obligations of approximately $53 million during fiscal 2021. These payments include $18 million to satisfy the minimum statutory funding requirements of our U.S. qualified pension plans; $24 million for our non-U.S. benefit plans, which are predominantly not pre-funded; and $11 million for salaried and represented retiree post-retirement benefits. See discussion in Note 15, "Benefit Obligations," to our Consolidated Financial Statements for further details.

- *Restructuring payments*—We expect to make payments of approximately $25 million to $30 million during fiscal 2021 for employee separation costs and lease termination obligations associated with restructuring actions. The Company continues to evaluate opportunities to streamline its operations and identify additional cost savings globally.

In addition to the matters identified above, in the ordinary course of business, the Company is involved in litigation, claims, government inquiries, investigations and proceedings relating to intellectual property, commercial, employment, environmental and regulatory matters, which may require us to make cash payments. These and other legal matters could have a material adverse effect on the manner in which the Company does business and the Company's financial position, results of operations, cash flows and liquidity.

We and our subsidiaries and affiliates may from time to time seek to retire or purchase our outstanding equity (common stock and warrants) and/or debt (including our Term Loans, Senior Notes and Convertible Notes) through cash purchases and/or exchanges, in open market purchases, privately negotiated transactions, tender offers, redemptions or otherwise. Such repurchases or exchanges, if any, will depend on prevailing market conditions, liquidity requirements, contractual restrictions and other factors.

Future Sources of Liquidity

We expect our cash balance, cash generated by operations and borrowings available under our ABL Credit Agreement to be our primary sources of short-term liquidity.

As of September 30, 2020 and 2019, our cash and cash equivalent balances held outside the U.S. were $227 million and $176 million, respectively. As of September 30, 2020, the Company’s cash and cash equivalents held outside the U.S. are not expected to be needed to be repatriated to fund the Company’s operations in the U.S. based on our expected future sources of liquidity.

Under the terms of the ABL Credit Agreement, the Company can issue letters of credit up to $150 million. At September 30, 2020, the Company had issued and outstanding letters of credit and guarantees of $41 million under the ABL Credit Agreement and had no borrowings outstanding under the ABL Credit Agreement. The aggregate additional principal amount that may be borrowed under the ABL Credit Agreement, based on the borrowing base less $41 million of outstanding letters of credit and guarantees, was $153 million at September 30, 2020.

We believe that our existing cash and cash equivalents of $727 million as of September 30, 2020, expected future cash provided by operating activities and borrowings available under the ABL Credit Agreement will be sufficient to meet our future cash requirements for at least the next twelve months. Our ability to meet these requirements will depend on our ability to generate cash in the future, which is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. We also believe that our financial resources, along with appropriate management of discretionary expenses, will allow us to manage the anticipated impact of COVID-19 on our business operations, and specifically our liquidity, for the foreseeable future. However, the challenges posed by COVID-19 on our business constantly and rapidly evolve and could result in the need for additional liquidity. Consequently, we will continue to evaluate our financial position in light of future developments.

Off-Balance Sheet Arrangements

See discussion in Note 22, "Commitments and Contingencies," to our Consolidated Financial Statements for further details.

Debt Ratings

Our ability to obtain additional external financing and the related cost of borrowing may be affected by our ratings, which are periodically reviewed by the major credit rating agencies. The ratings are subject to change or withdrawal at any time by the respective credit rating agencies.

As of September 30, 2020, the Company's debt ratings were as follows:

- Moody’s Investors Service issued a corporate family rating of "B2" with a stable outlook and a rating of "B2" applicable to the Senior Notes and the Term Loan Credit Agreement;
- Standard and Poor's issued a definitive corporate credit rating of "B" with a stable outlook and a rating of "B" applicable to the Senior Notes and the Term Loan Credit Agreement; and
- Fitch Ratings Inc. issued a Long-Term Issuer Default Rating of "B" with a stable outlook and a rating of "BB-" applicable to the Senior Notes and the Term Loan Credit Agreement.

EBITDA and Adjusted EBITDA

We present below the Company's EBITDA and Adjusted EBITDA, each of which is a non-GAAP Measure.

EBITDA is defined as net loss before income taxes, interest expense, interest income and depreciation and amortization and excludes the results of discontinued operations. EBITDA provides us with a measure of operating performance that excludes certain non-operating and/or non-cash expenses, which can differ significantly from company to company depending on capital structure, the tax jurisdictions in which companies operate and capital investments.

Adjusted EBITDA is EBITDA as further adjusted by the items noted in the reconciliation table below. We believe Adjusted EBITDA provides a measure of our financial performance based on operational factors that management can impact in the short-term, such as our pricing strategies, volume, costs and expenses of the organization, and therefore presents our financial performance in a way that can be more easily compared to prior quarters or fiscal years. In addition, Adjusted EBITDA serves as a basis for determining certain management and employee compensation. We also present EBITDA and Adjusted EBITDA because we believe analysts and investors utilize these measures in analyzing our results. Under the Company's debt agreements, the ability to engage in activities such as incurring additional indebtedness, making investments and paying dividends is tied in part to ratios based on a measure of Adjusted EBITDA.

EBITDA and Adjusted EBITDA have limitations as analytical tools. EBITDA measures do not represent net loss or cash flow from operations as those terms are defined by GAAP and do not necessarily indicate whether cash flows will be sufficient to fund cash needs. While EBITDA measures are frequently used as measures of operations and the ability to meet debt service requirements, these terms are not necessarily comparable to other similarly titled captions of other companies due to the potential inconsistencies in the method of calculation. Further, Adjusted EBITDA excludes the impact of earnings or charges resulting from matters that we consider not to be indicative of our ongoing operations that still affect our net income. In particular, our formulation of Adjusted EBITDA adjusts for certain amounts that are included in calculating net loss as set forth in the following table including, but not limited to, restructuring charges, impairment charges, resolution of certain legal matters and a portion of our pension costs and post-retirement benefits costs, which represents the amortization of pension service costs and actuarial gain (loss) associated with these benefits. However, these are expenses that may recur, may vary and/or may be difficult to predict.

The unaudited reconciliation of net loss, which is a GAAP measure, to EBITDA and Adjusted EBITDA, which are non-GAAP measures, is presented below for the periods indicated:

		Fiscal years ended September 30,	
(In millions)		**2020**	**2019**
Net loss		$ (680)	$ (671)
Interest expense		226	237
Interest income		(6)	(14)
Provision for income taxes		62	2
Depreciation and amortization		423	443
EBITDA		25	(3)
Impact of fresh start accounting adjustments	(a)	1	5
Restructuring charges	(b)	20	22
Advisory fees	(c)	40	11
Acquisition-related costs		—	9
Share-based compensation		30	25
Impairment charges		624	659
Change in fair value of Emergence Date Warrants		3	(29)
Loss on foreign currency transactions		16	8
Gain on investments in equity and debt securities, net	(d)	(49)	(1)
Adjusted EBITDA		$ 710	$ 706

(a) The impact of fresh start accounting adjustments in connection with the Company's emergence from bankruptcy.

(b) Restructuring charges represent employee separation costs and facility exit costs (excluding the impact of accelerated depreciation expense) related to the Company's restructuring programs, net of sublease income.

(c) Advisory fees represent costs incurred to assist in the assessment of strategic and financial alternatives to improve the Company's capital structure.

(d) Realized and unrealized gains on investments in equity securities, net of impairment of investments in debt securities.

Critical Accounting Policies and Estimates

The preparation of financial statements and related disclosures in conformity with GAAP requires the Company's management to make judgments, assumptions and estimates that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and revenue and expenses during the periods reported. Management bases its estimates on historical experience and on various other assumptions it believes to be reasonable under the circumstances. Actual results may differ from these estimates and such differences may be material. Note 2, "Summary of Significant Accounting Policies," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K describes the significant accounting policies and methods used in the preparation of the Company's Consolidated Financial Statements. The accounting policies and estimates below have been identified by the Company's management as those that are most critical to our financial statements as they require management to make significant judgments and estimates about inherently uncertain matters.

Revenue Recognition

The Company derives revenue primarily from the sale of products and services for communications systems and applications. The Company sells directly through its worldwide sales force and indirectly through its global network of channel partners, including distributors, service providers, dealers, value-added resellers, systems integrators and business partners that provide sales and services support. The Company’s critical revenue recognition estimate is the variable consideration included in the total transaction price for a customer contract.

The total transaction price for each customer contract represents the total consideration specified in the contract, including variable consideration such as sales incentives and other discounts. Judgment is required in estimating variable consideration, which typically reduces the total transaction price due to the nature of the elements to which variable consideration relates. The Company’s variable consideration estimates mainly consist of reserves for contractual stock rotation rights to channel partners to support the management of inventory; future credits and sales incentives to distributors and other channel partners based on our contractual arrangements; and reserves for estimated sales returns based on a customer’s right of return. Estimates of variable consideration reflect the Company’s historical experience, current contractual requirements, specific known market events and trends, industry data and forecasted customer buying patterns. When estimating returns, the Company considers customary inventory levels held by third-party distributors. The Company’s variable consideration estimates are recorded as a reduction of revenue at the time of sale and depending on the facts and circumstances, a change in variable consideration estimate will either be accounted for at the contract level or using the portfolio method.

Goodwill and Indefinite-lived Intangible Assets

Goodwill and indefinite-lived intangible assets are not amortized but are subject to annual testing for impairment each July 1st, or more frequently if events occur or circumstances change that would more likely than not reduce the fair value of goodwill or an indefinite-lived intangible asset below its carrying amount. The Company's goodwill was primarily recorded upon emergence from bankruptcy as a result of applying fresh start accounting.

Goodwill is tested for impairment at the reporting unit level. The impairment test for goodwill consists of a comparison of the fair value of a reporting unit with its carrying value, including the goodwill allocated to that reporting unit. If the carrying value of a reporting unit exceeds its fair value, the Company will recognize an impairment loss equal to the amount of the excess, limited to the amount of goodwill allocated to that reporting unit. Application of the impairment test requires estimates and judgement when determining the fair value of each reporting unit. In performing the goodwill impairment test, the Company estimates the fair value of each reporting unit using a weighting of fair values derived from an income approach and a market approach.

Under the income approach, the fair value of a reporting unit is estimated using a discounted cash flows model. Future cash flows are based on forward-looking information regarding revenue and costs for each reporting unit and are discounted using an appropriate discount rate. The discounted cash flows model relies on assumptions regarding revenue growth rates, projected gross profit, working capital needs, selling, general and administrative expenses, research and development expenses, business restructuring costs, capital expenditures, income tax rates, discount rates and terminal growth rates. The discount rates the Company uses represent the estimated weighted average cost of capital, which reflects the overall level of inherent risk involved in its reporting unit operations and the rate of return an outside investor would expect to earn. To estimate cash flows beyond the final year of its model, the Company uses a terminal value approach. Under this approach, the Company applies a perpetuity growth assumption to determine the terminal value. The Company incorporates the present value of the resulting terminal value into its estimate of fair value. Forecasted cash flows for each reporting unit consider current economic conditions and trends, estimated future operating results, the Company's view of growth rates and anticipated future economic conditions. Revenue growth rates inherent in the forecasts are based on input from internal and external market intelligence research sources that compare factors such as growth in global economies, regional trends in the telecommunications industry and product evolution. Macroeconomic factors such as changes in economies, product evolution, industry consolidation and other changes beyond the Company's control could have a positive or negative impact on achieving its targets.

The market approach estimates the fair value of a reporting unit by applying multiples of operating performance measures to the reporting unit's operating performance (the "Guideline Public Company Method"). These multiples are derived from comparable publicly-traded companies with similar investment characteristics to the reporting unit. The key estimates and assumptions that are used to determine the fair value under the market approach include current and projected 12-month operating performance results, as applicable, and the selection of the relevant multiples that are applied.

Changes in these estimates and assumptions could materially affect the determination of fair value and the goodwill impairment test result for each reporting unit.

During the second quarter of fiscal 2020, the Company concluded that a triggering event occurred for both of its reporting units due to (i) the impact of the COVID-19 pandemic on the macroeconomic environment which led to revisions to the Company's long-term forecast during the second quarter of fiscal 2020 and (ii) the sustained decrease in the Company's stock price since the advent of the pandemic which was caused by the resulting volatility in the financial markets. As a result, the Company performed an interim quantitative goodwill impairment test as of March 31, 2020 to compare the fair values of its reporting units to their respective carrying amounts, including the goodwill allocated to each reporting unit. The results of the Company's interim goodwill impairment test as of March 31, 2020 indicated that the estimated fair value of the Company's Services reporting unit exceeded its carrying amount. The carrying amount of the Company's Products & Solutions reporting unit exceeded its estimated fair value primarily due to a reduction in the Company's long-term forecast to reflect increased risk from higher market uncertainty and the accelerated reduction of product sales related to the Company's historical on-premises perpetual licenses. The Company anticipates a continued shift and acceleration of customers upgrading and acquiring new technology innovation through the utilization of the Company's subscription offering, which is included in the Services reporting unit. As a result, the Company recorded a goodwill impairment charge of $624 million to write down the full carrying amount of the Products & Solutions goodwill in the Impairment charges line item in the Consolidated Statements of Operations.

The Company performed its annual goodwill impairment test as of July 1, 2020. As permitted under FASB ASC Topic 350, "Intangibles-Goodwill and Other" ("ASC 350"), the Company performed a qualitative goodwill impairment assessment to determine whether it was more likely than not that the fair value of its Services reporting unit was less than its carrying amount, including goodwill. After assessing all relevant qualitative factors, the Company determined that it was more likely than not that the fair value of the reporting unit exceeded its carrying amount and a quantitative goodwill impairment test was not necessary.

The impairment test of the Company’s indefinite-lived intangible asset, the Avaya Trade Name, consists of a comparison of the estimated fair value of the asset with its carrying value. The fair value of the Avaya Trade Name is estimated using the relief-from-royalty model, a form of the income approach. Under this methodology, the fair value of the trade name is estimated by applying a royalty rate to forecasted net revenues which is then discounted using a risk-adjusted rate of return on capital. Revenue growth rates inherent in the forecast are based on input from internal and external market intelligence research sources that compare factors such as growth in global economies, regional trends in the telecommunications industry and product evolution. The royalty rate is determined using a set of observed market royalty rates.

As a result of the triggering event described above, the Company also performed an interim quantitative impairment test for its indefinite-lived intangible asset, the Avaya Trade Name, as of March 31, 2020, which indicated no impairment existed. As of July 1, 2020, the Company performed its annual impairment test of the Avaya Trade Name and determined that its estimated fair value exceeded its carrying amount by 14% and no impairment existed. An increase in the discount rate of 120 basis points or a decrease in the long-term revenue growth rate of 340 basis points would have resulted in an estimated fair value of the trade name below its carrying value.

The Company's long-term forecast includes significant estimates and assumptions, including management's estimate of the potential impact of the COVID-19 pandemic on the Company's operating results. Due to the uncertainty surrounding the impact of the COVID-19 pandemic on the macroeconomic environment and, more specifically, on the Company's future operating results, it is reasonably possible that the pandemic could have a more adverse impact than what is currently contemplated by the Company's long-term forecast.

The Company determined that no events occurred or circumstances changed during the three months ended September 30, 2020 that would indicate that it is more likely than not that its goodwill or indefinite-lived intangible asset were impaired. To the extent that business conditions deteriorate or if changes in key assumptions and estimates differ significantly from management's expectations, it may be necessary to record additional impairment charges in the future.

Income Taxes

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are

expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the Consolidated Statements of Operations in the period that includes the enactment date. A valuation allowance is recorded to reduce the carrying amounts of deferred tax assets if it is more likely than not that such assets will not be realized.

Additionally, the accounting for income taxes requires the Company to evaluate and make an assertion as to whether undistributed foreign earnings will be indefinitely reinvested or repatriated.

FASB ASC subtopic 740-10, "Income Taxes-Overall" ("ASC 740-10") prescribes a comprehensive model for the financial statement recognition, measurement, classification and disclosure of uncertain tax positions. ASC 740-10 contains a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit based on the technical merits of the position. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement.

Significant judgment is required in evaluating uncertain tax positions and determining the provision for income taxes. Although the Company believes its reserves are reasonable, no assurance can be given that the final tax outcome of these matters will not be different from that which is reflected in the historical income tax provision and accruals. The Company adjusts its estimated liability for uncertain tax positions periodically due to new information discovered from ongoing examinations by, and settlements with, various taxing authorities, as well as changes in tax laws, regulations and interpretations. The Company’s policy is to recognize, when applicable, interest and penalties on uncertain tax positions as part of income tax expense.

As part of the Company’s accounting for business combinations, some of the purchase price is allocated to goodwill and intangible assets. Impairment expenses associated with goodwill are generally not tax deductible and will result in an increased effective income tax rate in the fiscal period any impairment is recorded. The income tax benefit from future releases of the acquisition date valuation allowances or income tax contingencies, if any, are reflected in the income tax provision in the Consolidated Statements of Operations, rather than as an adjustment to the purchase price allocation.

Pension and Post-retirement Benefit Obligations

The Company sponsors non-contributory defined benefit pension plans covering a portion of its U.S. employees and retirees, and post-retirement benefit plans covering a portion of its U.S. employees and retirees that include healthcare benefits and life insurance coverage. Certain non-U.S. operations have various retirement benefit programs covering substantially all of their employees.

The Company’s pension and post-retirement benefit costs are developed from actuarial valuations. Inherent in these valuations are key assumptions, including the discount rate, expected long-term rate of return on plan assets, rate of compensation increase and healthcare cost trend rate. Material changes in pension and post-retirement benefit costs may occur in the future due to changes in these assumptions, in the number of plan participants, in the level of benefits provided, in asset levels and in legislation.

The discount rate is subject to change each year, consistent with changes in rates of return on high-quality fixed-income investments currently available and expected to be available during the expected benefit payment period. The Company selects the assumed discount rate for its U.S. pension and post-retirement benefit plans by applying the rates from the Aon AA Above Median and Aon AA Only Bond Universe yield curves to the expected benefit payment streams and develops a rate at which it is believed the benefit obligations could be effectively settled. The Company follows a similar process for its non-U.S. pension plans by applying the Aon Euro AA corporate bond yield curve for the plans based in Europe and relevant country-specific bond indices for other locations.

The market-related value of the Company’s plan assets as of the measurement date is developed using a five-year smoothing technique. First, a preliminary market-related value is calculated by adjusting the market-related value at the beginning of the year for payments to and from plan assets and the expected return on assets during the year. The expected return on assets represents the expected long-term rate of return on plan assets adjusted up to plus or minus 2% based on the actual ten-year average rate of return on plan assets. A final market-related value is determined as the preliminary market-related value, plus 20% of the difference between the actual return and expected return for each of the past five years.

Salary growth and healthcare cost trend assumptions are based on the Company's historical experience and future outlook.

While the Company believes that the assumptions used in these calculations are reasonable, differences in actual experience or changes in assumptions could materially affect the expense and liabilities related to the Company's defined benefit plans. For the U.S. pension; non-U.S. pension; and post-retirement plans combined, a hypothetical 25 basis point increase or decrease in the discount rate would affect expense for fiscal 2020 by $3 million or $2 million, respectively. A hypothetical 25 basis point increase or decrease in the discount rate would change the projected benefit obligation as of September 30, 2020 by $(61) million or $64 million, respectively. A hypothetical 25 basis point change in the expected long-term rate of return would affect expense for fiscal 2020 by approximately $3 million.

Item 7A. ***Quantitative and Qualitative Disclosures About Market Risk***

Interest Rate Risk

The Company has exposure to changing interest rates primarily under the Term Loan Credit Agreement and ABL Credit Agreement, each of which bears interest at variable rates based on LIBOR. As of September 30, 2020, the Company had $1,643 million of variable rate loans outstanding and maintained interest rate swap agreements, which mature on December 15, 2022, to pay a fixed rate of 2.935% on $1,543 million of the variable rate loans outstanding (the "Swap Agreements"). On an annual basis, a hypothetical one percent change in interest rates for the $100 million of unhedged variable rate debt as of September 30, 2020 would have affected interest expense by approximately $1 million.

On July 1, 2020, the Company entered into additional interest rate swap agreements, to fix a portion of the variable interest due on its Term Loan Credit Agreement (the "New Swap Agreements") from December 15, 2022 (the maturity date of the Swap Agreements) through December 15, 2024. Under the terms of the New Swap Agreements, the Company will pay a fixed rate of 0.7047% and receive a variable rate of interest based on one-month LIBOR. The New Swap Agreements have a total notional amount of $1,400 million.

It is management’s intention that the net notional amount of interest rate swap agreements be less than the variable rate loans outstanding during the life of the derivatives. For fiscal 2020, fiscal 2019 and the period from December 16, 2017 through September 30, 2018, the Company recognized a loss on its interest rate swap agreements of $35 million, $10 million and $6 million, respectively, which is reflected in Interest expense in the Consolidated Statements of Operations. At September 30, 2020, the Company maintained a $91 million deferred loss on its interest rate swap agreements designated as highly effective cash flow hedges within Accumulated other comprehensive loss in the Consolidated Balance Sheets.

See Note 12, “Derivative Instruments and Hedging Activities," to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information related to the Company's interest rate swap agreements.

Foreign Currency Risk

Foreign currency risk is the potential change in value, income and cash flow arising from adverse changes in foreign currency exchange rates. Each of our non-U.S. ("foreign") operations maintains capital in the currency of the country of its geographic location consistent with local regulatory guidelines. Each foreign operation may conduct business in its local currency, as well as the currency of other countries in which it operates. The primary foreign currency exposures for these foreign operations are Euros, Canadian Dollars, British Pound Sterling, Chinese Renminbi, Indian Rupee, Australian Dollars, Singapore Dollars and United Arab Emirates Dirham.

Non-U.S. denominated revenue was $638 million for fiscal 2020. We estimate a 10% change in the value of the U.S. dollar relative to all foreign currencies would have affected our revenue for fiscal 2020 by $64 million.

The Company, from time-to-time, utilizes foreign currency forward contracts primarily to hedge fluctuations associated with certain monetary assets and liabilities including receivables, payables and certain intercompany balances. These foreign currency forward contracts are not designated for hedge accounting treatment. As a result, changes in the fair value of these contracts are recorded as a component of Other income (expense), net to offset the change in the value of the underlying assets and liabilities. As of September 30, 2020, the Company maintained open foreign exchange contracts with a total notional value of $375 million, primarily hedging the British Pound Sterling, Euro, Chinese Renminbi and Indian Rupee. At September 30, 2020, the fair value of the open foreign exchange contracts was a net unrealized loss of $1 million, with $2 million recorded in Other current liabilities and $1 million recorded in Other current assets in the Consolidated Balance Sheets. In fiscal 2020 and 2019, the Company's loss on foreign exchange contracts was $1 million and $5 million, respectively, and was recorded within Other income (expense) on the Consolidated Statements of Operations.

Item 8. ***Financial Statements and Supplementary Data***

Avaya Holdings Corp.
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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Avaya Holdings Corp.

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Avaya Holdings Corp. and its subsidiaries (Successor) (the "Company") as of September 30, 2020 and 2019, and the related consolidated statements of operations, comprehensive (loss) income, changes in stockholders' equity (deficit) and cash flows for the years ended September 30, 2020 and 2019, and the period from December 16, 2017 through September 30, 2018, including the related notes (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of September 30, 2020, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of September 30, 2020 and 2019, and the results of its operations and its cash flows for the years ended September 30, 2020 and 2019, and the period from December 16, 2017 through September 30, 2018 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of September 30, 2020, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the COSO.

Basis of Accounting

As discussed in Note 1 to the consolidated financial statements, the United States Bankruptcy Court for the Southern District of New York confirmed the Company's Second Amended Joint Chapter 11 Plan of Reorganization of Avaya Inc. and Its Debtor Affiliates (the "plan") on November 28, 2017. Confirmation of the plan resulted in the discharge of certain claims against the Company that arose before January 19, 2017 and terminates all rights and interests of equity security holders as provided for in the plan. The plan was substantially consummated on December 15, 2017 and the Company emerged from bankruptcy. In connection with its emergence from bankruptcy, the Company adopted fresh start accounting as of December 15, 2017.

Changes in Accounting Principles

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases as of October 1, 2019 and the manner in which it accounts for revenues from contracts with customers as of October 1, 2018.

Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control Over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company's consolidated financial statements and on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that (i) relate to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Goodwill Interim Impairment Assessment - Products & Solutions and Services Reporting Units

As described in Notes 2 and 7 to the consolidated financial statements, the Company's total goodwill, net balance was $1,478 million as of September 30, 2020, and the goodwill associated with the Products & Solutions and Services reporting units was $0 and $1,478 million, respectively. Goodwill is not amortized but is subject to periodic testing for impairment at the reporting unit level. The Company's reporting units are subject to impairment testing annually, on July 1st, or more frequently if events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. During the second quarter of fiscal 2020, the Company concluded that a triggering event occurred for both of its reporting units due to (i) the impact of the COVID-19 pandemic on the macroeconomic environment which led to revisions to the Company's long-term forecast during the second quarter of fiscal 2020 and (ii) the sustained decrease in the Company's stock price since the advent of the pandemic which was caused by the resulting volatility in the financial markets. The impairment test for goodwill consists of a comparison of the fair value of a reporting unit with its carrying value, including the goodwill allocated to that reporting unit. If the carrying value of a reporting unit exceeds its fair value, the Company will recognize an impairment loss equal to the amount of the excess, limited to the amount of goodwill allocated to that reporting unit. As a result of the triggering event, the Company recorded a goodwill impairment charge of $624 million to write down the full carrying amount of the Products & Solutions goodwill. The estimated fair value of the Services reporting unit exceeded its carrying amount. Management estimates the fair value of each reporting unit using a weighting of fair values derived from an income approach and a market approach. Under the income approach, the fair value of a reporting unit is estimated using a discounted cash flows model, which relies on assumptions regarding revenue growth rates, projected gross profit, working capital needs, selling, general and administrative expenses, research and development expenses, business restructuring costs, capital expenditures, income tax rates, discount rates and terminal growth rates.

The principal considerations for our determination that performing procedures relating to the goodwill interim impairment assessment of the Products & Solutions and Services reporting units is a critical audit matter are (i) the significant judgment by management when developing the fair value measurement of the reporting units derived from the income approach; (ii) significant auditor judgment, subjectivity, and effort in performing procedures and evaluating management's significant assumptions related to revenue growth rates, projected gross profit, selling, general, and administrative expenses, discount rates and the terminal growth rate; and (iii) the audit effort involved the use of professionals with specialized skill and knowledge.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to management's goodwill impairment assessment, including controls over the valuation of the Company's Products & Solutions and Services reporting units. These procedures also included, among others (i) testing management's process for developing the fair value estimates; (ii) evaluating the appropriateness of the discounted cash flows model; (iii) testing the completeness and accuracy of underlying data used in the model; and (iv) evaluating the reasonableness of the significant assumptions used by management related to the revenue growth rates, projected gross profit, selling, general, and administrative expenses, discount rates and the terminal growth rate. Evaluating management's assumptions related to the revenue growth rates, projected gross profit, and selling, general, and administrative expenses involved evaluating whether the assumptions used by management were reasonable considering (i) the current and past performance of the reporting units; (ii) the consistency with external market

and industry data; and (iii) whether these assumptions were consistent with evidence obtained in other areas of the audit. Professionals with specialized skill and knowledge were used to assist in the evaluation of the Company's discounted cash flows model and the discount rates and terminal growth rate assumptions.

Indefinite-Lived Intangible Asset Interim Impairment Assessment - Trade Name

As described in Notes 2 and 8 to the consolidated financial statements, the Company's total trade name indefinite-lived intangible asset, net balance was $333 million as of September 30, 2020. Intangible assets determined to have indefinite useful lives are not amortized but are tested for impairment annually, on July 1st, or more frequently if events occur or circumstances change that indicate an asset may be impaired. As a result of the triggering event described above, management performed an interim quantitative impairment test for its trade name indefinite-lived intangible asset as of March 31, 2020, which indicated no impairment existed. The impairment test for the trade name indefinite-lived intangible asset consists of a comparison of the estimated fair value of the asset with its carrying value. If the carrying value of the trade name indefinite-lived intangible asset exceeds its estimated fair value, the Company recognizes an impairment loss equal to the amount of the excess. Management estimates the fair value of the trade name indefinite-lived intangible asset using the relief-from-royalty model, a form of the income approach. Under this methodology, the fair value of the trade name is estimated by applying a royalty rate to forecasted net revenues which is then discounted using a risk-adjusted rate of return on capital. Revenue growth rates inherent in the forecast are based on input from internal and external market intelligence research sources that compare factors such as growth in global economies, regional trends in the telecommunications industry and product evolution. The royalty rate is determined using a set of observed market royalty rates.

The principal considerations for our determination that performing procedures relating to the trade name indefinite-lived intangible asset interim impairment assessment is a critical audit matter are (i) the significant judgment by management when developing the fair value measurement of the trade name; (ii) significant auditor judgment, subjectivity, and effort in performing procedures and evaluating management's significant assumptions related to the royalty rate and the risk-adjusted rate of return on capital; and (iii) the audit effort involved the use of professionals with specialized skill and knowledge.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to management's trade name indefinite-lived intangible asset impairment assessment, including controls over the valuation of the Company's trade name. These procedures also included, among others (i) testing management's process for developing the fair value estimate of the Company's trade name indefinite-lived intangible asset; (ii) evaluating the appropriateness of the relief-from-royalty model; and (iii) evaluating the reasonableness of the significant assumptions used by management related to royalty rate and the risk-adjusted rate of return on capital. Professionals with specialized skill and knowledge were used to assist in the evaluation of the Company's relief-from-royalty model and the royalty rate and risk-adjusted rate of return on capital assumptions.

/s/ PricewaterhouseCoopers LLP
San Jose, California
November 25, 2020

We have served as the Company's auditor since 2000.

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Avaya Holdings Corp.

Opinion on the Financial Statements

We have audited the accompanying consolidated statements of operations, comprehensive (loss) income, changes in stockholders' equity (deficit) and cash flows of Avaya Holdings Corp. and its subsidiaries (Predecessor) (the "Company") for the period from October 1, 2017 through December 15, 2017, including the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the results of operations and cash flows of the Company for the period from October 1, 2017 through December 15, 2017 in conformity with accounting principles generally accepted in the United States of America.

Basis of Accounting

As discussed in Note 1 to the consolidated financial statements, the Company filed a petition on January 19, 2017 with the United States Bankruptcy Court for the Southern District of New York for reorganization under the provisions of Chapter 11 of the Bankruptcy Code. The Company's Second Amended Joint Chapter 11 Plan of Reorganization of Avaya Inc. and Its Debtor Affiliates was substantially consummated on December 15, 2017 and the Company emerged from bankruptcy. In connection with its emergence from bankruptcy, the Company adopted fresh start accounting.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP
San Jose, California
December 21, 2018

We have served as the Company's auditor since 2000.

Avaya Holdings Corp.
Consolidated Statements of Operations
(In millions, except per share amounts)

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
REVENUE				
Products	$ 1,073	$ 1,222	$ 989	$ 253
Services	1,800	1,665	1,258	351
	2,873	2,887	2,247	604
COSTS				
Products:				
Costs	405	442	372	84
Amortization of technology intangible assets	174	174	135	3
Services	714	696	597	155
	1,293	1,312	1,104	242
GROSS PROFIT	1,580	1,575	1,143	362
OPERATING EXPENSES				
Selling, general and administrative	1,013	1,001	888	264
Research and development	207	204	172	38
Amortization of intangible assets	161	162	127	10
Impairment charges	624	659	—	—
Restructuring charges, net	30	22	81	14
	2,035	2,048	1,268	326
OPERATING (LOSS) INCOME	(455)	(473)	(125)	36
Interest expense	(226)	(237)	(169)	(14)
Other income (expense), net	63	41	35	(2)
Reorganization items, net	—	—	—	3,416
(LOSS) INCOME BEFORE INCOME TAXES	(618)	(669)	(259)	3,436
(Provision for) benefit from income taxes	(62)	(2)	546	(459)
NET (LOSS) INCOME	$ (680)	$ (671)	$ 287	$ 2,977
(LOSS) EARNINGS PER SHARE				
Basic	$ (7.45)	$ (6.06)	$ 2.61	$ 5.19
Diluted	$ (7.45)	$ (6.06)	$ 2.58	$ 5.19
Weighted average shares outstanding				
Basic	92.2	110.8	109.9	497.3
Diluted	92.2	110.8	111.1	497.3

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

Avaya Holdings Corp.
Consolidated Statements of Comprehensive (Loss) Income
(In millions)

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
Net (loss) income	$ (680)	$ (671)	$ 287	$ 2,977
Other comprehensive (loss) income:				
Pension, post-retirement and postemployment benefit-related items, net of income taxes of $29 for fiscal 2019; $(19) for the period from December 16, 2017 through September 30, 2018; and $(58) for the period from October 1, 2017 through December 15, 2017	(2)	(157)	51	655
Cumulative translation adjustment	(39)	24	(31)	3
Change in interest rate swaps, net of income taxes of $3 for fiscal 2020; $19 for fiscal 2019 and $1 for the period from December 16, 2017 through September 30, 2018	(31)	(58)	(2)	—
Other comprehensive (loss) income	(72)	(191)	18	658
Elimination of Predecessor Company accumulated other comprehensive loss	—	—	—	790
Total comprehensive (loss) income	$ (752)	$ (862)	$ 305	$ 4,425

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

Avaya Holdings Corp.
Consolidated Balance Sheets
(In millions, except per share and share amounts)

	As of September 30,	
	2020	**2019**
ASSETS		
Current assets:		
Cash and cash equivalents	$ 727	$ 752
Accounts receivable, net	275	314
Inventory	54	63
Contract assets	296	187
Contract costs	115	114
Other current assets	112	115
TOTAL CURRENT ASSETS	1,579	1,545
Property, plant and equipment, net	268	255
Deferred income taxes, net	31	35
Intangible assets, net	2,556	2,891
Goodwill, net	1,478	2,103
Operating lease right-of-use assets	160	—
Other assets	159	121
TOTAL ASSETS	**$ 6,231**	**$ 6,950**
LIABILITIES		
Current liabilities:		
Debt maturing within one year	$ —	$ 29
Accounts payable	242	291
Payroll and benefit obligations	198	116
Contract liabilities	446	472
Operating lease liabilities	49	—
Business restructuring reserves	21	33
Other current liabilities	181	158
TOTAL CURRENT LIABILITIES	1,137	1,099
Non-current liabilities:		
Long-term debt, net of current portion	2,886	3,090
Pension obligations	749	759
Other post-retirement obligations	215	200
Deferred income taxes, net	38	72
Contract liabilities	373	78
Operating lease liabilities	129	—
Business restructuring reserves	28	36
Other liabilities	312	316
TOTAL NON-CURRENT LIABILITIES	4,730	4,551
TOTAL LIABILITIES	5,867	5,650
Commitments and contingencies (Note 22)		
Preferred stock, $0.01 par value; 55,000,000 shares authorized at September 30, 2020 and 2019		
Convertible series A preferred stock; 125,000 shares issued and outstanding at September 30, 2020 and no shares issued and outstanding at September 30, 2019	128	—
STOCKHOLDERS' EQUITY		
Common stock, $0.01 par value; 550,000,000 shares authorized; 83,278,383 shares issued and outstanding at September 30, 2020; and 111,046,085 shares issued and 111,033,405 shares outstanding at September 30, 2019	1	1
Additional paid-in capital	1,449	1,761
Accumulated deficit	(969)	(289)
Accumulated other comprehensive loss	(245)	(173)
TOTAL STOCKHOLDERS' EQUITY	236	1,300
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	**$ 6,231**	**$ 6,950**

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

Avaya Holdings Corp.
Consolidated Statements of Changes in Stockholders' Equity (Deficit)
(In millions)

	Common Stock		Additional Paid-In Capital	(Accumulated Deficit) Retained Earnings	Accumulated Other Comprehensive (Loss) Income	Total Stockholders' Equity (Deficit)
	Shares	Par Value				
Balance as of September 30, 2017 (Predecessor)	**494.8**	**$ —**	**$ 2,389**	**$ (5,954)**	**$ (1,448)**	**$ (5,013)**
Share-based compensation expense			3			3
Accrued dividends on Series A preferred stock			(2)			(2)
Accrued dividends on Series B preferred stock			(4)			(4)
Reclassifications to equity awards on redeemable shares			1			1
Net loss				2,977		2,977
Other comprehensive income					658	658
Balance as of December 15, 2017 (Predecessor)	**494.8**	**$ —**	**$ 2,387**	**$ (2,977)**	**$ (790)**	**$ (1,380)**
Cancellation of Predecessor equity	(494.8)	—	(2,387)	2,977	790	1,380
Balance as of December 15, 2017 (Predecessor)	**—**	**$ —**	**$ —**	**$ —**	**$ —**	**$ —**
Issuance of Successor common stock						
Common stock issued for Predecessor debt	103.9	1	1,575			1,576
Common stock issued for Pension Benefit Guaranty Corporation	6.1	—	92			92
Balance as of December 15, 2017 (Predecessor)	**110.0**	**$ 1**	**$ 1,667**	**$ —**	**$ —**	**$ 1,668**
Balance as of December 16, 2017 (Successor)	**110.0**	**$ 1**	**$ 1,667**	**$ —**	**$ —**	**$ 1,668**
Issuance of common stock under the equity incentive plan	0.2		—			—
Shares repurchased and retired for tax withholding on vesting of restricted stock units			(2)			(2)
Equity component of convertible notes, net of issuance costs and income taxes			67			67
Purchase of convertible note bond hedge, net of income taxes			(64)			(64)
Issuance of call spread warrants			58			58
Share-based compensation expense			19			19
Net income				287		287
Other comprehensive income					18	18
Balance as of September 30, 2018 (Successor)	**110.2**	**$ 1**	**$ 1,745**	**$ 287**	**$ 18**	**$ 2,051**
Issuance of common stock under the equity incentive plan	1.3		—			—
Shares repurchased and retired for tax withholding on vesting of restricted stock units	(0.5)		(9)			(9)
Share-based compensation expense			25			25
Adjustment for adoption of new accounting standard (Note 2)				95		95
Net loss				(671)		(671)
Other comprehensive loss					(191)	(191)
Balance as of September 30, 2019 (Successor)	**111.0**	**$ 1**	**$ 1,761**	**$ (289)**	**$ (173)**	**$ 1,300**
Issuance of common stock under the equity incentive plan	1.5					—
Issuance of common stock under the employee stock purchase plan	0.2		2			2
Shares repurchased and retired for tax withholding on vesting of restricted stock units	(0.5)		(7)			(7)
Shares repurchased and retired under share repurchase program	(28.9)		(330)			(330)
Share-based compensation expense			30			30
Accretion of preferred stock to redemption value			(4)			(4)
Preferred stock dividends accrued			(3)			(3)
Net loss				(680)		(680)
Other comprehensive loss					(72)	(72)
Balance as of September 30, 2020 (Successor)	**83.3**	**$ 1**	**$ 1,449**	**$ (969)**	**$ (245)**	**$ 236**

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

Avaya Holdings Corp.
Consolidated Statements of Cash Flows
(In millions)

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
OPERATING ACTIVITIES:				
Net (loss) income	$ (680)	$ (671)	$ 287	$ 2,977
Adjustments to reconcile net (loss) income to net cash provided by (used for) operating activities:				
Depreciation and amortization	423	443	384	31
Share-based compensation	30	25	19	—
Amortization of debt discount and issuance costs	23	22	8	—
Loss on extinguishment of debt	7	—	—	—
Deferred income taxes, net	(29)	(54)	(588)	455
Impairment charges	624	659	—	—
Change in fair value of emergence date warrants	3	(29)	17	—
Unrealized loss (gain) on foreign currency transactions	24	9	(36)	—
Impairment of debt securities	10	—	—	—
Realized gain on sale of equity securities	(59)	—	—	—
Other non-cash (credits) charges, net	(9)	7	3	—
Reorganization items:				
Net gain on settlement of Liabilities subject to compromise	—	—	—	(1,778)
Payment to PBGC	—	—	—	(340)
Payment to pension trust	—	—	—	(49)
Payment of unsecured claims	—	—	—	(58)
Fresh start adjustments, net	—	—	—	(1,697)
Non-cash and financing related reorganization items, net	—	—	—	26
Changes in operating assets and liabilities:				
Accounts receivable	37	58	13	40
Inventory	8	(7)	36	—
Operating lease right-of-use assets and liabilities	13	—	—	—
Contract assets	(166)	(122)	—	—
Contract costs	5	(13)	—	—
Accounts payable	(48)	24	(16)	(40)
Payroll and benefit obligations	46	(73)	(71)	16
Business restructuring reserves	(19)	(25)	29	(7)
Contract liabilities	(71)	35	160	28
Other assets and liabilities	(25)	(47)	(43)	(18)
NET CASH PROVIDED BY (USED FOR) OPERATING ACTIVITIES	147	241	202	(414)
INVESTING ACTIVITIES:				
Capital expenditures	(98)	(113)	(61)	(13)
Proceeds from sale of marketable securities	412	—	—	—
Acquisition of businesses, net of cash acquired	—	—	(157)	—
Investment in debt securities	—	(10)	—	—
Proceeds from sale-leaseback transactions	—	—	17	—
Other investing activities, net	—	(1)	2	—
NET CASH PROVIDED BY (USED FOR) INVESTING ACTIVITIES	314	(124)	(199)	(13)
FINANCING ACTIVITIES:				
Shares repurchased under share repurchase program	(330)	—	—	—
Proceeds from issuance of Series A Preferred Stock, net of issuance costs of $4	121	—	—	—
Proceeds from Term Loan Credit Agreement	—	—	—	2,896
Repayment of Term Loan Credit Agreement due to refinancing	(1,643)	—	(2,918)	—
Proceeds from Term Loan Credit Agreement due to refinancing	1,627	—	2,911	—
Repayment of long-term debt, including adequate protection payments	(1,231)	(29)	(22)	(111)
Proceeds from issuance of senior notes	1,000	—	—	—
Repayment of debtor-in-possession financing	—	—	—	(725)
Repayment of first lien debt	—	—	—	(2,061)
Proceeds from issuance of convertible notes	—	—	350	—
Proceeds from issuance of call spread warrants	—	—	58	—
Purchase of convertible note bond hedge	—	—	(84)	—
Debt issuance costs	(14)	—	(10)	(97)
Payment of acquisition-related contingent consideration	(5)	(9)	—	—
Principal payments for financing leases	(10)	(14)	(10)	(4)
Proceeds from Employee Stock Purchase Plan	3	—	—	—
Other financing activities, net	(7)	(9)	(2)	—
NET CASH (USED FOR) PROVIDED BY FINANCING ACTIVITIES	(489)	(61)	273	(102)
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	3	(4)	(7)	(2)
NET (DECREASE) INCREASE IN CASH, CASH EQUIVALENTS, AND RESTRICTED CASH	(25)	52	269	(531)
Cash, cash equivalents, and restricted cash at beginning of period	756	704	435	966
Cash, cash equivalents, and restricted cash at end of period	$ 731	$ 756	$ 704	$ 435

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

1. Background and Basis of Presentation

Background

Avaya Holdings Corp. (the "Parent" or "Avaya Holdings"), together with its consolidated subsidiaries (collectively, the "Company" or "Avaya"), is a global leader in digital communications products, solutions and services for businesses of all sizes delivering most of its technology through software and services. Avaya builds open, converged and innovative solutions to enhance and simplify communications and collaboration in the cloud, on-premise or a hybrid of both. The Company's global team of professionals delivers services from initial planning and design, to implementation and integration, to ongoing managed operations, optimization, training and support. The Company manages its business operations in two segments, Products & Solutions and Services. The Company sells directly to customers through its worldwide sales force and indirectly through its global network of channel partners, including distributors, service providers, dealers, value-added resellers, system integrators and business partners that provide sales and services support.

Basis of Presentation

Avaya Holdings has no material assets or standalone operations other than its ownership of direct wholly-owned subsidiary Avaya Inc. and its subsidiaries. The accompanying Consolidated Financial Statements reflect the operating results of Avaya Holdings and its consolidated subsidiaries and have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and the rules and regulations of the U.S. Securities and Exchange Commission ("SEC").

On January 19, 2017 (the "Petition Date"), Avaya Holdings, together with certain of its affiliates, namely Avaya CALA Inc., Avaya EMEA Ltd., Avaya Federal Solutions, Inc., Avaya Holdings LLC, Avaya Holdings Two, LLC, Avaya Inc., Avaya Integrated Cabinet Solutions Inc. (n/k/a Avaya Integrated Cabinet Solutions LLC), Avaya Management Services Inc., Avaya Services Inc., Avaya World Services Inc., Octel Communications LLC, Sierra Asia Pacific Inc., Sierra Communication International LLC, Technology Corporation of America, Inc., Ubiquity Software Corporation, VPNet Technologies, Inc. and Zang, Inc. (n/k/a Avaya Cloud Inc.) (the "Debtors"), filed voluntary petitions for relief (the "Bankruptcy Filing") under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The cases were jointly administered as Case No. 17-10089 (SMB). The Bankruptcy Court confirmed the Second Amended Joint Chapter 11 Plan of Reorganization of Avaya Inc. and its Debtor Affiliates filed on October 24, 2017 (the "Plan of Reorganization") on November 28, 2017. Confirmation of the Plan of Reorganization resulted in the discharge of certain claims against the Company that arose before the Petition Date and terminated all rights and interests of the pre-filing equity security holders as provided for in the Plan of Reorganization and as further discussed in Note 23, "Emergence from Voluntary Reorganization under Chapter 11 Proceedings." The Debtors operated their businesses as "debtors-in-possession" under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of Chapter 11 of the Bankruptcy Code and the orders of the Bankruptcy Court until the Plan of Reorganization was substantially consummated and they emerged from bankruptcy on December 15, 2017 (the "Emergence Date").

On the Emergence Date, the Company applied fresh start accounting, which resulted in a new basis of accounting and the Company becoming a new entity for financial reporting purposes. As a result of the application of fresh start accounting and the effects of the implementation of the Plan of Reorganization, the Consolidated Financial Statements after the Emergence Date are not comparable with the Consolidated Financial Statements on or before that date. See Note 24, "Fresh Start Accounting," for additional information. References to "Successor" or "Successor Company" refer to the financial position and results of operations of the reorganized Avaya Holdings after the Emergence Date. References to "Predecessor" or "Predecessor Company" refer to the financial position and results of operations of Avaya Holdings on or before the Emergence Date.

During the second quarter of fiscal 2020, the World Health Organization characterized a novel strain of coronavirus ("COVID-19") as a pandemic. The spread of COVID-19 around the globe and the actions required to mitigate its impact have created substantial disruption to the global economy. The duration of the pandemic and the long-term impacts on the global economy are uncertain. Although the COVID-19 pandemic did not have a material impact on the Company’s revenue and gross margin during fiscal 2020, the Company did recognize a significant goodwill impairment charge during fiscal 2020 as a result of the COVID-19 pandemic. See Note 7, “Goodwill, net” for additional information regarding the goodwill impairment charge recorded during fiscal 2020.

The accompanying Consolidated Financial Statements of the Company have been prepared assuming that the Company will continue as a going concern and contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business. While we believe existing cash and cash equivalents of $727 million as of September 30, 2020, future cash provided by operating activities and borrowings available under the ABL Credit Agreement will be sufficient to

meet our future cash requirements for at least the next twelve months from the filing of this Annual Report on Form 10-K, our ability to meet our future cash requirements will depend on the Company's ability to generate cash in the future, which is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond the Company's control.

2. Summary of Significant Accounting Policies

Accounting Policy Changes

The Company emerged from bankruptcy on December 15, 2017 and qualified for fresh start accounting. Fresh start accounting allows a company to set new accounting policies for the successor company independent of those followed by the predecessor company. As such, the Successor Company adopted certain accounting policy changes, which have been detailed in the "Share-based Compensation" and "Foreign Currency Translation" accounting policies below.

Use of Estimates

Management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and revenue and expenses during the periods reported. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected in the Consolidated Financial Statements in the period they are determined to be necessary. Actual results could differ from these estimates. The spread of COVID-19 and the actions required to mitigate its impact have created substantial disruption to the global economy. The duration of the pandemic and the long-term impacts on the global economy are uncertain. The pandemic may affect management's estimates and assumptions, in particular those that require a projection of our financial results, our cash flows or broader economic conditions, such as the collectability of accounts receivable, sales returns and allowances, the use and recoverability of inventory, the realization of deferred tax assets, annual effective tax rate, the fair value of equity compensation, the recoverability of long-lived assets, useful lives and impairment of tangible and intangible assets including goodwill (see Note 7, "Goodwill, net"), business restructuring reserves, and fair value measurements (see Note 13, "Fair Value Measurements"). The Company also uses estimates to assess pension and post-retirement benefit costs, the fair value of assets and liabilities in connection with fresh start accounting and those acquired in business combinations, and the amount of exposure from potential loss contingencies, among others.

Principles of Consolidation

The Consolidated Financial Statements include the accounts of Avaya Holdings Corp. and its subsidiaries. All intercompany transactions and balances have been eliminated in consolidation. Certain prior year amounts have been reclassified to conform to the current year's presentation.

Revenue Recognition

The Company derives revenue primarily from the sale of products and services for communications systems and applications. The Company sells directly through its worldwide sales force and indirectly through its global network of channel partners, including distributors, service providers, dealers, value-added resellers, systems integrators and business partners that provide sales and services support.

On October 1, 2018, the Company adopted Accounting Standards Update ("ASU") No. 2014-09, "Revenue from Contracts with Customers (Topic 606)" ("ASC 606"). This standard superseded most of the previous revenue recognition guidance under GAAP and is intended to improve and converge with international standards the financial reporting requirements for revenue recognition. The Company adopted ASC 606 using the modified retrospective transition method applied to all open contracts with customers that were not completed as of September 30, 2018. On October 1, 2018, the Company recorded a net increase to the opening Retained earnings balance of $95 million, net of tax, due to the cumulative impact of adopting ASC 606. Under the modified retrospective method, results for reporting periods beginning after September 30, 2018 are presented under ASC 606 while prior period financial information is not adjusted and continues to be reported under prior guidance (“ASC 605”).

In accordance with ASC 606, the Company accounts for a customer contract when both parties have approved the contract and are committed to perform their respective obligations, each party’s rights can be identified, payment terms can be identified, the contract has commercial substance and it is at least probable that the Company will collect the consideration to which it is entitled. The Company accrues a provision for estimated sales returns and other allowances, including promotional marketing programs and other incentives, as a reduction of revenue at the time of sale. When estimating returns, the Company considers customary inventory levels held by third-party distributors. Revenue is recognized upon the transfer of control of the promised products and services to customers. Judgment is required in instances where the Company’s contracts include multiple products and services to determine whether each should be accounted for as a separate performance obligation. The Company enters into contracts that include various combinations of products and services, each of which is generally capable of being distinct as well as distinct within the context of the contracts.

Customer contracts are typically made pursuant to purchase orders and statements of work based on master purchase or partner agreements. Invoicing typically occurs upon customer acceptance or monthly for a series of services. Payment is due based on the Company's standard payment terms which are typically within 30 to 60 days of invoice issuance. The Company does not typically provide financing arrangements to customers. For certain services and customer types, customers will remit payment before the services are provided. In instances where the timing of revenue recognition differs from the timing of invoicing, the Company determined that contracts do not include a significant financing component. The primary purpose of the invoicing terms is to provide customers with simplified and predictable ways of purchasing products and services, not to receive financing from or to provide financing to customers. Certain contracts include performance obligations accounted for as a series which also include variable consideration (primarily usage-based fees). For these arrangements, variable consideration is not estimated and allocated to the entire performance obligation, rather the variable fees are recognized in the period in which the usage occurs in accordance with the "right to invoice" practical expedient.

The total transaction price for each contract is determined based on the total consideration specified in the contract, including variable consideration such as sales incentives and other discounts. The expected value method is generally used when estimating variable consideration, which typically reduces the total transaction price due to the nature of the elements to which the variable consideration relates. These estimates reflect the Company's historical experience, current contractual requirements, specific known market events and trends, industry data and forecasted customer buying patterns. The Company excludes from the transaction price all taxes assessed by governmental authorities that are both (i) imposed on and concurrent with a specific revenue-producing transaction and (ii) collected from customers. Accordingly, such tax amounts are not included as a component of net sales or cost of sales. The expected value method requires judgment and considers multiple factors that may vary over time depending upon the unique facts and circumstances related to each performance obligation. Depending on the facts and circumstances, a change in variable consideration estimate will either be accounted for at the contract level or using the portfolio method. Reserves for contractual stock rotation rights to channel partners to support the management of inventory and certain other sales incentives are determined using the portfolio method. The Company also considers the customers' rights of return in determining the transaction price where applicable.

The Company allocates the transaction price to each performance obligation based on its relative standalone selling price and recognizes revenue as each performance obligation is satisfied. Judgment is required to determine the standalone selling price for each distinct performance obligation. The Company uses a range of selling prices to estimate standalone selling price when each of the products and services is sold separately. The Company typically has more than one standalone selling price for individual products and services due to the stratification of those products and services by customers and circumstances. In these instances, the Company may use information such as the size of the customer and geographic region in determining the standalone selling price. In instances where standalone selling price is not directly observable, such as when the Company does not sell the product or service separately, the Company determines the standalone selling price using information that may include market conditions and other observable inputs.

Amounts billed to customers for shipping and handling activities are considered contract fulfillment activities and not a separate performance obligation of the contract. Shipping and handling fees are recorded as revenue and the related cost is a cost to fulfill the contract.

Contract modifications are accounted for as separate contracts if the additional products and services are distinct and priced at standalone selling prices. If the additional products and services are distinct, but not priced at standalone selling prices, the modification is treated as a termination of the existing contract and the creation of a new contract. Lastly, if the additional products and services are not distinct within the context of the contract, the modification is combined with the original contract and either an increase or decrease in revenue is recognized on the modification date.

The Company records a contract asset when revenue is recognized in advance of the right to bill, pursuant to customer contract terms. The contract asset decreases when the Company has the right to bill the customer which is generally triggered by the satisfaction of additional performance obligations or contract milestones. The Company records a contract liability when payment is received from the customer in advance of the Company satisfying a performance obligation and the contract liability is reduced as performance obligations are satisfied and revenue is recognized. The Company records the net contract asset or liability position for each customer contract.

Software

The Company’s software licenses provide users with access to capabilities such as voice, video, conferencing, messaging and collaboration. The Company’s software licenses also add functionality to the Company’s hardware. The Company’s software licenses for on-premise customer software provide the customer with a right to use the software as it exists when it is made available to the customer and are accounted for as distinct performance obligations. The Company’s software licenses are sold through both direct and indirect channels with terms that are either perpetual or time based, both of which provide the end-user with the same functionality. The main difference between perpetual and term licenses is the duration over which the customer benefits from the software. Revenue from on-premise customer software licenses is generally recognized at the point-in-time the software is made available to the customer, via direct sale to the end-user or indirect sale to a channel partner, based on the fixed minimum revenue commitment under the arrangement. However, revenue is not recognized before the beginning of the period during which the customer can use and benefit from the license. In instances where the Company’s software licenses include a usage-based fee, revenue associated with the incremental usage is recognized at the point-in-time the incremental usage occurs.

The Company also sells its software under its subscription-based offerings which mainly consist of term software license arrangements and software as a service ("SaaS") arrangements. Term software licenses include multiple performance obligations where the term licenses are recognized at the point-in-time of transfer of control of the software, with the associated software maintenance revenue recognized ratably over the contract term as the customer consumes the services. SaaS arrangements do not include the right for the customer to take possession of the software during the contractual term of the arrangement, and therefore have one distinct performance obligation which is satisfied over time with revenue recognized ratably over the contract term as the customer consumes the services. Subscription-based offerings typically have terms that range from one to five years.

ACO

Avaya Cloud Office by RingCentral or “ACO”, was introduced by the Company to accelerate the Company's transition to the cloud. Through this partnership, ACO combines RingCentral's UCaaS platform with Avaya technology, services and migration capabilities to create a differentiated UCaaS offering. These services are accounted for as two distinct performance obligations, one being a licensing component that is generally recognized at the point-in-time the software is made available to the customer, and the second being associated support services which represents a stand-ready obligation whereby the revenues are generally recognized ratably over the contract term. The Company’s ACO solution is provided through both direct and indirect channels. Contracts typically have terms that range from one to five years.

Hardware

The Company’s hardware, phones, gateways, and servers, each of which has a stand-alone functionality, are generally considered distinct performance obligations. Hardware is sold through both direct and indirect channels and revenue is recognized at the point-in-time at which control of the product is transferred to the customer, via direct sale to the end-user or indirect sale to a channel partner, generally upon delivery, as defined in the contract.

Global Support Services

The Company’s global support services provide supplemental maintenance options to end-users in support of the Company’s products and solutions, including when and if available upgrade rights and maintenance for hardware. These services are typically accounted for as distinct performance obligations. Given that global support services consist of a series of distinct promises that are satisfied over time in the form of a single performance obligation comprised of a stand-ready obligation, these services are generally recognized ratably over the period during which the services are performed as customers simultaneously consume and receive benefits. Maintenance contracts typically have terms that range from one to five years.

Professional Services

The Company’s professional services include the design, implementation and development of communication solutions. Professional services are sold through the Company’s direct and indirect channels either on a stand-alone basis or with other hardware, software and services and are generally accounted for as distinct performance obligations. Revenue for professional services is generally recognized over time based on the cost of effort incurred to date relative to the total cost of effort expected to be incurred as customers simultaneously consume and receive benefits. Effort incurred generally represents work performed, which corresponds with, and thereby best depicts, the transfer of control to the customer. Contracts for professional services typically have terms that range from four to six weeks for simple engagements and from six months to three years for more complex engagements. Prior to the adoption of ASC 606, revenue for professional services was recognized upon completion and acceptance of the project and when such arrangements included products, product revenue was also recognized upon completion and acceptance of the project.

Cloud and Managed Services

The Company's managed services provide additional support options to end-users on top of the Company's supplemental maintenance services, including hardware support, help-desk routing and system monitoring services. The Company's managed services are sold either on a stand-alone basis or together with the Company's hardware, software and other services, and are generally accounted for as distinct performance obligations. The Company's managed services are provided through both direct and indirect channels. Managed services consist of a series of distinct promises that are satisfied over time in the form of a single performance obligation comprised of a stand-ready obligation. Contracts for managed services typically have terms that range from one to five years.

The Company's cloud offerings enable customers to take advantage of its technology via the cloud, or as a hybrid with its on-premise solutions. The software that enables the core communications functionality is offered both as a sale of perpetual or time based licenses or through a SaaS arrangement. Cloud offerings can include supplemental maintenance and managed services and are sold through the Company's direct and indirect channels.

Cloud and managed services offerings often include multiple performance obligations. Each performance obligation can itself include a series of distinct promises that are satisfied over time. Total consideration for a project is allocated to each performance obligation, with revenue recognized ratably over the period during which the services are performed as customers simultaneously consume and receive benefits. Variable consideration from incremental usage above a fixed fee is recognized at the point-in-time at which the usage occurs.

Warranties

The Company offers standard limited warranties that provide the customer with assurance that its products will function in accordance with contract specifications. The Company's standard limited warranties are not sold separately but are included with each customer purchase. Warranties are not considered separate performance obligations, and therefore, warranty expense is accrued at the time the related revenue is recognized.

Cash and Cash Equivalents

All highly liquid investments with original maturities of three months or less at the date of purchase are classified as cash equivalents.

Concentrations of Risk

The Company's cash and cash equivalents are maintained with several financial institutions. Deposits held at banks may exceed the amount of insurance provided on such deposits. Generally, these deposits may be redeemed upon demand and are maintained with financial institutions with reputable credit and therefore bear minimal credit risk. The Company seeks to mitigate such risks by spreading its risk across multiple counterparties and monitoring the risk profiles of these counterparties.

The Company, from time to time, may enter into derivative financial instruments with high credit quality financial institutions to manage foreign exchange rate and interest rate risk and is exposed to losses in the event of non-performance by the counterparties to these contracts. To date, no counterparty has failed to meet its obligations to the Company.

The Company relies on a limited number of contract manufacturers and suppliers to provide manufacturing services for its products. The inability of a contract manufacturer or supplier to fulfill supply requirements of the Company could materially impact future operating results.

The Company's largest distributor is also its largest customer and represented 8% of the Company's total annual consolidated revenue for fiscal 2020.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are recorded when the customer has been billed or the right to consideration is unconditional. Accounts receivable are recorded net of reserves for sales returns and allowances and provisions for doubtful accounts. The Company performs ongoing credit evaluations of its customers and generally does not require collateral from its customers. The allowances are based on analyses of historical trends, aging of accounts receivable balances and the creditworthiness of customers as determined by credit checks, analyses and payment history. At September 30, 2020 and 2019, one distributor accounted for approximately 9% and 12% of accounts receivable.

Inventory

Inventory includes goods awaiting sale (finished goods) and goods to be used in connection with providing maintenance services. Inventory is stated at the lower of cost or net realizable value, determined on a first-in, first-out method. Reserves to reduce the inventory cost to net realizable value are based on current inventory levels, assumptions about future demand and product life cycles for the various inventory types.

The Company has outsourced the manufacturing of substantially all of its products and may be obligated to purchase certain excess inventory levels from its outsourced manufacturers if actual sales of product are lower than forecast, in which case additional inventory provisions may need to be recorded in the future.

Contract Assets

The Company recognizes a contract asset when it transfers products and services to a customer in advance of scheduled billings. Contract assets decrease when the Company invoices the customer or the right to receive consideration is unconditional.

Contract Costs

The Company capitalizes direct and incremental costs incurred to obtain and to fulfill a contract in advance of revenue recognition, such as sales commissions, business partner incentives and certain labor, third party service and related product costs. These costs are recognized as an asset if the Company expects to recover them. Costs to obtain a contract are amortized using the portfolio approach over the average term of the customer contracts, which corresponds to the period of benefit. Costs incurred to obtain a contract with an amortization period of one year or less are expensed as incurred in accordance with the prescribed practical expedient. Contract fulfillment costs are recognized consistent with the transfer to the customer of the underlying performance obligations based on the specific contracts to which they relate.

Research and Development Costs

Research and development costs are charged to expense as incurred. The costs incurred for the development of communications software that will be sold, leased or otherwise marketed, however, are capitalized when technological feasibility has been established in accordance with FASB ASC Topic 985, "Software" ("ASC 985"). The Company has continued to leverage agile development methodologies, which are characterized by a more dynamic development process with more frequent revisions to a product releases' features and functions as the software is being developed with technological feasibility being met shortly before the product revision is made generally available. As such, no amounts were capitalized for internally developed software costs in the Company's Consolidated Financial Statements during fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor).

Property, Plant and Equipment

Property, plant and equipment are stated at cost less accumulated depreciation. Depreciation is determined using the straight-line method over the estimated useful lives of the assets. Estimated lives range from 2 to 10 years for machinery and equipment and the remaining lease term for equipment acquired under a financing lease. Improvements that extend the useful life of assets are capitalized and maintenance and repairs are charged to expense as incurred. Capitalized improvements to facilities subject to operating leases are depreciated over the lesser of the estimated useful life of the asset or the duration of the lease. Upon retirement or disposal of assets, the cost and related accumulated depreciation are removed from the Consolidated Balance Sheets and any gain or loss is reflected in the Consolidated Statements of Operations.

The Company capitalizes costs associated with software developed or obtained for internal use when the preliminary project stage is completed and it is determined that the software will provide enhanced capabilities. Internal use software is amortized on a straight-line basis generally over 5 to 7 years. Costs capitalized include payroll and related benefits, third party development fees and acquired software and licenses. General and administrative costs, overhead, maintenance and training, and the cost of the software that does not add functionality to existing systems, are expensed as incurred. The Company had unamortized internal use software costs included in Property, Plant and Equipment, net in the Consolidated Balance Sheets of $91 million and $83 million as of September 30, 2020 and 2019, respectively. Depreciation expense related to internal use software recognized in the Consolidated Statements of Operations for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor) was $27 million, $39 million, $31 million and $5 million, respectively.

Acquisition Accounting

The Company accounts for business combinations using the acquisition method, which requires an allocation of the purchase price of an acquired entity to the assets acquired and liabilities assumed based on their estimated fair values at the date of acquisition. Goodwill represents the excess of the purchase price over the net tangible and intangible assets acquired.

Goodwill

Goodwill is not amortized but is subject to periodic testing for impairment in accordance with FASB ASC Topic 350, "Intangibles-Goodwill and Other" ("ASC 350") at the reporting unit level. The Company's reporting units are subject to impairment testing annually, on July 1st, or more frequently if events occur or circumstances change that would more likely than

not reduce the fair value of a reporting unit below its carrying amount. The Company's goodwill was primarily recorded upon emergence from bankruptcy as a result of applying fresh start accounting.

ASC 350 provides the option to assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. The Company has the unconditional option to bypass the qualitative assessment for any reporting unit in any period and proceed directly to performing a quantitative goodwill impairment test. If the assessment of all relevant qualitative factors indicates that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, a quantitative goodwill impairment test is not necessary. If the assessment of all relevant qualitative factors indicates that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, the Company will perform a quantitative goodwill impairment test. The quantitative impairment test for goodwill consists of a comparison of the fair value of a reporting unit with its carrying value, including the goodwill allocated to that reporting unit. If the carrying value of a reporting unit exceeds its fair value, the Company will recognize an impairment loss equal to the amount of the excess, limited to the amount of goodwill allocated to that reporting unit. Application of the impairment test requires judgement, including the identification of reporting units, assignment of assets and liabilities to reporting units and the determination of fair value of each reporting unit. In performing the quantitative goodwill impairment test, the Company estimates the fair value of each reporting unit using a weighting of fair values derived from an income approach and a market approach.

Under the income approach, the fair value of a reporting unit is estimated using a discounted cash flows model. Future cash flows are based on forward-looking information regarding revenue and costs for each reporting unit and are discounted using an appropriate discount rate. The discounted cash flows model relies on assumptions regarding revenue growth rates, projected gross profit, working capital needs, selling, general and administrative expenses, research and development expenses, business restructuring costs, capital expenditures, income tax rates, discount rates and terminal growth rates. The discount rates the Company uses represent the estimated weighted average cost of capital, which reflects the overall level of inherent risk involved in its reporting unit operations and the rate of return an outside investor would expect to earn. To estimate cash flows beyond the final year of its model, the Company uses a terminal value approach. Under this approach, the Company applies a perpetuity growth assumption to determine the terminal value. The Company incorporates the present value of the resulting terminal value into its estimate of fair value. Forecasted cash flows for each reporting unit consider current economic conditions and trends, estimated future operating results, the Company's view of growth rates and anticipated future economic conditions. Revenue growth rates inherent in the forecasts are based on input from internal and external market intelligence research sources that compare factors such as growth in global economies, regional trends in the telecommunications industry and product evolution. Macroeconomic factors such as changes in economies, product evolution, industry consolidation and other changes beyond the Company's control could have a positive or negative impact on achieving its targets.

The market approach estimates the fair value of a reporting unit by applying multiples of operating performance measures to the reporting unit's operating performance (the "Guideline Public Company Method"). These multiples are derived from comparable publicly-traded companies with similar investment characteristics to the reporting unit. The key estimates and assumptions that are used to determine the fair value under the market approach include current and projected 12-month operating performance results, as applicable, and the selection of the relevant multiples that are applied.

Intangible and Long-lived Assets

Intangible assets include technology and patents, customer relationships and trademarks and trade names. Intangible assets with finite lives are amortized using the straight-line method over the estimated economic lives of the assets, which range from 1 to 19 years.

Long-lived assets, including intangible assets with finite lives, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable in accordance with FASB ASC Topic 360, "Property, Plant, and Equipment." Intangible assets determined to have indefinite useful lives are not amortized but are tested for impairment annually, on July 1st, or more frequently if events occur or circumstances change that indicate an asset may be impaired.

The recoverability test of finite-lived assets is based on forecasts of undiscounted cash flows for each asset group. The impairment test of the Company’s indefinite-lived intangible asset, the Avaya Trade Name consists of a comparison of the estimated fair value of the asset with its carrying value. If the carrying value of the Avaya Trade Name exceeds its estimated fair value, the Company will recognize an impairment loss equal to the amount of the excess. The fair value of the Avaya Trade Name is estimated using the relief-from-royalty model, a form of the income approach. Under this methodology, the fair value of the trade name is estimated by applying a royalty rate to forecasted net revenues which is then discounted using a risk-adjusted rate of return on capital. Revenue growth rates inherent in the forecast are based on input from internal and external market intelligence research sources that compare factors such as growth in global economies, regional trends in the telecommunications industry and product evolution. The royalty rate is determined using a set of observed market royalty rates.

The estimated useful lives of intangible and long-lived assets are based on many factors including assumptions regarding the effects of obsolescence, demand, competition and other economic factors, expectations regarding the future use of the asset, and the Company's historical experience with similar assets. The assumptions used to determine the estimated useful lives could change due to numerous factors including product demand, market conditions, technological developments, economic conditions and competition.

Amortizable technology and patents have useful lives that range between 1 and 10 years with a weighted average remaining useful life of 3.1 years. Customer relationships have useful lives that range between 1 and 19 years with a weighted average remaining useful life of 11.9 years. Amortizable product trade names have useful lives of 10 years with a weighted average remaining useful life of 7.2 years. The Avaya Trade Name is expected to generate cash flows indefinitely and, consequently, this asset is classified as an indefinite-lived intangible and is therefore not amortized.

Derivative Financial Instruments

All derivatives are recognized as assets or liabilities and measured at fair value. The accounting for changes in the fair value of a derivative depends on the intended use of the derivative and the resulting designation. For derivative instruments designated as highly effective cash flow hedges under FASB ASC Topic 815, "Derivatives and Hedging" ("ASC 815"), the change in fair value of the derivative is initially recorded in Accumulated other comprehensive loss in the Consolidated Balance Sheets and is subsequently recognized in earnings when the hedged exposure impacts earnings. For derivative instruments that are not designated as highly effective hedges, gains or losses from changes in fair values are recognized in earnings. The Company does not enter into derivatives for trading or speculative purposes.

Leases

On October 1, 2019, the Company adopted ASU No. 2016-02, "Leases (Topic 842)." This standard, along with other guidance subsequently issued by the FASB (collectively "ASC 842"), superseded all lease accounting guidance and requires lessees to recognize lease assets and liabilities for all leases with initial lease terms of more than 12 months. The Company adopted ASC 842 using the modified retrospective transition method as of the beginning of the period of adoption. Therefore, on October 1, 2019, the Company recognized and measured leases without revising the historical comparative period information or disclosures. See Note 3, “Recent Accounting Pronouncements” for additional information related to the adoption of ASC 842.

The Company enters into various arrangements for office, warehouse and data center facilities, network equipment and vehicles. In accordance with ASC 842, the Company assesses whether an arrangement contains a lease at contract inception. When an arrangement contains a lease, the Company records a right-of-use asset and lease liability. Right-of-use assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make payments for the right to use the asset.

Right-of-use assets and lease liabilities are recognized at the lease commencement date at the present value of future payments over the lease term. The Company adopted the practical expedient permitting the non-lease components of an arrangement to be included in the right-of-use asset to which they relate. The present value of future payments is discounted using the rate implicit in the lease, when available. However, as most of the Company's leases do not provide an implicit interest rate, the present value is calculated using the Company's incremental borrowing rate, which represents the interest rate the Company would expect to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms. Options to extend or terminate a lease are included in the calculation of the lease term to the extent that the option is reasonably certain of exercise. For the majority of the Company's leases, the Company has concluded that it is not reasonably certain it would exercise such options, therefore the lease term is generally the non-cancelable period stated within the lease. The Company has elected to not record a right-of-use asset and lease liability for short term leases with an initial lease term of 12 months or less.

Restructuring Programs

A business restructuring is defined as an exit or disposal activity that includes, but is not limited to, a program that is planned and controlled by management and materially changes either the scope of a business or the manner in which that business is conducted. The Company's business restructuring charges include (i) one-time termination benefits related to employee separations, (ii) contract termination costs and (iii) other related costs associated with exit or disposal activities including, but not limited to, costs for consolidating or closing facilities and relocating employees.

The Company accounts for non-facility related exit or disposal activities in accordance with FASB ASC Topic 420, "Exit or Disposal Cost Obligations" ("ASC 420"). A liability is recognized and measured at its fair value for one-time termination benefits once the plan of termination meets all of the following criteria: (i) management commits to a plan of termination, (ii) the plan identifies the number of employees to be terminated and their job classifications or functions, locations and the expected completion date, (iii) the plan establishes the terms of the benefit arrangement and (iv) it is unlikely that significant changes to the plan will be made or the plan will be withdrawn. Contract termination costs include costs to terminate a contract or costs that will continue to be incurred under the contract without benefit to the Company. A liability is recognized and

measured at its fair value when the Company either terminates the contract or ceases using the rights conveyed by the contract. A liability is recognized and measured at its fair value for other related costs in the period in which the liability is incurred.

As of October 1, 2019, the Company accounts for facility-related exit or disposal activities in accordance with ASC 842 and no longer records facility-related restructuring charges within the Business restructuring reserve on the Consolidated Balance Sheets. The adoption of ASC 842 resulted in a one-time reclassification of $5 million for certain facility-related lease obligations from the Business restructuring reserve to Operating lease right-of-use assets. Facility exit costs primarily include lease obligation charges for exited facilities, including the impact of accelerated lease expense for right-of-use assets and accelerated depreciation expense for leasehold improvements with reductions in their estimated useful lives due to exited facilities. The Company's accounting for such charges is dependent on whether it has the ability and intent to sublease an exited facility. In circumstances in which the Company has the ability and intent to sublease an exited facility, the Company performs an impairment test of the asset group by comparing its fair value to its carrying value on the earlier of the sublease inception date or cease use date. To the extent the carrying value of the asset group is greater than its fair value, an impairment charge is recorded within the Restructuring charges line item in the Company's Consolidated Statements of Operations. If the Company does not have the ability and intent to sublease an exited facility, the Company adjusts the estimated useful life of the facility related assets to end on the cease use date and recognizes accelerated depreciation and amortization within the Restructuring charges line item in the Consolidated Statements of Operations. The amortization of right-of-use assets for exited facilities is recorded within Restructuring charges after the cease use date. Sublease income is recorded within Other income, net in the Consolidated Statements of Operations.

Pension and Post-retirement Benefit Obligations

The Company sponsors non-contributory defined benefit pension plans covering a portion of its U.S. employees and retirees, and post-retirement benefit plans covering a portion of its U.S. employees and retirees that include healthcare benefits and life insurance coverage. Certain non-U.S. operations have various retirement benefit programs covering substantially all of their employees. Some of these programs are considered to be defined benefit pension plans for accounting purposes.

These pension and other post-retirement benefits are accounted for in accordance with FASB ASC Topic 715, "Compensation—Retirement Benefits" ("ASC 715"). ASC 715 requires that plan assets and obligations be measured as of the reporting date and the over-funded, under-funded or unfunded status of plans be recognized as of the reporting date as an asset or liability in the Consolidated Balance Sheets. In addition, ASC 715 requires costs and related obligations and assets arising from pensions and other post-retirement benefit plans to be accounted for based on actuarially determined estimates.

The Company's pension and post-retirement benefit costs are developed from actuarial valuations. Inherent in these valuations are key assumptions, including the discount rate and expected long-term rate of return on plan assets. Material changes in pension and post-retirement benefit costs may occur in the future due to changes in these assumptions, in the number of plan participants, in the level of benefits provided, in asset levels and in legislation.

The market-related value of the Company's plan assets as of the measurement date is developed using a five-year smoothing technique. First, a preliminary market-related value is calculated by adjusting the market-related value at the beginning of the year for payments to and from plan assets and the expected return on assets during the year. The expected return on assets represents the expected long-term rate of return on plan assets adjusted up to plus or minus 2% based on the actual ten-year average rate of return on plan assets. A final market-related value is determined as the preliminary market-related value, plus 20% of the difference between the actual return and expected return for each of the past five years.

The plans use different factors based on plan provisions and participant census data, including years of service, eligible compensation and age, to determine the benefit amount for eligible participants. The Company funds its U.S. pension plans in compliance with applicable laws.

Advertising Costs

The Company expenses advertising costs as incurred. Advertising costs were $42 million, $39 million, $27 million and $9 million for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), respectively.

Share-based Compensation

The Company accounts for share-based compensation in accordance with FASB Topic ASC 718, "Compensation-Stock Compensation," which requires the measurement and recognition of compensation expense for all share-based payment awards made to employees and non-employee directors including stock options, restricted stock, restricted stock units, performance awards and other forms of awards granted or denominated in shares of the Company's common stock, as well as certain cash-based awards. Upon emergence from bankruptcy, the Company changed its accounting policy related to determining the fair value of certain equity awards. Prior to the Emergence Date, the Predecessor Company used the Cox-Ross-Rubenstein ("CRR") binomial option pricing model to determine the grant date fair values of stock options and its Preferred Series A and B Stock

warrants. Forfeitures were an input assumption in the valuation model. Subsequent to the Emergence Date, the Successor Company uses the Black-Scholes-Merton option pricing model ("Black-Scholes") to calculate the fair value of stock options and warrants to purchase common stock. In addition to the change in option pricing models, the Successor Company accounts for forfeitures as incurred.

Income Taxes

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the Consolidated Statements of Operations in the period that includes the enactment date. A valuation allowance is recorded to reduce the carrying amounts of deferred tax assets if it is more likely than not that such assets will not be realized. Additionally, the accounting for income taxes requires the Company to evaluate and make an assertion as to whether undistributed foreign earnings will be indefinitely reinvested or repatriated.

FASB ASC Subtopic 740-10, "Income Taxes—Overall" ("ASC 740-10") prescribes a comprehensive model for the financial statement recognition, measurement, classification, and disclosure of uncertain tax positions. ASC 740-10 contains a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, based on the technical merits of the position. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement.

Significant judgment is required in evaluating uncertain tax positions and determining the provision for income taxes. Although the Company believes its reserves are reasonable, no assurance can be given that the final tax outcome of these matters will not be different from that which is reflected in the historical income tax provision and accruals. The Company adjusts its estimated liability for uncertain tax positions periodically due to new information discovered from ongoing examinations by, and settlements with, various taxing authorities, as well as changes in tax laws, regulations and interpretations. The Company's policy is to recognize, when applicable, interest and penalties on uncertain tax positions as part of income tax expense.

As part of the Company's accounting for business combinations, some of the purchase price is allocated to goodwill and intangible assets. Impairment expenses associated with goodwill are generally not tax deductible and will result in an increased effective income tax rate in the fiscal period any impairment is recorded. The income tax benefit from future releases of the acquisition date valuation allowances or income tax contingencies, if any, are reflected in the income tax provision in the Consolidated Statements of Operations, rather than as an adjustment to the purchase price allocation.

(Loss) Earnings Per Share

The Company uses the two-class method to calculate basic and diluted (loss) earnings per share as its Series A Preferred Stock are participating securities. Under the two-class method, undistributed earnings are allocated to common stock and participating securities according to their respective participating rights in undistributed earnings, as if all the earnings for the period had been distributed. Basic (loss) earnings per common share is computed by dividing the net (loss) income attributable to common stockholders by the weighted average number of common shares outstanding during the period. Net (loss) income attributable to common stockholders is reduced for preferred stock dividends earned and accretion recognized during the period. No allocation of undistributed earnings to preferred shares is performed for periods with net losses as such securities do not have a contractual obligation to share in the losses of the Company. Diluted (loss) earnings per share is computed by dividing the net (loss) income attributable to common stockholders by the weighted average number of common shares outstanding plus potentially dilutive common shares.

Deferred Financing Costs

Deferred financing costs are amortized using the effective interest method as interest expense over the contractual lives of the related credit facilities. Deferred financing costs related to a debt liability are presented on the Consolidated Balance Sheets as a reduction of the carrying amount of that debt liability and deferred financing costs related to revolving credit facilities are included within other assets.

Foreign Currency Translation

Assets and liabilities of non-U.S. subsidiaries that operate in a local currency environment, where the local currency is the functional currency, are translated from foreign currencies into U.S. dollars at period-end exchange rates.

Upon emergence from bankruptcy, the Company changed its accounting policy related to translating the income and expense of non-U.S. dollar functional currency subsidiaries into U.S. dollars. Prior to the Emergence Date, the Predecessor Company translated the income and expense of non-U.S. dollar functional currency subsidiaries into U.S. dollars at the spot rate for the

transaction. Subsequent to the Emergence Date, the Successor Company translates the income and expense of non-U.S. dollar functional currency subsidiaries into U.S. dollars using an average rate for the period.

Translation gains or losses related to net assets located outside the U.S. are shown as a component of Accumulated other comprehensive (loss) in the Consolidated Balance Sheets. Gains and losses resulting from foreign currency transactions, which are denominated in currencies other than the functional currency, are included in Other income (expense), net in the Consolidated Statements of Operations.

3. Recent Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In February 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2018-02, "Income Statement - Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income." This standard allows companies to reclassify from accumulated other comprehensive income to retained earnings any stranded tax benefits resulting from the enactment of the Tax Cuts and Jobs Act. The Company adopted this standard as of October 1, 2019. The adoption of this standard did not have a material impact on the Company's Consolidated Financial Statements.

In February 2016, the FASB issued ASC 842, which superseded all lease accounting guidance and requires lessees to recognize lease assets and liabilities for all leases with initial lease terms of more than 12 months. The standard makes similar changes to lessor accounting and aligns key aspects of the lessor accounting model with the GAAP revenue recognition standard. The Company adopted ASC 842 on October 1, 2019 using the modified retrospective transition method as of the beginning of the period of adoption. Therefore, on October 1, 2019, the Company recognized and measured leases without revising the historical comparative period information or disclosures. The modified retrospective transition method included optional practical expedients which lessened the burden of implementing ASC 842 by not requiring a reassessment of certain conclusions reached under the previous lease accounting guidance. The Company elected to apply the package of practical expedients to forego a reassessment of (1) whether any expired or existing contracts are or contain leases; (2) the lease classification for any expired or existing leases; and (3) the initial direct costs for an existing lease. In addition, the Company elected the land easement practical expedient permitting it to not reassess whether an existing or expired land easement is a lease or contains a lease. The Company also adopted the practical expedient permitting the non-lease components of an arrangement to be included in the right-of-use asset to which they relate. The Company did not elect the practical expedient allowing the use-of-hindsight which would require the Company to reassess the lease term of existing leases based on all facts and circumstances through the effective date.

The adoption of ASC 842 had a material impact to the Company's Consolidated Balance Sheet mainly due to the recognition of $190 million of operating lease right-of-use assets and $194 million of operating lease liabilities. The adoption of ASC 842 also resulted in the one-time reclassification of certain prepaid and deferred rent and facility-related business restructuring liabilities to operating lease right-of-use assets.

The impact of the adoption of ASC 842 on the September 30, 2019 Consolidated Balance Sheet was as follows:

(In millions)	September 30, 2019 As Reported	Adjustments	Upon Adoption of ASC 842
ASSETS			
Other current assets	$ 115	$ (2)	$ 113
Intangible assets, net	2,891	(2)	2,889
Operating lease right-of-use assets	—	190	190
LIABILITIES			
Current liabilities:			
Operating lease liabilities	—	51	51
Business restructuring reserve	33	(4)	29
Non-current liabilities:			
Operating lease liabilities	—	143	143
Business restructuring reserve	36	(1)	35
Other liabilities	316	(3)	313

Recent Standards Not Yet Effective

In August 2020, the FASB issued ASU No. 2020-06, "Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity." This standard simplifies the accounting for convertible instruments and the application of the derivatives scope exception for contracts in an entity's own equity. The standard also amends the accounting for convertible instruments in the diluted earnings per share calculation and requires enhanced disclosures of convertible instruments and contracts in an entity's own equity. This standard is effective for the Company in the first quarter of fiscal 2023 with early adoption permitted in the first quarter of fiscal 2022. The adoption may be applied on a modified or fully retrospective basis. An entity may also irrevocably elect the fair value option in accordance with Accounting Standards Codification ("ASC") 825 for any financial instrument that is a convertible security upon adoption of this standard. The Company is currently assessing the impact the new guidance will have on its Consolidated Financial Statements.

In December 2019, the FASB issued ASU No. 2019-12, "Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes". This standard simplifies the accounting for income taxes by removing certain exceptions to the general principles in ASC 740. The amendments also improve consistent application of and simplify GAAP for other areas of ASC 740 by clarifying and amending existing guidance. This standard is effective for the Company beginning in the first quarter of fiscal 2022, with early adoption permitted. Depending on the amendment, adoption may be applied on a retrospective, modified retrospective or prospective basis. The Company intends to early adopt this standard in the first quarter of fiscal 2021 and does not expect the adoption of the standard to have a material impact on its Consolidated Financial Statements.

In August 2018, the FASB issued ASU No. 2018-15, "Intangibles - Goodwill and Other Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That is a Service Contract." This standard aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The standard is effective for the Company in the first quarter of fiscal 2021, with early adoption permitted. The amendments in this standard may be applied on a retrospective or prospective basis. The Company intends to adopt the standard on a prospective basis in the first quarter of fiscal 2021. The prospective impact of the new guidance on the Company's Consolidated Financial Statements will be dependent on the nature of future transactions within its scope.

In August 2018, the FASB issued ASU No. 2018-14, "Compensation - Retirement Benefits - Defined Benefit Plans - General (Subtopic 715-20): Disclosure Framework - Changes to the Disclosure Requirements for Defined Benefit Plans." This standard modifies the disclosure requirements for employers that sponsor defined benefit pension or other post-retirement plans. This update removes disclosures that are not considered cost beneficial, clarifies certain required disclosures and adds additional disclosures. This standard is effective for the Company beginning in fiscal 2021, with early adoption permitted. The amendments in the standard need to be applied on a retrospective basis. The Company does not expect the adoption of the standard to result in material changes to its benefit plan disclosures.

In August 2018, the FASB issued ASU No. 2018-13, "Fair Value Measurement (Topic 820): Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement." This standard modifies the disclosure requirements on fair value measurements by removing certain disclosures, modifying certain disclosures and adding additional disclosures. This standard is effective for the Company beginning in the first quarter of fiscal 2021. Certain disclosures in the standard need to be applied on a retrospective basis and others on a prospective basis. The Company does not expect the adoption of the standard to result in material changes to its fair value disclosures.

In June 2016, the FASB issued ASU No. 2016-13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments." This standard, along with other guidance subsequently issued by the FASB, requires entities to estimate all expected credit losses for certain types of financial instruments, including trade receivables and contract assets, held at the reporting date based on historical experience, current conditions, and reasonable and supportable forecasts. The standard also expands the disclosure requirements to enable users of financial statements to understand the entity's assumptions, models and methods for estimating expected credit losses. This standard is effective for the Company in the first quarter of fiscal 2021 on a modified retrospective basis. The Company does not expect the adoption of the standard to have a material impact on its Consolidated Financial Statements.

4. Revenue Recognition

Disaggregation of Revenue

The following tables provide the Company's disaggregated revenue for fiscal 2020 and 2019:

(In millions)	Fiscal years ended September 30, 2020	2019
Revenue:		
Products & Solutions	$ 1,074	$ 1,228
Services	1,805	1,680
Unallocated Amounts	(6)	(21)
	$ 2,873	$ 2,887

(In millions)	Fiscal year ended September 30, 2020			
	Products & Solutions	Services	Unallocated	Total
Revenue:				
U.S.	$ 546	$ 1,097	$ (3)	$ 1,640
International:				
Europe, Middle East and Africa	327	389	(2)	714
Asia Pacific	122	175	(1)	296
Americas International - Canada and Latin America	79	144	—	223
Total International	528	708	(3)	1,233
Total revenue	$ 1,074	$ 1,805	$ (6)	$ 2,873

(In millions)	Fiscal year ended September 30, 2019			
	Products & Solutions	Services	Unallocated	Total
Revenue:				
U.S.	$ 585	$ 981	$ (13)	$ 1,553
International:				
Europe, Middle East and Africa	381	375	(3)	753
Asia Pacific	155	175	(3)	327
Americas International - Canada and Latin America	107	149	(2)	254
Total International	643	699	(8)	1,334
Total revenue	$ 1,228	$ 1,680	$ (21)	$ 2,887

Unallocated amounts represent the fair value adjustment to deferred revenue recognized upon emergence from bankruptcy and excluded from segment revenue.

Transaction Price Allocated to the Remaining Performance Obligations

The transaction price allocated to remaining performance obligations that were wholly or partially unsatisfied as of September 30, 2020 was $2.4 billion, of which 57% and 26% is expected to be recognized within 12 months and 13-24 months, respectively, with the remaining balance expected to be recognized thereafter. This excludes amounts for remaining performance obligations that are (1) for contracts recognized over time using the "right to invoice" practical expedient, (2) related to sales or usage based royalties promised in exchange for a license of intellectual property and (3) related to variable consideration allocated entirely to a wholly unsatisfied performance obligation.

Contract Balances

The following table provides information about accounts receivable, contract assets and contract liabilities for the periods presented:

(In millions)	As of September 30, 2020	2019	Increase (Decrease)
Accounts receivable, net	$ 275	$ 314	$ (39)
Contract assets:			
Current	$ 296	$ 187	$ 109
Non-current (Other assets)	71	16	55
	$ 367	$ 203	$ 164
Cost of obtaining a contract:			
Current (Contract costs)	$ 92	$ 89	$ 3
Non-current (Other assets)	40	45	(5)
	$ 132	$ 134	$ (2)
Cost to fulfill a contract:			
Current (Contract costs)	$ 23	$ 25	$ (2)
Contract liabilities:			
Current	$ 446	$ 472	$ (26)
Non-current	373	78	295
	$ 819	$ 550	$ 269

The increase in Contract assets was mainly driven by growth in the Company's subscription offerings. The increase in Contract liabilities was mainly driven by consideration received in connection with the strategic partnership with RingCentral, Inc. ("RingCentral") as discussed in Note 6, "Business Combinations and Strategic Partnerships and Investments." The Company did not record any asset impairment charges related to contract assets during fiscal 2020 and 2019.

During fiscal 2020 and 2019, the Company recognized revenue of $546 million and $537 million that had been previously recorded as a Contract liability as of October 1, 2019 and 2018, respectively. As a result of contract modifications during fiscal 2020, the Company recorded adjustments to reduce revenue by $1 million for performance obligations that were satisfied in prior periods. During fiscal 2019, no adjustments were recorded to revenue related to performance obligations that were satisfied in prior periods.

Contract Costs

During fiscal 2020, the Company recognized $156 million for amortization of costs to obtain customer contracts, of which $152 million was included in Selling, general and administrative expense and the remaining $4 million was a reduction to Revenue. During fiscal 2019, the Company recognized $103 million for amortization of costs to obtain customer contracts, of which $100 million was included in Selling, general and administrative expense and the remaining $3 million was a reduction to Revenue.

During fiscal 2020, the Company recognized $52 million of contract fulfillment costs, of which $48 million was included within Costs and the remaining $4 million was a reduction to Revenue. During fiscal 2019, the Company recognized $50 million of contract fulfillment costs within Costs.

5. Leases

The following table details the components of net lease expense for fiscal 2020:

(In millions)	Fiscal year ended September 30, 2020
Operating lease cost [1]	$ 67
Short-term lease cost [1]	5
Variable lease cost [1][2]	17
Finance lease amortization of right-of-use assets [1]	4
Sublease income [3]	(5)
Total lease cost	$ 88

[1] Allocated between Cost of products and services, and Operating expenses.

[2] Includes real estate taxes and other charges for non-lease services payable to lessors and recognized in the period incurred.

[3] Included in Other income, net.

The Company's right-of-use assets and lease liabilities for financing leases are included in the Consolidated Balance Sheet as follows:

(In millions)	September 30, 2020
ASSETS	
Property, plant and equipment, net	$ 12
LIABILITIES	
Other current liabilities	8
Other liabilities	9

The following table presents the Company's annual maturity of lease payments, weighted average remaining lease term and weighted average interest rate for operating and financing leases as of September 30, 2020:

(In millions)	Operating Leases	Financing Leases
2021	58	9
2022	49	4
2023	36	3
2024	25	2
2025	14	—
2026 and thereafter	22	—
Total lease payments	204	18
Less: imputed interest	(26)	(1)
Total lease liability	$ 178	$ 17
Weighted average remaining lease term	4.5 years	2.7 years
Weighted average interest rate	6.1 %	5.4 %

The following table presents the Company's future minimum lease payments under non-cancelable leases as of September 30, 2019, which was prior to the adoption of ASC 842:

In millions	Operating Leases	Capital Leases
2020	$ 51	$ 12
2021	39	6
2022	33	2
2023	22	—
2024	17	—
2025 and thereafter	29	—
Total lease payments	$ 191	20
Less: imputed interest		(1)
Total lease liability		$ 19

The capital lease obligation as of September 30, 2019 included $11 million and $8 million within Other current liabilities and Other liabilities, respectively.

The Company outsources certain delivery services associated with its enterprise cloud and managed services, which included the sale of specified assets owned by the Company that were leased-back by the Company and are accounted for as a finance lease. As of September 30, 2020 and September 30, 2019, finance lease obligations associated with these sale leaseback agreements were $5 million and $13 million, respectively.

6. Business Combinations and Strategic Partnerships and Investments

Business Combination

On March 9, 2018 (the "Acquisition Date"), the Company acquired Intellisist, Inc. ("Spoken"), a United States-based private technology company, which provides cloud-based Contact Center as a Service ("CCaaS") solutions and customer experience management and automation applications. The total purchase price was $172 million, consisting of $157 million in cash, $14 million in contingent consideration and a $1 million settlement of Spoken’s net payable to the Company, which mainly related to services provided by the Company to Spoken under a co-development partnership prior to the acquisition.

Upon the achievement of three specified performance targets ("Earn-outs"), the Company was required to pay up to $16 million of contingent consideration to Spoken's former owners and employees and up to $4 million in discretionary earn-out bonuses ("Earn-out Bonuses") to Spoken employees who had contributed to the achievement of the Earn-outs. The fair value of the Earn-outs at the Acquisition Date was $14 million, which was calculated using a probability-weighted discounted cash flow model and was remeasured to fair value at each subsequent reporting period. The Earn-out Bonuses, which were intended to incentivize continuing employees to assist in achieving the Earn-outs, were excluded from the acquisition consideration and were recognized as compensation expense in the Company's Consolidated Financial Statements ratably over the estimated Earn-out periods. During fiscal 2020 and 2019, the Company paid $5 million and $11 million for Earn-outs, respectively. During both fiscal 2020 and 2019, the Company also paid $2 million for Earn-out Bonuses. As of September 30, 2020, all potential Earn-outs and Earn-out Bonuses were fully settled.

In connection with this acquisition, the Company recorded goodwill of $117 million, which was assigned to the Products & Solutions segment, identifiable intangible assets with a fair value of $64 million and other net liabilities of $9 million. The goodwill recognized was attributable primarily to the potential that the Spoken technology, cloud platform and assembled workforce would accelerate the Company's growth in cloud-based solutions. The goodwill is not deductible for tax purposes.

The acquired intangible assets of $64 million included technology and patents of $56 million with a weighted average useful life of 4.9 years, $5 million of in-process research and development ("IPR&D") activities, which are considered indefinite lived until projects are completed or abandoned, and customer relationships of $3 million with a weighted average useful life of 7.5 years. During fiscal 2019, $3 million of the acquired IPR&D activities were completed and are being amortized over a weighted average useful life of 4.2 years and $2 million were abandoned and written off (see Note 8, "Intangible Assets, net").

During the period from December 16, 2017 through September 30, 2018, the Company recorded $3 million of acquisition-related costs, which included investment banking, legal and other third-party costs, and $7 million of compensation expense resulting from the accelerated vesting of certain unvested Spoken stock option awards because post-combination service requirements were eliminated. The acquisition-related costs and the compensation expense were recorded in Selling, general and administrative expense in the Consolidated Statements of Operations.

Strategic Partnership

On October 3, 2019, the Company entered into certain agreements that establish the framework for the Company's strategic partnership with RingCentral, a leading provider of global enterprise cloud communications, collaboration and contact center ("CC") solutions, to accelerate the Company's transition to the cloud. Through this partnership, the Company introduced Avaya Cloud Office by RingCentral ("Avaya Cloud Office" or "ACO"), a new global unified communications as a service ("UCaaS") solution. Avaya Cloud Office expands the Company's portfolio to offer a full suite of Unified Communications and Collaboration ("UCC"), CC, UCaaS and contact center as a service solutions to its global customer base. ACO combines RingCentral's leading UCaaS platform with Avaya technology, services and migration capabilities to create a highly differentiated UCaaS offering. The transaction closed on October 31, 2019 and ACO was launched on March 31, 2020.

As part of the strategic partnership, the Company and RingCentral also entered into an agreement governing the terms of the commercial arrangement between the parties (the "Framework Agreement"). Under the Framework Agreement, the parties entered into a Super Master Agent Agreement, pursuant to which Avaya acts as an agent to Avaya's channel partners with respect to the sale of ACO and make direct sales of ACO. RingCentral pays a fee to Avaya, including for the benefit of its channel partners, for each such sale. In addition, for each unit of ACO sold during the term of the Framework Agreement, RingCentral pays Avaya certain fees. Among other things, the Framework Agreement requires Avaya to (subject to certain exceptions) market and sell ACO as its exclusive UCaaS solution (as defined in the Framework Agreement). The Framework Agreement has a multiyear term and can be terminated early by either party in the event (i) the other party fails to cure a material breach or (ii) the other party undergoes a change in control.

In accordance with the Framework Agreement, RingCentral paid Avaya $375 million, predominantly for future fees, as well as for certain licensing rights. The $375 million payment consisted of $361 million in shares of RingCentral common stock and $14 million in cash. During fiscal 2020, the Company sold all of its shares of RingCentral common stock and recognized a gain of $59 million within Other income (expense), net in the Consolidated Statements of Operations.

In connection with the strategic partnership, the Company and RingCentral entered into an investment agreement, whereby RingCentral purchased 125,000 shares of the Company's Series A 3% Convertible Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock"), for an aggregate purchase price of $125 million. See Note 17, "Capital Stock" for additional information on the Series A Preferred Stock.

Strategic Investment

On May 20, 2019, the Company made a $10 million investment in a UCaaS provider delivering public sector Federal Risk and Authorization Management Program ("FedRAMP") security requirements (the "Investee") through the acquisition of a 3-year convertible note ("Promissory Note"). The Investee offers hosted, cloud-based Voice over Internet Protocol infrastructure services and a FedRAMP authorized hosting platform.

The Promissory Note has a principal amount of $10 million, bears interest at a rate of 8% per annum and has a maturity date of May 20, 2022. Under the terms of the Promissory Note, the Company may, at its sole discretion, convert its interest in the Promissory Note into newly issued Class D units of the Investee representing no less than 27.3% of the Investee's fully diluted capitalization at the time of the conversion. On or after the Promissory Note's maturity date, the Company will have the option, at its sole discretion, to demand payment from the Investee for the unpaid principal and accrued interest on the Promissory Note. In conjunction with the purchase of the Promissory Note, the Company entered into a separate agreement with the Investee and its equity holders which provides the Company with an option to purchase from such equity holders any or all of the outstanding LLC units of the Investee for prices specified in the relevant agreement. The option is exercisable upon the earlier of December 31, 2021 or the Investee reaching specified milestones. The option does not currently convey power to the Company as it is not currently exercisable and requires significant economic outlay.

The Promissory Note was classified as an available-for-sale security as of September 30, 2019 with a carrying value and fair value of $10 million and was recorded within Other Assets in the Consolidated Balance Sheets. Although the Company maintains a variable interest in the Investee, it is not the primary beneficiary as it does not direct the activities that most significantly impact the economic performance of the Investee through the rights maintained with the Promissory Note or separate agreement.

During fiscal 2020, the Company recorded an other-than-temporary impairment charge for a $10 million credit loss on its Promissory Note mainly driven by a decline in the macroeconomic environment due to the COVID-19 pandemic and a decline in the expected operating results and cash flows of the Investee. The impairment charge is included in Other income (expense), net. As a result of the impairment charge, the Company no longer maintains any risk of loss as a result of its involvement with the Investee since its risk of loss was limited to the initial investment in the Promissory Note.

7. Goodwill, net

The changes in the carrying amount of goodwill by segment for the periods indicated were as follows:

(In millions)	Products & Solutions	Services	Total
Balance as of September 30, 2018 (Successor)			
Cost	$ 1,283	$ 1,481	$ 2,764
Accumulated impairment charges	—	—	—
	1,283	**1,481**	**2,764**
Impairment charges	657	—	657
Foreign currency fluctuations	(1)	(1)	(2)
Other	—	(2)	(2)
Balance as of September 30, 2019 (Successor)			
Cost	1,282	1,478	2,760
Accumulated impairment charges	(657)	—	(657)
	625	**1,478**	**2,103**
Impairment charges	(624)	—	(624)
Foreign currency fluctuations	(1)	1	—
Other	—	(1)	(1)
Balance as of September 30, 2020 (Successor)			
Cost	1,281	1,478	2,759
Accumulated impairment charges	(1,281)	—	(1,281)
	$ —	**$ 1,478**	**$ 1,478**

Fiscal 2020 (Successor)

During the first quarter of fiscal 2020, the Company changed its reporting units to align with changes in its organizational structure, mainly resulting from the previously disclosed strategic review process which concluded in October 2019. As a result, on October 1, 2019, the Company consolidated its UCC and CC reporting units into a Products & Solutions reporting unit and consolidated its Global Support Services ("GSS"), Avaya Professional Services ("APS") and Enterprise Cloud and Managed Services ("ECMS") reporting units into a Services reporting unit. As a result of these changes, the Company's reporting units are the same as its operating segments which are described in Note 19, "Operating Segments." Due to the consolidation of reporting units, the Company performed an interim goodwill impairment assessment immediately before and after the consolidation on October 1, 2019 by estimating and comparing the fair value of each reporting unit to its carrying value. The Company determined that the carrying amounts of each of the Company's reporting units did not exceed their estimated fair values and therefore no impairment existed as of October 1, 2019.

During the second quarter of fiscal 2020, the Company concluded that a triggering event occurred for both of its reporting units due to (i) the impact of the COVID-19 pandemic on the macroeconomic environment which led to revisions to the Company's long-term forecast during the second quarter of fiscal 2020 and (ii) the sustained decrease in the Company's stock price since the advent of the pandemic which was caused by the resulting volatility in the financial markets. As a result, the Company performed an interim quantitative goodwill impairment test as of March 31, 2020 to compare the fair values of its reporting units to their respective carrying amounts, including the goodwill allocated to each reporting unit. The results of the Company's interim goodwill impairment test as of March 31, 2020 indicated that the estimated fair value of the Company's Services reporting unit exceeded its carrying amount. The carrying amount of the Company's Products & Solutions reporting unit exceeded its estimated fair value primarily due to a reduction in the Company's long-term forecast to reflect increased risk from higher market uncertainty and the accelerated reduction of product sales related to the Company's historical on-premise perpetual licenses. The Company anticipates a continued shift and acceleration of customers upgrading and acquiring new technology innovation through the utilization of the Company's subscription offering, which is included in the Services reporting unit. As a result, the Company recorded a goodwill impairment charge of $624 million in fiscal 2020 to write down the full carrying amount of the Products & Solutions goodwill in the Impairment charges line item in the Consolidated Statements of Operations.

The Company performed its annual goodwill impairment test as of July 1, 2020. As permitted under ASC 350, the Company performed a qualitative goodwill impairment assessment to determine whether it was more likely than not that the fair value of its Services reporting unit was less than its carrying amount, including goodwill. After assessing all relevant qualitative factors,

the Company determined that it was more likely than not that the fair value of the reporting unit exceeded its carrying amount and a quantitative goodwill impairment test was not necessary.

The Company's long-term forecast includes significant estimates and assumptions, including management's estimate of the potential impact of the COVID-19 pandemic on the Company's operating results. Due to the uncertainty surrounding the impact of the COVID-19 pandemic on the macroeconomic environment and, more specifically, on the Company's future operating results, it is reasonably possible that the pandemic could have a more adverse impact than what is currently contemplated by the Company's long-term forecast.

The Company determined that no events occurred or circumstances changed during the three months ended September 30, 2020 that would indicate that it is more likely than not that its goodwill was impaired. To the extent that business conditions deteriorate or if changes in key assumptions and estimates differ significantly from management's expectations, it may be necessary to record additional impairment charges in the future.

Fiscal 2019 (Successor)

During the third quarter of fiscal 2019, the Company concluded that triggering events occurred for all of its reporting units due to a sustained decrease in the Company's stock price and lower than planned financial results which led to revisions to the Company's long-term forecast during the third quarter of fiscal 2019. As a result, the Company performed an interim quantitative goodwill impairment test as of June 30, 2019 to compare the fair values of its reporting units to their respective carrying values, including the goodwill allocated to each reporting unit. The results of the Company’s interim goodwill impairment test as of June 30, 2019 indicated that the estimated fair values of the Company’s UCC, GSS, APS and ECMS reporting units were greater than their carrying amounts, however, the carrying amount of the Company’s CC reporting unit within the Products & Solutions segment exceeded its estimated fair value primarily due to a reduction in the Company's long-term forecast. As a result, the Company recorded a goodwill impairment charge of $657 million in fiscal 2019 in the Impairment charges line item in the Consolidated Statements of Operations representing the amount by which the carrying value of the CC reporting unit exceeded its fair value.

The Company performed its annual goodwill impairment test on July 1, 2019 and determined that the carrying amounts of each of the Company's reporting units did not exceed their estimated fair values and therefore no impairment existed.

The Period from December 16, 2017 through September 30, 2018 (Successor) and the Period from October 1, 2017 through December 15, 2017 (Predecessor)

The Company performed its annual goodwill impairment test on July 1, 2018 and determined that the carrying amounts of each of the Company's reporting units did not exceed their estimated fair values and therefore no impairment existed.

8. Intangible Assets, net

The Company's intangible assets consist of the following for the periods indicated:

(In millions)	Technology and Patents	Customer Relationships and Other Intangibles	Trademarks and Trade Names	Total
Balance as of September 30, 2020				
Finite-lived intangible assets:				
Cost	$ 961	$ 2,153	$ 42	$ 3,156
Accumulated amortization	(482)	(433)	(18)	(933)
Finite-lived intangible assets, net	479	1,720	24	2,223
Indefinite-lived intangible assets:				
Cost	—	—	333	333
Accumulated impairment	—	—	—	—
Indefinite-lived intangible assets, net	—	—	333	$ 333
Intangible assets, net	$ 479	$ 1,720	$ 357	$ 2,556
Balance as of September 30, 2019				
Finite-lived intangible assets:				
Cost	$ 960	$ 2,154	$ 42	$ 3,156
Accumulated amortization	(308)	(279)	(11)	(598)
Finite-lived intangible assets, net	652	1,875	31	2,558
Indefinite-lived intangible assets:				
Cost	$ 2	$ —	$ 333	$ 335
Accumulated impairment	(2)	—	—	(2)
Indefinite-lived intangible assets, net	$ —	$ —	$ 333	$ 333
Intangible assets, net	$ 652	$ 1,875	$ 364	$ 2,891

Amortization expense for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor) was $335 million, $336 million, $262 million and $13 million, respectively.

Future amortization expense of intangible assets as of September 30, 2020 for the fiscal years ending September 30, is as follows:

(In millions)	
2021	$ 331
2022	304
2023	287
2024	185
2025 and thereafter	1,116
Total	$ 2,223

Fiscal 2020 (Successor)

As a result of the triggering event described in Note 7, "Goodwill, net," the Company performed a recoverability test on all of its finite-lived asset groups and indefinite-lived intangible assets as of March 31, 2020 before proceeding to the goodwill impairment review. As of March 31, 2020, the Company's interim quantitative impairment test for the finite-lived asset groups and indefinite-lived intangible asset, the Avaya Trade Name, indicated no impairment existed.

As of July 1, 2020, the Company performed its annual impairment test of the Avaya Trade Name and determined that its estimated fair value exceeded its carrying amount and no impairment existed.

The Company determined that no events occurred or circumstances changed during the three months ended September 30, 2020 that would indicate that its finite-lived intangible assets may not be recoverable or that it is more likely than not that its indefinite-lived intangible assets were impaired. To the extent that business conditions deteriorate or if changes in key assumptions and estimates differ significantly from management's expectations, it may be necessary to record impairment charges in the future.

Fiscal 2019 (Successor)

During fiscal 2019, the Company elected to abandon an in-process research and development project that no longer aligned with the Company's technology roadmap. As a result, the Company recorded an impairment charge of $2 million to write down the full carrying amount of the project within the Impairment charges line item in the Consolidated Statements of Operations.

As a result of the triggering events described in Note 7, "Goodwill, net," the Company performed a recoverability test on all of its finite-lived asset groups as of June 30, 2019 before proceeding to the goodwill impairment review and concluded that no impairment charge was necessary. The Company also performed an interim quantitative impairment test for the Avaya Trade Name as of June 30, 2019 and determined that its estimated fair value exceeded its carrying value and no impairment existed.

At July 1, 2019, the Company performed its annual impairment test of the Avaya Trade Name and determined that its estimated fair value exceeded its carrying amount and no impairment existed.

The Period from December 16, 2017 through September 30, 2018 (Successor) and the Period from October 1, 2017 through December 15, 2017 (Predecessor)

At July 1, 2018, the Company performed its annual impairment test of indefinite-lived intangible assets. The Company determined that the respective carrying amounts of the indefinite-lived intangible assets did not exceed their estimated fair values and therefore no impairment existed.

9. Supplementary Financial Information

Consolidated Statements of Operations Information

The following table presents a summary of depreciation and amortization and Other income (expense), net for the periods indicated:

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
(In millions)	2020	2019		
DEPRECIATION AND AMORTIZATION				
Amortization of intangible assets (included in Costs and Operating expenses)	$ 335	$ 336	$ 262	$ 13
Depreciation and amortization of property, plant and equipment and internal use software (included in Costs and Operating expenses)	88	107	122	18
Total depreciation and amortization	**$ 423**	**$ 443**	**$ 384**	**$ 31**
OTHER INCOME (EXPENSE), NET				
Interest income	$ 6	$ 14	$ 5	$ 2
Foreign currency (losses) gains, net	(16)	(8)	28	—
Gain on investments in equity and debt securities, net	49	—	—	—
Other pension and post-retirement benefit credits (costs), net	22	7	13	(8)
Change in fair value of Emergence Date Warrants	(3)	29	(17)	—
Sublease income	5	—	—	—
Income from transition services agreement, net	—	—	5	3
Other, net	—	(1)	1	1
Total other income (expense), net	**$ 63**	**$ 41**	**$ 35**	**$ (2)**

The gain on investments in equity and debt securities, net for fiscal 2020 includes a gain on shares of RingCentral common stock of $59 million and is partially offset by a $10 million impairment of debt securities owned by the Company, which is further described in Note 6, "Business Combinations and Strategic Partnerships and Investments."

The Foreign currency gains, net for the period from December 16, 2017 through September 30, 2018 was principally due to the strengthening of the U.S. dollar compared to certain foreign exchange rates on U.S. dollar denominated receivables maintained in non-U.S. locations, mainly Argentina, India and Mexico. As of July 1, 2018, we concluded that Argentina represents a hyperinflationary economy as its projected three-year cumulative inflation rate exceeds 100%. As a result, we changed the local

functional currency for our Argentinian operations from the Argentine Peso to the U.S. Dollar effective July 1, 2018 and remeasured the financial statements for those operations to the U.S. Dollar as of July 1, 2018 in accordance with ASC 830 "Foreign Currency Matters." Although the remeasurement on July 1, 2018 did not have an impact on our Consolidated Financial Statements, foreign exchange transaction gains and losses recognized on or after July 1, 2018 are based on our Argentina operation's new U.S. dollar functional currency.

A summary of Reorganization items, net for the periods indicated is presented in the following table:

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through	Period from October 1, 2017 through
(In millions)	2020	2019	September 30, 2018	December 15, 2017
REORGANIZATION ITEMS, NET				
Net gain on settlement of Liabilities subject to compromise	$ —	$ —	$ —	$ 1,778
Net gain on fresh start adjustments	—	—	—	1,697
Bankruptcy-related professional fees	—	—	—	(56)
Other items, net	—	—	—	(3)
Reorganization items, net	**$ —**	**$ —**	**$ —**	**$ 3,416**
Cash payments for reorganization items	$ —	$ —	$ 1	$ 2,524

Costs directly attributable to the implementation of the Plan of Reorganization were reported as Reorganization items, net. The cash payments for reorganization items for the period from October 1, 2017 through December 15, 2017 included $2,468 million of claims paid related to Liabilities subject to compromise and $56 million for bankruptcy-related professional fees, including emergence and success fees paid on the Emergence Date.

Consolidated Balance Sheet Information

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through	Period from October 1, 2017 through
(In millions)	2020	2019	September 30, 2018	December 15, 2017
VALUATION AND QUALIFYING ACCOUNTS				
Allowance for Doubtful Accounts Receivable:				
Balance at beginning of period	$ 4	$ 2	$ —	$ 13
Increase in expense	5	2	2	1
Reductions	(2)	—	—	(1)
Impact of fresh start accounting	—	—	—	(13)
Balance at end of period	**$ 7**	**$ 4**	**$ 2**	**$ —**
Deferred Tax Asset Valuation Allowance:				
Balance at beginning of period	$ 928	$ 919	$ 836	$ 2,152
Increase (decrease) in expense	58	43	105	(452)
Additions (reductions)	67	(34)	(22)	(393)
Impact of fresh start accounting	—	—	—	(471)
Balance at end of period	**$ 1,053**	**$ 928**	**$ 919**	**$ 836**

(In millions)	As of September 30, 2020	2019
PROPERTY, PLANT AND EQUIPMENT, NET		
Leasehold improvements	$ 97	$ 101
Machinery and equipment	265	221
Assets under construction	30	30
Internal use software	188	154
Total property, plant and equipment	580	506
Less: Accumulated depreciation and amortization	(312)	(251)
Property, plant and equipment, net	**$ 268**	**$ 255**

As of September 30, 2020, Machinery and equipment and Accumulated depreciation and amortization include $27 million and $(15) million, respectively, for assets acquired under finance leases. As of September 30, 2019, Machinery and equipment and Accumulated depreciation and amortization include $17 million and $(12) million, respectively, for assets acquired under finance leases.

Supplemental Cash Flow Information

(In millions)	Successor: Fiscal years ended September 30, 2020	2019	Successor: Period from December 16, 2017 through September 30, 2018	Predecessor: Period from October 1, 2017 through December 15, 2017
OTHER PAYMENTS				
Interest payments	$ 197	$ 206	$ 149	$ 15
Income tax payments	101	56	22	7
NON-CASH INVESTING ACTIVITIES				
Acquisition of equipment under finance leases	$ 9	$ 3	$ 2	$ —
(Decrease) increase in Accounts payable, Other current liabilities and Other liabilities for Capital expenditures	(4)	6	1	—

During fiscal 2020, the Company made payments for operating lease liabilities of $66 million and recorded non-cash additions for operating lease right-of-use assets of $35 million.

The following table presents a reconciliation of cash, cash equivalents, and restricted cash that sum to the total of the same such amounts shown in the Consolidated Statements of Cash Flows for the periods presented:

(In millions)	Successor: As of September 30, 2020	2019	2018	Predecessor: December 15, 2017
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH				
Cash and cash equivalents	$ 727	$ 752	$ 700	$ 366
Restricted cash included in other current assets	—	—	—	65
Restricted cash included in other assets	4	4	4	4
Total cash, cash equivalents, and restricted cash	$ 731	$ 756	$ 704	$ 435

As of December 15, 2017 (Predecessor), restricted cash in other current assets consisted primarily of funds held for bankruptcy-related professional fees.

10. Business Restructuring Reserves and Programs

The following table summarizes the restructuring charges by activity for the periods presented:

(In millions)	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
Employee separation costs	$ 6	$ 19	$ 70	$ 13
Facility exit costs	24	3	11	$ 1
Total restructuring charges	**$ 30**	**$ 22**	**$ 81**	**$ 14**

The restructuring charges include changes in estimates for increases and decreases in costs or changes in the timing of payments related to the restructuring programs of prior fiscal years. The Company's employee separation costs generally consist of severance charges which include, but are not limited to, termination payments, pension fund payments, and health care and unemployment insurance costs to be paid to, or on behalf of, the affected employees. Facility exit costs primarily consist of lease obligation charges for exited facilities, including the impact of accelerated lease expense for right-of-use assets and accelerated depreciation expense for leasehold improvements with reductions in their estimated useful lives due to exited facilities. The Company does not allocate restructuring reserves to its operating segments.

As a result of the adoption of ASC 842 on October 1, 2019, the Company no longer records facility-related restructuring charges within the Business restructuring reserves on the Consolidated Balance Sheets. As a result, the Company recorded a one-time reclassification of $5 million for certain facility-related lease obligations from Business restructuring reserves to Operating lease right-of-use assets upon adoption of ASC 842.

The following table summarizes the activity for employee separation costs recognized under the Company's restructuring programs for the periods presented:

(In millions)	Fiscal 2020 Restructuring Program [2]	Fiscal 2019 Restructuring Program [3]	Fiscal 2018 Restructuring Program [3]	Fiscal 2008 through 2017 Restructuring Programs [3]	Total
Accrual balance as of September 30, 2017 (Predecessor)	$ —	$ —	$ —	$ 55	$ 55
Cash payments	—	—	(3)	(4)	(7)
Restructuring charges	—	—	12	1	13
Adjustments [1]	—	—	—	4	4
Impact of foreign currency fluctuations	—	—	—	—	—
Accrual balance as of December 15, 2017 (Predecessor)	$ —	$ —	$ 9	$ 56	$ 65
Accrual balance as of December 16, 2017 (Successor)	$ —	$ —	$ 9	$ 56	$ 65
Cash payments	—	—	(23)	(17)	(40)
Restructuring charges	—	—	70	—	70
Adjustments [1]	—	—	—	—	—
Impact of foreign currency fluctuations	—	—	(2)	(1)	(3)
Accrual balance as of September 30, 2018 (Successor)	**—**	**—**	**54**	**38**	**92**
Cash payments	—	(8)	(19)	(16)	(43)
Restructuring charges	—	20	—	—	20
Adjustments [1]	—	—	(2)	1	(1)
Impact of foreign currency fluctuations	—	(1)	(2)	(1)	(4)
Accrual balance as of September 30, 2019 (Successor)	**—**	**11**	**31**	**22**	**64**
Cash payments	(1)	(5)	(11)	(9)	(26)
Restructuring charges	8	—	—	—	8
Adjustments [1]	—	—	(1)	(1)	(2)
Impact of foreign currency fluctuations	1	1	2	1	5
Accrual balance as of September 30, 2020 (Successor)	**$ 8**	**$ 7**	**$ 21**	**$ 13**	**$ 49**

[1] Includes changes in estimates for increases and decreases in costs related to the Company's restructuring programs, which are recorded in Restructuring charges, net in the Consolidated Statements of Operations in the period of the adjustment.

[2] Payments related to the fiscal 2020 restructuring program are expected to be completed in fiscal 2027.

[3] Payments related to the fiscal 2019, 2018 and 2008 through 2017 restructuring programs are expected to be completed in fiscal 2026.

11. Financing Arrangements

The following table reflects principal amounts of debt and debt net of discounts and issuance costs for the periods presented:

(In millions)	September 30, 2020		September 30, 2019	
	Principal amount	Net of discounts and issuance costs	Principal amount	Net of discounts and issuance costs
Term Loan Credit Agreement due December 15, 2024 and 2027	$ 1,643	$ 1,611	$ 2,874	$ 2,846
Senior 6.125% Notes due September 15, 2028	1,000	984	—	—
Convertible 2.25% Senior Notes due June 15, 2023	350	291	350	273
Total debt	**$ 2,993**	2,886	**$ 3,224**	3,119
Debt maturing within one year		—		(29)
Long-term debt, net of current portion		**$ 2,886**		**$ 3,090**

Term Loan and ABL Credit Agreements

On December 15, 2017, Avaya Inc. entered into (i) the Term Loan Credit Agreement among Avaya Inc., as borrower, Avaya Holdings, the lending institutions from time to time party thereto, and Goldman Sachs Bank USA, as administrative agent and collateral agent, which provided a $2,925 million term loan facility maturing on December 15, 2024 (the "Term Loan Credit Agreement") and (ii) the ABL Credit Agreement maturing on December 15, 2022, among Avaya Inc., as borrower, Avaya Holdings, the several other borrowers party thereto, the several lenders from time to time party thereto, and Citibank, N.A., as administrative agent and collateral agent, which provided a revolving credit facility consisting of a U.S. tranche and a foreign tranche allowing for borrowings of up to an aggregate principal amount of $300 million from time to time, subject to borrowing base availability (the "ABL Credit Agreement" and, together with the Term Loan Credit Agreement, the "Credit Agreements").

On June 18, 2018, the Company amended the Term Loan Credit Agreement ("Amendment No.1") to reduce interest rates and to reduce the London Inter-bank Offered Rate ("LIBOR") floor that existed under the original agreement from 1.00% to 0.00%. After Amendment No.1, the Term Loan Credit Agreement (a) in the case of alternative base rate ("ABR") Loans, bears interest at a rate per annum equal to 3.25% plus the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the U.S. prime rate as publicly announced in the Wall Street Journal and (iii) the LIBOR Rate for an interest period of one month and (b) in the case of LIBOR Loans, bears interest at a rate per annum equal to 4.25% plus the applicable LIBOR rate, subject to a 0.00% floor. Prior to Amendment No.1, the Term Loan Credit Agreement, in the case of ABR Loans, bore interest at a rate per annum equal to 3.75% plus the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the U.S. prime rate as publicly announced in the Wall Street Journal and (iii) the LIBOR Rate for an interest period of one month and in the case of LIBOR Loans, bore interest at a rate per annum equal to 4.75% plus the applicable LIBOR rate, subject to a 1.00% floor. As a result of Amendment No.1, outstanding loan balances under the original Term Loan Credit Agreement were paid in full and new debt was issued for the same outstanding principal amount. Amendment No.1 was accounted for as a loan modification under ASC 470, "Debt" ("ASC 470").

On September 25, 2020, the Company closed a private offering of $1,000 million aggregate principal amount of its Senior 6.125% First Lien Notes due September 15, 2028 (the “Senior Notes,” which are described in more detail below). On September 25, 2020, the Company also amended the Term Loan Credit Agreement (“Amendment No. 2”), pursuant to which the maturity of $800 million in principal amount of the first lien term loans outstanding under the Term Loan Credit Agreement was extended from December 2024 to December 2027. Amendment No. 2 also made certain other changes to the Term Loan Credit Agreement, including with respect to the change of control provisions. Concurrently with Amendment No. 2, the Company also used the net proceeds from the issuance of its Senior Notes after debt issuance costs to repurchase and prepay $981 million of certain first lien term loans under the Term Loan Credit Agreement whose maturity was not extended pursuant to Amendment No. 2.

The Company evaluated the issuance of the Senior Notes, the $981 million principal prepayment on the Term Loan Credit Agreement and Amendment No. 2 (collectively the “Debt Transactions”) under the loan modification and extinguishment guidance within ASC 470. The Debt Transactions were accounted for as a partial modification, partial extinguishment and new debt issuance at the syndicated lender level. Based on the application of the loan modification and extinguishment guidance within ASC 470 to the Debt Transactions, the Company capitalized $32 million of new debt issuance costs and underwriting discounts as a reduction to Long-term debt on the Consolidated Balance Sheets; recorded $9 million of new debt issuance costs and underwriting discounts within Interest Expense in the Consolidated Statements of Operations; and wrote-off a portion of the original underwriting discount on the Term Loan Credit Agreement of $5 million to Interest expense.

During fiscal 2020, the Company made total principal prepayments on its Term Loan Credit Agreement of $1,231 million, including the $981 million prepayment on September 25, 2020 described above. Due to the prepayments, there are no amounts due within one year on the Term Loan Credit Agreement and the balance has been classified as non-current as of September 30, 2020. For fiscal 2020, the Company recognized interest expense of $161 million related to the Term Loan Credit Agreement, including the expenses associated with the Debt Transactions described above and the amortization of the underwriting discount. For fiscal 2019 and the period from December 16, 2017 through September 30, 2018, the Company recognized interest expense of $200 million and $154 million, respectively, related to the Term Loan Credit Agreement, including the amortization of the underwriting discount.

On September 25, 2020, the Company also amended the ABL Credit Agreement to, among other things, extend its maturity to September 25, 2025, subject to customary adjustments to the extent certain indebtedness matures prior to such date. The total commitments under the ABL Credit Agreement were also reduced from $300 million to $200 million, subject to borrowing base availability. As a result of the amendment, the Company capitalized $2 million of issuance costs within Other assets on the Consolidated Balance Sheets in accordance with ASC 470.

Prior to the effectiveness of the September 25, 2020 amendment, the ABL Credit Agreement bore interest at the following rates:

1. In the case of Base Rate Loans denominated in U.S. dollars, at a rate per annum equal to 0.75% (subject to a 0.25% step-up or step-down based on availability) plus the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the U.S. prime rate as publicly announced by Citibank, N.A. and (iii) the LIBOR Rate for an interest period of one month;
2. In the case of LIBOR Rate Loans denominated in U.S. dollars, at a rate per annum equal to 1.75% (subject to a 0.25% step-up or step-down based on availability) plus the applicable LIBOR Rate;
3. In the case of Canadian Prime Rate Loans denominated in Canadian dollars, at a rate per annum equal to 0.75% (subject to a 0.25% step-up or step-down based on availability) plus the highest of (i) the "Base Rate" as publicly announced by Citibank, N.A., Canadian branch and (ii) the rate of interest per annum equal to the average rate applicable to Canadian Dollar Bankers Rate ("CDOR Rate") for an interest period of 30 days;
4. In the case of CDOR Rate Loans denominated in Canadian dollars, at a rate per annum equal to 1.75% (subject to a 0.25% step-up or step-down based on availability) plus the applicable CDOR Rate;
5. In the case of LIBOR Rate Loans denominated in Sterling, at a rate per annum equal to 1.75% (subject to a 0.25% step-up or step-down based on availability) plus the applicable LIBOR Rate;
6. In the case of Euro Interbank Offered Rate ("EURIBOR Rate") Loans denominated in Euro, at a rate per annum equal to 1.75% (subject to a 0.25% step-up or step-down based on availability) plus the applicable LIBOR Rate; and
7. In the case of Overnight LIBOR Rate Loans, at a rate per annum equal to 1.75% (subject to a 0.25% step-up or step-down based on availability) plus the applicable Overnight LIBOR Rate.

Subsequent to the effectiveness of the September 25, 2020 amendment, the ABL Credit Agreement bears interest at the following rates:

1. In the case of Base Rate Loans denominated in U.S. dollars, at a rate per annum equal to 1.00% (subject to a 0.25% step-up or step-down based on availability) plus the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the U.S. prime rate as publicly announced by Citibank, N.A. and (iii) the LIBOR Rate for an interest period of one month;
2. In the case of LIBOR Rate Loans denominated in U.S. dollars, at a rate per annum equal to 2.00% (subject to a 0.25% step-up or step-down based on availability) plus the applicable LIBOR Rate;
3. In the case of Canadian Prime Rate Loans denominated in Canadian dollars, at a rate per annum equal to 1.00% (subject to a 0.25% step-up or step-down based on availability) plus the highest of (i) the "Base Rate" as publicly announced by Citibank, N.A., Canadian branch and (ii) the rate of interest per annum equal to the average rate applicable to Canadian Dollar Bankers Rate ("CDOR Rate") for an interest period of 30 days;
4. In the case of CDOR Rate Loans denominated in Canadian dollars, at a rate per annum equal to 2.00% (subject to a 0.25% step-up or step-down based on availability) plus the applicable CDOR Rate;
5. In the case of LIBOR Rate Loans denominated in Sterling, at a rate per annum equal to 2.00% (subject to a 0.25% step-up or step-down based on availability) plus the applicable LIBOR Rate;
6. In the case of Euro Interbank Offered Rate ("EURIBOR Rate") Loans denominated in Euro, at a rate per annum equal to 2.00% (subject to a 0.25% step-up or step-down based on availability) plus the applicable LIBOR Rate; and
7. In the case of Overnight LIBOR Rate Loans, at a rate per annum equal to 2.00% (subject to a 0.25% step-up or step-down based on availability) plus the applicable Overnight LIBOR Rate.

The Credit Agreements limit, among other things, the ability of Avaya Inc. and certain of its subsidiaries to (i) incur indebtedness, (ii) incur liens, (iii) dispose of assets, (iv) make investments, (v) make dividends, or conduct redemptions and repurchases of capital stock, (vi) prepay junior indebtedness or amend junior indebtedness documents, (vii) enter into restricted agreements, (viii) enter into transactions with affiliates and (ix) modify the terms of any of their organizational documents. The Credit Agreements also contain customary representations, warranties and events of default.

The Term Loan Credit Agreement does not contain any financial covenants. The ABL Credit Agreement does not contain any financial covenants other than a requirement to maintain a minimum fixed charge coverage ratio of 1:1 that becomes applicable only in the event that the net borrowing availability under the ABL Credit Agreement is less than the greater of $16 million and 10% of the lesser of the total borrowing base and the ABL commitments (commonly known as the "line cap").

Under the terms of the ABL Credit Agreement, the Company can issue letters of credit up to $150 million. At September 30, 2020, the Company had issued and outstanding letters of credit and guarantees of $41 million under the ABL Credit Agreement. As of September 30, 2020, the Company had no borrowings outstanding under the ABL Credit Agreement. The aggregate additional principal amount that may be borrowed under the ABL Credit Agreement, based on the borrowing base less $41 million of outstanding letters of credit and guarantees, was $153 million at September 30, 2020. For fiscal 2020, fiscal 2019 and the period from December 16, 2017 through September 30, 2018, the Company recognized interest expense of $1 million related to the ABL Credit Agreement, primarily resulting from the unused commitment fee.

Senior Notes

As noted above, on September 25, 2020, the Company's Senior Notes were issued pursuant to an indenture, among the Company, the Company's subsidiaries that are guarantors of the Senior Notes and party thereto (the "Guarantors") and Wilmington Trust, National Association, as trustee and notes collateral agent. Interest is payable on the Senior Notes at a rate of 6.125% per annum on March 15 and September 15 of each year, commencing on March 15, 2021 until their maturity date of September 15, 2028.

The Senior Notes are guaranteed on a senior secured basis by Avaya and each of the Company's other wholly-owned domestic subsidiaries that guarantee the Company's term loan credit facility (the "Term Loan Facility") under the Company's Term Loan Credit Agreement and asset-based revolving credit facility (the "ABL Facility") under the Company's ABL Credit Agreement. The Senior Notes and related guarantees are secured on a first lien basis by substantially all assets of the Company and the Guarantors (other than any excluded collateral as defined in the indenture or ABL Priority Collateral (as defined below)) which assets also secure the Company's and each Guarantor's obligations under the Term Loan Facility ratably on a pari passu basis, subject to permitted liens. The Senior Notes and related guarantees are also secured on a second-lien basis ratably on a pari passu basis with the Term Loan Facility, subject to permitted liens, by certain of the assets of the Company and the Guarantors that secure obligations under the ABL Facility on a first-lien basis (the "ABL Priority Collateral").

The Senior Notes contain covenants that, among other things, limit the Company's ability and the ability of its restricted subsidiaries to: incur or guarantee additional indebtedness or issue disqualified stock or certain preferred stock; pay dividends and make other distributions or repurchase stock; make certain investments; create or incur liens; sell assets; enter into restrictions affecting the ability of restricted subsidiaries to make distributions, loans or advances or transfer assets to the Company or the Guarantors; enter into certain transactions with the Company's affiliates; designate restricted subsidiaries as unrestricted subsidiaries; and merge, consolidate or transfer or sell all or substantially all of the Company's or the Guarantors' assets. These covenants are subject to a number of important exceptions and qualifications.

The Company may redeem the Senior Notes at any time, in whole or in part, at any time prior to maturity. The redemption price for Senior Notes that are redeemed before September 15, 2023 will be equal to 100% of the principal amount of the Senior Notes to be redeemed, plus accrued and unpaid interest, if any, plus an applicable make-whole premium. The redemption price for Senior Notes that are redeemed on or after September 15, 2023 will be equal to redemption prices as set forth in the indenture, together with any accrued and unpaid interest. In addition, the Company may redeem up to 40% of the Senior Notes using the proceeds of certain equity offerings completed before September 15, 2023.

During fiscal 2020, the Company recognized interest expense of $1 million related to the Senior Notes, including the amortization of debt issuance costs.

Convertible Notes

On June 11, 2018, the Company issued its 2.25% Convertible Notes with an aggregate principal amount of $350 million (including notes issued in connection with the underwriters' exercise in full of an over-allotment option of $50 million), which mature on June 15, 2023 (the "Convertible Notes"). The Convertible Notes were issued under an indenture (the "Indenture"), by and between the Company and the Bank of New York Mellon Trust Company N.A., as Trustee. The Company received net proceeds from the offering of $314 million after giving effect to debt issuance costs, including the underwriting discount, the net cash used to purchase a bond hedge and the proceeds from the issuance of warrants, which are discussed below.

The Convertible Notes accrue interest at a rate of 2.25% per annum, payable semi-annually on June 15 and December 15 of each year. On or after March 15, 2023, and until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert the Convertible Notes at the holders' option.

Holders may convert the Convertible Notes, at the holders' option, prior to March 15, 2023 only under the following circumstances:

- during any calendar quarter, if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- during the five business day period after any five consecutive trading day period (the "Measurement Period") in which the trading price per $1,000 principal amount of the Convertible Notes for each trading day of the Measurement Period was less than 98% of the product of the last reported sales price of the Company's common stock and the conversion rate on each such trading day; or
- upon the occurrence of specified corporate events.

The Convertible Notes are convertible at an initial rate of 36.0295 shares per $1,000 of principal (equivalent to an initial conversion price of $27.76 per share of the Company's common stock). The conversion rate is subject to customary adjustments for certain events as described in the Indenture. Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of its common stock, or a combination of cash and shares of its common stock, at the Company's election. It is the Company’s current intent to settle conversions of the Convertible Notes through combination settlement, which involves repayment of the principal portion in cash and any excess of the conversion value over the principal amount in shares of its common stock.

The Company may not redeem the Convertible Notes prior to their maturity date, and no sinking fund is provided for them. If the Company undergoes a fundamental change, as described in the Indenture, subject to certain conditions, holders may require the Company to repurchase for cash all or any portion of the Convertible Notes. The fundamental change repurchase price is equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest up to, but excluding, the fundamental change repurchase date. If holders elect to convert the Convertible Notes in connection with a make-whole fundamental change, as described in the Indenture, the Company will, to the extent provided in the Indenture, increase the conversion rate applicable to the Convertible Notes.

The Indenture does not contain any financial or operating covenants or restrictions on the payment of dividends, the incurrence of indebtedness, or the issuance or repurchase of securities by the Company or any of its subsidiaries. The Indenture contains customary events of default with respect to the Convertible Notes.

In accounting for the issuance of the Convertible Notes, the Company separated the Convertible Notes into liability and equity components. The Company allocated $258 million of the Convertible Notes to the liability component, and $92 million to the equity component. The carrying amount of the liability component was calculated by measuring the fair value of a similar debt instrument that does not have an associated convertible feature. The carrying amount of the equity component, which represents the conversion option and does not meet the criteria for separate accounting as a derivative as it is indexed to the Company's own stock, was determined by deducting the fair value of the liability component from the par value of the Convertible Notes. The excess of the principal amount of the liability component over its carrying amount represents a debt discount, which was recorded as a direct deduction from the related debt liability in the Consolidated Balance Sheets and is amortized to interest expense over the term of the Convertible Notes using the effective interest method. The equity component is included in Additional paid-in capital in the Consolidated Balance Sheets and will not be remeasured as long as it continues to meet the conditions for equity classification.

The Company incurred issuance costs of $10 million related to the Convertible Notes. Issuance costs were allocated to the liability and equity components based on the same proportion used to allocate the proceeds. Issuance costs attributable to the liability component of $7 million are amortized to interest expense over the term of the Convertible Notes, and issuance costs attributable to the equity component of $3 million are included along with the equity component in stockholders' equity.

For fiscal 2020, fiscal 2019 and the period from December 16, 2017 through September 30, 2018, the Company recognized interest expense of $26 million, $25 million, and $7 million related to the Convertible Notes, which includes $18 million, $17 million and $4 million of amortization of the underwriting discount and issuance costs, respectively.

The net carrying amount of the Convertible Notes for the periods indicated was as follows:

(In millions)	As of September 30, 2020	2019
Principal	$ 350	$ 350
Less:		
Unamortized debt discount	(55)	(72)
Unamortized issuance costs	(4)	(5)
Net carrying amount	$ 291	$ 273

Bond Hedge and Call Spread Warrants

In connection with the issuance of the Convertible Notes, the Company also entered into privately negotiated transactions to purchase hedge instruments ("Bond Hedge"), covering 12.6 million shares of its common stock at a cost of $84 million. The Bond Hedge is subject to anti-dilution provisions substantially similar to those of the Convertible Notes, has a strike price of $27.76 per share, is exercisable by the Company upon any conversion of the Convertible Notes, and expires on June 15, 2023. The cost of the Bond Hedge was recorded as a reduction of Additional paid-in capital in the accompanying Consolidated Balance Sheets.

The Company also sold warrants for the purchase of up to 12.6 million shares of its common stock for aggregate proceeds of $58 million ("Call Spread Warrants"). The Call Spread Warrants have a strike price of $37.3625 per share and are subject to customary anti-dilution provisions. The Call Spread Warrants will expire in ratable portions on a series of expiration dates commencing on September 15, 2023. The proceeds from the issuance of the Call Spread Warrants were recorded as an increase to Additional paid-in capital.

The Bond Hedge and Call Spread Warrants are intended to reduce the potential dilution with respect to the Company’s common stock and/or reduce the Company’s exposure to potential cash payments that the Company may be required to make upon conversion of the Convertible Notes by, in effect, increasing the conversion price, from the Company’s economic standpoint, to $37.3625 per share. However, the Call Spread Warrants could have a dilutive effect with respect to the Company's common stock or, if the Company so elects, obligate the Company to make cash payments to the extent that the market price of common stock exceeds $37.3625 per share on any date upon which the Call Spread Warrants are exercised.

Debt Maturity

The stated annual maturity of total debt for the fiscal years ended September 30, consist of:

(In millions)	
2021	$ —
2022	—
2023	350
2024	—
2025 and thereafter	2,643
Total	**$ 2,993**

The weighted average contractual interest rate of the Company’s outstanding debt was 6.5% and 6.3%, as of September 30, 2020 and 2019, respectively. The effective interest rate for the Term Loan Credit Agreement as of September 30, 2020 and 2019 was not materially different than its contractual interest rate including adjustments related to interest rate swap agreements designated as highly effective cash flow hedges. The effective interest rate for the Senior Notes as of September 30, 2020 was not materially different than its contractual interest rate. The effective interest rate for the Convertible Notes as of both September 30, 2020 and 2019 was 9.2% reflecting the separation of the conversion feature in equity. The effective interest rates include interest on the debt and amortization of discounts and issuance costs.

Effective January 19, 2017, the Company ceased recording interest expense on outstanding pre-petition debt classified as liabilities subject to compromise. Contractual interest expense represented amounts due under the contractual terms of outstanding debt, including debt subject to compromise. For the period from October 1, 2017 through December 15, 2017 (Predecessor) contractual interest expense of $94 million was not recorded as interest expense, as it was not an allowed claim under the Bankruptcy Filing.

As of September 30, 2020, the Company was not in default under any of its debt agreements.

12. Derivative Instruments and Hedging Activities

The Company accounts for derivative financial instruments in accordance with FASB ASC Topic 815 "Derivatives and Hedging," ("ASC 815") and does not enter into derivatives for trading or speculative purposes.

Interest Rate Contracts

The Company, from time-to-time, enters into interest rate swap contracts as a hedge against changes in interest rates on its outstanding variable rate loans.

On May 16, 2018, the Company entered into interest rate swap agreements with six counterparties, which fix a portion of the variable interest due under its Term Loan Credit Agreement (the "Original Swap Agreements"). Under the terms of the Original Swap Agreements, which mature on December 15, 2022, the Company pays a fixed rate of 2.935% and receives a variable rate of interest based on one-month LIBOR. Through September 23, 2020, the total $1,800 million notional amount of the Original Swap Agreements were designated as cash flow hedges and deemed highly effective as defined under ASC 815.

On September 23, 2020, the Company entered into an interest rate swap agreement for a notional amount of $257 million (the “Offsetting Swap Agreement”). Under the terms of the Offsetting Swap Agreement, which matures on December 15, 2022, the Company pays a variable rate of interest based on one-month LIBOR and receives a fixed rate of 0.1745%. The Company entered into the Offsetting Swap Agreement to maintain a net notional amount less than the amount of the Company’s variable rate loans outstanding. The Offsetting Swap Agreement was not designated for hedge accounting treatment. On September 23, 2020, Original Swap Agreements with a notional amount of $257 million were also de-designated from hedge accounting treatment. As of September 30, 2020, Original Swap Agreements with a notional amount of $1,543 million continue to be designated as cash flow hedges and deemed highly effective as defined under ASC 815.

On July 1, 2020, the Company entered into interest rate swap agreements with four counterparties, which fix a portion of the variable interest due on its Term Loan Credit Agreement (the "New Swap Agreements") from December 15, 2022 (the maturity date of the Original Swap Agreements) through December 15, 2024. Under the terms of the New Swap Agreements, the Company will pay a fixed rate of 0.7047% and receive a variable rate of interest based on one-month LIBOR. The total notional amount of the New Swap Agreements is $1,400 million. Since their execution, the New Swap Agreements have been designated as cash flow hedges and deemed highly effective as defined by ASC 815.

The Company records changes in the fair value of interest rate swap agreements designated as cash flow hedges initially within Accumulated other comprehensive loss in the Consolidated Balance Sheets. As interest expense is recognized on the Term Loan Credit Agreement, the corresponding deferred gain or loss on the cash flow hedge is reclassified from Accumulated other comprehensive loss to Interest expense in the Consolidated Statements of Operations. The Company records changes in the fair value of interest rate swap agreements not designated for hedge accounting within Interest expense. On September 23, 2020, the Company froze a $15 million deferred loss within Accumulated other comprehensive loss for the de-designated Original Swap Agreements, which will be reclassified to Interest expense over the term of the Original Swap Agreements.

Based on the amount in Accumulated other comprehensive loss at September 30, 2020, approximately $50 million would be reclassified to interest expense in the next twelve months.

It is management's intention that the net notional amount of interest rate swap agreements be less than the variable rate loans outstanding during the life of the derivatives.

Foreign Currency Forward Contracts

The Company, from time to time, utilizes foreign currency forward contracts primarily to hedge fluctuations associated with certain monetary assets and liabilities including receivables, payables and certain intercompany balances. These foreign currency forward contracts are not designated for hedge accounting treatment. As a result, changes in the fair value of these contracts are recorded as a component of Other income (expense), net to offset the change in the value of the hedged assets and liabilities. As of September 30, 2020, the Company maintained open foreign currency forward contracts with a total notional value of $375 million, primarily hedging the British Pound Sterling, Euro, Chinese Renminbi and Indian Rupee. As of September 30, 2019, the Company maintained open foreign currency forward contracts with a total notional value of $400 million, primarily hedging the British Pound Sterling, Indian Rupee, Chinese Renminbi, Czech Koruna, Mexican Peso and Australian Dollar.

Emergence Date Warrants

In accordance with the Plan of Reorganization, the Company issued warrants to purchase 5,645,200 shares of Company common stock under a warrant agreement to the holders of the Predecessor second lien obligations extinguished pursuant to the Plan of Reorganization (the "Emergence Date Warrants"). Each Emergence Date Warrant has an exercise price of $25.55 per share and expires December 15, 2022. The Emergence Date Warrants contain certain derivative features that require them to be classified as a liability and for changes in the fair value of the liability to be recognized in earnings each reporting period. On

November 14, 2018, the Company's Board of Directors approved a warrant repurchase program, authorizing the Company to repurchase up to $15 million worth of the Emergence Date Warrants. None of the Emergence Date Warrants have been exercised or repurchased as of September 30, 2020.

The fair value of the Emergence Date Warrants was determined using a probability weighted Black-Scholes option pricing model. This model requires certain input assumptions including risk-free interest rates, volatility, expected life and dividend rates. Selection of these inputs involves significant judgment. The fair value of the Emergence Date Warrants as of September 30, 2020 and 2019 was determined using the input assumptions summarized below:

	As of September 30,	
	2020	2019
Expected volatility	68.53 %	56.89 %
Risk-free interest rates	0.14 %	1.55 %
Contractual remaining life (in years)	2.21	3.21
Price per share of common stock	$15.20	$10.23

In determining the fair value of the Emergence Date Warrants, the dividend yield was assumed to be zero as the Company does not anticipate paying dividends throughout the term of the warrants.

Financial Statement Information Related to Derivative Instruments

The following table summarizes the fair value of the Company's derivatives on a gross basis, including accrued interest, segregated between those that are designated as hedging instruments and those that are not designated as hedging instruments:

		September 30, 2020		September 30, 2019	
(In millions)	Balance Sheet Caption	Asset	Liability	Asset	Liability
Derivatives Designated as Hedging Instruments:					
Interest rate contracts	Other current liabilities	—	43	—	23
Interest rate contracts	Other liabilities	—	58	—	58
		—	101	—	81
Derivatives Not Designated as Hedging Instruments:					
Interest rate contracts	Other current liabilities	—	7	—	—
Interest rate contracts	Other liabilities	—	9	—	—
Foreign exchange contracts	Other current assets	1	—	1	—
Foreign exchange contracts	Other current liabilities	—	2	—	—
Emergence Date Warrants	Other liabilities	—	8	—	5
		1	26	1	5
Total derivative fair value		**$ 1**	**$ 127**	**$ 1**	**$ 86**

The following table provides information regarding the location and amount of pre-tax (losses) gains for interest rate swaps designated as cash flow hedges:

	Fiscal years ended September 30,				Period from December 16, 2017 through September 30, 2018	
	2020		2019			
(In millions)	Interest Expense	Other Comprehensive (Loss) Income	Interest Expense	Other Comprehensive (Loss) Income	Interest Expense	Other Comprehensive (Loss) Income
Financial Statement Line Item in which Cash Flow Hedges are Recorded	$ (226)	$ (72)	$ (237)	$ (191)	$ (169)	$ 18
Impact of cash flow hedging relationships:						
Loss recognized in AOCI - on interest rate swaps	—	(69)	—	(87)	—	(9)
Interest expense reclassified from AOCI	(35)	35	(10)	10	(6)	6

The following table provides information regarding the pre-tax (losses) gains for derivatives not designated as hedging instruments on the Consolidated Statements of Operations:

(In millions)	Location of Derivative Pre-tax Gain (Loss)	Fiscal years ended September 30, 2020	Fiscal years ended September 30, 2019	Period from December 16, 2017 through September 30, 2018
Emergence Date Warrants	Other income (expense), net	(3)	$ 29	$ (17)
Foreign exchange contracts	Other income (expense), net	(1)	(5)	—

The Company records its derivatives on a gross basis in the Consolidated Balance Sheets. The Company has master netting agreements with several of its financial institution counterparties. The following table provides information on the Company's derivative positions as if those subject to master netting arrangements were presented on a net basis, allowing for the right to offset by counterparty per the master netting agreements:

	September 30, 2020		September 30, 2019	
(In millions)	Asset	Liability	Asset	Liability
Gross amounts recognized in the Consolidated Balance Sheet	$ 1	$ 127	$ 1	$ 86
Gross amount subject to offset in master netting arrangements not offset in the Consolidated Balance Sheet	(1)	(1)	(1)	(1)
Net amounts	$ —	$ 126	$ —	$ 85

13. Fair Value Measurements

Pursuant to the accounting guidance for fair value measurements, fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required or permitted to be recorded at fair value, the Company considers the principal or most advantageous market in which it would transact and it considers assumptions that market participants would use when pricing the asset or liability. Considerable judgment was required in developing certain of the estimates of fair value including the consideration of the recent COVID-19 pandemic that has caused significant volatility in U.S. and international markets, and accordingly, the estimates presented herein are not necessarily indicative of the amounts that the Company could realize in a current market exchange.

Fair Value Hierarchy

The accounting guidance for fair value measurements also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. A financial instrument’s categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The inputs are prioritized into three levels that may be used to measure fair value:

Level 1: Inputs that reflect quoted prices for identical assets or liabilities in active markets that are observable.

Level 2: Inputs that reflect quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; or model-derived valuations in which significant inputs are observable or can be derived principally from, or corroborated by, observable market data.

Level 3: Inputs that are unobservable to the extent that observable inputs are not available for the asset or liability at the measurement date.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

Assets and liabilities measured at fair value on a recurring basis as of September 30, 2020 and 2019 were as follows:

	September 30, 2020				September 30, 2019			
	Fair Value Measurements Using				Fair Value Measurements Using			
(In millions)	Total	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3
Assets:								
Investments in debt securities	$ —	$ —	$ —	$ —	$ 10	$ —	$ —	$ 10
Foreign exchange contracts	1	—	1	—	1	—	1	—
Total assets	$ 1	$ —	$ 1	$ —	$ 11	$ —	$ 1	$ 10
Liabilities:								
Interest rate contracts	$ 117	$ —	$ 117	$ —	$ 81	$ —	$ 81	$ —
Spoken acquisition Earn-outs	—	—	—	—	5	—	—	5
Foreign exchange contracts	2	—	2	—	—	—	—	—
Emergence Date Warrants	8	—	—	8	5	—	—	5
Total liabilities	$ 127	$ —	$ 119	$ 8	$ 91	$ —	$ 81	$ 10

Investments in debt securities

The investments in debt securities were valued using a discounted cash flow model which includes various unobservable inputs including cash flow projections, long-term growth rates, discount rates and market comparable companies. The investments in debt securities were recorded in Other assets in the Consolidated Balance Sheets.

Interest rate and foreign exchange contracts

Interest rate and foreign exchange contracts classified as Level 2 assets and liabilities are not actively traded and are valued using pricing models that use observable inputs.

Spoken acquisition Earn-outs

The Spoken acquisition Earn-outs classified as Level 3 liabilities were measured using a probability-weighted discounted cash flow model. Significant unobservable inputs, which included probability of the achievement of the Earn out targets and discount rate assumption, reflected the assumptions market participants would use in valuing these liabilities. The Earn-outs were recorded in Other current liabilities in the Consolidated Balance Sheets.

Emergence Date Warrants

Emergence Date Warrants classified as Level 3 liabilities are valued using the Black-Scholes option pricing model.

During fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), there were no transfers between Level 1 and Level 2, or into and out of Level 3.

The following table summarizes the activity for the Company's Level 3 assets and liabilities measured at fair value on a recurring basis:

(In millions)	Emergence Date Warrants	Spoken acquisition earn-outs	Investments in debt securities
Balance as of September 30, 2019	**$ 5**	**$ 5**	**$ 10**
Impairment[1]	—	—	(10)
Changes in fair value[2]	3	—	—
Settlement	—	(5)	—
Balance as of September 30, 2020	**$ 8**	**$ —**	**$ —**

(1) During fiscal 2020, the Company recorded an other-than-temporary impairment charge for a $10 million credit loss on its investments in debt securities. See Note 6, "Business Combinations and Strategic Partnerships and Investments," for additional information.

(2) Changes in fair value of the Emergence Date Warrants are included in Other income (expense), net.

Fair Value of Financial Instruments

The estimated fair values of the Company's Term Loan Credit Agreement, Senior Notes and Convertible Notes at September 30, 2020 and 2019 were as follows:

	September 30, 2020		September 30, 2019	
(In millions)	Principal amount	Fair value	Principal amount	Fair value
Term Loan Credit Agreement due December 15, 2024 and 2027	$ 1,643	$ 1,624	$ 2,874	$ 2,739
Senior 6.125% Notes due September 15, 2028	1,000	1,022	—	—
Convertible 2.25% Senior Notes due June 15, 2023	350	331	350	298
Total	**$ 2,993**	**$ 2,977**	**$ 3,224**	**$ 3,037**

The estimated fair value of the Company's Term Loan Credit Agreement and Senior Notes was determined using Level 2 inputs based on a market approach utilizing market-clearing data on the valuation date in addition to bid/ask prices. The estimated fair value of the Convertible Notes was determined based on the quoted price of the Convertible Notes in an inactive market on the last trading day of the reporting period and has been classified as Level 2.

The fair values of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses, to the extent the underlying liability will be settled in cash, approximate their carrying values because of the short-term nature of these instruments.

14. Income Taxes

During the year ended September 30, 2018, under the Plan of Reorganization, a substantial amount of the Company's debt was extinguished. Absent an exception, a debtor recognizes the cancellation of indebtedness income ("CODI") upon discharge of its outstanding indebtedness for an amount of consideration that is less than its adjusted issue price. The Company's U.S. federal net operating loss ("NOL") and tax credits not utilized during the taxable year ended September 30, 2018 were eliminated in the year ended September 30, 2018 due to the recognition of CODI. Prior to December 15, 2017, a full valuation allowance was established in any jurisdiction that had a net deferred tax asset. A portion of the U.S. valuation allowance in the amount of $787 million was reversed as part of the reorganization adjustments as it was previously established against (i) the NOL and tax credits that as of December 15, 2017 were estimated to be eliminated as a result of the CODI rules and (ii) other deferred tax assets that were previously established for liabilities that were discharged in the Plan or Reorganization and eliminated as part of the reorganization adjustments. The valuation allowance in the amount of $47 million was reversed in certain non-U.S. jurisdictions as part of the reorganization adjustments as management concluded it was more likely than not that the related deferred tax assets will be realized. The remaining U.S. valuation allowance in the amount of $460 million was reversed as part of the fresh start adjustments because management concluded it was more likely than not that the deferred tax assets will be realized primarily due to future sources of taxable income that will be generated by the reversal of deferred tax liabilities established as a result of fresh start.

During the fourth quarter of fiscal 2018, the Company centralized the management and ownership of certain intellectual property in a U.S. limited partnership. This action resulted in the utilization and recognition of previously unrecognized NOLs, the reversal of deferred tax liabilities established as part of fresh start accounting and the recognition of a deferred tax asset, cumulatively in the amount of $366 million.

On December 22, 2017, the Tax Cuts and Jobs Act (the "Act") was signed into law. The Act lowered the U.S. federal corporate tax rate from 35% to 21% effective January 1, 2018. Corporations with a fiscal year-end that is not a calendar year but included January 1, 2018 were subject to a blended tax rate based on the number of days in the fiscal year before and after January 1, 2018. The Company has a September 30th tax year-end and therefore the U.S. federal tax rate for the fiscal year ending September 30, 2018 was 24.5%.

The SEC issued Staff Accounting Bulletin No. 118 ("SAB 118") on December 22, 2017, which provided guidance to registrants on the accounting for tax related impacts under the Act. The guidance provides a measurement period of up to one year after the enactment date for companies to complete the tax accounting implications of the Act. As a fiscal year-end tax filer, the Company was subject to various provisions under the Act for the period from December 16, 2017 through September 30, 2018, including the change to the U.S. federal statutory tax rate and the mandatory deemed repatriation of unremitted foreign earnings. In fiscal 2018, the Company recorded adjustments related to the Act, including a revaluation of its deferred taxes. The amount of the reduction to the net deferred tax liability as a result of the Act was $245 million and had been recorded as an income tax benefit in the period from December 16, 2017 through September 30, 2018.

During fiscal 2019, various U.S. tax provisions that were introduced or updated as part of the Act became effective for the Company, including provisions that result in the current U.S. taxation of certain income earned by the Company's foreign

subsidiaries. The FASB has published guidance (Topic 740, No. 5) regarding how to account for the Global Intangible Low-Taxed Income ("GILTI") provisions included in the Act. The guidance states that a company may make a policy decision with respect to the accounting for taxes related to GILTI and whether deferred taxes should be established. The Company has generated income that is taxed as GILTI in fiscal 2020 and 2019. The Company has determined that it will account for any taxes associated with GILTI as a period cost.

The Company previously established a deferred tax liability for non-U.S. withholding taxes to be incurred upon the remittance of foreign earnings which was $17 million as of September 30, 2020. The Company has a taxable outside basis difference of $83 million as of September 30, 2020 which was permanently reinvested. The Company estimates the unrecorded deferred tax liability on the outside basis difference to be $20 million.

The (provision for) benefit from income taxes is comprised of U.S. federal, state and foreign income taxes. The following table presents the U.S. and foreign components of (loss) income before income taxes and the (provision for) benefit from income taxes for the periods indicated:

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through	Period from October 1, 2017 through
(In millions)	2020	2019	September 30, 2018	December 15, 2017
(LOSS) INCOME BEFORE INCOME TAXES:				
U.S.	$ (639)	$ (510)	$ (165)	$ 3,353
Foreign	21	(159)	(94)	83
(Loss) income before income taxes	$ (618)	$ (669)	$ (259)	$ 3,436
(PROVISION FOR) BENEFIT FROM INCOME TAXES:				
CURRENT				
Federal	$ (58)	$ (20)	$ —	$ —
State and local	(10)	(7)	4	—
Foreign	(23)	(29)	(40)	(4)
	(91)	(56)	(36)	(4)
DEFERRED				
Federal	30	47	530	(453)
State and local	3	10	34	(19)
Foreign	(4)	(3)	18	17
	29	54	582	(455)
(Provision for) benefit from income taxes	**$ (62)**	**$ (2)**	**$ 546**	**$ (459)**

Deferred income taxes are provided for the effects of temporary differences between the amounts of assets and liabilities recognized for financial reporting purposes and the amounts recognized for income tax purposes. Significant components of the Company's deferred tax assets and liabilities as of the periods indicated were as follows:

(In millions)	As of September 30, 2020	2019
DEFERRED INCOME TAX ASSETS:		
Benefit obligations	$ 218	$ 225
Net operating losses/credit carryforwards	981	918
Property, plant and equipment	8	15
Other/accrued liabilities	13	—
Valuation allowance	(1,053)	(928)
Gross deferred income tax assets	167	230
DEFERRED INCOME TAX LIABILITIES:		
Goodwill and intangible assets	(174)	(213)
Other/accrued liabilities	—	(54)
Gross deferred income tax liabilities	(174)	(267)
Net deferred income tax liabilities	**$ (7)**	**$ (37)**

A reconciliation of the Company's (loss) income before income taxes at the U.S. federal statutory rate to the (provision for) benefit from income taxes is as follows:

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
(In millions)	2020	2019		
Income tax benefit (provision) computed at the U.S. Federal statutory rate	$ 130	$ 140	$ 64	$ (1,203)
State and local income taxes, net of federal income tax effect	2	11	(12)	10
Tax differentials on foreign earnings	—	(11)	(12)	182
Loss on foreign subsidiaries	28	29	43	—
Taxes on unremitted foreign earnings and profits	(8)	(4)	4	7
Non-deductible portion of goodwill	(125)	(123)	—	—
Non-deductible reorganization items	—	—	—	(11)
Adjustment to deferred taxes	(14)	16	4	(1)
Audit settlements and accruals	6	5	(48)	(6)
Credits and other taxes	(2)	4	(5)	(1)
Impact of Tax Cuts and Jobs Act	(3)	1	245	—
NOL recognition / intellectual property	—	—	366	—
Warrants	(1)	6	(4)	—
Debt refinancing	—	—	(8)	—
Non-deductible impact of fresh start accounting	—	—	—	(555)
Non-taxable cancellation of debt income	—	—	—	313
Attribute reduction	—	—	—	(452)
Rate changes	(3)	(19)	(3)	—
U.S. tax on foreign source income	—	—	(10)	(2)
Valuation allowance	(58)	(43)	(85)	1,199
Other differences—net	(14)	(14)	7	61
(Provision for) benefit from income taxes	**$ (62)**	**$ (2)**	**$ 546**	**$ (459)**

In fiscal 2020 and 2019, the Company recognized goodwill impairment charges of $624 million and $657 million, respectively. See Note 7, "Goodwill, net" for further discussion.

In assessing the realization of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The Company considered the scheduled reversal of deferred tax assets and liabilities, projected future taxable income and certain tax planning strategies in assessing the realization of its deferred tax

assets. Based on this assessment, the Company determined that it is more likely than not that the deferred tax assets in certain significant jurisdictions, including the U.S., Ireland, Germany, Luxembourg and France, will not be realized to the extent they exceed the scheduled reversal of deferred tax liabilities.

During fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), the Company's valuation allowance increased (decreased) by $125 million, $9 million, $82 million and $(1,316) million, respectively, primarily due to valuation allowances established for additional NOLs and the tax effects related to other comprehensive income. At September 30, 2020, the valuation allowance of $1,053 million is comprised of $76 million, $341 million, $589 million and $47 million related to the U.S., Germany, Luxembourg, and other foreign subsidiaries, respectively. The recognition of valuation allowances will continue to adversely affect the Company's effective income tax rate.

As of September 30, 2020, the Company had tax-effected NOLs and credits of $1,006 million, comprised of $17 million for U.S. state and local taxes and $989 million for foreign taxes, including $260 million and $679 million in Germany and Luxembourg, respectively.

The U.S. state NOLs expire through fiscal 2039, with the majority expiring in excess of 10 years. The majority of foreign NOLs have no expiration.

As of September 30, 2020, there were $140 million of unrecognized tax benefits ("UTBs") associated with uncertain tax positions and an additional $25 million of accrued interest and penalties related to these amounts. The Company estimates $89 million of UTBs would affect the effective tax rate if recognized. The reduction in the balance during fiscal 2020 is primarily related to the expiration of relevant statute of limitations. At this time, the Company is unable to make a reasonably reliable estimate of the timing of payments in connection with these tax liabilities. The Company’s policy is to include interest and penalties related to its uncertain tax positions within the (provision for) benefit from income taxes. Included in the (provision for) benefit from income taxes in fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor) was a net interest (expense) benefit of $(3) million, $(4) million, $0 million and $1 million, respectively. The Company files corporate income tax returns with the federal government in the U.S. and with multiple U.S. state and local jurisdictions and foreign tax jurisdictions. In the ordinary course of business these income tax returns will be examined by the tax authorities. Various foreign income tax returns, such as Brazil, Italy, Germany, India, Ireland, Israel, and Netherlands are under examination by taxing authorities for tax years ranging from 2001 through 2019. It is reasonably possible that the total amount of UTB will decrease by an estimated $8 million in the next 12 months as a result of these examinations and by an estimated $5 million as a result of the expiration of the statute of limitations.

The following table summarizes the activity for the Company's gross UTB balance:

(In millions)	
Gross UTB balance at September 30, 2017 (Predecessor)	**268**
Additions based on tax positions relating to the period	4
Gross UTB balance at December 15, 2017 (Predecessor)	**$ 272**
Gross UTB balance at December 16, 2017 (Successor)	**$ 272**
Additions based on tax positions relating to the period	57
Changes based on tax positions relating to prior periods	(143)
Statute of limitations expirations	(12)
Gross UTB balance at September 30, 2018 (Successor)	**174**
Additions based on tax positions relating to the period	10
Changes based on tax positions relating to prior periods	(32)
Statute of limitations expirations	(5)
Gross UTB balance at September 30, 2019 (Successor)	**$ 147**
Additions based on tax positions relating to the period	4
Changes based on tax positions relating to prior periods	(1)
Settlements	(2)
Statute of limitations expirations	(8)
Gross UTB Balance at September 30, 2020 (Successor)	**$ 140**

15. Benefit Obligations

Pension, Post-retirement and Postemployment Benefits

The Company sponsors non-contributory defined benefit pension plans covering a portion of its U.S. employees and retirees, and post-retirement benefit plans covering a portion of its U.S. employees and retirees that include healthcare benefits and life insurance coverage. Certain non-U.S. operations have various retirement benefit programs covering substantially all of their employees. Some of these programs are considered to be defined benefit pension plans for accounting purposes. The Company froze benefit accruals and additional participation in the pension and post-retirement benefit plans for its U.S. management employees effective December 31, 2003.

In June 2019, the Company announced a change in medical benefits under the post-retirement medical plan for represented retirees effective January 1, 2020, to replace medical coverage through the Company's group plan for represented retirees who are retired as of April 30, 2019 and their eligible dependents, with medical coverage through the private and public insurance marketplace. As a result of the plan amendment, the Company recognized a $7 million reduction in the accumulated benefit obligation with an offset to Accumulated other comprehensive loss in the Consolidated Balance Sheet during fiscal 2019.

On December 15, 2017, the Avaya Inc. Pension Plan for Salaried Employees ("APPSE"), a qualified pension plan, was settled with the Pension Benefit Guaranty Corporation ("PBGC"). At that time, the Company and the PBGC executed a termination and trusteeship agreement to terminate the APPSE and to appoint the PBGC as the statutory trustee of the plan. The Company paid settlement consideration to the PBGC consisting of $340 million in cash and 6.1 million shares of Successor Company common stock (fair value of $92 million). With this payment, any accrued but unpaid minimum funding contributions due were deemed to have been paid in full. As a result of the plan termination on December 15, 2017, the Company's projected benefit obligation and pension trust assets were reduced by $2,192 million and $1,573 million, respectively. Including the settlement consideration and $703 million of Accumulated other comprehensive loss recorded in the Consolidated Balance Sheets, a settlement loss of $516 million was recorded in Reorganization items, net in the Consolidated Statements of Operations for the period from October 1, 2017 through December 15, 2017 (Predecessor).

On December 15, 2017, the unfunded Avaya Supplemental Pension Plan ("ASPP"), a non-qualified excess benefit plan, was also terminated and settled. Benefit liabilities for ASPP participants were included as allowed claims in the general unsecured recovery pool. Settlement consideration of $17 million in the form of allowed claims payable to ASPP participants was estimated based upon claims data as of the Emergence Date as amounts due to individual general unsecured creditors had not been finalized and paid. As a result of the termination, the Company's projected benefit obligation was reduced by $88 million. Including the settlement consideration and $18 million of Accumulated other comprehensive loss recorded in the Consolidated Balance Sheet, a settlement gain of $53 million was recorded in Reorganization items, net in the Consolidated Statements of Operations for the period from October 1, 2017 through December 15, 2017 (Predecessor).

Remeasurement as a result of fresh start accounting increased the Avaya Pension Plan ("APP") and other post-retirement benefit plan obligations by $3 million on December 15, 2017.

Effective September 9, 2019, the Company and the Communications Workers of America ("CWA") and the International Brotherhood of Electrical Workers ("IBEW"), agreed to extend the 2009 Collective Bargaining Agreement ("CBA") until June 19, 2021. The contract extensions did not affect the Company’s obligation for pension and post-retirement benefits available to U.S. employees of the Company who are represented by the CWA or IBEW ("represented employees").

Most post-retirement medical benefits are not pre-funded. Consequently, the Company makes payments directly to the claims administrator as retiree medical benefit claims are disbursed. These payments are funded by the Company up to the maximum contribution amounts specified in the plan documents and contract with the CWA and IBEW, and contributions from the participants, if required. Payments for retiree medical and dental benefits were $10 million, $12 million, $7 million and $2 million for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), respectively, which were net of reimbursements received of $3 million in both fiscal 2020 and 2019 related to payments in prior periods. The Company estimates it will make payments for retiree medical and dental benefits totaling $11 million during fiscal 2021.

A reconciliation of the changes in the benefit obligations and fair value of assets of the defined benefit pension and post-retirement plans, the funded status of the plans and the amounts recognized in the Consolidated Balance Sheets are provided in the tables below:

(In millions)	Fiscal years ended September 30, 2020	2019
Pension Benefits - U.S.		
Change in benefit obligation		
Projected benefit obligation at beginning of period	$ 1,134	$ 1,050
Service cost	4	3
Interest cost	29	40
Actuarial loss	55	131
Benefits paid	(77)	(90)
Projected benefit obligation at end of period	**$ 1,145**	**$ 1,134**
Change in plan assets		
Fair value of plan assets at beginning of period	$ 915	$ 881
Actual return on plan assets	79	97
Employer contributions	10	27
Benefits paid	(77)	(90)
Fair value of plan assets at end of period	**$ 927**	**$ 915**
Underfunded status at end of period	**$ (218)**	**$ (219)**
Amount recognized in the Consolidated Balance Sheets consists of:		
Accrued benefit liability, noncurrent	$ (218)	$ (219)
Net amount recognized	**$ (218)**	**$ (219)**
Amount recognized in Accumulated other comprehensive loss (pre-tax) consists of:		
Net actuarial loss	110	79
Net amount recognized	**$ 110**	**$ 79**
Weighted average assumptions used to determine benefit obligations		
Discount rate	2.50 %	3.09 %
Rate of compensation increase	3.00 %	3.00 %

(In millions)	Fiscal years ended September 30, 2020	2019
Pension Benefits - Non-U.S.		
Change in benefit obligation		
Projected benefit obligation at beginning of period	$ 573	$ 536
Service cost	7	6
Interest cost	5	10
Actuarial (gain) loss	(34)	76
Benefits paid	(21)	(22)
Foreign currency exchange rate changes	42	(32)
Curtailments, settlements and other	1	(1)
Projected benefit obligation at end of period	**$ 573**	**$ 573**
Change in plan assets		
Fair value of plan assets at beginning of period	$ 15	$ 15
Actual return on plan assets	—	1
Employer contributions	22	23
Benefits paid	(21)	(22)
Foreign currency exchange rate changes	2	(1)
Settlements	—	(1)
Fair value of plan assets at end of period	**$ 18**	**$ 15**
Underfunded status at end of period	**$ (555)**	**$ (558)**
Amount recognized in the Consolidated Balance Sheets consists of:		
Noncurrent assets	$ 1	$ 1
Accrued benefit liability, current	(25)	(19)
Accrued benefit liability, noncurrent	(531)	(540)
Net amount recognized	**$ (555)**	**$ (558)**
Amount recognized in Accumulated other comprehensive loss (pre-tax) consists of:		
Net actuarial loss	$ 22	$ 55
Net amount recognized	**$ 22**	**$ 55**
Weighted average assumptions used to determine benefit obligations		
Discount rate	0.86 %	0.87 %
Rate of compensation increase	2.60 %	2.59 %

(In millions)	Fiscal years ended September 30, 2020	2019
Post-retirement Benefits - U.S.		
Change in benefit obligation		
Benefit obligation at beginning of period	$ 404	$ 368
Service cost	1	1
Interest cost	11	14
Actuarial loss	30	44
Benefits paid	(15)	(16)
Plan amendments	—	(7)
Projected benefit obligation at end of period	**$ 431**	**$ 404**
Change in plan assets		
Fair value of plan assets at beginning of period	$ 191	$ 178
Actual return on plan assets	20	17
Employer contributions	10	12
Benefits paid	(15)	(16)
Fair value of plan assets at end of period	**$ 206**	**$ 191**
Underfunded status at end of period	**$ (225)**	**$ (213)**
Amount recognized in the Consolidated Balance Sheets consists of:		
Accrued benefit liability, current	$ (10)	$ (13)
Accrued benefit liability, noncurrent	(215)	(200)
Net amount recognized	**$ (225)**	**$ (213)**
Amount recognized in Accumulated other comprehensive loss (pre-tax) consists of:		
Net prior service credit	$ (6)	$ (7)
Net actuarial loss	$ 23	$ 3
Net amount recognized	**$ 17**	**$ (4)**
Weighted average assumptions used to determine benefit obligations		
Discount rate	2.69 %	3.17 %
Rate of compensation increase	3.00 %	3.00 %

Effective September 30, 2020, to reflect its best estimate of future mortality for its salaried post-retirement benefit plans, the Company started using the *White-Collar PRI-2012 Private Retirement Plans Mortality Tables*. For the U.S. pension and represented post-retirement benefit plans, the Company continued to use the *PRI-2012 Private Retirement Plans Mortality Tables*. The Company also updated its mortality rate assumptions to use the projected mortality improvement scale, *Mortality Projection-2020*, as published by the Society of Actuaries. As of September 30, 2020, the changes in mortality rate assumptions had the effect of decreasing the projected U.S. pension and post-retirement obligations by $10 million and $5 million, respectively.

The following table provides the accumulated benefit obligation for all defined benefit pension plans and information for pension plans with an accumulated benefit obligation in excess of plan assets:

(In millions)	Pension Benefits - U.S.		Pension Benefits - Non-U.S.	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
Accumulated benefit obligation for all plans	$ 1,145	$ 1,134	$ 555	$ 555
Plans with accumulated benefit obligation in excess of plan assets				
Projected benefit obligation	$ 1,145	$ 1,134	$ 567	$ 568
Accumulated benefit obligation	$ 1,145	$ 1,134	$ 549	$ 550
Fair value of plan assets	$ 927	$ 915	$ 12	$ 9

Estimated future benefits expected to be paid in each of the next five fiscal years, and in aggregate for the five fiscal years thereafter, are presented below:

(In millions)	Pension Benefits		Post-retirement Benefits
	U.S.	Non-U.S.	
2021	$ 74	$ 24	$ 17
2022	73	24	18
2023	73	23	19
2024	72	23	19
2025	71	24	20
2026 - 2030	338	136	107
Total	**$ 701**	**$ 254**	**$ 200**

The components of the pension and post-retirement net periodic benefit (credit) cost for the periods indicated are provided in the table below:

(In millions)	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
Pension Benefits - U.S.				
Components of net periodic benefit (credit) cost				
Service cost	$ 4	$ 3	$ 3	$ 1
Interest cost	29	40	28	22
Expected return on plan assets	(55)	(60)	(51)	(38)
Amortization of actuarial loss	—	—	—	20
Net periodic benefit (credit) cost	**$ (22)**	**$ (17)**	**$ (20)**	**$ 5**
Weighted average assumptions used to determine net periodic benefit cost				
Discount rate	2.84 %	3.94 %	3.29 %	3.19 %
Expected return on plan assets	6.40 %	7.00 %	7.65 %	7.75 %
Rate of compensation increase	3.00 %	4.00 %	4.00 %	4.00 %
Pension Benefits - Non-U.S.				
Components of net periodic benefit cost				
Service cost	$ 7	$ 6	$ 5	$ 2
Interest cost	5	10	7	3
Expected return on plan assets	(1)	(1)	—	(1)
Amortization of actuarial loss	—	—	—	2
Net periodic benefit cost	**$ 11**	**$ 15**	**$ 12**	**$ 6**
Weighted average assumptions used to determine net periodic benefit cost				
Discount rate	0.87 %	1.92 %	1.92 %	1.22 %
Expected return on plan assets	3.72 %	3.67 %	3.68 %	1.82 %
Rate of compensation increase	2.59 %	2.58 %	3.62 %	3.45 %
Post-retirement Benefits - U.S.				
Components of net periodic benefit cost				
Service cost	$ 1	$ 1	$ 1	$ —
Interest cost	11	14	11	3
Expected return on plan assets	(10)	(9)	(8)	(2)
Amortization of prior service credit	(1)	—	—	(3)
Amortization of actuarial (gain) loss	—	(1)	—	2
Net periodic benefit cost	**$ 1**	**$ 5**	**$ 4**	**$ —**
Weighted average assumptions used to determine net periodic benefit cost				
Discount rate	2.18 %	4.02 %	3.39 %	3.37 %
Expected return on plan assets	5.50 %	5.50 %	5.50 %	5.90 %
Rate of compensation increase	3.00 %	4.00 %	4.00 %	4.00 %

The service components of net periodic benefit (credit) cost were recorded similar to compensation expense, while all other components were recorded in Other income (expense), net.

The Company's general funding policy with respect to its U.S. qualified pension plans is to contribute amounts at least sufficient to satisfy the minimum amount required by applicable law and regulations, or to directly pay benefits where appropriate. As part of the Plan of Reorganization, on December 15, 2017, the Company paid the aggregate unpaid required minimum funding for the APP of $49 million. On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act

("CARES Act") was signed into law, providing limited relief for pension funding and retirement plan distributions. Under the CARES Act, employers may delay contributions for single employer defined benefit pension plans until January 1, 2021. Contributions to U.S. pension plans were $10 million, $27 million, $43 million and $49 million for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), respectively. Contributions to the non-U.S. pension plans were $22 million, $23 million, $22 million and $3 million for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), respectively. In fiscal 2021, the Company estimates that it will make contributions totaling $18 million to satisfy the minimum statutory funding requirements in the U.S. and contributions totaling $24 million for non-U.S. plans.

Other changes in plan assets and benefit obligations recognized in other comprehensive (loss) income are provided in the tables below:

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
(In millions)	2020	2019		
Pension Benefits - U.S.				
Net loss (gain)	$ 31	$ 94	$ (15)	$ —
Amortization of actuarial loss	—	—	—	(20)
Reorganization adjustments	—	—	—	(1,147)
Total recognized in Other comprehensive (loss) income	**$ 31**	**$ 94**	**$ (15)**	**$ (1,167)**
Total recognized in net periodic benefit cost and Other comprehensive (loss) income[1]	**$ 9**	**$ 77**	**$ (35)**	**$ (722)**
Pension Benefits - Non-U.S.				
Net (gain) loss	$ (33)	$ 76	$ (19)	$ 22
Foreign exchange rate loss	—	(2)	—	—
Amortization of actuarial loss	—	—	—	(2)
Reorganization adjustments	—	—	—	(163)
Total recognized in Other comprehensive (loss) income	**$ (33)**	**$ 74**	**$ (19)**	**$ (143)**
Total recognized in net periodic benefit cost and Other comprehensive (loss) income[1]	**$ (22)**	**$ 89**	**$ (7)**	**$ (137)**
Post-retirement Benefits - U.S.				
Net loss (gain)	$ 20	$ 36	$ (34)	$ —
Prior service credit	—	(7)	—	—
Amortization of prior service credit	1	—	—	3
Amortization of actuarial gain (loss)	—	1	—	(2)
Reorganization adjustments	—	—	—	(40)
Total recognized in Other comprehensive (loss) income	**$ 21**	**$ 30**	**$ (34)**	**$ (39)**
Total recognized in net periodic benefit cost and Other comprehensive (loss) income[1]	**$ 22**	**$ 35**	**$ (30)**	**$ 2**

[1] For the period from October 1, 2017 through December 15, 2017, the U.S.; non-U.S.; and other Post-retirement benefits include Plan of Reorganization settlements that were recorded in Reorganization items, net in the Consolidated Statements of Operations of $(440) million, $0 million and $(43) million, respectively.

The estimated amount to be amortized from Accumulated other comprehensive loss as a net periodic cost during fiscal 2021 is $3 million, consisting of the recognition of net actuarial expense for the Company's U.S. pension plan and post-retirement benefit plan of $2 million and $2 million, respectively, partially offset by the recognition of a prior service credit for the Company's post-retirement benefit plan of $1 million.

The discount rate is subject to change each year, consistent with changes in rates of return on high-quality fixed-income investments currently available and expected to be available during the expected benefit payment period. The Company selects

the assumed discount rate for its U.S. pension and post-retirement benefit plans by applying the rates from the Aon AA Above Median and Aon AA Only Bond Universe yield curves to the expected benefit payment streams and develops a rate at which it is believed the benefit obligations could be effectively settled. The Company follows a similar process for its non-U.S. pension plans by applying the Aon Euro AA corporate bond yield curve for the plans based in Europe and relevant country-specific bond indices for other locations.

Based on the published rates as of September 30, 2020, the Company used a weighted average discount rate of 2.50% for the U.S. pension plans, 0.86% for the non-U.S. pension plans and 2.69% for the post-retirement plans, a decrease of 59 basis points, 1 basis points and 48 basis points from the prior year for the U.S. pension plans, the non-U.S. pension plans and the post-retirement benefit plans, respectively. As of September 30, 2020, this had the effect of increasing the projected U.S. pension, non-U.S. pension and post-retirement benefit obligations by $66 million, $2 million and $25 million, respectively. For fiscal 2021, this will have a minimal effect on the U.S. pension and post-retirement service cost.

The expected long-term rate of return on U.S. pension and post-retirement benefit plan assets is selected by applying forward-looking capital market assumptions to the strategic asset allocation approved by the governing body for each plan. The forward-looking capital market assumptions are developed by an investment adviser and reviewed by the Company for reasonableness. The return and risk assumptions consider such factors as anticipated long-term performance of individual asset classes, risk premium for active management based on qualitative and quantitative analysis, and correlations of the asset classes that comprise the asset portfolio.

The Company's cost for post-retirement healthcare claims is capped and the projected post-retirement healthcare claims exceed the cap. Therefore, a one-percentage-point increase or decrease in the Company's healthcare cost trend rates will not impact the post-retirement benefit obligation and the service and interest cost components of net periodic benefit cost.

The weighted average asset allocation of the pension and post-retirement plans by asset category and target allocation is as follows:

	As of September 30,		
Asset Category	**2020**	**2019**	**Long-term Target**
Pension Benefits - U.S.			
Debt Securities	52 %	52 %	52 %
Equity Securities	29 %	29 %	34 %
Hedge Funds	6 %	7 %	6 %
Real Estate	5 %	6 %	6 %
Commodities	2 %	2 %	2 %
Other[1]	6 %	4 %	— %
Total	100 %	100 %	100 %
Pension Benefits - Non-U.S.			
Debt Securities	22 %	27 %	
Asset Allocation Fund	11 %	13 %	
Insurance Contracts	67 %	60 %	
Total	100 %	100 %	
Post-retirement Benefits - U.S.			
Equity Securities	34 %	40 %	35 %
Debt Securities	66 %	60 %	65 %
Total	100 %	100 %	100 %

[1] Other includes cash/cash equivalents, derivative financial instruments and payables/receivables for pending transactions.

The Company's asset management strategy focuses on the dual objectives of improving the funded status of the pension plans and reducing the impact of changes in interest rates on the funded status. To improve the funded status of the pension plans, assets are invested in a diversified mix of asset classes designed to generate higher returns over time, than the pension benefit obligation discount rate assumption. To reduce the impact of interest rate changes on the funded status of the pension plans, assets are invested in a mix of fixed income investments (including long-term debt) that are selected based on the characteristics of the benefit obligation of the pension plans. Strategic asset allocation is the principal method for achieving the Company's

investment objectives, which are determined in the course of periodic asset-liability studies. The most recent asset-liability study was completed in 2019 for the pension plans.

As part of the Company's asset management strategy, investments are professionally managed and diversified across multiple asset classes and investment styles to minimize exposure to any one specific investment. Derivative instruments (such as forwards, futures, swaptions and swaps) may be held as part of the Company's asset management strategy. However, the use of derivative financial instruments for speculative purposes is prohibited by the Company's investment policy. Also, as part of the Company's investment strategy, the U.S. pension plans invest in hedge funds, real estate funds, private equity and commodities to provide additional uncorrelated returns.

The fair value of plan assets is determined by the trustee and reviewed by the Company, in accordance with the accounting guidance for fair value measurements and the fair value hierarchy discussed in Note 13, "Fair Value Measurements." Because of the inherent uncertainty of valuation, estimated fair values may differ significantly from the fair values that would have been used had quoted prices in an active market existed.

The following table summarizes the fair value measurements of the U.S. pension plan assets by asset class:

	As of September 30, 2020				As of September 30, 2019			
(In millions)	**Level 1**	**Level 2**	**Level 3**	**Total**	**Level 1**	**Level 2**	**Level 3**	**Total**
U.S. Government debt securities [a]	$ —	$ 132	$ —	$ 132	$ —	$ 125	$ —	$ 125
Derivative instruments [b]	—	—	—	—	(2)	—	—	(2)
Total assets in the fair value hierarchy	—	132	—	132	(2)	125	—	123
Investments measured at net asset value: [c]								
Real estate [d]				50				55
Private equity [e]				2				4
Multi-strategy hedge funds [f]				56				65
Investment funds: [g]								
Cash equivalents				46				37
Long duration fixed income				327				328
High-yield debt				19				19
U.S. equity				154				144
Non-U.S. equity				83				92
Emerging market equity				33				29
Commodities				20				14
Total investments measured at net asset value				790				787
Other plan assets, net				5				5
Total plan assets at fair value	**$ —**	**$ 132**	**$ —**	**$ 927**	**$ (2)**	**$ 125**	**$ —**	**$ 915**

[a] Includes U.S. Treasury STRIPS, which are generally valued using institutional bid evaluations from various contracted pricing vendors. Institutional bid evaluations are estimated prices that represent the price a dealer would pay for a security. Pricing inputs to the institutional bid evaluation vary by security and include benchmark yields, reported trades, unadjusted broker/dealer quotes, issuer spreads, bids, offers or other observable market data.

[b] Includes future contracts that are generally valued using the last trade price at which a specific contract/security was last traded on the primary exchange, which is provided by a contracted vendor. If pricing is not available from the contracted vendor, then pricing is obtained from other sources such as Bloomberg, broker bid, ask/offer quotes or the investment manager.

[c] These investments are measured at fair value using the net asset value per share or its equivalent ("NAV") and have therefore not been classified in the fair value hierarchy.

[d] Includes open ended real estate commingled funds, close ended real estate limited partnerships, and insurance company separate accounts that invest primarily in U.S. office, lodging, retail and residential real estate. The insurance company separate accounts and the commingled funds account for their portfolio of assets at fair value and calculate the NAV on either a monthly or quarterly basis. Shares can be redeemed at the NAV on a quarterly basis, provided a written redemption request is received in advance (generally 45-91 days) of the redemption date. Therefore, the undiscounted NAV is used as the fair value measurement. For limited partnerships, the fair value of the underlying assets and the capital account for each

investor is determined by the General Partner ("GP"). The valuation techniques used by the GP generally consist of unobservable inputs such as discounted cash flow analysis, analysis of recent comparable sales transactions, actual sale negotiations and bona fide purchase offers received from third parties. The partnerships are typically funded over time as capital is needed to fund asset purchases, and distributions from the partnerships are received as the partnerships liquidate their underlying asset holdings. Therefore, the life cycle for a typical investment in a real estate limited partnership is expected to be approximately 10 years from initial funding.

(e) Includes limited partner interests in various limited partnerships ("LPs") that invest primarily in U.S. and non-U.S. investments either directly, or through other partnerships or funds with a focus on venture capital, buyouts, expansion capital, or companies undergoing financial distress or significant restructuring. The NAV of the LPs and of the capital account of each investor is determined by the GP of each LP. Marketable securities held by the LPs are valued based on the closing price on the valuation date on the exchange where they are principally traded and may be adjusted for legal restrictions, if any. Investments without a public market are valued based on assumptions made and valuation techniques used by the GP, which consist of unobservable inputs. Such valuation techniques may include discounted cash flow analysis, analysis of recent comparable sales transactions, actual sale negotiations and bona fide purchase offers received from third parties. The LPs are typically funded over time as capital is needed to fund purchases and distributions are received as the partnerships liquidate their underlying asset holdings.

(f) Includes hedge funds and funds of funds that pursue multiple strategies to diversify risks and reduce volatility. The funds account for their portfolio of assets at fair value and calculate the NAV of their fund on a monthly basis. The funds limit the frequency of redemptions to manage liquidity and protect the interests of the funds and its shareholders.

(g) Includes open-end funds and unit investment trusts that invest in various asset classes including: U.S. and non-U.S. corporate debt, U.S. government debt, municipal bonds, U.S. equity, non-U.S. developed and emerging markets equity, and commodities. The funds account for their portfolio of assets at fair value and calculate the NAV of the funds on a daily basis, and shares can be redeemed at the NAV. Therefore, the undiscounted NAV as reported by the funds is used as the fair value measurement.

The following table summarizes the fair value of the non-U.S. pension plan assets by asset class:

	As of September 30,	
(In millions)	**2020**	**2019**
Investments measured at net asset value: [a]		
Investment funds: [b]		
Debt securities	$ 4	$ 4
Asset allocation	2	2
Insurance contracts [c]	12	9
Total plan assets at fair value	**$ 18**	**$ 15**

(a) These investments are measured at fair value using the NAV and have therefore not been classified in the fair value hierarchy.

(b) Includes collective investment funds that invest in various asset classes including U.S. and non-U.S. corporate debt and equity, and derivatives. The funds account for their portfolio of assets at fair value and calculate the NAV of the funds on a daily basis, and shares can be redeemed at the NAV. Therefore, the undiscounted NAV as reported by the funds is used as the fair value measurement.

(c) Most non-U.S. pension plans are funded through insurance contracts, which provide for a guaranteed interest credit and a profit-sharing adjustment based on the actual performance of the underlying investment assets of the insurer. The fair value of the contract is determined by the insurer based on the premiums paid by the Company plus interest credits plus the profit-sharing adjustment less benefit payments. The underlying assets of the insurer are invested in compliance with local rules or law, which tend to require a high allocation to fixed income securities.

The following table summarizes the fair value of the post-retirement plan assets by asset class:

	As of September 30,	
(In millions)	**2020**	**2019**
Investments measured at net asset value: [a]		
Group life insurance contract measured at net asset value [b]	$ 206	$ 191
Total plan assets at fair value	**$ 206**	**$ 191**

[a] These investments are measured at fair value using the NAV and have therefore not been classified in the fair value hierarchy.

[b] The group life insurance contracts are held in a reserve of an insurance company that provides for investment of pre-funding amounts in a family of pooled separate accounts. The fair value of each group life insurance contract is primarily determined by the value of the units it owns in the pooled separate accounts that back the policy. Each of the pooled separate accounts provides a unit NAV on a daily basis, which is based on the fair value of the underlying assets owned by the account. The post-retirement benefit plans can transact daily at the unit NAV without restriction. As of September 30, 2020, the asset allocation of the pooled separate accounts in which the contracts invest was approximately 66% fixed income securities, 24% U.S. equity securities and 10% non-U.S. equity securities.

Savings Plans

Substantially all of the Company's U.S. employees are eligible to participate in savings plans sponsored by the Company. The plans allow employees to contribute a portion of their compensation on a pre-tax and after-tax basis in accordance with specified guidelines. The Company matches a percentage of employee contributions up to certain limits. The Company's expense related to these savings plans was $8 million, $8 million, $7 million and $0 million for fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor).

16. Share-based Compensation

The Predecessor Company's common and preferred stock were canceled and new common stock was issued on the Emergence Date. Accordingly, the Predecessor Company's then existing share-based compensation awards were also canceled, which resulted in the recognition of any previously unamortized expense on the date of cancellation. As a result, share-based compensation for the Successor and Predecessor periods are not comparable.

Successor

2017 Equity Incentive Plan

On the Emergence Date, the Company adopted the Avaya Holdings Corp. 2017 Equity Incentive Plan (the "2017 Plan"), under which non-employee directors, employees of the Company or any of its affiliates, and certain consultants and advisors may be granted stock options, restricted stock, restricted stock units ("RSUs"), performance awards ("PRSUs") and other forms of awards granted or denominated in shares of the Company's common stock, as well as certain cash-based awards.

2019 Equity Incentive Plan

On November 13, 2019, the Board of Directors of the Company (the "Board") approved the Avaya Holdings Corp. 2019 Equity Incentive Plan and on January 8, 2020 approved an amendment to such plan (as so amended, the "2019 Plan"). On November 13, 2019, the Board also adopted the 2019 Omnibus Inducement Equity Plan (the "Inducement Plan"), which reserved up to 1,700,000 shares of the Company's common stock for awards to be made to certain prospective employees pursuant to the "inducement grant" exemption under the NYSE Listing Rules. On March 4, 2020, the stockholders of the Company approved the 2019 Plan and, as of such date, no additional awards may be granted under the 2017 Plan or the Inducement Plan (together, the "Prior Plans"). The Board or any committee duly authorized thereby administers the 2019 Plan. The administrator has broad authority to, among other things: (i) select participants; (ii) determine the types of awards that participants are to receive and the number of shares that are to be granted under such awards; and (iii) establish the terms and conditions of awards, including the price to be paid for the shares or the awards.

The 2019 Plan provides an initial pool of 18,800,000 shares of common stock (the "Initial Pool") that may be issued or granted, which can be adjusted for shares that become available from existing awards issued under the Prior Plans in accordance with the terms of the 2019 Plan. The Initial Pool will be reduced by one share of common stock for every option granted and 1.7 shares for any awards granted other than options. As of September 30, 2020, there were 14,407,473 shares available to be granted under the 2019 Plan. If any awards granted under the 2019 Plan expire, terminate or are canceled or forfeited for any reason without having been exercised in full, the number of shares of common stock underlying any unexercised award will

again be available for issuance under the 2019 Plan. Any award under the 2019 Plan settled in cash will not be counted against the foregoing maximum share limitations. Shares withheld by the Company in satisfaction of the applicable exercise price or withholding taxes upon the issuance, vesting or settlement of awards, shares reacquired by the Company on the open market or otherwise using cash proceeds from the exercise of options, in each case, shall not be available for future issuance under the 2019 Plan or the Prior Plans.

Stock options and RSUs granted to employees generally vest ratably over a period of three years. PRSUs granted to certain senior executive employees vest at the end of a three year service period. Awards granted to non-employee directors during fiscal 2020 and 2019 vest immediately, while those granted during the period from December 16, 2017 through September 30, 2018 vested ratably over one year. The aggregate grant date fair value of all awards granted to any non-employee director during any fiscal year (excluding awards made pursuant to deferred compensation arrangements made in lieu of all or a portion of cash retainers and any dividends payable in respect of outstanding awards) may not exceed $750,000. As of the Emergence Date, forfeitures are accounted for as incurred.

Pre-tax share-based compensation expense for fiscal 2020, fiscal 2019 and the period from December 16, 2017 through September 30, 2018 was $30 million, $25 million and $19 million and the income tax benefit recognized in the Consolidated Statements of Operations for share-based compensation arrangements was $2 million, $2 million and $1 million, respectively.

Restricted Stock Units

Compensation cost for RSUs granted to employees and non-employee directors is generally measured by using the closing market price of the Company's common stock at the date of grant.

A summary of RSU activity for fiscal 2020 is presented below:

	Restricted Stock Units (In thousands)	Weighted Average Grant-Date Fair Value
Non-vested at September 30, 2019	2,797	$ 15.60
Granted	2,128	12.42
Vested	(1,533)	15.31
Forfeited	(698)	15.30
Non-vested at September 30, 2020	2,694	$ 13.32

As of September 30, 2020, there was $31 million of unrecognized share-based compensation expense related to RSUs, which is expected to be recognized over a period up to 2.9 years, or 2.0 years on a weighted average basis. The weighted average grant date fair value for RSUs granted during fiscal 2020, fiscal 2019 and the period from the Emergence Date through September 30, 2018 was $12.42, $15.29 and $16.11, respectively. The total grant date fair value of RSUs vested during fiscal 2020, fiscal 2019 and the period from the Emergence Date through September 30, 2018 was $23 million, $27 million and $6 million, respectively.

Performance Restricted Stock Units

The Company grants PRSUs which vest based on the attainment of specified performance metrics for each of the next three separate fiscal years (collectively the "Performance Period"), and the Company's total shareholder return over the Performance Period as compared to the total shareholder return for a specified index of companies over the same period (the “Performance PRSUs”). During the Performance Period, the Company adjusts compensation expense for the Performance PRSUs based on its best estimate of attainment of the specified annual performance metrics. The cumulative effect on current and prior periods of a change in the estimated number of Performance PRSUs that are expected to be earned during the Performance Period is recognized as an adjustment to earnings in the period of the revision.

The weighted average grant date fair value for Performance PRSUs granted during fiscal 2020 and 2019 was $13.69 and $17.39, respectively. There were no Performance PRSUs granted during the period from December 16, 2017 through September 30, 2018. The grant date fair value of the Performance PRSUs was determined using a Monte Carlo simulation model that incorporated multiple valuation assumptions, including the probability of achieving the total shareholder return market condition and the following assumptions presented on a weighted-average basis:

	Fiscal years ended September 30,	
	2020	2019
Expected volatility[1]	55.75 %	53.00 %
Risk-free interest rate[2]	1.61 %	2.46 %
Dividend yield[3]	— %	— %

(1) Expected volatility based on a blend of Company and peer group company historical data adjusted for the Company's leverage.

(2) Risk-free interest rate based on U.S. Treasury yields with a term equal to the remaining Performance Period as of the grant date.

(3) Dividend yield was assumed to be zero as the Company does not anticipate paying dividends.

The Company has also granted PRSUs which become eligible to vest if prior to the vesting date the average closing price of one share of the Company’s Common Stock for sixty consecutive days equals or exceeds a specified price (the “Market PRSUs”). The grant date fair value of the Market PRSUs is recognized as expense ratably over the vesting period and is not adjusted in future periods for the success or failure to achieve the specified market condition.

The grant date fair value of Market PRSUs granted during fiscal 2019 was $11.18. There were no Market PRSUs granted during fiscal 2020 or the period from December 16, 2017 through September 30, 2018. The grant date fair value of Market PRSUs was determined using a Monte Carlo simulation model that incorporated multiple valuation assumptions, including the probability of achieving the specified market condition and the following assumptions:

	Fiscal year ended September 30, 2019
Expected volatility[1]	53.76 %
Risk-free interest rate[2]	2.45 %
Dividend yield[3]	— %

(1) Expected volatility based on a blend of Company and peer group company historical data adjusted for the Company's leverage.

(2) Risk-free interest rate based on U.S. Treasury yields with a term equal to the remaining Performance Period as of the grant date.

(3) Dividend yield was assumed to be zero as the Company does not anticipate paying dividends.

A summary of total PRSU activity for fiscal 2020 is presented below:

	Performance Restricted Stock Units (In thousands)	Weighted Average Grant-Date Fair Value
Non-vested at September 30, 2019	274	$ 11.18
Granted	662	13.69
Change in shares due to performance	(314)	13.71
Forfeited	(34)	13.29
Non-vested at September 30, 2020	588	$ 12.53

As of September 30, 2020, there was $5 million of unrecognized share-based compensation expense related to PRSUs, which is expected to be recognized over a period of 2.4 years or 2.1 years on a weighted average basis.

Stock Options

A lattice option pricing model was used to determine the fair value of options granted on the Emergence Date as they were premium priced options. The Black-Scholes option pricing model is used to value all options granted after the Emergence Date. The weighted average grant date fair value of options granted in fiscal 2020 and the period from the Emergence Date through September 30, 2018 was $6.11 and $8.18, respectively. There were no options granted during fiscal 2019. The weighted average grant date assumptions used in calculating the fair value of options granted on the Emergence Date and thereafter were as follows:

	Fiscal year ended September 30, 2020	Period from December 16, 2017 through September 30, 2018	Emergence Date
Exercise price	$ 11.38	$ 21.66	$ 19.46
Expected volatility[(1)]	56.76 %	49.67 %	56.59 %
Expected life (in years)[(2)]	5.97	5.86	6.65
Risk-free interest rate[(3)]	1.71 %	2.72 %	2.35 %
Dividend yield[(4)]	— %	— %	— %

[(1)] Expected volatility based on peer group companies adjusted for the Company's leverage.
[(2)] Expected life based on the vesting terms of the option and a contractual life of ten years.
[(3)] Risk-free interest rate based on U.S. Treasury yields with a term equal to the expected option term.
[(4)] Dividend yield was assumed to be zero as the Company does not anticipate paying dividends.

A summary of option activity for fiscal 2020 is presented below:

	Options (In thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (In thousands)
Outstanding at September 30, 2019	925	$ 19.59		
Granted	164	11.38		
Forfeited or expired	(147)	19.84		
Outstanding at September 30, 2020	**942**	**$ 18.13**	**7.3**	**$ 625**
Exercisable at September 30, 2020	**715**	**$ 19.54**	**6.9**	**$ —**

The intrinsic value is the difference between the Company's common stock price and the option exercise price. There were no stock options exercised during fiscal 2020 and 2019. The total pretax intrinsic value of stock options exercised for the period from December 16, 2017 through September 30, 2018 was not material. As of September 30, 2020, there was $1 million of unrecognized share-based compensation expense related to stock options, which is expected to be recognized over a period up to 2.4 years, or 1.5 years on a weighted average basis. The total grant date fair value of stock options vested during fiscal 2020, fiscal 2019 and the period from December 16, 2017 through September 30, 2018 was $2 million, $4 million and $1 million respectively.

Employee Stock Purchase Plan

On January 8, 2020, the Board approved the Avaya Holdings Corp. 2020 Employee Stock Purchase Plan ("ESPP"). A maximum of 5,500,000 shares of the Company's common stock has been reserved for issuance under the ESPP. Under the ESPP, eligible employees may purchase the Company's common stock through payroll deductions at a discount not to exceed 15% of the lower of the fair market values of the Company's common stock as of the beginning or end of each 3-month offering period. Payroll deductions are limited to 10% of the employee's eligible compensation and a maximum of 6,250 shares of the Company's common stock may be purchased by an employee each offering period. The first offering period began on June 1, 2020. During fiscal 2020, the Company withheld $3 million of eligible employee compensation for purchases of common stock and issued 204,445 shares under the ESPP. As of September 30, 2020, 5,295,555 shares of common stock were available for future issuance under the ESPP.

The grant date fair value for shares issued under the ESPP is measured on the date that each offering period commences. The average grant date fair value for the offering periods that commenced during fiscal 2020 was $4.99 per share. The grant date fair value was determined using a Black-Scholes option pricing model with the following average grant date assumptions:

	Fiscal year ended September 30, 2020
Expected volatility[1]	93.51 %
Risk-free interest rate[2]	0.13 %
Dividend yield[3]	— %

[1] Expected volatility based on the Company's historical data.

[2] Risk-free interest rate based on U.S. Treasury yields with a term equal to the length of the offering period.

[3] Dividend yield was assumed to be zero as the Company does not anticipate paying dividends.

As of September 30, 2020, there was $0.4 million of unrecognized share-based compensation expense related to the ESPP, which is expected to be recognized over a period of 0.2 years.

Predecessor

Prior to the Emergence Date, the Predecessor Company had granted share-based awards that were canceled upon emergence from bankruptcy. In conjunction with the cancellation, the Predecessor Company accelerated the unrecognized share-based compensation expense and recorded $3 million of compensation expense in the period from October 1, 2017 through December 15, 2017, principally reflected in Reorganization costs, net. No income tax benefit was recognized in the income statement for share-based compensation arrangements for the period from October 1, 2017 through December 15, 2017.

Option Awards

Under the terms of the Predecessor Company's equity incentive plan, stock options could not be granted with an exercise price of less than the fair market value of the underlying stock on the date of grant. Share-based compensation expense recognized in the Consolidated Statements of Operations was based on awards ultimately expected to vest. Forfeitures were estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differed from those estimates in accordance with the authoritative guidance. All options awarded under the Predecessor Company's equity incentive plan expired the earlier of ten years from the date of grant or upon cessation of employment, in which event there were limited exercise provisions allowed for vested options.

Subsequent to October 1, 2012, the Company granted time-based options to purchase Predecessor common stock. Time-based options vested over their performance periods and were payable in shares of common stock upon vesting and exercise. The performance period for time-based options was generally three to four years. Compensation expense equal to the fair value of the option measured on the grant date was recognized utilizing graded attribution over the requisite service period.

During the period from October 1, 2017 through December 15, 2017, there were no options granted or exercised and 19,842,268 options were canceled upon the Company’s emergence from bankruptcy.

Restricted Stock Units

Avaya Holdings had issued RSUs, each of which represented the right to receive one share of its Predecessor common stock when fully vested. The fair value of the common stock underlying the RSUs was estimated by the Compensation Committee of Avaya Holdings’ Board of Directors at the date of grant.

During the period from October 1, 2017 through December 15, 2017, there were no RSUs granted or vested and 369,584 unvested RSUs were canceled upon the Company’s emergence from bankruptcy.

17. Capital Stock

Successor

Preferred Stock

The Successor Company's certificate of incorporation authorizes it to issue up to 55,000,000 shares of preferred stock with a par value of $0.01 per share.

On October 31, 2019, the Company issued 125,000 shares of its 3% Series A Convertible Preferred Stock, par value $0.01 per share ("Series A Preferred Stock"), to RingCentral for an aggregate purchase price of $125 million. The Series A Preferred Stock is convertible into shares of the Company's common stock at an initial conversion price of $16.00 per share, which represents an approximately 9% interest in the Company's common stock on an as-converted basis as of September 30, 2020, assuming no holders of options, warrants, convertible notes or similar instruments exercise their exercise or conversion rights. The holders of the Series A Preferred Stock are entitled to vote, on an as-converted basis, together with holders of the Company's common stock on all matters submitted to a vote of the holders of the common stock. Holders of the Series A Preferred Stock are entitled to receive dividends, in preference and priority to holders of the Company's common stock, which

accrue on a daily basis at the rate of 3% per annum of the stated value of the Series A Preferred Stock. The stated value of the Series A Preferred Stock was initially $1,000 per share and will be increased by the sum of any dividends on such shares not paid in cash. These dividends are cumulative and compound quarterly. The holders of the Series A Preferred Stock participate in any dividends the Company pays on its common stock, equal to the dividend which holders would have received if their Series A Preferred Stock had been converted into common stock on the date such common stock dividend was determined. In the event the Company is liquidated or dissolved, the holders of the Series A Preferred Stock are entitled to receive an amount equal to the liquidation preference (which equals the then stated value plus any accrued and unpaid dividends) for each share of Series A Preferred Stock before any distribution is made to holders of the Company's common stock.

The Series A Preferred Stock are redeemable at the Company's election upon the termination of the Framework Agreement. In addition, the holders of the Series A Preferred Stock have certain rights to require the Company to redeem or put rights to require the Company to repurchase all or any portion of the Series A Preferred Stock. The holders can exercise such redemption rights, upon at least 21 days' notice, after the termination of the Framework Agreement or upon the occurrence of certain events. If and to the extent the redemption right is exercised, the Company would be required to purchase each share of Series A Preferred Stock at the per share price equal to the stated value of the Series A Preferred Stock which will be increased by the sum of any dividends on such shares that have accrued and have been paid in kind, plus all accrued but unpaid dividends. Given that the holders of the Series A Preferred Stock may require the Company to redeem all or a portion of its shares, the Series A Preferred Stock is classified in the mezzanine section of the Consolidated Balance Sheets between Total liabilities and Stockholders' equity. As of September 30, 2020, the carrying value of the Series A Preferred Stock was $128 million, which includes $3 million of accreted dividends paid in kind.

In connection with the issuance of the Series A Preferred Stock, the Company granted RingCentral certain customary consent rights with respect to certain actions by the Company, including amending the Company's organizational documents in a manner that would have an adverse effect on the Series A Preferred Stock and issuing securities that are senior to, or equal in priority with, the Series A Preferred Stock. In addition, pursuant to an Investor Rights Agreement, until such time when RingCentral and its affiliates hold or beneficially own less than 4,759,339 shares of the Company's common stock (on an as-converted basis), RingCentral has the right to nominate one person for election to the Company's Board of Directors. The director designated by RingCentral has the option (i) to serve on the Company's Audit and Nominating and Corporate Governance Committees or (ii) to attend (but not vote at) all of the Company's Board of Directors' committee meetings. During the fourth quarter of fiscal 2020, RingCentral nominated Robert Theis for election to the Company's Board of Directors. On November 6, 2020, Robert Theis was elected to join the Board.

As of September 30, 2020, there were 125,000 shares of preferred stock outstanding. There were no preferred shares outstanding as of September 30, 2019.

Common Stock

The Successor Company's certificate of incorporation authorizes it to issue up to 550,000,000 shares of common stock with a par value of $0.01 per share. As of September 30, 2020, there were 83,278,383 shares issued and outstanding. As of September 30, 2019, there were 111,046,085 shares issued and 111,033,405 shares outstanding with the remaining 12,680 shares distributable in accordance with the Plan of Reorganization.

On November 14, 2018, the Company's Board of Directors approved a warrant repurchase program, authorizing the Company to repurchase Emergence Date Warrants for an aggregate expenditure of up to $15 million. The repurchases may be made from time to time in the open market, through block trades or in privately negotiated transactions. The Company may adopt one or more purchase plans pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, in order to implement the warrant repurchase program. The warrant repurchase program does not obligate the Company to purchase any warrants and may be terminated, increased or decreased by the Board of Directors in its discretion at any time. As of September 30, 2020, there were no warrant repurchases under the program.

On October 1, 2019, the Board of Directors of the Company approved a share repurchase program authorizing the Company to repurchase the Company's common stock for an aggregate expenditure of up to $500 million. The repurchases may be made from time to time in the open market, through block trades or in privately negotiated transactions. The Company adopted a purchase plan pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, to implement the share repurchase program. The share repurchase program does not obligate the Company to purchase any common stock and may be terminated, increased or decreased by the Board in its discretion at any time. All shares that are repurchased under the program are retired by the Company. During fiscal 2020, the Company repurchased 28,923,664 shares of its common stock at a weighted average price per share of $11.41, including transaction costs. As of September 30, 2020, the remaining authorized amount for share repurchases under this program was $170 million.

Predecessor

In connection with the Successor Company's Plan of Reorganization and emergence from bankruptcy, all equity interests in the Predecessor Company were canceled, including preferred and common stock, warrants and equity-based awards. As a result, the carrying value of the Predecessor Company's equity interests were adjusted to $0 during the period from October 1, 2017 through December 15, 2017. See Note 24, "Fresh Start Accounting," for additional information.

18. (Loss) Earnings Per Common Share

Basic (loss) earnings per share is calculated by dividing net (loss) income attributable to common stockholders by the weighted average number of common shares outstanding. Diluted (loss) earnings per share reflects the potential dilution that would occur if equity awards granted under the Company's various share-based compensation plans were vested or exercised; if the Company's Series A Preferred Stock were converted into shares of the Company's common stock; if the Company's Convertible Notes or the warrants the Company sold to purchase up to 12.6 million shares of its common stock in connection with the issuance of Convertible Notes ("Call Spread Warrants") were exercised; and/or if the Emergence Date Warrants were exercised, resulting in the issuance of common shares that would participate in the earnings of the Company.

The following table sets forth the calculation of net (loss) income attributable to common shareholders and the computation of basic and diluted (loss) earnings per share for the periods indicated:

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
(In millions, except per share amounts)	2020	2019		
(Loss) Earnings per share:				
Numerator				
Net (loss) income	$ (680)	$ (671)	$ 287	$ 2,977
Dividends and accretion to preferred stockholders	(7)	—	—	(6)
Undistributed (loss) income	(687)	(671)	287	2,971
Percentage allocated to common stockholders[1]	100.0 %	100.0 %	100.0 %	86.9 %
Numerator for basic and diluted (loss) earnings per common share	$ (687)	$ (671)	$ 287	$ 2,582
Denominator				
Denominator for basic (loss) earnings per weighted average common shares	92.2	110.8	109.9	497.3
Effect of dilutive securities				
Restricted stock units	—	—	1.2	—
Denominator for diluted (loss) earnings per weighted average common shares	92.2	110.8	111.1	497.3
(Loss) earnings per common share				
Basic	$ (7.45)	$ (6.06)	$ 2.61	$ 5.19
Diluted	$ (7.45)	$ (6.06)	$ 2.58	$ 5.19
[1] Basic weighted average common stock outstanding	92.2	110.8	109.9	497.3
Basic weighted average common stock and common stock equivalents (preferred shares)	92.2	110.8	109.9	572.4
Percentage allocated to common stockholders	100.0 %	100.0 %	100.0 %	86.9 %

The Company's preferred stock are participating securities, which requires the application of the two-class method to calculate basic and diluted earnings per share. Under the two-class method, undistributed earnings are allocated to common stock and participating securities according to their respective participating rights in undistributed earnings, as if all the earnings for the period had been distributed. Basic (loss) earnings per common share is computed by dividing the net (loss) income attributable to common stockholders by the weighted average number of common shares outstanding during the period. Net (loss) income attributable to common stockholders is reduced for preferred stock dividends earned and accretion recognized during the period. No allocation of undistributed earnings to participating securities was performed for periods with net losses as such securities do not have a contractual obligation to share in the losses of the Company.

For fiscal 2020, the Company excluded 0.9 million stock options, 2.7 million RSUs, 0.2 million shares issuable under the ESPP, 0.1 million shares of Series A Preferred Stock and 5.6 million Emergence Date Warrants from the diluted loss per share calculation as their effect would have been anti-dilutive. The Company also excluded 1.0 million PRSUs from the diluted loss per share calculation as either their performance metrics have not been attained or their effect would have been anti-dilutive. For fiscal 2019, the Company excluded 0.9 million stock options, 2.8 million RSUs and 5.6 million Emergence Date Warrants from the diluted loss per share calculation as their effect would have been anti-dilutive. The Company also excluded 0.5 million PRSUs from the diluted loss per share calculation as their performance metrics have not been attained. During the period from December 16, 2017 through September 30, 2018, the Company excluded 1.1 million stock options, 0.2 million restricted stock units and 5.6 million Emergence Date Warrants to purchase common shares from the diluted earnings per share calculation as their effect would have been anti-dilutive.

The Company’s Convertible Notes and Call Spread Warrants were also excluded from the diluted (loss) earnings per share calculation for fiscal 2020 and 2019 and the period from December 16, 2017 through September 30, 2018 as their effect would have been anti-dilutive. For purposes of considering the Convertible Notes in determining diluted (loss) earnings per share, the Company has the ability and current intent to settle conversions of the Convertible Notes through combination settlement by repaying the principal portion in cash and any excess of the conversion value over the principal amount (the "Conversion Premium") in shares of the Company's common stock. Therefore, if it would have a dilutive impact, only the impact of the Conversion Premium will be included in diluted weighted average shares outstanding using the treasury stock method. Since the Convertible Notes were out of the money and anti-dilutive as of September 30, 2020, 2019 and 2018, they were excluded from the diluted (loss) earnings per share calculation for fiscal 2020, fiscal 2019 and the period from December 16, 2017 through September 30, 2018. The Call Spread Warrants will not be considered in calculating diluted weighted average shares outstanding until the price per share of the Company’s common stock exceeds the strike price of $37.3625 per share. When the price per share of the Company’s common stock exceeds the strike price per share of the Call Spread Warrants, the effect of the additional shares that may be issued upon exercise of the Call Spread Warrants will be included in diluted weighted average shares outstanding using the treasury stock method.

19. Operating Segments

The Products & Solutions segment primarily develops, markets, and sells unified communications and contact center solutions, offered on premises, in the cloud, or as a hybrid solution. These integrate multiple forms of communications, including telephony, email, instant messaging and video. The Services segment develops, markets and sells comprehensive end-to-end global service offerings that enable customers to evaluate, plan, design, implement, monitor, manage and optimize complex enterprise communications networks. Revenue from customers who upgrade and acquire new technology through the Company's subscription offerings is reported within the Services segment.

The Company’s chief operating decision maker makes financial decisions and allocates resources based on segment profit information obtained from the Company’s internal management systems. Management does not include in its segment measures of profitability selling, general and administrative expenses, research and development expenses, amortization of intangible assets, and certain discrete items, such as fair value adjustments recognized upon emergence from bankruptcy, charges relating to restructuring actions, impairment charges, and merger-related costs as these costs are not core to the measurement of segment performance, but rather are controlled at the corporate level.

Summarized financial information relating to the Company's operating segments is shown in the following table for the periods indicated:

(In millions)	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
REVENUE				
Products & Solutions	$ 1,074	$ 1,228	$ 1,052	$ 253
Services	1,805	1,680	1,401	351
Unallocated Amounts [1]	(6)	(21)	(206)	—
	$ 2,873	**$ 2,887**	**$ 2,247**	**$ 604**
GROSS PROFIT				
Products & Solutions	$ 669	$ 791	$ 696	$ 169
Services	1,092	996	843	196
Unallocated Amounts [2]	(181)	(212)	(396)	(3)
	1,580	1,575	1,143	362
OPERATING EXPENSES				
Selling, general and administrative	1,013	1,001	888	264
Research and development	207	204	172	38
Amortization of intangible assets	161	162	127	10
Impairment charges	624	659	—	—
Restructuring charges, net	30	22	81	14
	2,035	2,048	1,268	326
OPERATING (LOSS) INCOME	(455)	(473)	(125)	36
INTEREST EXPENSE, OTHER INCOME (EXPENSE), NET AND REORGANIZATION ITEMS, NET	(163)	(196)	(134)	3,400
(LOSS) INCOME BEFORE INCOME TAXES	**$ (618)**	**$ (669)**	**$ (259)**	**$ 3,436**

(1) Unallocated amounts in Revenue represent the fair value adjustment to deferred revenue recognized upon emergence from bankruptcy and excluded from segment revenue.

(2) Unallocated amounts in Gross Profit include the fair value adjustments recognized upon emergence from bankruptcy and excluded from segment gross profit; the effect of the amortization of technology intangibles; and costs that are not core to the measurement of segment management's performance, but rather are controlled at the corporate level.

(In millions)	As of September 30,	
	2020	2019
ASSETS:		
Products & Solutions	$ 31	$ 662
Services	1,501	1,504
Unallocated Assets [1]	4,699	4,784
Total	**$ 6,231**	**$ 6,950**

(1) Unallocated Assets consist of cash and cash equivalents, accounts receivable, contract assets, contract costs, deferred income tax assets, property, plant and equipment, operating lease right-of-use assets, acquired intangible assets and other assets. Unallocated Assets are managed at the corporate level and are not identified with a specific segment.

The decrease in Products & Solutions total assets was mainly driven by the $624 million impairment of goodwill recorded during fiscal 2020 as described in Note 7, "Goodwill, net."

Geographic Information

Financial information relating to the Company's revenue and long-lived assets by geographic area is as follows:

(In millions)	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
REVENUE[1]:				
U.S.	$ 1,640	$ 1,553	$ 1,184	$ 331
International:				
EMEA	714	753	603	166
APAC—Asia Pacific	296	327	256	57
Americas International—Canada and Latin America	223	254	204	50
Total International	1,233	1,334	1,063	273
Total	**$ 2,873**	**$ 2,887**	**$ 2,247**	**$ 604**

(In millions)	As of September 30,	
	2020	2019
LONG-LIVED ASSETS[2]		
U.S.	$ 191	$ 184
International:		
EMEA	57	54
APAC—Asia Pacific	13	10
Americas International—Canada and Latin America	7	7
Total International	77	71
Total	**$ 268**	**$ 255**

(1) Revenue is attributed to geographic areas based on the location of customers.
(2) Represents property, plant and equipment, net.

20. Accumulated Other Comprehensive (Loss) Income

The components of Accumulated other comprehensive (loss) income for the periods indicated were as follows:

(In millions)	Change in Unamortized Pension, Post-retirement and Postemployment Benefit-related Items	Foreign Currency Translation	Unrealized Loss on Interest Rate Swaps	Other	Accumulated Other Comprehensive (Loss) Income
Balance as of September 30, 2017 (Predecessor)	**(1,375)**	**(72)**	**—**	**(1)**	**(1,448)**
Other comprehensive (loss) income before reclassifications	(24)	3	—	—	(21)
Amounts reclassified to earnings	16	—	—	—	16
Pension settlement	721	—	—	—	721
Provision for income taxes	(58)	—	—	—	(58)
Balance as of December 15, 2017 (Predecessor)	**(720)**	**(69)**	**—**	**(1)**	**(790)**
Elimination of Predecessor Company Accumulated other comprehensive loss	720	69	—	1	790
Balance as of December 15, 2017 (Predecessor)	**$ —**	**$ —**	**$ —**	**$ —**	**$ —**
Balance as of December 16, 2017 (Successor)	**$ —**	**$ —**	**$ —**	**$ —**	**$ —**
Other comprehensive income (loss) before reclassifications	70	(31)	(3)	—	36
(Provision for) benefit from income taxes	(19)	—	1	—	(18)
Balance as of September 30, 2018 (Successor)	**51**	**(31)**	**(2)**	**—**	**18**
Other comprehensive (loss) income before reclassifications	(186)	24	(87)	—	(249)
Amounts reclassified to earnings	—	—	10	—	10
Benefit from income taxes	29	—	19		48
Balance as of September 30, 2019 (Successor)	**$ (106)**	**$ (7)**	**$ (60)**	**$ —**	**$ (173)**
Other comprehensive loss before reclassifications	(2)	(66)	(69)	—	(137)
Amounts reclassified to earnings	—	27	35	—	62
Benefit from income taxes	—	—	3	—	3
Balance as of September 30, 2020 (Successor)	**$ (108)**	**$ (46)**	**$ (91)**	**$ —**	**$ (245)**

Reclassifications from Accumulated other comprehensive (loss) income related to changes in unamortized pension, post-retirement and postemployment benefit-related items are recorded in Other income (expense), net. Reclassifications from Accumulated other comprehensive (loss) income related to the unrealized loss on interest rate swap agreements are recorded in Interest expense. Reclassifications from Accumulated other comprehensive (loss) income related to foreign currency translation reflect the impact of certain liquidated entities and are recorded in Other income (expense), net.

21. Related Party Transactions

Successor

As of September 30, 2020, the Company's Board of Directors was comprised of seven directors, including the Company's Chief Executive Officer, James M. Chirico, Jr., and six non-employee directors, William D. Watkins, Stephan Scholl, Susan L. Spradley, Stanley J. Sutula, III, Scott D. Vogel and Jacqueline E. Yeaney. On November 6, 2020, Robert Theis was elected to join the Company's Board of Directors as a result of his nomination by RingCentral pursuant to an Investor Rights Agreement entered into in conjunction with the issuance of the Company's Series A Preferred Stock.

Specific Arrangements Involving the Successor Company's Current Directors and Executive Officers

William D. Watkins is a Director and Chair of the Board of Directors of the Company and serves on the board of directors of Flex Ltd. ("Flex"), an electronics design manufacturer. During fiscal 2020, the Company sold goods and services to subsidiaries of Flex of $1 million. Sales to Flex during fiscal 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor) were not material. As of

September 30, 2020, the Company had outstanding accounts receivable due from Flex of $1 million. Outstanding accounts receivable due from Flex as of September 30, 2019 was not material. During fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), the Company purchased goods and services from subsidiaries of Flex of $23 million, $29 million, $19 million and $6 million, respectively. As of September 30, 2020 and 2019, the Company had outstanding accounts payable due to Flex of $3 million and $6 million, respectively.

Effective April 13, 2020, Stephan Scholl, a Director of the Company, assumed the role of Chief Executive Officer of Alight Solutions LLC ("Alight"), a provider of integrated benefits, payroll and cloud solutions. During fiscal 2020, the Company purchased goods and services from subsidiaries of Alight of $5 million. As of September 30, 2020, the Company had outstanding accounts payable due to Alight of $1 million.

Specific Arrangements Involving the Successor Company's Former Directors and Executive Officers

Laurent Philonenko was a Senior Vice President of Avaya Holdings through February 15, 2019. While he was a Senior Vice President of Avaya Holdings, Mr. Philonenko served as an Advisor to Koopid, Inc. ("Koopid"), a software development company specializing in mobile communications, a position he had held until January 2018. For the period from December 16, 2017 through September 30, 2018, the Company purchased goods and services from Koopid of $1 million. For the period from October 1, 2017 through December 15, 2017 (Predecessor), purchased goods and services from Koopid were not material.

Ronald A. Rittenmeyer was a Director of Avaya Holdings through April 29, 2018. While he was a Director of Avaya Holdings, Mr. Rittenmeyer served on the board of directors of Tenet Healthcare Corporation ("Tenet Healthcare"), a healthcare services company, and also served on the board of directors of American International Group, Inc. ("AIG"), a global insurance organization. For the period from December 16, 2017 through September 30, 2018, sales of the Company's products and services to Tenet Healthcare were $1 million. For the period from October 1, 2017 through December 15, 2017 (Predecessor), sales of the Company's products and services to Tenet Healthcare were not material. For the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), sales of the Company's products and services to AIG were $5 million and $2 million, respectively.

Predecessor

In connection with the acquisition of Avaya Inc., through Avaya Holdings by Silver Lake Partners ("Silver Lake"), TPG Capital ("TPG") and their respective affiliates (collectively, the "Predecessor Sponsors"), in a transaction that was completed on October 26, 2007 (the "Merger"), Avaya Holdings entered into certain stockholder agreements and registration rights agreements with the Predecessor Sponsors and various co-investors. In addition, Avaya Holdings entered into a management services agreement with affiliates of the Predecessor Sponsors and, from time to time, Avaya Holdings entered into various other contracts with companies affiliated with the Predecessor Sponsors. These arrangements terminated upon emergence from bankruptcy. In addition, all Predecessor Company equity held by the Predecessor Sponsors was canceled. No fees were paid to the Predecessor Sponsors in the period from October 1, 2017 through December 15, 2017 (Predecessor).

Stockholders' Agreement

In connection with the Merger, Avaya Holdings entered into a stockholders' agreement with the Predecessor Sponsors and certain of their affiliates. The stockholders' agreement was amended and restated in connection with the financing of certain acquisitions. The stockholders' agreement contained certain restrictions on the Predecessor Sponsors' and their affiliates' transfer of Avaya Holdings' equity securities, contained provisions regarding participation rights, contained standard tag-along and drag-along provisions, provided for the election of Avaya Holdings' directors, mandated board of directors approval of certain matters to include the consent of each Predecessor Sponsor and generally set forth the respective rights and obligations of the stockholders who were parties to that agreement. None of Avaya Holdings' officers or directors were parties to the agreement, although certain of Avaya Holdings' non-employee directors may have had an indirect interest in the agreement to the extent of their affiliations with the Predecessor Sponsors. This agreement was terminated upon emergence from bankruptcy.

Registration Rights Agreement

In addition, in connection with the Merger, Avaya Holdings entered into a registration rights agreement with the Predecessor Sponsors and certain of their affiliates, which was amended and restated in connection with the financing of certain acquisitions. Pursuant to the registration rights agreement, as amended, Avaya Holdings would provide the Predecessor Sponsors and certain of their affiliates party thereto with certain demand registration rights. In addition, in the event that Avaya Holdings registered shares of common stock for sale to the public, Avaya Holdings would be required to give notice of such registration to the Predecessor Sponsors and their affiliates party to the agreement of its intention to effect such a registration, and, subject to certain limitations, the Predecessor Sponsors and such holders would have piggyback registration rights providing them with the right to require Avaya Holdings to include shares of common stock held by them in such registration. Avaya Holdings would have been required to bear the registration expenses, other than underwriting discounts and commissions and transfer taxes, if any, associated with any registration of shares by the Predecessor Sponsors or other holders

described above. Avaya Holdings had agreed to indemnify each holder of its common stock covered by the registration rights agreement for violations of federal or state securities laws by it in connection with any registration statement, prospectus or any preliminary prospectus. Each holder of such securities had in turn agreed to indemnify Avaya Holdings for federal or state securities law violations that occur in reliance upon written information the holder provided to Avaya Holdings in connection with any registration statement in which a holder of such securities was participating. None of Avaya Holdings' officers or directors were a party to this agreement, although certain of Avaya Holdings' non-employee directors may have had an indirect interest in the agreement to the extent of their affiliations with the Predecessor Sponsors. This agreement was terminated upon emergence from bankruptcy.

Management Services Agreement and Consulting Services

Both Avaya Holdings and Avaya Inc. were party to a Management Services Agreement with Silver Lake Management Company, L.L.C., an affiliate of Silver Lake, and TPG Capital Management, L.P., an affiliate of TPG, collectively "the Managers," pursuant to which the Managers provided management and financial advisory services to the Company. Pursuant to the Management Services Agreement, the Managers received a monitoring fee of $7 million per annum and reimbursement on demand for out-of-pocket expenses incurred in connection with the provision of such services. In the event of a financing, acquisition, disposition or change of control transaction involving the Company during the term of the Management Services Agreement, the Managers had the right to require the Company to pay a fee equal to customary fees charged by internationally-recognized investment banks for serving as a financial advisor in similar transactions. The Management Services Agreement could have been terminated at any time by the Managers, but otherwise had an initial term ending on December 31, 2017 that automatically extended each December 31st for an additional year unless terminated earlier by the Company or the Managers. The term had been automatically extended nine times since the execution of the agreement such that the term was through December 31, 2026. In the event that the Management Services Agreement was terminated, the Company was required to pay a termination fee equal to the net present value of the monitoring fees that would have been payable during the remaining term of the Management Services Agreement. Therefore, if the Management Services Agreement was terminated at September 30, 2017, the termination fee would have been calculated using the term ending December 31, 2026. In accordance with the Management Services Agreement, the Company did not record monitoring fees for the period from October 1, 2017 through December 15, 2017 (Predecessor).

In December 2013, the Company and TPG Capital Management, L.P. executed a letter agreement reducing the portion of the monitoring fees owed to TPG Capital Management, L.P. by $1,325,000 for fiscal 2014 and thereafter on an annual basis by $800,000. Afshin Mohebbi was a Director of Avaya Holdings and Avaya Inc. and held the position of Senior Advisor of TPG. Ronald A. Rittenmeyer was a Director of Avaya Holdings and Avaya Inc. and served in these capacities as a director designated by TPG. The Company agreed to pay Messrs. Mohebbi and Rittenmeyer in aggregate $800,000 annually.

This Management Services Agreement and consulting services were terminated upon emergence from bankruptcy.

Transactions with Other Predecessor Sponsor Portfolio Companies

The Predecessor Sponsors were private equity firms that had investments in companies that did business with the Company. For the period from October 1, 2017 through December 15, 2017, the Company recorded $10 million associated with sales of the Company's products and services to companies in which one or both of the Predecessor Sponsors had investments. For the period from October 1, 2017 through December 15, 2017, the Company purchased goods and services of $15 million from companies in which one or both of the Predecessor Sponsors had investments. In September 2015, a company in which a Predecessor Sponsor had an investment merged with a commercial real estate services firm that began providing management services associated with the Company's leased properties. Included in the above purchased goods and services amounts was $5 million incurred by the Company for management services provided by the commercial real estate services firm for the period from October 1, 2017 through December 15, 2017.

Arrangements Involving the Predecessor Company's Directors and Executive Officers

In connection with the Merger, Avaya Holdings entered into a senior manager registration and preemptive rights agreement with certain members of its senior management who owned shares of Avaya Holdings' common stock and options and RSUs convertible into shares of Avaya Holdings' common stock. Pursuant to the senior manager registration and preemptive rights agreement, the senior managers party thereto that held registrable securities thereunder were provided with certain registration rights upon either (a) the exercise of the Predecessor Sponsors or their affiliates of demand registration rights under the Predecessor Sponsors' registration rights agreement discussed above or (b) any request by the Predecessor Sponsors to file a shelf registration statement for the resale of such shares, as well as certain notification and piggyback registration rights. Avaya Holdings was required to bear the registration expenses, other than underwriting discounts and commissions and transfer taxes, if any, associated with any registration of stock by the senior managers as described above. Avaya Holdings had agreed to indemnify each holder of registrable securities covered by the agreement for violations of federal or state securities laws by Avaya Holdings in connection with any registration statement, prospectus or any preliminary prospectus. Each holder of such registrable securities had in turn agreed to indemnify Avaya Holdings for federal or state securities law violations that occurred

in reliance upon written information the holder provided to Avaya Holdings in connection with any registration statement in which a holder of such registrable securities was participating.

In addition, pursuant to the senior manager registration and preemptive rights agreement, the Company agreed to provide each senior manager party thereto with certain preemptive rights to participate in any future issuance of shares of Avaya Holdings' common stock to the Predecessor Sponsors or their affiliates.

In connection with the Merger, Avaya Holdings also entered into a management stockholders' agreement with certain management stockholders. The stockholders' agreement contained certain restrictions on such stockholders' transfer of Avaya Holdings equity securities, contained rights of first refusal upon disposition of shares, contained standard tag-along and drag-along provisions, and generally set forth the respective rights and obligations of the stockholders who were parties to the agreement.

The senior manager registration and preemptive rights agreement and the management stockholders' agreement terminated upon emergence from bankruptcy.

22. Commitments and Contingencies

Legal Proceedings

In the ordinary course of business, the Company is involved in litigation, claims, government inquiries, investigations and proceedings, including but not limited to, those relating to intellectual property, commercial, employment, environmental indemnity and regulatory matters. The Company records accruals for legal contingencies to the extent that it has concluded that it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated.

In the opinion of the Company's management, while the outcome of these matters is uncertain, the likely results of these matters are not expected, either individually or in the aggregate, to have a material adverse effect on the Company's financial position, results of operations or cash flows. However, an unfavorable resolution could have a material adverse effect on the Company's financial position, results of operations or cash flows in the periods in which the matters are ultimately resolved, or in the periods in which more information is obtained that changes management's opinion of the ultimate disposition.

During fiscal 2020 and 2019 (Successor) and the period from December 16, 2017 through September 30, 2018 (Successor), there were no costs incurred in connection with the resolution of legal matters other than those incurred in the ordinary course of business. During the period from October 1, 2017 through December 15, 2017 (Predecessor), costs incurred in connection with the resolution of certain legal matters were $37 million.

Product Warranties

The Company recognizes a liability for the estimated costs that may be incurred to remedy certain deficiencies of quality or performance of the Company's products. These product warranties extend over a specified period of time, generally ranging up to two years from the date of sale depending upon the product subject to the warranty. The Company accrues a provision for estimated future warranty costs based upon the historical relationship of warranty claims to sales. The Company periodically reviews the adequacy of its product warranties and adjusts, if necessary, the warranty percentage and accrued warranty reserve, which is included in other current and non-current liabilities in the Consolidated Balance Sheets, for actual experience. As of September 30, 2020 and 2019, the amount reserved for product warranties was $2 million. For fiscal 2020 and 2019 (Successor), the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), product warranty expense recorded in the Consolidated Statements of Operations was $4 million, $3 million, $2 million and $1 million, respectively.

Guarantees of Indebtedness and Other Off-Balance Sheet Arrangements

Letters of Credit and Guarantees

The Company provides guarantees, letters of credit and surety bonds to various parties as required for certain transactions initiated during the ordinary course of business to guarantee the Company's performance in accordance with contractual or legal obligations. As of September 30, 2020, the maximum potential payment obligation with regards to letters of credit, guarantees and surety bonds was $52 million. The outstanding letters of credit are collateralized by restricted cash of $4 million which is included in Other assets on the Consolidated Balance Sheets as of September 30, 2020.

Purchase Commitments and Termination Fees

The Company purchases components from a variety of suppliers and uses several contract manufacturers to provide manufacturing services for its products. During the normal course of business, to manage manufacturing lead times and to help assure adequate component supply, the Company enters into agreements with contract manufacturers and suppliers that allow them to produce and procure inventory based upon forecasted requirements provided by the Company. If the Company does not meet these specified purchase commitments, it could be required to purchase the inventory, or in the case of certain agreements,

pay an early termination fee. Historically, the Company has not been required to pay a charge for not meeting its designated purchase commitments with these suppliers, but has been obligated to purchase certain excess inventory levels from its outsourced manufacturers due to actual sales of product varying from forecast and due to transition of manufacturing from one vendor to another.

The Company's outsourcing agreements with its most significant contract manufacturers automatically renew in July and September for successive periods of twelve months each, subject to specific termination rights for the Company and the contract manufacturers. All manufacturing of the Company's products is performed in accordance with either detailed requirements or specifications and product designs furnished by the Company and is subject to quality control standards.

Transactions with Nokia

Pursuant to the Contribution and Distribution Agreement effective October 1, 2000 (the "Contribution and Distribution Agreement"), Nokia Corporation ("Nokia", formerly known as Lucent Technologies, Inc. ("Lucent")) contributed to the Company substantially all of the assets, liabilities and operations associated with its enterprise networking businesses (the "Contributed Businesses") and distributed the Company's stock pro-rata to the shareholders of Lucent ("distribution"). The Contribution and Distribution Agreement, among other things, provides that, in general, the Company will indemnify Nokia for all liabilities including certain pre-distribution tax obligations of Nokia relating to the Contributed Businesses and all contingent liabilities primarily relating to the Contributed Businesses or otherwise assigned to the Company. In addition, the Contribution and Distribution Agreement provides that certain contingent liabilities not allocated to one of the parties will be shared by Nokia and the Company in prescribed percentages. The Contribution and Distribution Agreement also provides that each party will share specified portions of contingent liabilities based upon agreed percentages related to the business of the other party that exceed $50 million. The Company is unable to determine the maximum potential amount of other future payments, if any, that it could be required to make under this agreement.

In addition, in connection with the distribution, the Company and Lucent entered into a Tax Sharing Agreement effective October 1, 2000 (the "Tax Sharing Agreement") that governs Nokia's and the Company's respective rights, responsibilities and obligations after the distribution with respect to taxes for the periods ending on or before the distribution. Generally, pre-distribution taxes or benefits that are clearly attributable to the business of one party will be borne solely by that party and other pre-distribution taxes or benefits will be shared by the parties based on a formula set forth in the Tax Sharing Agreement. The Company may be subject to additional taxes or benefits pursuant to the Tax Sharing Agreement related to future settlements of audits by state and local and foreign taxing authorities for the periods prior to the Company's separation from Nokia.

23. Emergence from Voluntary Reorganization under Chapter 11 Proceedings

Plan of Reorganization

On November 28, 2017, the Bankruptcy Court entered an order confirming the Plan of Reorganization. On the Emergence Date, the Plan of Reorganization became effective and the Debtors emerged from bankruptcy.

On or following the Emergence Date and pursuant to the terms of the Plan of Reorganization, the following occurred:

- *Debtor-in-Possession Credit Agreement.* The Company paid in full the debtor-in-possession credit agreement (the "DIP Credit Agreement") in the amount of $725 million;
- *Predecessor Equity and Indebtedness.* The Debtors' obligations under stock certificates, equity interests and/or any other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of, or ownership interest in, the Debtors or giving rise to any claim or equity interest were canceled, except as provided under the Plan of Reorganization;
- *Successor Equity.* The Company's certificate of incorporation was amended and restated to authorize the issuance of 605.0 million shares of Successor Company stock, consisting of 55.0 million shares of preferred stock, par value $0.01 per share, and 550.0 million shares of common stock, par value $0.01 per share, of which 110.0 million shares of common stock were issued (as discussed below);
- *Exit Financing.* The Successor Company entered into (1) a term loan credit agreement with a principal amount of $2,925 million maturing on December 15, 2024, and (2) a $300 million asset-based revolving credit facility maturing on December 15, 2022;
- *First Lien Debt Claims.* All of the Predecessor Company's outstanding obligations under the variable rate term B-3, B-4, B-6, and B-7 loans and the 7% and 9% senior secured notes (collectively, the "Predecessor first lien obligations") were canceled, and the holders of claims under the Predecessor first lien obligations received 99.3 million shares of Successor Company common stock. In addition, the holders of the Predecessor first lien obligations received cash in the amount of $2,061 million;

- *Second Lien Debt Claims.* All the Predecessor Company's outstanding obligations under the 10.50% senior secured notes (the "Predecessor second lien obligations") were canceled, and the holders of claims under the Predecessor second lien obligations received 4.4 million shares of Successor Company common stock. In addition, holders of the Predecessor second lien obligations received warrants to purchase 5.6 million shares of Successor Company common stock at an exercise price of $25.55 per warrant;
- *Claims of Pension Benefit Guaranty Corporation ("PBGC").* The Predecessor Company's outstanding obligations under the Avaya Inc. Pension Plan for Salaried Employees ("APPSE") were terminated and transferred to the PBGC. The PBGC received 6.1 million shares of Successor Company common stock and $340 million in cash; and
- *General Unsecured Claims.* Holders of the Predecessor Company's general unsecured claims were to receive their pro rata share of the general unsecured recovery pool. A liquidating trust was established in the amount of $58 million (comprised of cash and stock) for the benefit of the general unsecured claims. Included in the 110.0 million Successor Company common stock issued upon emergence were 0.2 million additional shares of common stock that were issued (but were not outstanding) for the benefit of the general unsecured creditors. Any excess cash and/or common stock not distributed to the general unsecured creditors was to be distributed to the holders of the Predecessor first lien obligations.

Section 363 Asset Sale

In July 2017, the Company sold its networking business ("Networking" or the "Networking business") to Extreme Networks, Inc. ("Extreme"). As part of the sale, Extreme paid the Company $70 million, deposited $10 million in an indemnity escrow account and assumed certain liabilities, primarily lease obligations, of $20 million. The Networking business provided wired, WLAN and Fabric technology, and included the related customers, personnel, software and technology assets. The Networking business was comprised primarily of certain assets of the Company's Networking segment (which prior to the sale was a separate operating segment), along with the maintenance and professional services of the Networking business, which was part of the Services segment. Under a transition services agreement (the "TSA"), the Company provided administrative services to Extreme for process support, maintenance services and product logistics on a fee basis. As of September 30, 2018, all activities required to be provided under the TSA were completed and the TSA was terminated. The $10 million indemnity escrow was distributed in September 2018, with the Successor Company receiving $7 million and Extreme receiving the remaining $3 million as final settlement. The Company recorded income from the TSA, net of $5 million and $3 million during the period from December 16, 2017 through September 30, 2018 (Successor) and the period from October 1, 2017 through December 15, 2017 (Predecessor), respectively.

24. Fresh Start Accounting

In connection with the Company's emergence from bankruptcy and in accordance with FASB ASC 852, "Reorganizations" ("ASC 852"), the Company applied the provisions of fresh start accounting to its Consolidated Financial Statements on the Emergence Date. The Company was required to use fresh start accounting since (i) the holders of existing voting shares of the Predecessor Company received less than 50% of the voting shares of the emerging entity and (ii) the reorganization value of the Company's assets immediately prior to confirmation of the Plan of Reorganization was less than the post-petition liabilities and allowed claims.

ASC 852 prescribes that with the application of fresh start accounting, the Company allocated its reorganization value to its individual assets based on their estimated fair values in conformity with ASC 805, "Business Combinations". The reorganization value represents the fair value of the Successor Company's assets before considering liabilities. The excess reorganization value over the fair value of identified tangible and intangible assets is reported as goodwill. As a result of the application of fresh start accounting and the effects of the implementation of the Plan of Reorganization, the Consolidated Financial Statements after December 15, 2017 are not comparable with the Consolidated Financial Statements as of or prior to that date.

Reorganization Value

As set forth in the Plan of Reorganization, the agreed upon enterprise value of the Company was $5,721 million. This value was within the initial range calculated by the Company of approximately $5,100 million to approximately $7,100 million using an income approach. The $5,721 million enterprise value was selected as it was the transaction price agreed to in the global settlement agreement with the Company’s creditor constituencies, including the PBGC. The reorganization value was then determined by adding liabilities other than interest bearing debt, pension obligations and the deferred tax impact of the reorganization and fresh start adjustments.

The following table reconciles the enterprise value to the estimated fair value of the Successor stockholders' equity as of the Emergence Date:

(In millions, except per share amount)		
Enterprise value	$	5,721
Plus:		
Cash and cash equivalents		366
Less:		
Minimum cash required for operations		(120)
Fair value of Term Loan Credit Agreement[1]		(2,896)
Fair value of capitalized leases		(20)
Fair value of pension and other post-retirement obligations, net of tax[2]		(856)
Change in net deferred tax liabilities from reorganization		(510)
Fair value of Successor Emergence Date Warrants[3]		(17)
Fair value of Successor common stock	$	1,668
Shares issued at December 15, 2017 upon emergence		110.0
Successor common stock value per share	$	15.16

(1) The fair value of the Term Loan Credit Agreement was determined based on a market approach utilizing market-clearing data on the valuation date in addition to bid/ask prices and was estimated to be 99% of par value.

(2) The following assumptions were used when measuring the fair value of the U.S. pension, non-U.S. pension, and post-retirement benefit plans: weighted-average return on assets of 7.75%, 3.80% and 5.90%, and weighted-average discount rate to measure plan obligations of 3.70%, 1.52% and 3.77%, respectively.

(3) The fair value of the Emergence Date Warrants was estimated using the Black-Scholes pricing model.

The following table reconciles the enterprise value to the estimated reorganization value as of the Emergence Date:

(In millions)		
Enterprise value	$	5,721
Plus:		
Non-debt current liabilities		955
Non-debt non-current liabilities		2,090
Excess cash and cash equivalents		246
Less:		
Pension and other post-retirement obligations, net of deferred taxes		(856)
Capital lease obligations		(20)
Change in net deferred tax liabilities from reorganization		(510)
Emergence Date Warrants issued		(17)
Reorganization value of Successor assets	$	7,609

Consolidated Balance Sheet

The adjustments set forth in the following consolidated balance sheet as of December 16, 2017 reflect the effect of the consummation of the transactions contemplated by the Plan of Reorganization (reflected in the column "Reorganization Adjustments") as well as fair value adjustments as a result of applying fresh start accounting (reflected in the column "Fresh Start Adjustments"). The explanatory notes highlight methods used to determine fair values or other amounts of the assets and liabilities, as well as significant assumptions or inputs.

(In millions)	Predecessor Company December 15, 2017	Reorganization Adjustments		Fresh Start Adjustments		Successor Company December 16, 2017
ASSETS						
Current assets:						
Cash and cash equivalents	$ 770	$ (404)	(1)	$ —		$ 366
Accounts receivable, net	497	—		(106)	(21)	391
Inventory	90	—		29	(22)	119
Other current assets	374	(58)	(2)	(66)	(23)	250
TOTAL CURRENT ASSETS	1,731	(462)		(143)		1,126
Property, plant and equipment, net	194	—		116	(24)	310
Deferred income taxes, net	—	48	(3)	(17)	(25)	31
Intangible assets, net	298	—		3,137	(26)	3,435
Goodwill	3,541	—		(883)	(27)	2,658
Other assets	70	6	(4)	(27)	(28)	49
TOTAL ASSETS	**$ 5,834**	**$ (408)**		**$ 2,183**		**$ 7,609**
LIABILITIES						
Current liabilities:						
Debt maturing within one year	$ 725	$ (696)	(5)	$ —		$ 29
Accounts payable	325	(49)	(6)	—		276
Payroll and benefit obligations	123	23	(7)	—		146
Deferred revenue	627	50	(8)	(341)	(29)	336
Business restructuring reserve	35	3	(9)	—		38
Other current liabilities	97	65	(6,10)	(3)	(30)	159
TOTAL CURRENT LIABILITIES	1,932	(604)		(344)		984
Non-current liabilities:						
Long-term debt, net of current portion	—	2,771	(11)	96	(31)	2,867
Pension obligations	539	246	(12)	—		785
Other post-retirement obligations	—	212	(13)	—		212
Deferred income taxes, net	28	113	(14)	548	(32)	689
Business restructuring reserve	26	4	(9)	4	(33)	34
Other liabilities	180	233	(8,15)	(43)	(29,34)	370
TOTAL NON-CURRENT LIABILITIES	773	3,579		605		4,957
LIABILITIES SUBJECT TO COMPROMISE	7,585	(7,585)	(16)	—		—
TOTAL LIABILITIES	10,290	(4,610)		261		5,941
Commitments and contingencies						
Equity awards on redeemable shares	6	(6)	(17)	—		—
Preferred stock:						
Series B	397	(397)	(17)	—		—
Series A	186	(186)	(17)	—		—
STOCKHOLDERS' (DEFICIT) EQUITY						
Common stock (Successor)	—	1	(18)	—		1
Additional paid-in capital (Successor)	—	1,667	(18)	—		1,667
Common stock (Predecessor)	—	—		—		—
Additional paid-in capital (Predecessor)	2,387	(2,387)	(17)	—		—
(Accumulated deficit) retained earnings	(5,978)	4,846	(19)	1,132	(36)	—
Accumulated other comprehensive (loss) income	(1,454)	664	(20)	790	(35)	—
TOTAL STOCKHOLDERS' (DEFICIT) EQUITY	(5,045)	4,791		1,922		1,668
TOTAL LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY	**$ 5,834**	**$ (408)**		**$ 2,183**		**$ 7,609**

Reorganization Adjustments

In accordance with the Plan of Reorganization, the following adjustments were made:

1. *Sources and Uses of Cash.* The following reflects the net cash payments recorded as of the Emergence Date as a result of implementing the Plan of Reorganization:

(In millions)		
Sources:		
Proceeds from Term Loan Credit Agreement, net of original issue discount	$	2,896
Release of restricted cash		76
Total sources of cash		2,972
Uses:		
Repayment of DIP Credit Agreement		(725)
Payment of DIP Credit Agreement accrued interest		(1)
Cash paid to Predecessor first lien debt-holders		(2,061)
Cash paid to PBGC		(340)
Payment for professional fees escrow account		(56)
Funding payment for Avaya represented employee pension plan		(49)
Payment of accrued professional and administrative fees		(27)
Costs incurred for Term Loan Credit Agreement and ABL Credit Agreement		(59)
Payment for general unsecured claims		(58)
Total uses of cash		(3,376)
Net uses of cash	$	(404)

2. *Other Current Assets.*

(In millions)		
Release of restricted cash	$	(76)
Reclassification of prepaid debt issuance costs related to the Term Loan Credit Agreement		(42)
Payment of fees related to the ABL Credit Agreement		5
Restricted cash for bankruptcy related professional fees		55
Total other current assets	$	(58)

3. *Deferred Income Taxes.* The adjustment represents the release of the valuation allowance on deferred tax assets for certain non-U.S. subsidiaries which management believes more likely than not will be realized as a result of the bankruptcy reorganization.

4. *Other Assets.* The adjustment represents the re-establishment of foreign prepaid taxes.

5. *Debt Maturing Within One Year.* The adjustment represents the net effect of the Company's repayment of $725 million for the DIP Credit Agreement and Term Loan Credit Agreement principal payments of $29 million due over the next year.

6. *Accounts Payable*. The net decrease of $49 million includes $50 million for professional fees that were reclassified to Other current liabilities for accrued bankruptcy related professional fees that were paid from an escrow account and a payment of $3 million of bankruptcy related professional fees, partially offset by reinstatement of $4 million contract cure costs from liabilities subject to compromise.

7. *Payroll and Benefit Obligations.* The Company reinstated $23 million of liabilities subject to compromise related to the post-employment and post-retirement benefit obligations.

8. *Deferred Revenue.* The reinstatement of liabilities subject to compromise was $79 million of which $50 million is included in deferred revenue and $29 million in other liabilities.

9. *Business Restructuring Reserve.* The reinstatement of liabilities subject to compromise was $7 million, of which $3 million is current and $4 million is non-current.

10. *Other Current Liabilities.*

(In millions)		
Reclassification of accrued bankruptcy related professional fees	$	50
Reinstatement of other current liabilities		16
Payment of accrued interest on the DIP Credit Agreement		(1)
Total other current liabilities	$	65

11. *Exit Financing.* In accordance with the Plan of Reorganization, the Company entered into the Term Loan Credit Agreement with a principal amount of $2,925 million, and the ABL Credit Agreement, which allows borrowings up to an aggregate principal amount of $300 million, subject to borrowing base availability.

(In millions)		
Term Loan Credit Agreement	$	2,925
Less:		
Discount		(29)
Upfront and underwriting fees		(54)
Cash received upon emergence from bankruptcy		2,842
Reclassification of debt issuance costs incurred prior to emergence from bankruptcy		(42)
Current portion of Long-term debt		(29)
Long-term debt, net of current portion	$	2,771

12. *Pension Obligations.* In accordance with the Plan of Reorganization, the Company reinstated from liabilities subject to compromise $295 million related to the Avaya Pension Plan for represented employees and also contributed $49 million to the related pension trust.

13. *Other Post-retirement Obligations.* Other post-retirement benefit obligations of $212 million were reinstated from liabilities subject to compromise.

14. *Deferred Income Taxes*. The adjustment represents the reinstatement of the deferred tax liability that was included in liabilities subject to compromise.

15. *Other Liabilities*. The increase of $233 million primarily relates to the reinstatement of employee benefits, tax liabilities and deferred revenue from liabilities subject to compromise. Also included is the value of the Emergence Date Warrants issued to the holders of the Predecessor second lien obligations.

16. *Liabilities Subject to Compromise.* Liabilities subject to compromise were reinstated or settled as follows in accordance with the Plan of Reorganization:

(In millions)		
Liabilities subject to compromise		$ 7,585
Less amounts settled per the Plan of Reorganization		
Pre-petition first lien debt		(4,281)
Pre-petition second lien debt		(1,440)
Avaya Pension Plan for Salaried Employees		(620)
Amounts reinstated:		
Accounts payable	(4)	
Payroll and benefit obligations	(23)	
Deferred revenue	(50)	
Business restructuring reserves	(7)	
Other current liabilities	(16)	
Pension obligations	(295)	
Other post-retirement obligations	(212)	
Deferred income taxes, net	(118)	
Other liabilities	(216)	
Total liabilities reinstated at emergence		(941)
General unsecured credit claims[1]		(303)
Liabilities subject to compromise		$ —

[1] In settlement of allowed general unsecured claims, each claimant will receive a pro-rata distribution of $58 million of the general unsecured claims account.

The following table displays the detail on the gain on settlement of liabilities subject to compromise:

(In millions)	
Pre-petition first lien debt	$ 711
Pre-petition second lien debt	1,356
Avaya pension plan for salaried employees	(516)
General unsecured creditors' claims	227
Net gain on settlement of Liabilities subject to compromise	$ 1,778

17. *Cancellation of Predecessor Preferred and Common Stock.* All common stock, Series A and B preferred stock and all other equity awards of the Predecessor Company were canceled on the Emergence Date without any recovery on account thereof.

18. *Issuance of Successor Common Stock and Emergence Date Warrants.* In settlement of the Company's $5,721 million Predecessor first lien obligations and Predecessor second lien obligations, the holders of the Predecessor first lien obligations received a total of 99.3 million shares of common stock (fair value of $1,509 million) and $2,061 million in cash and the holders of the Predecessor second lien obligations received a total of 4.4 million shares of common stock (fair value of $67 million) and 5.6 million Emergence Date Warrants to purchase a like amount of common shares (fair value of $17 million). In addition, as part of the Plan of Reorganization, the Company completed a distressed termination of the APPSE in accordance with a stipulation settlement with the PBGC, the PBGC received $340 million in cash and 6.1 million shares of common stock (fair value of $92 million).

19. *Accumulated Deficit.*

(In millions)	
Accumulated deficit:	
Net gain on settlement of liabilities subject to compromise	$ 1,778
Expense for certain professional fees	(26)
Benefit from income taxes	118
Cancellation of Predecessor equity awards	6
Cancellation of Predecessor Preferred stock Series B	397
Cancellation of Predecessor Preferred stock Series A	186
Cancellation of Predecessor Common stock	2,387
Total	$ 4,846

20. *Accumulated Comprehensive Loss.* The changes to Accumulated comprehensive loss relate to the settlement of the APPSE and the Avaya Supplemental Pension Plan ("ASPP") and the associated taxes.

Fresh Start Adjustments

At the Emergence Date, the Company met the requirements under ASC 852 for the adoption of fresh start accounting. These adjustments reflect actual amounts recorded as of the Emergence Date.

21. *Accounts Receivable.* This adjustment relates to a change in accounting policy for the way the Company will present uncollected deferred revenue upon emergence from bankruptcy. The Company offset such deferred revenue against the related account receivable.

22. *Inventory*. This adjustment relates to the write-up of inventory to fair value based on estimated selling prices, less costs of disposal.

23. *Other Current Assets*. This adjustment reflects the write-off of certain prepaid commissions, deferred installation costs and debt issuance costs that do not meet the definition of an asset upon emergence.

24. *Property, Plant and Equipment*. An adjustment of $116 million was recorded to increase the net book value of property, plant and equipment to its estimated fair value based on estimated current acquisition price, plus costs to make the property fully operational.

    The following table reflects the components of property, plant and equipment, net as of December 15, 2017:

(In millions)		
Buildings and improvements	$	82
Machinery and equipment		38
Rental equipment		85
Assets under construction		13
Internal use software		92
Total property, plant and equipment		310
Less: accumulated depreciation and amortization		—
Property, plant and equipment, net	$	310

25. *Deferred Income Tax.* The adjustment represents the release of the valuation allowance on deferred tax assets for certain non-U.S. subsidiaries which management believes more likely than not will be realized as a result of future taxable income from the reversal of deferred tax liabilities that were established as part of fresh start accounting.

26. *Intangible Assets.* The Company recorded an adjustment to intangible assets for $3,137 million as follows:

	Successor	Predecessor	
(In millions)	December 15, 2017 Post-emergence	December 15, 2017 Pre-emergence	Difference
Customer relationships and other intangible assets	$ 2,155	$ 96	$ 2,059
Technology and patents	905	12	893
Trademarks and trade names	375	190	185
Total	$ 3,435	$ 298	$ 3,137

The fair value of customer relationships was determined using the excess earnings method, a derivation of the income approach that calculates residual profit attributable to an asset after proper returns are paid to complementary or contributory assets.

The fair value of technology and patents and trademarks and trade names was determined using the royalty savings method, a derivation of the income approach that estimates the royalties saved through ownership of the assets.

27. *Goodwill.* Predecessor Company goodwill of $3,541 million was eliminated and Successor Company goodwill of $2,658 million was established based on the calculated reorganization value.

(In millions)		
Reorganization value of Successor Company	$	7,609
Less: Fair value of Successor Company assets		(4,951)
Reorganization value of Successor Company assets in excess of fair value - Goodwill	$	2,658

28. *Other Assets.* The $27 million decrease to other assets is related to prepaid commissions that do not meet the definition of an asset upon emergence as there is no future benefit to the Successor Company.

29. *Deferred Revenue.* The fair value of deferred revenue, which principally relates to payments on annual maintenance contracts, was determined by deducting selling costs and associated profit from the Predecessor Company deferred revenue balance to arrive at the costs and profit associated with fulfilling the liability. Additionally, the decrease includes the impact of an accounting policy change whereby the Successor Company no longer recognizes deferred revenue relating to sales transactions that have been billed, but for which the related account receivable has not yet been collected.

30. *Other Current Liabilities.* The decrease of $3 million to other current liabilities is related to the fair value of real estate leases determined to be above or below market using the income approach based on the difference between the contractual rental rate and the estimated market rental rate, discounted utilizing a risk-related discount rate.

31. *Long-term Debt*. The fair value of the Term Loan Credit Agreement was determined based on a market approach utilizing market-clearing data on the valuation date in addition to bid/ask prices.

32. *Deferred Income Taxes.* The adjustment represents the establishment of deferred tax liabilities related to book/tax differences created by fresh start accounting adjustments. The amount is net of the release of the valuation allowance on deferred tax assets, which management believes more likely than not will be realized as a result of future taxable income from the reversal of such deferred tax liabilities.

33. *Business Restructuring Reserve.* The Company recorded an increase to its non-current business restructuring reserves based on estimated future cash flows applied to a current discount rate at emergence.

34. *Other Liabilities.* A decrease in other liabilities of $43 million relates to deferred revenue and real estate leases as previously discussed.

35. *Accumulated Other Comprehensive Loss.* The remaining balance in Accumulated comprehensive loss was reversed to Reorganization expenses, net.

36. *Fresh Start Adjustments.* The following table reflects the cumulative impact of the fresh start adjustments as discussed above, the elimination of the Predecessor Company's accumulated other comprehensive loss and the adjustments required to eliminate accumulated deficit:

(In millions)		
Eliminate Predecessor Intangible assets	$	(298)
Eliminate Predecessor Goodwill		(3,541)
Establish Successor Intangible assets		3,435
Establish Successor Goodwill		2,658
Fair value adjustment to Inventory		29
Fair value adjustment to Other current assets		(66)
Fair value adjustment to Property, plant and equipment		116
Fair value adjustment to Other assets		(27)
Fair value adjustment to Deferred revenue		235
Fair value adjustment to Business restructuring reserves		(4)
Fair value adjustment to Other current liabilities		3
Fair value adjustment to Long-term debt		(96)
Fair value adjustment to Other liabilities		43
Release Predecessor Accumulated comprehensive loss		(790)
Fresh start adjustments included in Reorganization items, net		1,697
Tax impact of fresh start adjustments		(565)
Gain on fresh start accounting, net	$	1,132

25. Quarterly Financial Data (Unaudited)

The following tables present unaudited quarterly financial data. This information has been derived from the Company's unaudited financial statements and has been prepared on the same basis as the audited Consolidated Financial Statements appearing elsewhere in this Annual Report on Form 10-K.

(In millions, except per share amounts)	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
Fiscal year ended September 30, 2020				
Revenue	$ 755	$ 721	$ 682	$ 715
Gross profit	418	397	371	394
Operating income (loss)	74	53	(597)	15
Benefit from (provision for) income taxes	20	(20)	(37)	(25)
Net income (loss)	37	9	(672)	(54)
Net income (loss) attributable to common stockholders	33	7	(673)	(59)
Earnings (loss) per common share - basic	$ 0.40	$ 0.08	$ (7.24)	$ (0.54)
Earnings (loss) per common share - diluted	$ 0.39	$ 0.08	$ (7.24)	$ (0.54)

(In millions, except per share amounts)	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
Fiscal year ended September 30, 2019				
Revenue	$ 723	$ 717	$ 709	$ 738
Gross profit	392	390	386	407
Operating income (loss)	52	(613)	38	50
(Provision for) benefit from income taxes	(32)	27	6	(3)
Net (loss) income	(34)	(633)	(13)	9
Net (loss) income attributable to common stockholders	(34)	(633)	(13)	9
Earnings (loss) per common share - basic	$ (0.31)	$ (5.70)	$ (0.12)	$ 0.08
Earnings (loss) per common share - diluted	$ (0.31)	$ (5.70)	$ (0.12)	$ 0.08

26. Condensed Financial Information of Parent Company

Avaya Holdings has no material assets or stand-alone operations other than its ownership in Avaya Inc. and its subsidiaries.

These condensed financial statements have been presented on a "Parent Company only" basis. Under a Parent Company only basis of presentation, the Company's investments in its consolidated subsidiaries are presented using the equity method of accounting. These Parent Company only condensed financial statements should be read in conjunction with the Company's Consolidated Financial Statements.

The following presents:

(1) the Successor Company, Parent Company only, statements of financial position as of September 30, 2020 and 2019, the statements of operations, comprehensive (loss) income and cash flows for the fiscal years ended September 30, 2020 and 2019 and the period from December 16, 2017 through September 30, 2018, and;

(2) the Predecessor Company, Parent Company only, statements of operations, comprehensive (loss) income and cash flows for the period from October 1, 2017 through December 15, 2017.

Avaya Holdings Corp.
Parent Company Only
Condensed Statements of Financial Position
(In millions)

	As of September 30,	
	2020	**2019**
ASSETS		
Investment in Avaya Inc.	$ 888	$ 1,604
TOTAL ASSETS	**$ 888**	**$ 1,604**
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES		
Long-term debt	$ 291	$ 273
Other liabilities	233	31
TOTAL LIABILITIES	524	304
Commitments and contingencies		
Convertible series A preferred stock; 125,000 shares issued and outstanding at September 30, 2020 and no shares issued and outstanding at September 30, 2019	128	—
TOTAL STOCKHOLDERS' EQUITY	236	1,300
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	**$ 888**	**$ 1,604**

Avaya Holdings Corp.
Parent Company Only
Condensed Statements of Operations
(In millions, except per share amounts)

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
Equity in net (loss) income of Avaya Inc.	$ (616)	$ (672)	$ 311	$ 2,977
Selling, general and administrative	(35)	(3)	—	—
Interest expense	(26)	(25)	(3)	—
Other (expense) income, net	(3)	29	(21)	—
(LOSS) INCOME BEFORE INCOME TAXES	(680)	(671)	287	2,977
Provision for income taxes	—	—	—	—
NET (LOSS) INCOME	(680)	(671)	287	2,977
Less: Accretion and accrued dividends on Series A preferred stock	(7)	—	—	—
NET (LOSS) INCOME ATTRIBUTABLE TO COMMON STOCKHOLDERS	$ (687)	$ (671)	$ 287	$ 2,977
(LOSS) EARNINGS PER SHARE AVAILABLE TO COMMON STOCKHOLDERS				
Basic	$ (7.45)	$ (6.06)	$ 2.61	$ 5.19
Diluted	$ (7.45)	$ (6.06)	$ 2.58	$ 5.19
Weighted average shares outstanding				
Basic	92.2	110.8	109.9	497.3
Diluted	92.2	110.8	111.1	497.3

Avaya Holdings Corp.
Parent Company Only
Condensed Statements of Comprehensive (Loss) Income
(In millions)

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
Net (loss) income	$ (680)	$ (671)	$ 287	$ 2,977
Equity in other comprehensive (loss) income of Avaya Inc.	(72)	(191)	18	658
Elimination of Predecessor Company accumulated other comprehensive loss	—	—	—	790
Comprehensive (loss) income	$ (752)	$ (862)	$ 305	$ 4,425

Avaya Holdings Corp.
Parent Company Only
Condensed Statements of Cash Flows
(In millions)

	Successor			Predecessor
	Fiscal years ended September 30,		Period from December 16, 2017 through September 30, 2018	Period from October 1, 2017 through December 15, 2017
	2020	2019		
Net (loss) income	$ (680)	$ (671)	$ 287	$ 2,977
Adjustments to reconcile net (loss) income to net cash used for operating activities:				
Equity in net loss (income) of Avaya Inc.	616	672	(311)	(2,977)
Share-based compensation	2	2	—	—
Amortization of debt issuance costs	18	17	4	—
Change in fair value of emergence date warrants	3	(29)	17	—
Changes in operating assets and liabilities	—	9	3	—
Net cash used for operating activities	(41)	—	—	—
Net cash used for investing activities	—	—	(314)	—
Net cash provided by financing activities	41	—	314	—
Net increase (decrease) in cash and cash equivalents	—	—	—	—
Cash and cash equivalents at beginning of period	—	—	—	—
Cash and cash equivalents at end of period	$ —	$ —	$ —	$ —

Item 9. ***Changes in and Disagreements with Accountants on Accounting and Financial Disclosure***

None.

Item 9A. ***Controls and Procedures***

Disclosure Controls and Procedures

As of September 30, 2020, the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Chief Financial Officer, evaluated the effectiveness of the design and operation of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended). Based on this evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of September 30, 2020 to ensure that information required to be disclosed by the Company in reports filed or submitted under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

The Company's management, including the CEO and CFO, is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act. Management conducted an evaluation of the effectiveness of the Company's internal control over financial reporting based on the criteria set forth in *Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO")*. Based on that evaluation, management has concluded that its internal control over financial reporting was effective as of September 30, 2020 to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles. The Company's independent registered public accounting firm, PricewaterhouseCoopers LLP, has issued an audit report on the Company's internal control over financial reporting, which appears in Part II, Item 8 of this Form 10-K.

Changes in Internal Control Over Financial Reporting

There have been no changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) during the quarter ended September 30, 2020 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Item 9B. ***Other Information***

None.

PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***

Information required by this item will be included in an amendment hereto or a definitive proxy statement to be filed with the SEC within 120 days of the fiscal year ended September 30, 2020.

Item 11. ***Executive Compensation***

Information required by this item will be included in an amendment hereto or a definitive proxy statement to be filed with the SEC within 120 days of the fiscal year ended September 30, 2020.

Item 12. ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

Information required by this item will be included in an amendment hereto or a definitive proxy statement to be filed with the SEC within 120 days of the fiscal year ended September 30, 2020.

Item 13. ***Certain Relationships and Related Transactions, and Director Independence***

Information required by this item will be included in an amendment hereto or a definitive proxy statement to be filed with the SEC within 120 days of the fiscal year ended September 30, 2020.

Item 14. ***Principal Accountant Fees and Services***

Information required by this item will be included in an amendment hereto or a definitive proxy statement to be filed with the SEC within 120 days of the fiscal year ended September 30, 2020.

PART IV

Item 15. ***Exhibits, Financial Statement Schedules***

(a) (1) Financial Statements - The information required by this item is included in Part II Item 8 of this Annual Report on Form 10-K.

(2) Financial Statement Schedules - The information required by this item is included in Note 9, "Supplementary Financial Information," to our Consolidated Financial Statements included in Part II Item 8 of this Annual Report on Form 10-K.

(3) Exhibits - See Index to Exhibits, which is incorporated by reference in this Item. The Exhibits listed in the accompanying Index to Exhibits are filed herewith or incorporated by reference as part of this Annual Report on Form 10-K.

(b) Exhibits - See Index to Exhibits, which is incorporated by reference in this Item. The Exhibits listed in the accompanying Index to Exhibits are filed herewith or incorporated by reference as part of this Annual Report on Form 10-K.

INDEX TO EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
2.1	Second Amended Joint Chapter 11 Plan of Reorganization of Avaya Inc. and its Debtor Affiliates	10-12B	001-38289	2.1	December 15, 2017	
3.1	Amended and Restated Certificate of Incorporation of Avaya Holdings Corp.	10-12B	001-38289	3.1	December 15, 2017	
3.2	Certificate of Designations of the Series A Convertible Preferred Stock	8-K	001-38289	3.1	October 31, 2019	
3.3	Amended and Restated Bylaws of Avaya Holdings Corp.	8-K	001-38289	3.1	November 14, 2018	
4.1	Form of Certificate of Common Stock of Avaya Holdings Corp.	10-12B	001-38289	4.1	December 15, 2017	
4.2	Form of Registration Rights Agreement between Avaya Holdings Corp. and the stockholders party thereto	10-12B	001-38289	4.2	December 15, 2017	
4.3	Description of Capital Stock	10-K	001-38289	4.3	November 29, 2019	
4.4	Warrant Agreement, dated as of December 15, 2017, between Avaya Holdings Corp. and American Stock Transfer & Trust Company, LLC	10-12B	001-38289	4.6	December 15, 2017	
4.5	Form of Warrant Certificate	10-12B	001-38289	4.7	December 15, 2017	
4.6	Indenture, dated June 11, 2018, by and between Avaya Holdings Corp. and The Bank of New York Mellon Trust Company, N.A.	8-K	001-38289	4.1	June 12, 2018	
4.7	Indenture, dated September 25, 2020, among Avaya Inc., the guarantors named therein and Wilmington Trust, National Association, as trustee and notes collateral agent					X
10.1	Investment Agreement, dated as of October 3, 2019, by and between Avaya Holdings Corp. and RingCentral, Inc.	8-K	001-38289	10.1	October 3, 2019	
10.2	Investor Rights Agreement, dated October 31, 2019, by and between Avaya Holdings Corp. and RingCentral, Inc.	8-K	001-38289	10.1	October 31, 2019	
10.3 +	First Amended and Restated Framework Agreement, dated as of February 10, 2020, by and between Avaya Inc. and RingCentral, Inc.	10-Q	001-38289	10.1	February 10, 2020	
10.4	Term Loan Credit Agreement, dated as of December 15, 2017, by and among Avaya Inc., Avaya Holdings Corp., Goldman Sachs Bank USA, as administrative agent and collateral agent, the subsidiary guarantors party thereto and each lender from time to time party thereto	10-12B	001-38289	10.5	December 22, 2017	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.5	Amendment No. 1, dated as of June 18, 2018, to the Term Loan Credit Agreement, dated as of December 15, 2017, among Avaya Inc., as borrower, Avaya Holdings Corp., the lenders from time to time party thereto, Goldman Sachs Bank USA, as the Administrative Agent and the Collateral Agent, and the other parties from time to time party thereto	8-K	001-38289	10.1	June 20, 2018	
10.6	Amendment No. 2, dated as of September 25, 2020, to the Term Loan Credit Agreement, dated as of December 15, 2017, among Avaya Inc., as borrower, Avaya Holdings Corp., the lenders from time to time party thereto, Goldman Sachs Bank USA, as the Administrative Agent and the Collateral Agent, and the other parties from time to time party thereto					X
10.7	ABL Credit Agreement, dated as of December 15, 2017, among Avaya Inc., Avaya Holdings Corp., Avaya Canada Corp., Avaya UK, Avaya International Sales Limited, Avaya Deutschland GmbH, Avaya GmbH & Co. KG, Citibank, N.A. as collateral agent and administrative agent, the lending institutions from time to time party thereto and the lending institutions named therein as letters of credit issuers and swing line lenders	10-12B	001-38289	10.6	December 22, 2017	
10.8	Amendment No. 1, dated as of September 25, 2020, to the ABL Credit Agreement, dated as of December 15, 2017, among Avaya Inc., Avaya Holdings Corp., Avaya Canada Corp., Avaya UK, Avaya International Sales Limited, Avaya Deutschland GmbH, Avaya GmbH & Co. KG, Citibank, N.A. as collateral agent and administrative agent, the lending institutions from time to time party thereto and the lending institutions named therein as letters of credit issuers and swing line lenders					X
10.9*	Avaya Holdings Corp. 2017 Equity Incentive Plan	10-12B	001-38289	10.7	December 15, 2017	
10.10*	Form of Restricted Stock Unit Emergence Award Agreement Pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan for James M. Chirico, Jr.	10-12B	001-38289	10.9	December 22, 2017	
10.11*	Form of Restricted Stock Unit Emergence Award Agreement Pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan for Senior Executives	10-12B	001-38289	10.10	December 22, 2017	
10.12*	Form of Restricted Stock Unit Emergence Award Agreement Pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan for Other Employees	10-12B	001-38289	10.11	December 22, 2017	
10.13*	Form of Nonqualified Stock Option Emergence Award Agreement Pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan for James M. Chirico, Jr.	10-12B	001-38289	10.12	December 22, 2017	
10.14*	Form of Nonqualified Stock Option Emergence Award Agreement Pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan for Senior Executives	10-12B	001-38289	10.13	December 22, 2017	
10.15*	Form of Nonqualified Stock Option Emergence Award Agreement Pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan for Other Employees	10-12B	001-38289	10.14	December 22, 2017	
10.16*	Form of Restricted Stock Unit Award Agreement pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan	10-Q	001-38289	10.1	August 14, 2018	
10.17*	Form of Nonqualified Stock Option Award Agreement pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan	10-Q	001-38289	10.2	August 14, 2018	
10.18*	Form of Performance Restricted Stock Unit Award Agreement pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan	10-Q	001-38289	10.1	February 15, 2019	
10.19*	Form of Performance Restricted Stock Unit Award Agreement for the Chief Executive	10-Q	001-38289	10.2	February 15, 2019	

Officer pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.20*	Form of Restricted Stock Unit Award Agreement for Non-Employee Directors pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan	10-Q	001-38289	10.1	May 15, 2018	
10.21*	Form of Restricted Stock Unit Award Agreement for Non-Employee Directors pursuant to the Avaya Holdings Corp. 2017 Equity Incentive Plan	10-Q	001-38289	10.3	February 15, 2019	
10.22*	Avaya Holdings Corp. 2019 Omnibus Inducement Equity Plan	S-8	333-234716	99.2	November 15, 2019	
10.23*	Form of Restricted Stock Unit Award Agreement pursuant to the Avaya Holdings Corp. 2019 Omnibus Inducement Equity Plan	10-Q	001-38289	10.4	February 10, 2020	
10.24*	Form of Nonqualified Stock Option Award Agreement Pursuant to the Avaya Holdings Corp. 2019 Omnibus Inducement Equity Plan	10-Q	001-38289	10.5	February 10, 2020	
10.25*	Avaya Holdings Corp. 2019 Equity Incentive Plan	S-8	333-234716	99.1	November 15, 2019	
10.26*	Form of Restricted Stock Unit Award Agreement pursuant to the Avaya Holdings Corp. 2019 Equity Incentive Plan	10-Q	001-38289	10.1	May 11, 2020	
10.27*	Form of Non-Qualified Stock Option Award Agreement pursuant to the Avaya Holdings Corp. 2019 Equity Incentive Plan	10-Q	001-38289	10.2	May 11, 2020	
10.28*	Form of Performance Restricted Stock Unit Award Agreement pursuant to the Avaya Holdings Corp. 2019 Equity Incentive Plan	10-Q	001-38289	10.3	May 11, 2020	
10.29*	Form of Restricted Stock Unit Award Agreement pursuant to the Avaya Holdings Corp. 2019 Equity Incentive Plan					X
10.30*	Form of Performance Restricted Stock Unit Award Agreement pursuant to the Avaya Holdings Corp. 2019 Equity Incentive Plan					X
10.31*	Form of Non-Employee Director Deferred Restricted Stock Unit Award Agreement pursuant to the Avaya Holdings Corp. 2019 Equity Incentive Plan	10-Q	001-38289	10.4	May 11, 2020	
10.32*	Avaya Holdings Corp. 2020 Employee Stock Purchase Plan	10-Q	001-38289	10.5	May 11, 2020	
10.33*	Avaya Inc. Executive Annual Incentive Plan, effective March 7, 2018	8-K	001-38289	10.1	March 8, 2018	
10.34*	Avaya Inc. Involuntary Separation Plan for Senior Executives, dated May 16, 2018	8-K	001-38289	10.1	May 18, 2018	
10.35*	Avaya Inc. Change in Control Severance Plan, dated May 16, 2018	8-K	001-38289	10.2	May 18, 2018	
10.36*	First Amendment to Avaya Inc. Change in Control Severance Plan, dated May 16, 2018, effective February 11, 2019	10-Q	001-38289	10.4	February 15, 2019	
10.37	Base Convertible Bond Hedge Confirmation, by and between Avaya Holdings Corp. and Barclays Bank PLC, dated June 6, 2018	8-K	001-38289	10.1	June 12, 2018	
10.38	Base Convertible Bond Hedge Confirmation, by and between Avaya Holdings Corp. and Credit Suisse Capital LLC, dated June 6, 2018	8-K	001-38289	10.2	June 12, 2018	
10.39	Base Convertible Bond Hedge Confirmation, by and between Avaya Holdings Corp. and JPMorgan Chase Bank, National Association, dated June 6, 2018	8-K	001-38289	10.3	June 12, 2018	
10.40	Base Warrant Confirmation, by and between Avaya Holdings Corp. and Barclays Bank PLC, dated June 6, 2018	8-K	001-38289	10.4	June 12, 2018	
10.41	Base Warrant Confirmation, by and between Avaya Holdings Corp. and Credit Suisse Capital LLC, dated June 6, 2018	8-K	001-38289	10.5	June 12, 2018	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.42	Base Warrant Confirmation, by and between Avaya Holdings Corp. and JPMorgan Chase Bank, National Association, dated June 6, 2018	8-K	001-38289	10.6	June 12, 2018	
10.43	Additional Convertible Bond Hedge Confirmation, by and between Avaya Holdings Corp. and Barclays Bank PLC, dated June 26, 2018	8-K	001-38289	10.1	June 28, 2018	
10.44	Additional Convertible Bond Hedge Confirmation, by and between Avaya Holdings Corp. and Credit Suisse Capital LLC, dated June 26, 2018	8-K	001-38289	10.2	June 28, 2018	
10.45	Additional Convertible Bond Hedge Confirmation, by and between Avaya Holdings Corp. and JPMorgan Chase Bank, National Association, dated June 26, 2018	8-K	001-38289	10.3	June 28, 2018	
10.46	Additional Warrant Confirmation, by and between Avaya Holdings Corp. and Barclays Bank PLC, dated June 26, 2018	8-K	001-38289	10.4	June 28, 2018	
10.47	Additional Warrant Confirmation, by and between Avaya Holdings Corp. and Credit Suisse Capital LLC, dated June 26, 2018	8-K	001-38289	10.5	June 28, 2018	
10.48	Additional Warrant Confirmation, by and between Avaya Holdings Corp. and JPMorgan Chase Bank, National Association, dated June 26, 2018	8-K	001-38289	10.6	June 28, 2018	
10.49*	Executive Employment Agreement, dated November 13, 2017, between James M. Chirico, Jr. and Avaya Inc.	10-12B	001-38289	10.8	December 15, 2017	
10.50*	Amendment No. 1 to Executive Employment Agreement, dated January 3, 2020, between James M. Chirico, Jr. and Avaya Inc.	8-K	001-38289	10.1	January 6, 2020	
10.51*	Employment Offer Letter, dated January 30, 2019, between Kieran McGrath and Avaya Inc.	10-K	001-38289	10.38	November 29, 2019	
10.52*	Employment Offer Letter, dated November 16, 2017, between Shefali Shah and Avaya Inc.	10-K	001-38289	10.39	November 29, 2019	
10.53*	Employment Offer Letter, dated November 3, 2019, between Anthony F. Bartolo and Avaya Inc.					X
10.54*	Employment Offer Letter, dated August 9, 2020, between Stephen D. Spears and Avaya Inc.					X
10.55*	Form of Director and Officer Indemnification Agreement	10-12B	001-38289	10.1	December 22, 2017	
21.1	List of Subsidiaries					X
23.1	Consent of Independent Registered Public Accounting Firm					X
23.2	Consent of Independent Registered Public Accounting Firm					X
31.1	Certification of James M. Chirico, Jr. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification of Kieran J. McGrath, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32.1	Certification of James M. Chirico, Jr. pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
32.2	Certification of Kieran J. McGrath, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
101.INS	XBRL Instance Document - The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.					X
101.SCH	XBRL Taxonomy Extension Schema					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase					X
101.LAB	XBRL Taxonomy Extension Labels Linkbase					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase					X

104	Cover Page Interactive Data File (Formatted as Inline XBRL in Exhibit 101)	X

***** Indicates management contract or compensatory plan or arrangement.

[+] Portions of this exhibit have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K, which portions will be furnished to the Securities and Exchange Commission upon request.

(c) Not applicable.

Item 16. ***Form 10-K Summary***

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on November 25, 2020.

AVAYA HOLDINGS CORP.

By: /s/ KEVIN SPEED
Name: **Kevin Speed**
Title: **Vice President, Controller and Chief Accounting Officer**

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JAMES M. CHIRICO, JR. **James M. Chirico, Jr.**	Director, President and Chief Executive Officer (Principal Executive Officer)	November 25, 2020
/s/ KIERAN J. MCGRATH **Kieran J. McGrath**	Executive Vice President, Chief Financial Officer (Principal Financial Officer)	November 25, 2020
/s/ KEVIN SPEED **Kevin Speed**	Vice President, Corporate Controller and Chief Accounting Officer	November 25, 2020
/s/ WILLIAM D. WATKINS **William D. Watkins**	Chairman of the Board of Directors	November 25, 2020
/s/ STEPHAN SCHOLL **Stephan Scholl**	Director	November 25, 2020
/s/ SUSAN L. SPRADLEY **Susan L. Spradley**	Director	November 25, 2020
/s/ STANLEY J. SUTULA, III **Stanley J. Sutula, III**	Director	November 25, 2020
/s/ ROBERT THEIS **Robert Theis**	Director	November 25, 2020
/s/ SCOTT D. VOGEL **Scott D. Vogel**	Director	November 25, 2020
/s/ JACQUELINE E. YEANEY **Jacqueline E. Yeaney**	Director	November 25, 2020

EXHIBIT 4.7
Execution Version

AVAYA INC.

AND

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee and Notes Collateral Agent

6.125% Senior First Lien Notes due 2028

INDENTURE

Dated as of September 25, 2020

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Page

ARTICLE XII

COLLATERAL

ARTICLE XIII

MISCELLANEOUS

INDENTURE dated as of September 25, 2020, by and among AVAYA INC., a Delaware corporation (the "Issuer" or the "Company"), each of the Guarantors (as defined herein) listed on the signature pages hereto, and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as trustee (the "Trustee") and as notes collateral agent (the "Notes Collateral Agent").

W I T N E S S E T H

WHEREAS, the Issuer has duly authorized the execution and delivery of this Indenture to provide for the issuance of (i) its 6.125% Senior First Lien Notes due 2028 issued on the date hereof (the "Initial Notes") and (ii) any additional Notes ("Additional Notes" and, together with the Initial Notes, the "Notes") that may be issued after the Issue Date.

WHEREAS, all things necessary (i) to make the Notes, when executed and duly issued by the Issuer and authenticated and delivered hereunder, the valid obligations of the Issuer, and (ii) to make this Indenture a valid agreement of the Issuer and the Guarantors have been done;

NOW, THEREFORE, in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders, as follows:

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1. Definitions.

"ABL Collateral Agent" means Citibank, N.A., as administrative agent and collateral agent for the Senior Secured ABL Facility or any successor collateral agent.

"ABL Collateral Documents" means, collectively, the ABL Intercreditor Agreement, other security or intercreditor agreements relating to the ABL Priority Collateral and instruments filed and recorded in appropriate jurisdictions to preserve and protect the Liens on the ABL Priority Collateral, as amended and restated, modified, renewed or replaced from time to time.

"ABL Debt Documents" means the Senior Secured ABL Facility and the ABL Collateral Documents.

"ABL Obligations" means Obligations in respect of the Senior Secured ABL Facility and any security or other documents related thereto.

"ABL Priority Collateral" means any U.S. Collateral (or similar term) as defined in any ABL Collateral Document or any other ABL Debt Document (for the avoidance of doubt, excluding the Excluded Collateral), in each case, owned by the Issuer or any Guarantor, or any assets of the Issuer or any other Guarantor with respect to which a Lien is granted or purported to be granted pursuant to an ABL Collateral Document as security, for any ABL Obligations consisting of the following (including for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any similar provision of any foreign Bankruptcy Law), would be ABL Priority Collateral;

(1) all Accounts, other than Accounts which constitute identifiable proceeds of Notes/Term Priority Collateral;

(2) all Chattel Paper (including Tangible Chattel Paper and Electronic Chattel Paper), other than Chattel Paper which constitutes identifiable proceeds of Notes/Term Priority Collateral;

(3) (x) all Deposit Accounts (other than Term Priority Accounts) and money and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein, and (y) all Securities Accounts

(other than Term Priority Accounts), Security Entitlements and Securities credited to such Securities Accounts, and, in each case, all cash, checks and other property held therein or credited thereto; provided, however, that during the continuance of an Event of Default, to the extent that identifiable proceeds of Notes/Term Priority Collateral are deposited in any such Deposit Accounts or Securities Accounts, such identifiable proceeds shall be treated as Notes/Term Priority Collateral;

(4) all Inventory;

(5) to the extent relating to, evidencing or governing any of the items referred to in the preceding clauses (1) through (4) constituting ABL Priority Collateral, all Documents, General Intangibles (other than any Intellectual Property), Instruments (including Promissory Notes) and Commercial Tort Claims; provided that to the extent any of the foregoing also relates to Collateral of a type not referred to in clauses (1) through (4), only that portion related to the items referred to in the preceding clauses (1) through (4) shall be included in the ABL Priority Collateral;

(6) to the extent relating to any of the items referred to in the preceding clauses (1) through (5) constituting ABL Priority Collateral, all Supporting Obligations and Letter-of- Credit Rights; provided that to the extent any of the foregoing also relates to Notes/Term Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (5) shall be included in the ABL Priority Collateral;

(7) all books and Records relating to the items referred to in the preceding clauses (1) through (6) constituting ABL Priority Collateral (including all books, databases, customer lists, engineer drawings, and Records, whether tangible or electronic, which contain any information relating to any of the items referred to in the preceding clauses (1) through (6)); and

(8) all collateral security and guarantees with respect to any of the foregoing and all cash, Money, insurance proceeds, Instruments, Securities, Financial Assets and Deposit Accounts received as proceeds of any of the foregoing (such proceeds, "ABL Priority Proceeds"); provided, however, that no proceeds of ABL Priority Proceeds will constitute ABL Priority Collateral unless such proceeds of ABL Priority Proceeds would otherwise constitute ABL Priority Collateral.

For purposes of this definition of "ABL Priority Collateral" only, capitalized terms not otherwise defined in this Indenture shall have the meanings specified in the ABL Intercreditor Agreement.

"ABL Intercreditor Agreement" the Intercreditor Agreement, between Goldman Sachs Bank USA, as Term Priority Representative, on the one hand, and Citibank, N.A., as ABL Representative, on the other hand and to which the Notes Collateral Agent will accede as of the Issue Date.

"Acquired Indebtedness" means with respect to any Person (x) Indebtedness of any other Person or any of its Subsidiaries existing at the time such other Person becomes a Restricted Subsidiary or merges or amalgamates with or into or consolidates or otherwise combines with the Company or any Restricted Subsidiary and (y) Indebtedness secured by a Lien encumbering any asset acquired by such Person. Acquired Indebtedness shall be deemed to have been incurred, with respect to clause (x) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary or on the date of the relevant merger, amalgamation, consolidation, acquisition or other combination.

"Additional Assets" means:

(1) any property or assets (other than Capital Stock) used or to be used by the Company, a Restricted Subsidiary or otherwise useful in a Similar Business (it being understood that capital expenditures on property or assets already used in a Similar Business or to replace any property or assets that are the subject of such Asset Disposition shall be deemed an investment in Additional Assets);

(2) the Capital Stock of a Person that is engaged in a Similar Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Restricted Subsidiary; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary.

"Additional Pari Obligations" means any Indebtedness having Pari Passu Lien Priority relative to the Notes with respect to the Collateral; *provided* that an authorized representative of the holders of such Indebtedness shall have executed a joinder to the Pari Passu Intercreditor Agreement and the ABL Intercreditor Agreement.

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"AI" means an "accredited investor" as described in Rule 501(a)(4) under the Securities Act.

"Alternative Currency" means any currency (other than Dollars) that is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars (as determined in good faith by the Company).

"Applicable Laws" means, as to any Person, any law (including common law), statute, regulation, ordinance, rule, order, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

"Applicable Premium" means the greater of (A) 1.0% of the principal amount of such Note and (B) on any redemption date, the excess (to the extent positive) of:

(a) the present value at such redemption date of (i) the redemption price of such Note at September 15, 2023 (such redemption price (expressed in percentage of principal amount) being set forth in the table under Section 5.7(d) (excluding accrued but unpaid interest, if any)), plus (ii) all required interest payments due on such Note to and including such date set forth in clause (i) (excluding accrued but unpaid interest, if any), computed upon the redemption date using a discount rate equal to the Applicable Treasury Rate at such redemption date plus 50 basis points; over

(b) the outstanding principal amount of such Note;

in each case, as calculated by the Company or on behalf of the Company by such Person as the Company shall designate. The Trustee shall have no duty to calculate or verify the calculations of the Applicable Premium.

"Applicable Treasury Rate" means the weekly average for each Business Day during the most recent week that has ended at least two (2) Business Days prior to the redemption date of the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the Federal Reserve Statistical Release H.15 (or, if such statistical release is not so published or available, any publicly available source of similar market data selected by the Company in good faith)) most nearly equal to the period from the redemption date to September 15, 2023; *provided, however*, that if the period from the redemption date to September 15, 2023 is not equal to the constant maturity of a United States Treasury security for which a yield is given, the Applicable Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to such applicable date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

"Asset Disposition" means:

(a) the voluntary sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Leaseback Transaction) of the Company or any of its Restricted Subsidiaries (in each case other than Capital Stock of the Company) (each referred to in this definition as a "disposition"); or

(b) the issuance or sale of Capital Stock of any Restricted Subsidiary (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 3.2 hereof or directors' qualifying shares and shares issued to foreign nationals as required under applicable law), whether in a single transaction or a series of related transactions;

in each case, other than:

(1) a disposition by the Company or a Restricted Subsidiary to the Company or a Restricted Subsidiary, including pursuant to any Intercompany License Agreement;

(2) a disposition of cash, Cash Equivalents or Investment Grade Securities, including any marketable securities portfolio owned by the Company and its Subsidiaries on the Issue Date;

(3) a disposition of inventory, goods or other assets (including Settlement Assets) in the ordinary course of business or consistent with past practice or held for sale or no longer used in the ordinary course of business, including any disposition of disposed, abandoned or discontinued operations;

(4) a disposition of obsolete, worn-out, uneconomic, damaged or surplus property, equipment or other assets or property, equipment or other assets that are no longer economically practical or commercially desirable to maintain or used or useful in the business of the Company and its Restricted Subsidiaries whether now or hereafter owned or leased or acquired in connection with an acquisition or used or useful in the conduct of the business of the Company and its Restricted Subsidiaries (including by ceasing to enforce, allowing the lapse, abandonment or invalidation of or discontinuing the use or maintenance of or putting into the public domain any intellectual property that is, in the reasonable judgment of the Company or the Restricted Subsidiaries, no longer used or useful, or economically practicable to maintain, or in respect of which the Company or any Restricted Subsidiary determines in its reasonable judgment that such action or inaction is desirable);

(5) transactions permitted under Section 4.1 hereof or a transaction that constitutes a Change of Control;

(6) an issuance of Capital Stock by a Restricted Subsidiary to the Company or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors of the Company;

(7) any dispositions of Capital Stock, properties or assets in a single transaction or series of related transactions with a fair market value (as determined in good faith by the Company) not to exceed the greater of $70.0 million and 10% of LTM EBITDA;

(8) any Restricted Payment that is permitted to be made, and is made, under Section 3.3 and the making of any Permitted Payment or Permitted Investment or, solely for purposes of Section 3.5(a)(3), asset sales, the proceeds of which are used to make such Restricted Payments or Permitted Investments;

(9) dispositions in connection with Permitted Liens;

(10) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or consistent with past practice or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(11) conveyances, sales, transfers, licenses, sublicenses, cross-licenses or other dispositions of intellectual property, software or other general intangibles and licenses, sublicenses, cross-licenses leases or subleases of other property, in each case, in the ordinary course of business or consistent with past practice or pursuant to a research or development agreement in which the counterparty to such agreement receives a license in the intellectual property or software that result from such agreement;

(12) the lease, assignment, license, sublease or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice;

(13) foreclosure, condemnation, expropriation, forced disposition or any similar action with respect to any property or other assets or the granting of Liens not prohibited by this Indenture;

(14) the sale, discount or other disposition (with or without recourse, and on customary or commercially reasonable terms and for credit management purposes) of inventory, accounts receivable or notes receivable in the ordinary course of business or consistent with past practice, or the conversion or exchange of accounts receivable for notes receivable;

(15) any issuance or sale of Capital Stock in, or Indebtedness or other securities of, an Unrestricted Subsidiary or any other disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary;

(16) any disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Company or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired, or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(17) (i) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased, (ii) dispositions of property to the extent that the proceeds of such disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually promptly purchased) and (iii) to the extent allowable under Section 1031 of the Code or comparable law or regulation, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(18) any disposition of Securitization Assets or Receivables Assets, or participations therein, in connection with any Qualified Securitization Financing or Receivables Facility, or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with past practice;

(19) any financing transaction with respect to property constructed, acquired, leased, renewed, relocated, expanded, replaced, repaired, maintained, upgraded or improved (including any reconstruction, refurbishment, renovation and/or development of real property) by the Company or any Restricted Subsidiary after the Issue Date, including Sale and Leaseback Transactions and asset securitizations, permitted by this Indenture;

(20) sales, transfers or other dispositions of Investments in joint ventures or similar entities to the extent required by, or made pursuant to customary buy/sell arrangements between, the parties set forth in joint venture arrangements and similar binding arrangements;

(21) any surrender or waiver of contractual rights or the settlement, release, surrender or waiver of contractual, tort, litigation or other claims of any kind;

(22) the unwinding of any Cash Management Obligations or Hedging Obligations;

(23) transfers of property or assets subject to Casualty Events upon receipt of the Net Proceeds of such Casualty Event; *provided* that any Cash Equivalents received by the Company or any of its Restricted Subsidiaries

in respect of such Casualty Event shall be deemed to be Net Available Cash of an Asset Disposition, and such Net Available Cash shall be applied in accordance with Section 3.5;

(24) any disposition to a Captive Insurance Subsidiary;

(25) any sale of property or assets, if the acquisition of such property or assets was financed with Excluded Contributions and the proceeds of such sale are used to make a Restricted Payment pursuant to Section 3.3(b)(10)(b);

(26) any sale, transfer or other disposition to affect the formation of any Subsidiary that is a Delaware Divided LLC; *provided* that upon formation of such Delaware Divided LLC, such Delaware Divided LLC shall be a Restricted Subsidiary; *provided further* that any such assets or properties so sold, transferred or otherwise disposed shall be held by such Restricted Subsidiary;

(27) any disposition of non-revenue producing assets to a Person who is providing services related to such assets, the provision of which have been or are to be outsourced by the Company or any Restricted Subsidiary to such Person;

(28) any dispositions of assets not constituting Collateral with a fair market value (as determined in good faith by the Company) not to exceed $160 million in the aggregate for all such dispositions pursuant to this clause (28); and

(29) any dispositions of intellectual property to any Non-Guarantor with a fair market value (as determined in good faith by the Company) not to exceed $100 million in the aggregate for all such dispositions pursuant to this clause (29).

In the event that a transaction (or any portion thereof) meets the criteria of a permitted Asset Disposition and would also be a Permitted Investment or an Investment permitted under Section 3.3, the Company, in its sole discretion, will be entitled to divide and classify such transaction (or a portion thereof) as an Asset Disposition and/or one or more of the types of Permitted Investments or Investments permitted under Section 3.3.

"Associate" means (i) any Person engaged in a Similar Business of which the Company or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock and (ii) any joint venture entered into by the Company or any Restricted Subsidiary.

"Bankruptcy Law" means Title 11 of the United States Code or similar federal or state law for the relief of debtors.

"Board of Directors" means (i) with respect to the Company or any corporation, the board of directors or managers, as applicable, of the corporation, or any duly authorized committee thereof; (ii) with respect to any partnership, the board of directors or other governing body of the general partner, as applicable, of the partnership or any duly authorized committee thereof; (iii) with respect to a limited liability company, the managing member or members or any duly authorized controlling committee thereof; and (iv) with respect to any other Person, the board or any duly authorized committee of such Person serving a similar function.

Whenever any provision requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of the directors on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval). Unless the context requires otherwise, Board of Directors means the Board of Directors of the Company.

"Borrowing Base" means, as of any date, an amount equal to the sum of (a) 100% of the net book value of all inventory and rental products, plus (b) 95% of the net book value of investment grade accounts receivable, (c) 90% of the net book value of accounts receivable, (d) 90% of credit card receivables and (e) 100% of all cash held in

a deposit account either (x) maintained with the ABL Collateral Agent or (y) over which the ABL Collateral Agent has a perfected security interest, in each case, of the Company and its Restricted Subsidiaries in accordance with GAAP, as of the most recently ended fiscal quarter for which consolidated financial statements are available (which may, at the Company's election, be internal financial statements) immediately preceding the date of determination and measured as of the date of incurrence or establishment of commitments (at the Company's election). The Borrowing Base shall be calculated on a pro forma basis to include any accounts receivable, inventory, credit card receivables, unbilled receivables and billings owned by an entity that is to be merged with or into the Company or a Restricted Subsidiary or is to become a Restricted Subsidiary on the date of determination.

"Broker-Dealer Subsidiary" means any Subsidiary that is registered as a broker-dealer under the Exchange Act or any other Applicable Law requiring similar registration.

"Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York, United States or in the jurisdiction of the place of payment are authorized or required by law to close. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall not be reflected in computing interest or fees, as the case may be.

"Business Successor" means (i) any former Subsidiary of the Company and (ii) any Person that, after the Issue Date, has acquired, merged or consolidated with a Subsidiary of the Company (that results in such Subsidiary ceasing to be a Subsidiary of the Company), or acquired (in one transaction or a series of transactions) all or substantially all of the property and assets or business of a Subsidiary or assets constituting a business unit, line of business or division of a Subsidiary of the Company.

"Capital Stock" of any Person means any and all shares of, rights to purchase or acquire, warrants, options or depositary receipts for, or other equivalents of, or partnership or other interests in (however designated), equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into, or exchangeable for, such equity.

"Capitalized Lease Obligations" means an obligation that is required to be classified and accounted for as a capitalized lease (and, for the avoidance of doubt, not a straight-line or operating lease) for financial reporting purposes in accordance with GAAP. The amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty; *provided* that all obligations of the Company and its Restricted Subsidiaries that are or would be characterized as an operating lease as determined in accordance with GAAP as in effect on December 15, 2017 (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a Capitalized Lease Obligation) for purposes of this Indenture regardless of any change in GAAP following December 15, 2017 (that would otherwise require such obligation to be recharacterized as a Capitalized Lease Obligation).

"Capitalized Software Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

"Captive Insurance Subsidiary" means (i) any Subsidiary of the Company operating for the purpose of (a) insuring the businesses, operations or properties owned or operated by a Parent Entity, the Company or any of its Subsidiaries, including their future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members), and related benefits and/or (b) conducting any activities or business incidental thereto (it being understood and agreed that activities which are relevant or appropriate to qualify as an insurance company for U.S. federal or state tax purposes shall be

considered "activities or business incidental thereto") or (ii) any Subsidiary of any such insurance subsidiary operating for the same purpose described in clause (i) above.

"Cash Equivalents" means:

(1) (a) Dollars, Canadian dollars, pounds sterling, yen, euro, any national currency of any member state of the European Union or any Alternative Currency; or (b) any other foreign currency held by the Company and its Restricted Subsidiaries from time to time in the ordinary course of business or consistent with past practice;

(2) securities issued or directly and fully guaranteed or insured by the United States, Canadian, United Kingdom or Japanese governments, a member state of the European Union or, in each case, any agency or instrumentality thereof (provided that the full faith and credit obligation of such country or such member state is pledged in support thereof), with maturities of 36 months or less from the date of acquisition;

(3) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits, demand deposits or bankers' acceptances having maturities of not more than two years from the date of acquisition thereof issued by any bank, trust company or other financial institution (a) whose commercial paper is rated at least "P-2" or the equivalent thereof by S&P or at least "A-2" or the equivalent thereof by Moody's (or, if at the time, neither S&P or Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company) or (b) having combined capital and surplus in excess of $100.0 million;

(4) repurchase obligations for underlying securities of the types described in clauses (2), (3), (7) and (8) entered into with any Person meeting the qualifications specified in clause (3) above;

(5) securities with maturities of two years or less from the date of acquisition backed by standby letters of credit issued by any Person meeting the qualifications in clause (3) above;

(6) commercial paper and variable or fixed rate notes issued by any Person meeting the qualifications specified in clause (3) above (or by the parent company thereof) maturing within two years after the date of creation thereof, or if no rating is available in respect of the commercial paper or variable or fixed rate notes, the issuer of which has an equivalent rating in respect of its long-term debt;

(7) marketable short-term money market and similar securities having a rating of at least "P-2" or "A-2" from either S&P or Moody's, respectively (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company);

(8) readily marketable direct obligations issued by any state, province, commonwealth or territory of the United States of America or any political subdivision, taxing authority or any agency or instrumentality thereof, rated BBB- (or the equivalent) or better by S&P or Baa3 (or the equivalent) or better by Moody's (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company) with maturities of not more than two years from the date of acquisition;

(9) readily marketable direct obligations issued by any foreign government or any political subdivision, taxing authority or agency or instrumentality thereof, with a rating of "BBB-" or higher from S&P or "Baa3" or higher by Moody's or the equivalent of such rating by such rating organization (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company) with maturities of not more than two years from the date of acquisition;

(10) Investments with average maturities of 24 months or less from the date of acquisition in money market funds with a rating of "A" or higher from S&P or "A-2" or higher by Moody's or the equivalent of such

rating by such rating organization (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company);

(11) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers' acceptance of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "P-2" or the equivalent thereof or from Moody's is at least "A-2" or the equivalent thereof (any such bank being an "*Approved Foreign Bank*"), and in each case with maturities of not more than 270 days from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank;

(12) Indebtedness or Preferred Stock issued by Persons with a rating of "BBB-" or higher from S&P or "Baa3" or higher by Moody's or the equivalent of such rating by such rating organization (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company) with maturities of not more than two years from the date of acquisition;

(13) bills of exchange issued in the United States of America, Canada, the United Kingdom, Japan, a member state of the European Union eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(14) investments in industrial development revenue bonds that (i) "re-set" interest rates not less frequently than quarterly, (ii) are entitled to the benefit of a remarketing arrangement with an established broker dealer and (iii) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by any bank meeting the qualifications specified in clause (3) above; and

(15) any investment company, money market, enhanced high yield, pooled or other investment fund investing 90% or more of its assets in instruments of the types specified in the clauses above.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (a) investments of the type and maturity described in clauses (1) through (15) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (b) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (15) above and in this paragraph.

In addition, in the case of Investments by any Captive Insurance Subsidiary, Cash Equivalents shall also include (a) such Investments with average maturities of 12 months or less from the date of acquisition in issuers rated BBB- (or the equivalent thereof) or better by S&P or Baa3 (or the equivalent thereof) or better by Moody's, in each case at the time of such Investment and (b) any Investment with a maturity of more than 12 months that would otherwise constitute Cash Equivalents of the kind described in any of clauses of this definition above or clause (a) in this paragraph, if the maturity of such Investment was 12 months or less; *provided* that the effective maturity of such Investment does not exceed 15 years.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clause (1) above, *provided* that such amounts are converted into any currency listed in clause (1) as promptly as practicable and in any event within 10 Business Days following the receipt of such amounts.

For the avoidance of doubt, any items identified as Cash Equivalents under this definition will be deemed to be Cash Equivalents for all purposes under this Indenture regardless of the treatment of such items under GAAP.

"Cash Management Obligations" means (1) obligations in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements, electronic fund transfer, treasury services and cash management services, including controlled disbursement services, working capital lines, lines of credit, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services, or other cash management arrangements or any automated clearing house arrangements, (2) other obligations in respect of netting or setting off arrangements, credit, debit or purchase card programs, stored value card and similar arrangements and (3) obligations in respect of any other services related, ancillary or complementary to the foregoing (including any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services, corporate credit and purchasing cards and related programs or any automated clearing house transfers of funds).

"Casualty Event" means any event that gives rise to the receipt by the Company or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, assets or real property (including any improvements thereon) to replace or repair such equipment, assets or real property.

"CFC" means a Subsidiary of the Company that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"CFC Holding Company" means a Subsidiary of the Company that has no material assets other than (a) the equity interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) in (x) one or more Foreign Subsidiaries that are CFCs or (y) one or more other CFC Holding Companies and (b) cash and Cash Equivalents and other assets being held on a temporary basis incidental to the holding of assets described in clause (a) of this definition. It is understood and agreed that Sierra Communication International LLC, a Delaware limited liability company, constitutes a CFC Holding Company on the Issue Date.

"Change of Control" means:

(1) the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Issue Date), other than one or more Permitted Holders, that is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 of the Exchange Act as in effect on the Issue Date) of more than 50% of the total voting power of the Voting Stock of the Company; provided that (x) so long as the Company is a Subsidiary of any Parent Entity, no Person shall be deemed to be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of the Company unless such Person shall be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such Parent Entity (other than a Parent Entity that is a Subsidiary of another Parent Entity) and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in any Voting Stock of which any such Person is the beneficial owner; or

(2) the sale or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Restricted Subsidiaries, taken as a whole, to a Person (other than the Company or any of its Restricted Subsidiaries or one or more Permitted Holders) and any "person" (as defined in clause (1) above), other than one or more Permitted Holders, is or becomes the "beneficial owner" (as so defined) of more than 50% of the total voting power of the Voting Stock of the transferee Person in such sale or transfer of assets, as the case may be; *provided* that (x) so long as the Company is a Subsidiary of any Parent Entity, no Person shall be deemed to be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of the Company unless such Person shall be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such Parent Entity (other than a Parent Entity that is a Subsidiary of another Parent Entity) and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in any Voting Stock of which any such Person is the beneficial owner.

(3) Notwithstanding the preceding or any provision of Section 13d-3 of the Exchange Act, (i) a "person" or "group" shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) if any group includes one or more Permitted Holders, the issued and outstanding Voting Stock of the Company owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred, (iii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person's parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity and (iv) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

"Change of Control Triggering Event" means the occurrence of a Change of Control, unless the Consolidated Secured Leverage Ratio is less than 2.05 to 1.00 after giving pro forma effect to such Change of Control; *provided* that, notwithstanding anything in this Indenture to the contrary, when calculating the Consolidated Secured Leverage Ratio for purposes of this definition, any amounts added back to Consolidated EBITDA pursuant to clauses (1)(g) or (1)(o) of the definition thereof shall be calculated solely in accordance with Regulation S-X promulgated under the Securities Act and without giving effect to any other provision in this Indenture that would have the effect of adding back any other amounts described in such clauses that are not calculated in accordance with Regulation S-X.

"Collateral" means all of the assets and property of the Company or any Guarantor, whether real, personal or mixed securing or purported to secure any Pari Obligations or ABL Obligations, other than Excluded Collateral.

"Collateral Agent" means (1) in the case of any Senior Secured Term Credit Facility Obligations, the Bank Collateral Agent, (2) in the case of the Notes Obligations, the Notes Collateral Agent and (3) in the case of any Additional First Lien Obligations, the collateral agent, administrative agent or trustee with respect thereto.

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

"Collateral Documents" means, collectively, the Intercreditor Agreements and each intellectual property security agreement and each other security agreement or other instrument or document executed and delivered pursuant to this Indenture or pursuant to any other such Collateral Documents, in each case for purposes of providing collateral security for any Notes Obligations.

"Collateral Requirement" means, at any time, the requirement that, subject to the Intercreditor Agreements, as applicable:

(a) the Notes Collateral Agent shall have received each Collateral Document required to be delivered on the Issue Date pursuant to Section 12.1 hereof or from time to time pursuant to Section 3.15 hereof or the Collateral Documents, subject to the limitations and exceptions of this Indenture, duly executed by the Company and each Guarantor party thereto; and

(b) the Notes and the Note Guarantees shall have been secured pursuant to the Collateral Documents on a *pari passu* basis with the obligations under the Senior Secured Term Credit Facility by perfected first-priority security interests in the Notes/Term Priority Collateral and (ii) by perfected second-priority security interests in the ABL Priority Collateral, in each case, on a pari passu basis with the obligations under the Senior Secured Term Credit Facility, subject to exceptions and limitations otherwise set forth in this Indenture and the Collateral Documents (to the extent appropriate in the applicable jurisdiction) (and the Notes Collateral Agent or its bailee

shall have received certificates, documents or title or other instruments representing all such Capital Stock (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank).

Notwithstanding the foregoing provisions of this definition or anything in this Indenture or any other Collateral Document to the contrary:

(A) the Collateral Requirement shall not apply to any Excluded Collateral;

(B) Liens required to be granted from time to time pursuant to this Indenture shall be subject to exceptions and limitations set forth in the Collateral Documents;

(C) the Company and the Guarantors shall not be required to enter into any control agreement with respect to any deposit account, securities account or commodities account or contract (other than for which control agreements are required to be obtained or for which the ABL Collateral Agent has obtained control, in each case, to the extent required by the Senior Secured ABL Facility; provided that in such case, the ABL Collateral Agent will act as the agent for perfection on behalf of the Holders without causing the Notes Collateral Agent to become a party to such control agreements);

(D) no additional action in any non-U.S. jurisdiction or pursuant to the requirements of the laws of any non-U.S. jurisdiction shall be required to create any security interest or to perfect any security interests, including with respect to any intellectual property registered outside of the United States; it being understood that there shall be no security agreements or pledge agreements requirement to execute any security agreement or pledge agreement governed by the laws of any non-U.S. jurisdiction;

(E) except as otherwise expressly set forth in the Collateral Documents, the Company and the Guarantors shall not be required to take any other action with respect to any Collateral to perfect through control agreements or to otherwise perfect by "control"; and

(F) the Company and the Guarantors shall not be required to provide any notice to obtain the consent of governmental authorities under the Federal Assignment of Claims Act (or any state equivalent thereof).

"Company" has the meaning assigned to it in the recitals of this Indenture.

"Consolidated Depreciation and Amortization Expense" means, with respect to any Person for any period, the total amount of depreciation and amortization expense and capitalized fees, including amortization or write-off of (i) intangible assets and non-cash organization costs, (ii) deferred financing and debt issuance fees, costs and expenses, (iii) capitalized expenditures (including Capitalized Software Expenditures, amortization of expenditures relating to software, license and intellectual property payments, amortization of any lease related assets recorded in purchase accounting), customer acquisition costs, unrecognized prior service and incentive payments, media development costs, actuarial gains and losses related to pensions and other post-employment benefits, conversion costs and contract acquisition costs, the amortization of original issue discount resulting from the issuance of Indebtedness at less than par and amortization of favorable or unfavorable lease assets or liabilities and (iv) capitalized fees related to any Qualified Securitization Financing or Receivables Facility, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP and any write down of assets or asset value carried on the balance sheet.

"Consolidated EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period:

(1) increased (without duplication) by:

(a) Fixed Charges of such Person for such period (including (w) non-cash rent expense, (x) net payments and losses or any obligations on any Hedging Obligations or other derivative instruments, (y) bank, letter

of credit and other financing fees and (z) costs of surety bonds in connection with financing activities, plus amounts excluded from the definition of "Consolidated Interest Expense" and any non-cash interest expense), to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) (x) provision for taxes based on income, profits, revenue or capital, including federal, foreign, state, provincial, territorial, local, unitary, excise, property, franchise, value added and similar taxes (such as Delaware franchise tax, Pennsylvania capital tax, Texas margin tax and provincial capital taxes paid in Canada) and withholding taxes (including any future taxes or other levies which replace or are intended to be in lieu of such taxes and any penalties and interest related to such taxes or arising from tax examinations) and similar taxes of such Person paid or accrued during such period (including in respect of repatriated funds), (y) any distributions made to a Parent Entity with respect to the foregoing and (z) the net tax expense associated with any adjustments made pursuant to the definition of "Consolidated Net Income" in each case, to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any fees, costs, expenses or charges (other than Consolidated Depreciation and Amortization Expense) related to any actual, proposed or contemplated Equity Offering (including any expense relating to enhanced accounting functions or other transaction costs associated with becoming a public company, including Public Company Costs), Permitted Investment, Restricted Payment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful and including any such transaction consummated prior to the Issue Date), including (i) such fees, expenses or charges (including rating agency fees, consulting fees and other related expenses and/or letter of credit or similar fees) related to the offering or incurrence of, or ongoing administration, of the Notes, the Credit Agreement, any other Credit Facilities, any Securitization Fees and the Transactions, including Transaction Expenses, and (ii) any amendment, waiver or other modification of the Notes, the Credit Agreement, Receivables Facilities, Securitization Facilities, any other Credit Facilities, any Securitization Fees, any other Indebtedness or any Equity Offering, in each case, whether or not consummated, to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) (i) the amount of any restructuring charge, accrual, reserve (and adjustments to existing reserves) or expense, integration cost, inventory optimization programs or other business optimization expense or cost (including charges directly related to the implementation of cost-savings initiatives and tax restructurings) that is deducted (and not added back) in such period in computing Consolidated Net Income, including any costs incurred in connection with acquisitions or divestitures after the Issue Date, any severance, retention, signing bonuses, relocation, recruiting and other employee related costs, costs in respect of strategic initiatives and curtailments or modifications to pension and post-retirement employment benefit plans (including any settlement of pension liabilities), costs related to entry into new markets (including unused warehouse space costs) and new product introductions (including labor costs, scrap costs and lower absorption of costs, including due to decreased productivity and greater inefficiencies), systems development and establishment costs, operational and reporting systems, technology initiatives, contract termination costs, future lease commitments and costs related to the opening and closure and/or consolidation of facilities (including severance, rent termination, moving and legal costs) and to exiting lines of business and consulting fees incurred with any of the foregoing and (ii) fees, costs and expenses associated with acquisition related litigation and settlement thereof; *plus*

(f) any other non-cash charges, write-downs, expenses, losses or items reducing Consolidated Net Income for such period including (i) non-cash losses on the sale of assets and any write-offs or write-downs, deferred revenue or impairment charges, (ii) impairment charges, amortization (or write offs) of financing costs (including debt discount, debt issuance costs and commissions and other fees associated with Indebtedness, including the Notes and the Credit Agreement) of such Person and its Subsidiaries and/or (iii) the impact of acquisition method accounting adjustment and any non-cash write-up, write-down or write-off with respect to re-valuing assets and liabilities in connection with the Transactions or any Investment, deferred revenue or any effects of adjustments resulting from the application of purchase accounting, purchase price accounting (including any step-

up in inventory and loss of profit on the acquired inventory) (*provided* that if any such non-cash charge, write-down, expense, loss or item represents an accrual or reserve for potential cash items in any future period, (A) the Company may elect not to add back such non-cash charge, expense or loss in the current period and (B) to the extent the Company elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA when paid), or other items classified by the Company as special items less other non-cash items of income increasing Consolidated Net Income (excluding any amortization of a prepaid cash item that was paid in a prior period or such non-cash item of income to the extent it represents a receipt of cash in any future period); *plus*

(g) the amount of pro forma "run rate" cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the reduction of a public target's Public Company Costs), operating expense reductions, other operating improvements (including the entry into material contracts or arrangements), and initiatives and synergies (including, to the extent applicable, from (i) the Transactions, (ii) the effect of new customer contracts or projects and/or (iii) increased pricing or volume in existing contracts) (it is understood and agreed that "run rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or expected to be taken, net of the amount of actual benefits realized during such period form such actions) projected by the Company in good faith to result from actions which have been taken or with respect to which substantial steps have been taken or are expected to be taken no later than 24 months following the consummation thereof (including from any actions taken in whole or in part prior to such date), which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a pro forma basis as though such cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the reduction of a public target's Public Company Costs), operating expense reductions, other operating improvements and initiatives and synergies had been realized on the first day of such period, net of the amount of actual benefits realized prior to or during such period from such actions; *provided* that such cost savings are reasonably identifiable and factually supportable (in the good faith determination of the Company); *plus*

(h) any costs or expenses incurred by the Company or a Restricted Subsidiary or a Parent Entity pursuant to any management equity plan, stock option plan, phantom equity plan, profits interests or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement, and any costs or expenses in connection with the roll-over, acceleration or payout of Capital Stock held by management, to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds contributed to the capital of the Company or net cash proceeds of an issuance of Capital Stock (other than Disqualified Stock) of the Company; *plus*

(i) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(j) any net loss included in the Consolidated Net Income attributable to non-controlling or minority interests pursuant to the application of Accounting Standards Codification Topic 810-10-45 (or any successor provision or other financial accounting standard having a similar result or effect); *plus*

(k) the amount of any non-controlling or minority interest expense consisting of Subsidiary income attributable to non-controlling or minority equity interests of third parties in any non-wholly owned Subsidiary; *plus*

(l) (i) unrealized or realized foreign exchange losses resulting from the impact of foreign currency changes and (ii) gains and losses due to fluctuations in currency values and related tax effects determined in accordance with GAAP; *plus*

(m) with respect to any joint venture, an amount equal to the proportion of those items described in clauses (b) and (c) above relating to such joint venture corresponding to the Company's and its Restricted Subsidiaries' proportionate share of such joint venture's Consolidated Net Income (determined as if such joint venture were a Restricted Subsidiary) to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(n) the amount of any costs, charges or expenses relating to payments made to stock appreciation or similar rights, stock option, restricted stock, phantom equity, profits interests or other interests or rights holders of the Company or any of its Subsidiaries or any Parent Entity in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its Subsidiaries or any Parent Entities, which payments are being made to compensate such holders as though they were equityholders at the time of, and entitled to share in, such distribution; *plus*

(o) (i) adjustments of the nature or type used in connection with the calculation of "Adjusted EBITDA" as set forth in footnote (1) of "Summary—Summary consolidated financial information" contained in the Offering Memorandum and other adjustments of a similar nature to the foregoing and (ii) any due diligence quality of earnings report from time to time prepared with respect to the target of an acquisition or Investment by a nationally recognized accounting firm; *plus*

(p) [reserved]; *plus*

(q) rent expense as determined in accordance with GAAP not actually paid in cash during such period (net of rent expense paid in case during such period over and above rent expense as determined in accordance with GAAP); *plus*

(r) [reserved]; *plus*

(s) any non-cash increase in expense resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments; *plus*

(t) any net adjustment for the annualized full-year Consolidated EBITDA contribution (calculated in the good faith determination of the Company) from new customer contracts signed during the 12 months prior to the Determination Date; *plus*

(u) any fees, costs and expenses incurred in connection with the implementation of Accounting Standards Codification Topic 606—Revenue from Contracts with Customers (or any successor provision or other financial accounting standard having a similar result or effect), and any non-cash losses or charges resulting from the application of Accounting Standards Codification Topic 606—Revenue from Contracts with Customers (or any successor provision or other financial accounting standard having a similar result or effect); and

(2) decreased (without duplication) by non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period (other than non-cash gains relating to the application of Accounting Standards Codification Topic 842—Leases (or any successor provision or other financial accounting standard having a similar result or effect)).

"Consolidated Interest Expense" means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers

acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in mark-to-market valuation of any Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any made (less net payments, if any, received), pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (i) Securitization Fees, (ii) penalties and interest relating to taxes, (iii) annual agency or similar fees paid to the administrative agents, collateral agents and other agents under any Credit Facility, (iv) any additional interest or liquidated damages owing pursuant to any registration rights obligations, (v) costs associated with obtaining Hedging Obligations, (vi) accretion or accrual of discounted liabilities other than Indebtedness, (vii) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or purchase accounting in connection with the Transactions or any acquisition, (viii) amortization, expensing or write-off of deferred financing fees, amendment and consent fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, fees and expenses, discounted liabilities, original issue discount and any other amounts of non-cash interest and, adjusted to the extent included, to exclude any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program, (ix) any expensing of bridge, arrangement, structuring, commitment, agency, consent and other financing fees and any other fees related to the Transactions or any acquisitions after the Issue Date, (x) any accretion of accrued interest on discounted liabilities and any prepayment, make-whole or breakage premium, penalty or cost, (xi) interest expense with respect to Indebtedness of any direct or indirect parent of such Person resulting from push-down accounting) and (xii) any lease, rental or other expense in connection with a Non-Financing Lease Obligations; *plus*

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; *less*

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"Consolidated Net Income" means, with respect to any Person for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP and before any reduction in respect of Preferred Stock dividends; *provided, however*, that there will not be included in such Consolidated Net Income:

(1) any net income (loss) of any Person if such Person is not a Restricted Subsidiary (including any net income (loss) from investments recorded in such Person under the equity method of accounting), except that the Company's equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed (or to the extent converted into cash or Cash Equivalents) or that (as determined by the Company in its reasonable discretion) could have been distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or other distribution or return on investment;

(2) solely for the purpose of determining the amount available for Restricted Payments under Section 3.3(a) (iii)(A) hereof, any net income (loss) of any Restricted Subsidiary (other than the Subsidiary Guarantors) if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company or a Subsidiary Guarantor by operation of the terms of such Restricted Subsidiary's articles, charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Restricted Subsidiary or its stockholders (other than (a) restrictions that have been waived or otherwise released (or such Person reasonably believes such restriction could be waived or released and is using commercially reasonable efforts to pursue such waiver or release), (b) restrictions pursuant to the Credit Agreement, the Notes, this Indenture or other similar indebtedness and (c) restrictions specified in Section 3.4(b)(14)(i)), except that the Company's equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate

amount of cash or Cash Equivalents actually distributed (or to the extent converted, or having the ability to be converted, into cash or Cash Equivalents) or that could have been distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained in this clause);

(3) any gain (or loss) (a) in respect of facilities no longer used or useful in the conduct of the business of the Company or its Restricted Subsidiaries, abandoned, transferred, closed, disposed or discontinued operations, (b) on disposal, abandonment or discontinuance of disposed, abandoned, transferred, closed or discontinued operations, and (c) attributable to asset dispositions, abandonments, sales or other dispositions of any asset (including pursuant to any Sale and Leaseback Transaction) or the designation of an Unrestricted Subsidiary other than in the ordinary course of business;

(4) (a) any extraordinary, exceptional, unusual, infrequently occurring or nonrecurring loss, charge or expense, Transaction Expenses, Permitted Change of Control Costs, Public Company Costs, restructuring and duplicative running costs, restructuring charges or reserves (whether or not classified as restructuring expense on the consolidated financial statements), relocation costs, start-up or initial costs for any project or new production line, division or new line of business, integration and facilities' or bases' opening costs, facility consolidation and closing costs, severance costs and expenses, one-time charges (including compensation charges), payments made pursuant to the terms of change in control agreements that the Company or a Subsidiary or a Parent Entity had entered into with employees of the Company, a Subsidiary or a Parent Entity, costs relating to pre-opening, opening and conversion costs for facilities, losses, costs or cost inefficiencies related to project terminations, facility or property disruptions or shutdowns (including due to work stoppages, natural disasters and epidemics), signing, retention and completion bonuses (including management bonus pools), recruiting costs, costs incurred in connection with any strategic or cost savings initiatives, transition costs, contract terminations, litigation and arbitration fees, costs and charges, expenses in connection with one-time rate changes, costs incurred with acquisitions, investments and dispositions (including travel and out-of-pocket costs, human resources costs (including relocation bonuses), litigation and arbitration costs, charges, fees and expenses (including settlements), management transition costs, advertising costs, losses associated with temporary decreases in work volume and expenses related to maintain underutilized personnel) and non-recurring product and intellectual property development, other business optimization expenses or reserves (including costs and expenses relating to business optimization programs and new systems design and costs or reserves associated with improvements to IT and accounting functions), retention charges (including charges or expenses in respect of incentive plans), system establishment costs and implementation costs) and operating expenses attributable to the implementation of strategic or cost-savings initiatives, and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments) and professional, legal, accounting, consulting and other service fees incurred with any of the foregoing and (b) any charge, expense, cost, accrual or reserve of any kind associated with acquisition related litigation and settlements thereof;

(5) (a) at the election of the Company with respect to any quarterly period, the cumulative effect (including charges, accruals, expenses and reserves) of a change in law, regulation or accounting principles and changes as a result of the adoption or modification of accounting policies, (b) subject to the last paragraph of the definition of "GAAP," the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period (including any impact resulting from an election by the Company to apply IFRS or other Accounting Changes) and (c) any costs, charges, losses, fees or expenses in connection with the implementation or tracking of such changes or modifications specified in the foregoing clauses (a) and (b), in each case as reasonably determined by the Company;

(6) (a) any equity-based or non-cash compensation or similar charge, cost or expense or reduction of revenue, including any such charge, cost, expense or reduction arising from any grant of stock, stock appreciation or similar rights, stock options, restricted stock, phantom equity, profits interests or other interests, or other rights or equity- or equity-based incentive programs ("*equity incentives*"), any income (loss) associated with the equity incentives or other long-term incentive compensation plans (including under deferred compensation arrangements of the Company or any Parent Entity or Subsidiary and any positive investment income with respect to funded deferred

compensation account balances), roll-over, acceleration or payout of Capital Stock by employees, directors, officers, managers, contractors, consultants, advisors or business partners (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or any Parent Entity or Subsidiary, and any cash awards granted to employees of the Company and its Subsidiaries in replacement for forfeited awards, (b) any non-cash losses attributable to deferred compensation plans or trusts or realized in such period in connection with adjustments to any employee benefit plan due to changes in estimates, actuarial assumptions, valuations, studies or judgments, (c) non-cash compensation expense resulting from the application of Accounting Standards Codification Topic 718, Compensation—Stock Compensation or Accounting Standards Codification Topics 505-50 Equity-Based Payments to Non-Employees (or any successor provision or other financial accounting standard having a similar result or effect) and (d) any net pension or post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, amortization of such amounts arising in prior periods, amortization of the unrecognized obligation (and loss or cost) existing at the date of initial application of Statement of Financial Accounting Standards No. 87, 106 and 112 (or any successor provision or other financial accounting standard having a similar result or effect), and any other item of a similar nature;

(7) any income (loss) from the extinguishment, conversion or cancellation of Indebtedness, Hedging Obligations or other derivative instruments (including deferred financing costs written off, premiums paid or other expenses incurred);

(8) any unrealized or realized gains or losses in respect of any Hedging Obligations or any ineffectiveness recognized in earnings related to hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions;

(9) any fees, losses, costs, expenses or charges incurred during such period (including any transaction, retention bonus or similar payment), or any amortization thereof for such period, in connection with (a) any acquisition, recapitalization, Investment, Asset Disposition, disposition, issuance or repayment of Indebtedness (including such fees, expense or charges related to the offering, issuance and rating of the Notes, other securities and any Credit Facilities), issuance of Capital Stock, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Notes, other securities and any Credit Facilities), in each case, including the Transactions, any such transaction consummated prior to, on or after the Issue Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with Accounting Standards Codification Topic 805—Business Combinations (or any successor provision or other financial accounting standard having a similar result or effect) and any adjustments resulting from the application of Accounting Standards Codification Topic 460—Guarantees (or any successor provision or other financial accounting standard having a similar result or effect) or any related pronouncements) and (b) complying with the requirements under, or making elections permitted by, the documentation governing any Indebtedness;

(10) any unrealized or realized gain or loss resulting in such period from currency translation increases or decreases or transaction gains or losses, including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from Hedging Obligations for currency risk), intercompany loans, accounts receivables, accounts payable, intercompany balances, other balance sheet items, Hedging Obligations or other obligations of the Company or any Restricted Subsidiary owing to the Company or any Restricted Subsidiary and any other realized or unrealized foreign exchange gains or losses relating to the translation of assets and liabilities denominated in foreign currencies;

(11) any unrealized or realized income (loss) or non-cash expense attributable to movement in mark-to-market valuation of foreign currencies, Indebtedness or derivative instruments pursuant to GAAP;

(12) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) in such Person's consolidated financial statements pursuant to GAAP (including those required or permitted by Accounting Standards Codification Topic 805–Business Combinations and Accounting Standards Codification 350–Intangibles-Goodwill and Other (or any successor provision or other financial

accounting standard having a similar result or effect)) and related pronouncements, including in the inventory (including any impact of changes to inventory valuation policy methods, including changes in capitalization of variances), property and equipment, software, loans, leases, goodwill, intangible assets, in-process research and development, deferred revenue (including deferred costs related thereto and deferred rent) and debt line items thereof, resulting from the application of acquisition method accounting, recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition (by merger, consolidation, amalgamation or otherwise), joint venture investment or other Investment or the amortization or write-off or write-down of any amounts thereof;

(13) any impairment charge, write-off or write-down, including impairment charges, write-offs or write-downs related to intangible assets, long-lived assets, goodwill, investments in debt or equity securities (including any losses with respect to the foregoing in bankruptcy, insolvency or similar proceedings) and investments recorded using the equity method or as a result of a change in law or regulation, in connection with any disposition of assets and the amortization of intangibles arising pursuant to GAAP;

(14) (a) accruals and reserves (including contingent liabilities) that are established or adjusted in connection with the Transactions or within 18 months after the closing of any acquisition or disposition that are so required to be established or adjusted as a result of such acquisition or disposition in accordance with GAAP, or changes as a result of adoption or modification of accounting policies and (b) earn-out, non-compete and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise (and including deferred performance incentives in connection with any acquisition (by merger, consolidation, amalgamation or otherwise), joint venture investment or other Investment whether or not a service component is required from the transferor or its related party)) and adjustments thereof and purchase price adjustments;

(15) any income (loss) related to any realized or unrealized gains and losses resulting from Hedging Obligations or embedded derivatives that require similar accounting treatment (including embedded derivatives in customer contracts), and the application of Accounting Standards Codification Topic 815—Derivatives and Hedging (or any successor provision or other financial accounting standard having a similar result or effect) and its related pronouncements or mark to market movement of non-U.S. currencies, Indebtedness, derivatives instruments or other financial instruments pursuant to GAAP, including Accounting Standards Codification Topic 825—Financial Instruments (or any successor provision or other financial accounting standard having a similar result or effect) or an alternative basis of accounting applied in lieu of GAAP;

(16) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures and any deferred tax expense associated with tax deductions or net operating losses arising as a result of the Transactions, or the release of any valuation allowances related to such item;

(17) the amount of (x) Board of Director (or equivalent thereof) fees, management, monitoring, consulting, refinancing, transaction, advisory and other fees (including exit and termination fees) and indemnities, costs and expenses paid or accrued in such period to (or on behalf of) any member of the Board of Directors (or the equivalent thereof) of the Company, any of its Subsidiaries, any Parent Entity, any Permitted Holder or any Affiliate of a Permitted Holder, and (y) payments made to option holders of the Company or any Parent Entity in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Entity, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution, including any cash consideration for any repurchase of equity;

(18) the amount of loss or discount on sale of Securitization Assets, Receivables Assets and related assets in connection with a Qualified Securitization Financing or Receivables Facility;

(19) (i) payments to third parties in respect of research and development, including amounts paid upon signing, success, completion and other milestones and other progress payments, to the extent expensed, (ii) at the election of the Company with respect to any quarterly period, effects of adjustments to accruals and reserves during a period relating to any change in the methodology of calculating reserves for returns, rebates and other chargebacks (including government program rebates), and (iii) at the election of the Company with respect to any quarterly

period, an amount equal to the net change in deferred revenue at the end of such period from the deferred revenue at the end of the previous period; and

(20) all adjustments (including the effects of such adjustments pushed down to the Company and the Restricted Subsidiaries) in the Company's consolidated financial statements pursuant to GAAP, resulting from (i) the application of fresh start accounting principles as a result of the Company's emergence from bankruptcy or (ii) the application of purchase accounting in relation to such emergence or any consummated acquisition, in each case, including the amortization, write-off or write-down of any assets, any deferred revenue and any other amounts and other similar adjustments and, whether consummated before or after the December 15, 2017.

In addition, to the extent not already excluded (or included, as applicable) in the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall be increased by the amount of: (i) any expenses, charges or losses that are reimbursed by indemnification or other reimbursement provisions in connection with any investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder, or, so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed within 365 days of the date of such evidence (net of any amount so added back in a prior period to the extent not so reimbursed within the applicable 365-day period), (ii) to the extent covered by insurance (including business interruption insurance) and actually reimbursed, or, so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such evidence (net of any amount so added back in a prior period to the extent not so reimbursed within the applicable 365-day period), expenses, charges or losses with respect to liability or Casualty Events or business interruption and (iii) the amount of distributions actually made to any Parent Entity of such Person in respect of such period in accordance with Section 3.3(b)(9)(i) as though such amounts had been paid as taxes directly by such Person for such periods.

"Consolidated Secured Leverage Ratio" means, as of any date of determination, the ratio of (x) the Consolidated Total Indebtedness secured by a Lien on the Collateral as of such date (other than Indebtedness with a Junior Lien Priority relative to the Notes and the Note Guarantees) to (y) LTM EBITDA.

"Consolidated Total Indebtedness" means, as of any date of determination, an amount equal to (a) the aggregate principal amount of outstanding Indebtedness for borrowed money (excluding Indebtedness with respect to Cash Management Obligations and intercompany Indebtedness as of such date), *plus* (b) the aggregate principal amount of Capitalized Lease Obligations, Purchase Money Obligations and unreimbursed drawings under letters of credit of the Company and its Restricted Subsidiaries outstanding on such date (*provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Indebtedness until five Business Days after such amount is drawn), *minus* (c) the aggregate amount of cash and Cash Equivalents included on the consolidated balance sheet of the Company and its Restricted Subsidiaries as of the end of the most recent fiscal period for which consolidated financial statements are available (which may, at the Company's election, be internal financial statements) (*provided* that the cash proceeds of any proposed incurrence of Indebtedness shall not be included in this clause (c) for purposes of calculating the Consolidated Total Leverage Ratio or the Consolidated Secured Leverage Ratio, as applicable), with such pro forma adjustments as are consistent with the pro forma adjustments set forth in the definition of "Fixed Charge Coverage Ratio." For the avoidance of doubt, Consolidated Total Indebtedness shall exclude Indebtedness in respect of any Receivables Facility or Securitization Facility.

"Consolidated Total Leverage Ratio" means, as of any date of determination, the ratio of (x) Consolidated Total Indebtedness as of such date to (y) LTM EBITDA.

"Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any Non-Financing Lease Obligation, dividend or other obligation that does not constitute Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*"), including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"Contractual Requirement" means any term, covenant, condition or provision in any material indenture, loan agreement, lease agreement, mortgage, deed of trust or other material debt agreement or instrument to which Holdings, the Company or any Restricted Subsidiary is a party or by which it or any of its property or assets is bound.

"Controlling Collateral Agent" means, with respect to any Shared Collateral, the "Controlling Collateral Agent" under the Pari Passu Intercreditor Agreement at such time (as such term is defined in the Pari Passu Intercreditor Agreement).

"Controlled Investment Affiliate" means, as to any Person, any other Person, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Company and/or other companies.

"Convertible Notes" means the $350.0 million aggregate principal amount of Holdings' 2.25% Convertible Senior Notes due 2023 issued on June 11, 2018.

"Credit Agreement" means, collectively, (i) the Senior Secured Term Credit Facility and the Senior Secured ABL Facility, including, in each case, any related notes, mortgages, letters of credit, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any appendices, exhibits, annexes or schedules to any of the foregoing (as the same may be in effect from time to time), and (ii) any related documents thereto (including the revolving loans thereunder, any letters of credit and reimbursement obligations related thereto, any Guarantees and collateral documents), as amended, extended, renewed, restated, refunded, replaced, refinanced, supplemented, modified or otherwise changed (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions) from time to time, and any one or more agreements (and related documents) governing Indebtedness, including indentures, incurred to refinance, substitute, supplement, replace or add to (including increasing the amount available for borrowing or adding or removing any Person as a borrower, issuer or guarantor thereunder, in whole or in part), the borrowings and commitments then outstanding or permitted to be outstanding under such Credit Agreement or one or more successors to the Credit Agreement or one or more new credit agreements.

"Credit Facility" means, with respect to the Company or any of its Subsidiaries, one or more debt facilities, indentures or other arrangements (including the Senior Secured Term Credit Facility, the Senior Secured ABL Facility, commercial paper facilities and overdraft facilities) with banks, other financial institutions or investors providing for revolving credit loans, term loans, notes, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), letters of credit or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or other banks or institutions and whether provided under the original Credit Agreement or one or

more other credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term "Credit Facility" shall include any agreement or instrument (1) changing the maturity of any Indebtedness incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Company as additional borrowers or guarantors thereunder, (3) increasing the amount of Indebtedness incurred thereunder or available to be borrowed thereunder or (4) otherwise altering the terms and conditions thereof.

"Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

"Definitive Notes" means certificated Notes.

"Delaware Divided LLC" means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

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

"Derivative Instrument" with respect to a Person, means any contract, instrument or other right to receive payment or delivery of cash or other assets to which such Person or any Affiliate of such Person that is acting in concert with such Person in connection with such Person's investment in the Notes (other than a Screened Affiliate) is a party (whether or not requiring further performance by such Person), the value and/or cash flows of which (or any material portion thereof) are materially affected by the value and/or performance of the Notes and/or the creditworthiness of the Company and/or any one or more of the Guarantors (the "*Performance References*").

"Depositary" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.3 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provisions of this Indenture.

"Designated Non-Cash Consideration" means the fair market value (as determined in good faith by the Company) of non-cash consideration received by the Company or any of the Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 3.5 hereof.

"Designated Preferred Stock" means Preferred Stock of the Company or a Parent Entity (other than Disqualified Stock) that is issued for cash (other than to the Company or a Subsidiary of the Company or an employee stock ownership plan or trust established by the Company or any such Subsidiary for the benefit of their employees to the extent funded by the Company or such Subsidiary) and that is designated as "Designated Preferred

Stock" pursuant to an Officer's Certificate of the Company at or prior to the issuance thereof, the net cash proceeds of which are excluded from the calculation set forth in Section 3.3(a)(iii)(C) hereof.

"Disinterested Director" means, with respect to any Affiliate Transaction, a member of the Board of Directors having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of Directors shall be deemed not to have such a financial interest by reason of such member's holding Capital Stock of the Company or any options, warrants or other rights in respect of such Capital Stock.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

(1) matures or is mandatorily redeemable for cash or in exchange for Indebtedness pursuant to a sinking fund obligation or otherwise; or

(2) is or may become (in accordance with its terms) upon the occurrence of certain events or otherwise redeemable or repurchasable for cash or in exchange for Indebtedness at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the earlier of (a) the Stated Maturity of the Notes or (b) the date on which there are no Notes outstanding; *provided*, *however*, that (i) only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock and (ii) any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (howsoever defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with Section 3.3 hereof; *provided, however*, that if such Capital Stock is issued to any future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) (excluding the Permitted Holders (but not excluding any future, current or former employee, director, officer, manager, contractor, consultant or advisor) or Immediate Family Members), of the Company, any of its Subsidiaries, any Parent Entity or any other entity in which the Company or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors (or the compensation committee thereof) or any other plan for the benefit of current, former or future employees (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or its Subsidiaries or by any such plan to such employees (or their respective Controlled Investment Affiliates or Immediate Family Members), such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"Dollars" or "*$*" means the lawful currency of the United States of America.

"Domestic Subsidiary" means, with respect to any Person, any Restricted Subsidiary of such Person other than a Foreign Subsidiary.

"DTC" means The Depository Trust Company or any successor securities clearing agency.

"Equity Offering" means (x) a sale of Capital Stock (other than through the issuance of Disqualified Stock or Designated Preferred Stock or through an Excluded Contribution) other than (a) offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions or other securities of the Company or any Parent Entity and (b) issuances of Capital Stock to any Subsidiary of the Company or (y) a cash equity contribution to the Company.

"Euro" means the single currency of participating member states of the economic and monetary union as contemplated in the Treaty on European Union.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"Excluded Collateral" means the following:

(a) any vehicles and other assets subject to certificates of title;

(b) letter-of-credit rights to the extent a security interest therein cannot be perfected by a UCC filing (other than supporting obligations);

(c) any property that is subject to a Permitted Lien securing a purchase money agreement, Capital Lease or similar arrangement permitted hereunder in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other applicable law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting Excluded Collateral), to the extent, and for so long as, the creation of a security interest therein is prohibited thereby (or otherwise requires consent, provided that there shall be no obligation to seek such consent) or creates a right of termination or favor of a third party, in each case, excluding the proceeds and receivables thereof to the extent not otherwise constituting Excluded Collateral;

(d) (x) all leasehold interests in real estate (and there shall not be any requirement to obtain any landlord or other third party waivers, estoppels, consents or collateral access letters in respect of such leasehold interests) and (y) any parcel of real estate located in the United States and the improvements thereto owned in fee by the Company or any Guarantor with a fair market value of $10.0 million or less (at the time of acquisition) (but not any Collateral located thereon) or any parcel of real estate and the improvements thereto owned in fee by the Company or any Guarantor outside the United States;

(e) any "intent to use" trademark application filed and accepted in the United States Patent and Trademark Office unless and until an amendment to allege use or a statement of use has been filed and accepted by the United States Patent and Trademark Office to the extent, if any, that, and solely during the period, if any, in which the grant of security interest therein could impair the validity or enforceability of such "intent to use" trademark application under federal law;

(f) any charter, permit, franchise, authorization, lease, license or agreement, in each case, only to the extent and for so long as the grant of a security interest therein (or the assets subject thereto) by the Company or any Guarantor (x) would violate invalidate such charter, permit, franchise, authorization, lease, license, or agreement or (y) would give any party (other than the Company or any Guarantor) to any such charter, permit, franchise, authorization, lease, license or agreement the right to terminate its obligations thereunder or (z) is permitted under such charter, permit, franchise, lease, license or agreement only with consent of the parties thereto (other than consent of the Company or any Guarantor) and such necessary consents to such grant of a security interest have not been obtained (it being understood and agreed that the Company, Guarantors or Restricted Subsidiaries have no obligation to obtain such consents) other than, in each case referred to in clauses (x) and (y) and (z), as would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction, in each case excluding the proceeds and receivables thereof which are not otherwise Excluded Collateral;

(g) any commercial tort claim for which no claim has been made or with a value of less than $10.0 million for which a claim has been made;

(h) any Excluded Stock and Stock Equivalents and Rule 3-16 Capital Stock;

(i) any assets with respect to which, the Company reasonably determines, the cost or other consequences of granting a security interest or obtaining title insurance in favor of the Holders shall be excessive in view of the benefits to be obtained by the Holders therefrom;

(j) any assets with respect to which granting a security interest in such assets in favor of the Notes Collateral Agent could reasonably be expected to result in a material adverse tax consequence as reasonably determined by the Company;

(k) any margin stock; and

(l) any assets with respect to which granting a security interest in such assets is prohibited by or would violate law, treaty, rule, or regulation or determination of an arbitrator or a court or other Governmental Authority or which would require obtaining the consent, approval, license or authorization of any Governmental Authority (unless such consent, approval, license or authorization has been received; provided that there shall be no obligation to obtain such consent) or create a right of termination in favor of any governmental or regulatory third party, in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting Excluded Collateral);

provided that with respect to clauses (c), (f) and (l), such property shall be Excluded Collateral only to the extent and for so long as such prohibition, violation, invalidation or consent right, as applicable, is in effect and in the case of any such agreement or consent, was not created in contemplation thereof or of the creation of a security interest therein. Notwithstanding anything to the contrary in the Note Documents, Excluded Collateral will not include any assets owned by the Company and the Guarantors (other than Rule 3-16 Capital Stock) that constitute collateral securing the obligations under the Credit Agreement.

"Excluded Contribution" means net cash proceeds or property or assets received by the Company as capital contributions to the equity (other than through the issuance of Disqualified Stock or Designated Preferred Stock) of the Company after the Issue Date or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of their employees to the extent funded by the Company or any Restricted Subsidiary) of Capital Stock (other than Disqualified Stock or Designated Preferred Stock) of the Company, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer's Certificate of the Company.

"Excluded Stock and Stock Equivalents" means (i) any Stock or Stock Equivalents with respect to which, in the reasonable judgment of the Company, the burden or cost of pledging such Stock or Stock Equivalents in favor of the Notes Collateral Agent under the Collateral Documents shall be excessive in view of the benefits to be obtained by the Holders therefrom, (ii) (A) solely in the case of any pledge of Voting Stock of (x) any Foreign Subsidiary that is a CFC or (y) any CFC Holding Company, in each case, owned directly by the Company or any Guarantor, any Voting Stock in excess of 65% of each outstanding class of Voting Stock of such Foreign Subsidiary that is a CFC or such CFC Holding Company and (B) any Stock or Stock Equivalents of (x) any Foreign Subsidiary that is a CFC or (y) any CFC Holding Company in each case not owned directly by the Company or any Guarantor, (iii) any Stock or Stock Equivalents to the extent the pledge thereof would violate any Applicable Law or any Contractual Requirement (including any legally effective requirement to obtain the consent or approval of, or a license from, any Governmental Authority or any other regulatory third party unless such consent, approval or license has been obtained (it being understood that the foregoing shall not be deemed to obligate the Company or any Subsidiary of the Company to obtain any such consent, approval or license)), (iv) any Stock or Stock Equivalents of each Subsidiary to the extent that a pledge thereof to secure the Obligations is prohibited by any applicable organizational document of such Subsidiary or requires third party consent (other than the consent of the Company or any Guarantor), unless consent has been obtained to consummate such pledge (it being understood that the foregoing shall not be deemed to obligate the Company or any Subsidiary to obtain any such consent), in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting Excluded Collateral), (v) Stock or Stock Equivalents of any non-Wholly Owned Subsidiary, (vi) any Stock or Stock Equivalents of any Subsidiary to the extent that the pledge of such Stock or Stock Equivalents could reasonably be expected to result in material adverse tax or accounting consequences to Holdings or any Subsidiary thereof as reasonably determined by the Company, (vii) any Stock or Stock Equivalents that are margin stock, (viii) any Stock or Stock Equivalents owned by a CFC or a CFC Holding Company, and (ix) any Stock and Stock

Equivalents of any Unrestricted Subsidiary or of any Restricted Subsidiary that constitutes an Immaterial Subsidiary (other than (A) to the extent a perfected security interest therein can be obtained by filing a UCC-1 financing statement or (B) as otherwise agreed to by the Company in its sole discretion), any Person not constituting a Subsidiary, any Captive Insurance Subsidiary, any Broker-Dealer Subsidiary, any not-for-profit Subsidiary and any special purpose entity (including any Securitization Subsidiary); *provided* that Excluded Stock and Stock Equivalents shall not include proceeds of the foregoing property to the extent otherwise constituting Collateral.

"fair market value" may be conclusively established by means of an Officer's Certificate or resolutions of the Board of Directors setting out such fair market value as determined by such Officer or such Board of Directors in good faith.

"Fitch" means Fitch Ratings, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"Fixed Charge Coverage Ratio" means, with respect to any Person on any determination date, the ratio of Consolidated EBITDA of such Person for the most recent four consecutive fiscal quarters ending immediately prior to such determination date (the "*reference period*") for which consolidated financial statements are available (which may be internal consolidated financial statements) to the Fixed Charges of such Person for the reference period. In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, redeems, defeases, retires or extinguishes any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced), has caused any Reserved Indebtedness Amount to be deemed to be incurred during such period or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the reference period but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "*Fixed Charge Coverage Ratio Calculation Date*"), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, deemed incurrence, assumption, guarantee, redemption, defeasance, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, any Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and disposed or discontinued operations that have been made by the Company or any of its Restricted Subsidiaries, during the reference period or subsequent to the reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and disposed or discontinued operations (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged or amalgamated with or into the Company or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, amalgamation, consolidation or disposed or discontinued operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect thereto for such period as if such Investment, acquisition, disposition, merger, amalgamation, consolidation or disposed operation had occurred at the beginning of the reference period.

For purposes of this definition, whenever pro forma effect is to be given to a transaction (including the Transactions), the pro forma calculations shall be made in good faith by a responsible financial or chief accounting officer of the Company (and may include, for the avoidance of doubt, cost savings, operating expenses reductions and synergies resulting from such transactions which is being given pro forma effect. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire reference period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any

Indebtedness under a revolving credit facility computed with a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the reference period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Company may designate.

"Fixed Charges" means, with respect to any Person for any period, the sum of (without duplication):

(1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock of any Restricted Subsidiary of such Person during such period; and

(3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock of such Person during such period.

"Foreign Subsidiary" means, with respect to any Person, any Subsidiary of such Person that is not organized or existing under the laws of the United States of America or any state thereof, or the District of Columbia, and any Subsidiary of such Subsidiary.

"GAAP" means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time; *provided* that all terms of an accounting or financial nature used in this Indenture shall be construed, and all computations of amounts and ratios referred to in this Indenture shall be made (a) without giving effect to any election under Accounting Standards Codification Topic 825—Financial Instruments, or any successor thereto or comparable accounting principle (including pursuant to the Accounting Standards Codification), to value any Indebtedness of the Company or any Subsidiary at "fair value," as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations shall be determined in accordance with the definition of Capitalized Lease Obligations. At any time after the Issue Date, the Company may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in this Indenture); *provided* that any such election, once made, shall be irrevocable; *provided, further*, any calculation or determination in this Indenture that requires the application of GAAP for periods that include fiscal quarters ended prior to the Company's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Company shall give notice of any such election made in accordance with this definition to the Trustee. For the avoidance of doubt, solely making an election (without any other action) referred to in this definition will not be treated as an incurrence of Indebtedness.

If there occurs a change in IFRS or GAAP, as the case may be, and such change would cause a change in the method of calculation of any standards, terms or measures (including all computations of amounts and ratios) used in this Indenture (an "*Accounting Change*"), then the Company may irrevocably elect, that such standards, terms or measures shall be calculated as if such Accounting Change had or had not occurred.

"Governmental Authority" means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

"Grantor" means the Issuer and any Guarantor.

"Guarantee" means, any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part),

provided, *however*, that the term "Guarantee" will not include (x) endorsements for collection or deposit in the ordinary course of business or consistent with past practice and (y) standard contractual indemnities or product warranties provided in the ordinary course of business, and *provided further* that the amount of any Guarantee shall be deemed to be the lower of (i) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (ii) the maximum amount for which such guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee or, if such Guarantee is not an unconditional guarantee of the entire amount of the primary obligation and such maximum amount is not stated or determinable, the amount of such guaranteeing Person's maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantor" means (a) Holdings and (b) each Wholly Owned Domestic Subsidiary of the Company that executes a Note Guarantee in accordance with the provisions of this Indenture, and their respective successors and assigns, in each case, until such Guarantor's Note Guarantee is released in accordance with the terms of this Indenture.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contracts, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks either generally or under specific contingencies.

"Holder" means each Person in whose name the Notes are registered on the Registrar's books, which shall initially be the nominee of DTC.

"Holdings" means (a) Avaya Holdings Corp., the direct parent of the Company, or (b) any other partnership, limited partnership, corporation, limited liability company, or business trust or any successor thereto organized under the laws of the United States or any state thereof or the District of Columbia (the "*New Holdings*") that is a direct or indirect Wholly Owned Subsidiary of Avaya Holdings Corp. or that has merged, amalgamated or consolidated with Avaya Holdings Corp. (or, in either case, the previous New Holdings, as the case may be) (the "*Previous Holdings*"); *provided* that (i) such New Holdings owns directly or indirectly 100% of the Stock and Stock Equivalents of the Company, (ii) the New Holdings shall expressly assume all the obligations of the Previous Holdings under this Indenture and the other Note Documents to which it is a party pursuant to a supplement thereto, (iii) such substitution and any supplements to the Note Documents shall preserve the enforceability of each Guarantee and the perfection and priority of the Liens under the Collateral Documents, and New Holdings shall have delivered to the Trustee an Officer's Certificate to that effect and (iv) all assets of the Previous Holdings are contributed or otherwise transferred to such New Holdings; *provided*, *further*, that if the foregoing are satisfied, the Previous Holdings shall be automatically released of all its obligations under the Note Documents and any reference to "Holdings" in the Note Documents shall be meant to refer to the "New Holdings". Notwithstanding anything to the contrary in this Indenture, Holdings or any New Holdings may change its jurisdiction of organization or location for purposes of the UCC or its identity or type of organization or corporate structure, subject to compliance with the terms and provisions of the applicable Collateral Documents.

"IAI" means an institutional "accredited investor" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"IFRS" means the International Financial Reporting Standards as issued by the International Accounting Standards Board as in effect from time to time.

"Immaterial Subsidiary" means, at any date of determination, each Restricted Subsidiary of the Company that (i) has not guaranteed any other Indebtedness of the Company and (ii) has Total Assets and revenues, in each case, of less than 5.0% of Total Assets and revenues and, together with all other Immaterial Subsidiaries, has Total Assets and revenues of less than 10.0% of Total Assets and revenues, in each case, as determined in accordance with GAAP and measured at the end of the most recent fiscal period for which consolidated financial statements are available (which may be internal consolidated financial statements) on a pro forma basis giving effect to any acquisitions or dispositions of companies, division or lines of business since such balance sheet date or the start of such four quarter period, as applicable, and on or prior to the date of acquisition of such Subsidiary.

"Immediate Family Members" means, with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships, the estate of such individual and such other individuals above) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"incur" means issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) will be deemed to be incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and the terms "incurred" and "incurrence" have meanings correlative to the foregoing and any Indebtedness pursuant to any revolving credit or similar facility shall only be "incurred" at the time any funds are borrowed thereunder.

"Indebtedness" means, with respect to any Person on any date of determination (without duplication):

(1) the principal of indebtedness of such Person for borrowed money;

(2) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have not been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of incurrence);

(4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables or similar obligations, including accrued expenses owed, to a trade creditor), which purchase price is due more than one year after the date of placing such property in service or taking final delivery and title thereto;

(5) Capitalized Lease Obligations of such Person;

(6) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Restricted Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);

(7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided*, *however*, that the amount of

such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Company) and (b) the amount of such Indebtedness of such other Persons;

(8) Guarantees by such Person of the principal component of Indebtedness of the type referred to in clauses (1), (2), (3), (4), (5) and (9) of other Persons to the extent Guaranteed by such Person; and

(9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the net payments under such agreement or arrangement giving rise to such obligation that would be payable by such Person at the termination of such agreement or arrangement);

with respect to clauses (1), (2), (3), (4), (5) and (9) above, if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amount of funds borrowed and then outstanding. The amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (b) the principal amount of Indebtedness, or liquidation preference thereof, in the case of any other Indebtedness. Indebtedness shall be calculated without giving effect to the effects of Accounting Standards Codification Topic 815—Derivatives and Hedging and related pronouncements to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

(i) Contingent Obligations incurred in the ordinary course of business or consistent with past practice, other than Guarantees or other assumptions of Indebtedness;

(ii) Cash Management Obligations;

(iii) any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under GAAP as in effect on the Issue Date, Non-Financing Lease Obligations or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice;

(iv) obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) incurred prior to the Issue Date or in the ordinary course of business or consistent with past practice;

(v) in connection with the purchase by the Company or any Restricted Subsidiary of any business, any deferred or prepaid revenue, post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner;

(vi) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes;

(vii) obligations under or in respect of Qualified Securitization Financings or Receivables Facilities;

(viii) Indebtedness of any Parent Entity appearing on the balance sheet of the Company solely by reason of push down accounting under GAAP;

(ix) Capital Stock (other than in the case of clause (6) above, Disqualified Stock); or

(x) amounts owed to dissenting stockholders (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a consolidation, amalgamation, merger or transfer of assets that complies with Section 4.1.

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

"Independent Financial Advisor" means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing ; *provided, however*, that such firm or appraiser is not an Affiliate of the Company.

"Initial Notes" has the meaning ascribed to it in the recitals of this Indenture.

"Initial Purchasers" means J.P. Morgan Securities LLC, BofA Securities, Inc., Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, Barclays Capital Inc. and Deutsche Bank Securities Inc.

"Intercompany License Agreement" means any cost sharing agreement, commission or royalty agreement, license or sublicense agreement, distribution agreement, services agreement, intellectual property rights transfer agreement, any related agreements or similar agreements, in each case where all parties to such agreement are one or more of the Company or a Restricted Subsidiary.

"Intercreditor Agreements" means the Pari Passu Intercreditor Agreement, the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement.

"Investment" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of advances, loans or other extensions of credit (excluding (i) accounts receivable, trade credit, advances or extensions of credit to customers, suppliers, future, present or former employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of any Person in the ordinary course of business or consistent with past practice, (ii) any debt or extension of credit represented by a bank deposit other than a time deposit, (iii) intercompany advances arising from cash management, tax and accounting operations and (iv) intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others)), or the incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided*, *however*, that endorsements of negotiable instruments and documents in the ordinary course of business or consistent with past practice will not be deemed to be an Investment.

For purposes of Section 3.3 and Section 3.20 hereof:

(1) "Investment" will include the portion (proportionate to the Company's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Company's "Investment" in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets (as determined by the Company) of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary;

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined by the Company; and

(3) if the Company or any Restricted Subsidiary issues, sells or otherwise disposes of Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any investment by the Company or any Restricted Subsidiary in such Person remaining after giving effect thereto shall not be deemed to be an Investment at such time.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash and Cash Equivalents by the Company or a Restricted Subsidiary in respect of such Investment to the extent such amounts do not increase any other baskets under this Indenture.

"Investment Grade Event" means (1) the Notes have obtained Investment Grade Status; and (2) no Event of Default shall have occurred and be continuing with respect to the Notes.

"Investment Grade Securities" means:

(1) securities issued or directly and fully Guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities issued or directly and fully guaranteed or insured by the Canadian, United Kingdom or Japanese governments, a member state of the European Union, or any agency or instrumentality thereof (other than Cash Equivalents);

(3) debt securities or debt instruments with a rating of "BBB-" or higher from S&P or "Baa3" or higher by Moody's or the equivalent of such rating by such rating organization or, if no rating of Moody's or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization, but excluding any debt securities or instruments constituting loans or advances among the Company and its Subsidiaries;

(4) investments in any fund that invests exclusively in investments of the type described in clauses (1), (2) and (3) above which fund may also hold cash and Cash Equivalents pending investment or distribution; and

(5) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"Investment Grade Status" shall occur when the Notes receive two of the following:

(1) a rating of "BBB-" or higher from S&P;

(2) a rating of "Baa3" or higher from Moody's; or

(3) a rating of "BBB-" or higher from Fitch;

or the equivalent of such rating by such rating organization or, if no rating of S&P, Moody's or Fitch then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization.

"Issue Date" means September 25, 2020.

"Issuer" has the meaning assigned to it in the recitals of this Indenture.

"Junior Lien Intercreditor Agreement" means an intercreditor or subordination agreement or arrangement setting forth the junior Lien priority of any Indebtedness or Obligations relative to the Notes, the terms of which are

consistent with market terms governing intercreditor arrangements for the sharing or subordination of liens or arrangements relating to the distribution of payments, as applicable, at the time the applicable agreement or arrangement is proposed to be established in light of the type of Indebtedness subject thereto.

"Junior Lien Priority" means relative to specified Indebtedness, having junior Lien priority on specified Collateral and subject to a Junior Lien Intercreditor Agreement (it being understood that junior Liens are not required to rank equally and ratably with other junior Liens, and that Indebtedness secured by junior Liens may be secured by Liens that are senior in priority to, or rank equally and ratably with, or junior in priority to, other Liens constituting junior Liens). For the avoidance of doubt, any Indebtedness (including ABL Obligations) secured by Liens on the ABL Priority Collateral that rank senior in priority to the Liens on the ABL Priority Collateral securing the Notes shall be deemed not to have Junior Lien Priority on the Collateral relative to the Notes and the Note Guarantees, notwithstanding that such Indebtedness may be secured by Liens on the Notes/Term Priority Collateral that rank junior in priority to the Liens on the Notes/Term Priority Collateral securing the Notes and the Note Guarantees.

"Lien" means any mortgage, pledge, security interest, encumbrance, lien, hypothecation or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof); *provided* that in no event shall Non-Financing Lease Obligations be deemed to constitute a Lien.

"Limited Condition Transaction" means (1) any Investment or acquisition (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise and which may include, for the avoidance of doubt, a transaction that may constitute a Change of Control), whose consummation is not conditioned on the availability of, or on obtaining, third party financing, (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness, Disqualified Stock or Preferred Stock requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment, (3) any Restricted Payment requiring irrevocable notice in advance thereof; (4) any asset sale or a disposition excluded from the definition of "Asset Disposition" and (5) a "Permitted Change of Control."

"Long Derivative Instrument" means a Derivative Instrument (i) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with positive changes to the Performance References and/or (ii) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to the Performance References.

"LTM EBITDA" means Consolidated EBITDA of the Company measured for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which consolidated financial statements are available (which may, at the Company's election, be internal financial statements), in each case with such pro forma adjustments giving effect to such Indebtedness, acquisition or Investment, as applicable, since the start of such four quarter period and as are consistent with the pro forma adjustments set forth in the definition of "Fixed Charge Coverage Ratio."

"Management Advances" means loans or advances made to, or Guarantees with respect to loans or advances made to, future, present or former employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of any Parent Entity, the Company or any Restricted Subsidiary:

(1) (a) in respect of travel, entertainment, relocation or moving related expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or (b) for purposes of funding any such person's purchase of Capital Stock (or similar obligations) of the Company, its Subsidiaries or any Parent Entity with (in the case of this clause (1)(b)) the approval of the Board of Directors of the Company;

(2) in respect of relocation or moving related expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in connection with any closing or consolidation of any facility or office; or

(3) not exceeding $25 million and 4% of LTM EBITDA in the aggregate outstanding at the time of incurrence.

"Management Stockholders" means the members of management of the Company (or any Parent Entity) or its Subsidiaries who are holders of Capital Stock of the Company or of any Parent Entity on the Issue Date or will become holders of such Capital Stock in connection with the Transactions.

"Market Capitalization" means an amount equal to (i) the total number of issued and outstanding shares of common Capital Stock of the Company or any Parent Entity on the date of the declaration of a Restricted Payment permitted pursuant to Section 3.3(b)(10) multiplied by (ii) the arithmetic mean of the closing prices per share of such common Capital Stock on the principal securities exchange on which such common Capital Stock are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

"Minority Investment" means any Person (other than a Subsidiary) in which the Issuer or any Restricted Subsidiary owns Stock or Stock Equivalents, including any joint venture (regardless of form of legal entity).

"Moody's" means Moody's Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"Nationally Recognized Statistical Rating Organization" means a nationally recognized statistical rating organization within the meaning of Rule 436 under the Securities Act.

"Net Available Cash" with respect to any Asset Disposition, means cash proceeds received (including any cash proceeds received from the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Disposition, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

(1) all legal, accounting, consulting, investment banking, survey costs, title and recording expenses, title insurance premiums, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, relocation expenses, commissions, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such transaction;

(2) all Taxes paid, reasonably estimated to be payable, Tax reserves set aside or payable or accrued as a liability under GAAP (including, for the avoidance of doubt, any income, withholding and other Taxes payable as a result of the distribution or deemed distribution of such proceeds to the Company or any of its Subsidiaries, transfer taxes, deed or mortgage recording taxes and Taxes that would be payable in connection with any repatriation of such proceeds), as a consequence of such transaction, including distributions for Related Taxes or any transactions occurring or deemed to occur to effectuate a payment under this Indenture;

(3) all payments made on any Indebtedness which is (x) secured by any assets subject to such transaction, in accordance with the terms of any Lien upon such assets, (y) is owed by a Non-Guarantor or (z) which by applicable law be repaid out of the proceeds from such transaction;

(4) all distributions and other payments required to be made to non-controlling interest or minority interest holders (other than any Parent Entity, the Company or any of its respective Subsidiaries) in Subsidiaries or joint ventures as a result of such transaction;

(5) all costs associated with unwinding any related Hedging Obligations in connection with such transaction;

(6) the deduction of appropriate amounts required to be provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the assets disposed of in such transaction and retained

by the Company or any Restricted Subsidiary after such transaction, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction;

(7) any portion of the purchase price from such transaction placed in escrow, whether for the satisfaction of any indemnification obligations in respect of such transaction, as a reserve for adjustments to the purchase price associated with any such transaction or otherwise in connection with such transaction; and

(8) the amount of any liabilities (other than Indebtedness in respect of the Credit Agreement and the Notes) directly associated with such asset being sold and retained by the Company or any of its Restricted Subsidiaries.

"Net Short" means, with respect to a Holder or beneficial owner, as of a date of determination, either (i) the value of its Short Derivative Instruments exceeds the sum of the (x) the value of its Notes plus (y) the value of its Long Derivative Instruments as of such date of determination or (ii) it is reasonably expected that such would have been the case were a Failure to Pay or Bankruptcy Credit Event (each as defined in the 2014 ISDA Credit Derivatives Definitions) to have occurred with respect to the Company or any Guarantor immediately prior to such date of determination.

"Non-Financing Lease Obligation" means a lease obligation that is not required to be accounted for as a financing or capital lease in accordance with GAAP. For the avoidance of doubt, a straight-line or operating lease shall be considered a Non-Financing Lease Obligation.

"Non-Guarantor" means any Restricted Subsidiary of the Company that is not a Guarantor.

"Non-U.S. Person" means a Person who is not a U.S. Person (as defined in Regulation S).

"Note Documents" means the Notes (including Additional Notes), the Note Guarantees, the Collateral Documents, the Intercreditor Agreements and this Indenture.

"Note Guarantees" means the Guarantees of the Initial Notes and any Additional Notes.

"Notes" has the meaning ascribed to it in the recitals of this Indenture.

"Notes Collateral Agent" means Wilmington Trust, National Association, as collateral agent for the Holders of the Notes under the Collateral Documents and any successor pursuant to the provisions of this Indenture and the Collateral Documents.

"Notes Custodian" means the custodian with respect to the Global Notes (as appointed by DTC) or any successor Person thereto, and shall initially be the Trustee.

"Notes Obligations" means Obligations in respect of the Notes, the Note Guarantees, the Indenture and the Collateral Documents.

"Notes/Term Priority Collateral" means all Collateral other than the ABL Priority Collateral.

"Obligations" means any principal, interest (including Post-Petition Interest and fees accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Issuer or any Guarantor whether or not a claim for Post-Petition Interest or fees is allowed in such proceedings), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

"Offering Memorandum" means the final offering memorandum dated September 11, 2020, relating to the offering by the Company of $1,000 million principal amount of its 6.125% Senior First Lien Notes due 2028 and any future offering memorandum relating to Additional Notes.

"Officer" means, with respect to any Person, (1) the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Accounting Officer, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President"), the Treasurer, any Assistant Treasurer, any Managing Director, the Secretary or any Assistant Secretary (a) of such Person or (b) if such Person is owned or managed by a single entity, of such entity, or (2) any other individual designated as an "Officer" for the purposes of this Indenture by the Board of Directors of such Person.

"Officer's Certificate" means, with respect to any Person, a certificate signed by one Officer of such Person.

"Opinion of Counsel" means a written opinion from legal counsel who is reasonably satisfactory to the Trustee. The counsel may be an employee of or counsel to the Company or its Subsidiaries.

"Parent Entity" means any direct or indirect parent of the Company.

"Parent Entity Expenses" means:

(1) fees, costs and expenses (including all administrative, legal, accounting and other professional fees, costs and expenses) incurred or paid by any Parent Entity in connection with reporting obligations under or otherwise incurred or paid in connection with compliance with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, this Indenture or any other agreement or instrument relating to the Notes, the Note Guarantees or any other Indebtedness of the Company or any Restricted Subsidiary, including in respect of any reports filed or delivered with respect to the Securities Act, Exchange Act or the respective rules and regulations promulgated thereunder;

(2) customary salary, bonus, severance, indemnity, insurance (including premiums therefor) and other benefits payable to any employee, director, officer, manager, contractor, consultant or advisor of any Parent Entity or other Persons under its articles, charter, by-laws, partnership agreement or other organizational documents or pursuant to written agreements with any such Person to the extent relating to the Company and its Subsidiaries;

(3) (A) such Parent Entity's general operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties) to the extent such costs and expenses are attributable to the ownership or operation of the Company and its Restricted Subsidiaries and (to the extent of cash actually paid by Unrestricted Subsidiaries to the Company or its Restricted Subsidiaries for such purposes) Unrestricted Subsidiaries, (B) any indemnification claims made by directors or officers of the Company (or any Parent Entity) to the extent such claims are attributable to the ownership or operation of the Company or any Restricted Subsidiary and (to the extent of cash actually paid by Unrestricted Subsidiaries to the Company or its Restricted Subsidiaries for such purposes) Unrestricted Subsidiaries or (C) fees and expenses otherwise due and payable by the Company (or any Parent Entity) or any Restricted Subsidiary and not prohibited to be paid by the Company and its Restricted Subsidiaries under this Indenture;

(4) expenses incurred by any Parent Entity in connection with (i) any offering, sale, conversion or exchange of Capital Stock or Indebtedness (whether or not successful) and (ii) any related compensation paid to employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of such Parent Entity;

(5) amounts payable pursuant to any management services or similar agreements or the management services provisions in an investor rights agreement or other equityholders' agreement as in effect on the Issue Date (including any amendment thereto or replacement thereof so long as any such amendment or replacement is not

materially disadvantageous in the reasonable determination of the Company to the Holders when taken as a whole, as compared to the management services or similar agreements as in effect immediately prior to such amendment or replacement), solely to the extent such amounts are not paid directly by the Company or its Subsidiaries; and

(6) amounts to finance Investments that would otherwise be permitted to be made pursuant to Section 3.3 hereof if made by the Company or a Restricted Subsidiary; *provided*, that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment, (B) such Parent Entity shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Capital Stock) to be contributed to the capital of the Company or one of its Restricted Subsidiaries or (2) the merger, consolidation or amalgamation of the Person formed or acquired into the Company or one of its Restricted Subsidiaries (to the extent not prohibited by Section 4.1 hereof) in order to consummate such Investment, (C) such Parent Entity and its Affiliates (other than the Company or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Company or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Indenture and such consideration or other payment is included as a Restricted Payment under this Indenture, (D) any property received by the Company shall not increase amounts available for Restricted Payments pursuant to Section 3.3(a) (iii) and (E) such Investment shall be deemed to be made by the Company or such Restricted Subsidiary pursuant to a provision of the covenant described in Section 3.3 or pursuant to the definition of "Permitted Investment."

"Pari Obligations" means (x) Senior Secured Term Credit Facility Obligations, (y) the Notes Obligations and (z) any Additional Pari Obligations.

"Pari Passu Indebtedness" means Indebtedness of the Issuer which ranks equally in right of payment to the Notes or of any Guarantor if such Indebtedness ranks equally in right of payment to the Note Guarantees of the Notes.

"Pari Passu Lien Priority" means, relative to specified Indebtedness, having equal Lien priority on specified Collateral and subject to the Pari Passu Intercreditor Agreement.

"Pari Passu Intercreditor Agreement" means the First Lien Pari Intercreditor Agreement, dated as of the date hereof, by and among the Company, Avaya Holdings Corp., the other grantors party thereto, Goldman Sachs Bank USA, as Credit Agreement Collateral Agent for the benefit of the Credit Agreement Secured Parties and Authorized Representative for the Credit Agreement Secured Parties (each as defined therein), the Notes Collateral Agent, as the Initial Additional Pari Collateral Agent, as the Initial Additional Authorized Representative for the Initial Additional Pari Secured Parties and each additional Collateral Agent and Authorized Representative (each as defined therein) from time to time party thereto.

"Paying Agent" means any Person authorized by the Issuer to pay the principal of (and premium, if any) or interest on any Note on behalf of the Issuer.

"Permitted Asset Swap" means the concurrent purchase and sale or exchange of assets used or useful in a Similar Business or a combination of such assets and cash, Cash Equivalents between the Company or any of the Restricted Subsidiaries and another Person; *provided* that any cash or Cash Equivalents received in excess of the value of any cash or Cash Equivalents sold or exchanged must be applied in accordance with Section 3.5 hereof.

"Permitted Change of Control" means any Change of Control that does not constitute a Change of Control Triggering Event.

"Permitted Change of Control Costs" means all fees, costs and expenses incurred or payable by the Company, any Parent Entity or any of its Restricted Subsidiaries in good faith in connection with a Permitted Change of Control.

"Permitted Holders" means, collectively, (i) the Management Stockholders (including any Management Stockholders holding Capital Stock through an equityholding vehicle), (ii) any Person who is acting solely as an

underwriter in connection with a public or private offering of Capital Stock of any Parent Entity or the Company, acting in such capacity, (iii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing, any Permitted Plan or any Person or group that becomes a Permitted Holder specified in the last sentence of this definition are members and any member of such group; *provided* that, in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in subclauses (i) through (ii), collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Company or any Parent Entity held by such group and (iv) any Permitted Plan. Any Person or group whose acquisition of beneficial ownership constitutes (i) a Change of Control in respect of which a Change of Control Offer is made or waived in accordance with the requirements of this Indenture or (ii) a Permitted Change of Control, will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"Permitted Intercompany Activities" means any transactions (A) between or among the Company and its Restricted Subsidiaries that are entered into in the ordinary course of business or consistent with past practice of the Company and its Restricted Subsidiaries and, in the reasonable determination of the Company are necessary or advisable in connection with the ownership or operation of the business of the Company and its Restricted Subsidiaries, including (i) payroll, cash management, purchasing, insurance and hedging arrangements; (ii) management, technology and licensing arrangements; and (iii) customary loyalty and rewards programs; and (B) between or among the Company, its Restricted Subsidiaries and any Captive Insurance Subsidiary.

"Permitted Investment" means (in each case, by the Company or any of the Restricted Subsidiaries):

(1) Investments in (a) a Restricted Subsidiary (including the Capital Stock of, or guarantees of obligations of, a Restricted Subsidiary) or the Company or (b) a Person (including the Capital Stock of any such Person) that will, upon the making of such Investment, become a Restricted Subsidiary;

(2) Investments in another Person if such Person is engaged, directly or through entities that will be Restricted Subsidiaries, in any Similar Business and as a result of such Investment such other Person, in one transaction or a series of transactions, is merged, amalgamated, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets (or such division, business unit, product line or business) to, or is liquidated into, the Company or a Restricted Subsidiary, and any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, combination, transfer or conveyance;

(3) Investments in cash, Cash Equivalents or Investment Grade Securities;

(4) Investments in receivables owing to the Company or any Restricted Subsidiary created or acquired in the ordinary course of business or consistent with past practice;

(5) Investments in payroll, travel, entertainment, relocation, moving related and similar advances that are made in the ordinary course of business or consistent with past practice;

(6) Management Advances;

(7) Investments (including debt obligations and equity interests) (a) received in settlement, compromise or resolution of debts created in the ordinary course of business or consistent with past practice, (b) in exchange for any other Investment or accounts receivable, endorsements for collection or deposit held by the Company or any such Restricted Subsidiary, (c) as a result of foreclosure, perfection or enforcement of any Lien, (d) in satisfaction of judgments or (e) pursuant to any plan of reorganization or similar arrangement including upon the bankruptcy or insolvency of a debtor or litigation, arbitration or other disputes or otherwise with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(8) Investments made as a result of the receipt of promissory notes or other non-cash consideration (including earn-outs) from a sale or other disposition of property or assets, including an Asset Disposition;

(9) Investments existing or pursuant to binding commitments, agreements or arrangements in effect on the Issue Date and any modification, replacement, renewal, reinvestment or extension thereof; *provided* that the amount of any such Investment may not be increased except (i) as required by the terms of such Investment or binding commitment as in existence on the Issue Date (including in respect of any unused commitment), plus any accrued but unpaid interest (including any accretion of interest, original issue discount or the issuance of pay-in-kind securities) and premium payable by the terms of such Indebtedness thereon and fees and expenses associated therewith as of the Issue Date or (ii) as otherwise permitted under this Indenture;

(10) Hedging Obligations, which transactions or obligations not prohibited by Section 3.2 hereof;

(11) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under Section 3.6 hereof;

(12) any Investment to the extent made using Capital Stock of the Company (other than Disqualified Stock) or Capital Stock of any Parent Entity or any Unrestricted Subsidiary as consideration;

(13) any transaction to the extent constituting an Investment that is permitted by and made in accordance with Section 3.8(b) hereof (except those described in Section 3.8(b)(1), (4), (8), (9), (14) and (22));

(14) Investments consisting of (i) purchases or other acquisitions of inventory, supplies, materials, equipment and similar assets or (ii) licenses, sublicenses, cross-licenses, leases, subleases, assignments, contributions or other Investments of intellectual property or other intangibles or services in the ordinary course of business pursuant to any joint development, joint venture or marketing arrangements with other Persons or any Intercompany License Agreement and any other Investments made in connection therewith;

(15) (i) Guarantees of Indebtedness not prohibited by Section 3.2 hereof and (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business or consistent with past practice, and (ii) performance guarantees and Contingent Obligations with respect to obligations that are permitted by this Indenture;

(16) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Indenture;

(17) Investments of a Restricted Subsidiary acquired after the Issue Date or of an entity merged or amalgamated into or consolidated with the Company or merged or amalgamated into or consolidated with a Restricted Subsidiary after the Issue Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(18) any Investment in any Subsidiary or any joint venture in the ordinary course of business or consistent with past practice in connection with any cash management arrangements, cash pooling arrangements, intercompany loans or activities related thereto;

(19) contributions to a "rabbi" trust for the benefit of any employee, director, officer, manager, contractor, consultant, advisor or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Company, and Investments relating to non-qualified deferred payment plans in the ordinary course of business or consistent with past practice;

(20) Investments in joint ventures and similar entities and Unrestricted Subsidiaries having an aggregate fair market value, when taken together with all other Investments made pursuant to this clause that are at the time outstanding, not to exceed the greater of $185 million and 27.5% of LTM EBITDA at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), plus the amount of any returns (including dividends, payments, interest,

distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments (without duplication for purposes of Section 3.3 of any amounts applied pursuant to Section 3.3(a)(iii)) with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value; *provided*, however, that if any Investment pursuant to this clause is made in any Person that is not the Company or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Company or a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) or (2) above and shall cease to have been made pursuant to this clause;

(21) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause that are at that time outstanding, not to exceed the greater of $185 million and 27.5% of LTM EBITDA (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), plus the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments (without duplication for purposes of Section 3.3 of any amounts applied pursuant to Section 3.3(a)(iii) with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value; *provided, however*, that if any Investment pursuant to this clause is made in any Person that is not the Company or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Company or a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) or (2) above and shall cease to have been made pursuant to this clause;

(22) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause that are at that time outstanding, not to exceed the greater of $185 million and 27.5% of LTM EBITDA (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), plus the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments (without duplication for purposes of Section 3.3 of any amounts applied pursuant to Section 3.3(a)(iii)) with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value; *provided, however*, that if any Investment pursuant to this clause is made in any Person that is not the Company or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Company or a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) or (2) above and shall cease to have been made pursuant to this clause;

(23) (i) Investments arising in connection with a Qualified Securitization Financing or Receivables Facility and (ii) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets in connection with a Qualified Securitization Financing or Receivables Facility;

(24) Investments in connection with the Transactions;

(25) repurchases of Notes;

(26) Investments by an Unrestricted Subsidiary entered into prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary as described under Section 3.20;

(27) guaranty and indemnification obligations arising in connection with surety bonds issued in the ordinary course of business or consistent with past practice;

(28) Investments (a) consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with past practice, (b) made in the ordinary course of business or consistent with past practice in connection with obtaining, maintaining or renewing client, franchisee and customer contacts and loans or (c) advances, loans, extensions of credit (including the creation of receivables) or prepayments made to, and guarantees with respect to obligations of, franchisees, distributors, suppliers, lessors, licensors and licensees in the ordinary course of business or consistent with past practice;

(29) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with past practice;

(30) Investments consisting of UCC Article 3 endorsements for collection or deposit and Article 4 trade arrangements with customers (or any comparable or similar provisions in other applicable jurisdictions) in the ordinary course of business or consistent with past practices;

(31) any Investment by any Captive Insurance Subsidiary in connection with the provision of insurance to the Company or any Subsidiaries, which Investment is made in the ordinary course of business or consistent with past practice of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(32) non-cash Investments in connection with tax planning and reorganization activities, and Investments in connection with a Permitted Intercompany Activity, Permitted Tax Restructuring and related transactions;

(33) Investments made from casualty insurance proceeds in connection with the replacement, substitution, restoration or repair of assets on account of a Casualty Event; and

(34) any other Investment so long as, immediately after giving pro forma effect to the Investment and the incurrence of any Indebtedness the net proceeds of which are used to make such Investment, the Consolidated Total Leverage Ratio shall be no greater than 2.80 to 1.00.

"Permitted Liens" means, with respect to any Person:

(1) Liens on assets or property of a Restricted Subsidiary that is not a Guarantor securing Indebtedness and other Obligations of any Restricted Subsidiary that is not a Guarantor;

(2) pledges, deposits or Liens (a) in connection with workmen's compensation laws, payroll taxes, unemployment insurance laws, employers' health tax and other social security laws or similar legislation or other insurance related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto), (b) securing liability, reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments) for the benefit of insurance carriers under insurance or self-insurance arrangements or otherwise supporting the payments of items set forth in the foregoing clause (a), or (c) in connection with bids, tenders, completion guarantees, contracts, leases, utilities, licenses, public or statutory obligations, or to secure the performance of bids, trade contracts, government contracts and leases, statutory obligations, surety, stay, indemnity, warranty, release, judgment, customs, appeal, performance bonds, guarantees of government contracts, return of money bonds, bankers' acceptance facilities and obligations of a similar nature (including those to secure health, safety and environmental obligations), and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case incurred in the ordinary course of business or consistent with past practice;

(3) Liens with respect to outstanding motor vehicle fines and Liens imposed by law or regulation, including carriers', warehousemen's, mechanics', landlords', suppliers', materialmen's, repairmen's, architects', construction contractors' or other similar Liens, in each case for amounts not overdue for a period of more than 60 days or, if more than 60 days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith by appropriate proceedings;

(4) Liens for Taxes, assessments or other governmental charges that are not overdue for a period of more than 60 days or not yet payable or subject to penalties for nonpayment or that are being contested in good faith

by appropriate proceedings; *provided* that appropriate reserves required pursuant to GAAP (or other applicable accounting principles) have been made in respect thereof;

(5) encumbrances, charges, ground leases, easements (including reciprocal easement agreements), survey exceptions, restrictions, encroachments, protrusions, by-law, regulation, zoning restrictions or reservations of, or rights of others for, licenses, rights of way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects and irregularities in title and similar encumbrances) as to the use of real properties, exceptions on title policies insuring Liens granted on any mortgaged properties or any other collateral or Liens incidental to the conduct of the business of such Person or to the ownership of its properties, including servicing agreements, development agreements, site plan agreements, subdivision agreements, facilities sharing agreements, cost sharing agreements and other similar agreements, charges or encumbrances, which do not in the aggregate materially interfere with the ordinary course conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole;

(6) Liens (a) securing Hedging Obligations, Cash Management Obligations and the costs thereof; (b) that are rights of set-off, rights of pledge or other bankers' Liens (i) relating to treasury, depository and cash management services or any automated clearing house transfers of funds in the ordinary course of business or consistent with past practice, (ii) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company or any Subsidiary or consistent with past practice or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any Restricted Subsidiary in the ordinary course of business or consistent with past practice; (c) on cash accounts securing Indebtedness and other Obligations permitted to be incurred under Section 3.2(b)(8)(e) with financial institutions; (d) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes; and (e) (i) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection and (ii) in favor of a banking or other financial institution or electronic payment service providers arising as a matter of law encumbering deposits (including the right of set-off) arising in the ordinary course of business in connection with the maintenance of such accounts and (iii) arising under customary general terms and conditions of the account bank in relation to any bank account maintained with such bank and attaching only to such account and the products and proceeds thereof, which Liens, in any event, do not secure any Indebtedness;

(7) leases, licenses, subleases and sublicenses of assets (including real property, intellectual property, software and other technology rights), in each case entered into in the ordinary course of business, consistent with past practice or, with respect to intellectual property, software and other technology rights, that are not material to the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole;

(8) Liens securing or otherwise arising out of judgments, decrees, attachments, orders or awards not giving rise to an Event of Default under Section 6.1(a)(5);

(9) Liens (a) securing Capitalized Lease Obligations, or Purchase Money Obligations, or securing the payment of all or a part of the purchase price of, or securing Indebtedness or other Obligations incurred to finance or refinance the acquisition, improvement or construction of, assets or property acquired or constructed in the ordinary course of business; *provided* that (i) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be incurred under this Indenture and (ii) any such Liens may not extend to any assets or property of the Company or any Restricted Subsidiary other than assets and property affixed or appurtenant thereto and accessions, additions, improvements, proceeds, dividends or distributions thereof, including after-acquired property that is (A) affixed or incorporated into the property or assets covered by such Lien, (B) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (C) the proceeds and products thereof and (b) any interest or title of a lessor, sublessor, franchisor, licensor or sublicensor or secured by a lessor's, sublessor's, franchisor's, licensor's or sublicensor's interest under any Capitalized Lease Obligations or Non-Financing Lease Obligations;

(10) Liens arising from UCC financing statements, including precautionary financing statements (or similar filings) regarding operating leases or consignments entered into by the Company and its Restricted Subsidiaries;

(11) Liens existing on the Issue Date, excluding Liens securing the Credit Agreement or the Notes;

(12) Liens on property, other assets or shares of stock of a Person at the time such Person becomes a Subsidiary (or at the time the Company or a Subsidiary acquires such property, other assets or shares of stock, including any acquisition by means of a merger, amalgamation, consolidation or other business combination transaction with or into the Company or any Restricted Subsidiary); *provided*, *however*, that such Liens are not created in anticipation of such other Person becoming a Subsidiary (or such acquisition of such property, other assets or stock); *provided*, *further*, that such Liens are limited to all or part of the same property, other assets or stock (plus property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof, including after-acquired property that is (i) affixed or incorporated into the property or assets covered by such Lien, (ii) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (iii) the proceeds and products thereof) that secured (or, under the written arrangements under which such Liens arose, could secure) the Obligations relating to any Indebtedness or other obligations to which such Liens relate;

(13) Liens securing Obligations relating to any Indebtedness or other obligations of the Company or a Restricted Subsidiary owing to the Company or another Restricted Subsidiary, or Liens in favor of the Company or any Restricted Subsidiary or the Trustee;

(14) Liens securing Refinancing Indebtedness incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under this Indenture; *provided* that any such Lien is limited to all or part of the same property or assets (plus property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof, including after-acquired property that is (i) affixed or incorporated into the property or assets covered by such Lien, (ii) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (iii) the proceeds and products thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Obligations relating to the Indebtedness or other obligations being refinanced or is in respect of property or assets that is or could be the security for or subject to a Permitted Lien hereunder;

(15) (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Company or any Restricted Subsidiary has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;

(16) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture securing financing arrangement, joint venture or similar arrangement pursuant to any joint venture securing financing agreement, joint venture or similar agreement;

(17) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(18) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale or purchase of goods entered into in the ordinary course of business or consistent with past practice;

(19) Liens on the Collateral (a) securing Indebtedness and other Obligations in respect of Credit Facilities, including any letter of credit facility relating thereto, under Section 3.2(b)(1); *provided* that such Liens shall have Pari Passu Lien Priority on the Collateral relative to (i) the Notes (in the case of subclauses (a), (b) or (c)

of Section 3.2(b)(1)) or (ii) the ABL Obligations (in the case of subclause (d) of Section 3.2(b)(1)); and (b) securing obligations of the Company or any Subsidiary in respect of any Cash Management Obligation or Hedging Obligation provided by any lender party to any Credit Facility or Affiliate of such lender (or any Person that was a lender or an Affiliate of a lender at the time the applicable agreements in respect of such Cash Management Obligation or Hedging Obligation were entered into);

(20) Liens securing Indebtedness and other Obligations under Section 3.2(b)(5); *provided* that such Liens shall only be permitted if such Liens are limited to all or part of the same property or assets, including Capital Stock (plus property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof, including after-acquired property that is (i) affixed or incorporated into the property or assets covered by such Lien, (ii) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (iii) the proceeds and products thereof) acquired, or of any Person acquired or merged, consolidated or amalgamated with or into the Company or any Restricted Subsidiary, in any transaction to which such Indebtedness or other Obligation relates;

(21) Liens securing Indebtedness and other Obligations permitted by clause (7), (11) or (17) of Section 3.2(b); *provided* that (i) in the case of clause (7)(i), the related Indebtedness represented by such Capitalized Lease Obligations or Purchase Money Obligations shall not be secured by any property, equipment or assets of the Company or any Restricted Subsidiary other than the property, equipment or assets so acquired, leased, expanded, constructed, installed, replaced, repaired or improved and any proceeds therefrom and other than assets and property affixed or appurtenant thereto and accessions, additions, improvements, proceeds, dividends or distributions thereof, including after-acquired property that is (A) affixed or incorporated into the property or assets covered by such Lien, (B) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (C) the proceeds and products thereof, (ii) in the case of clause (7)(ii), such Liens cover only the assets subject to such Sale and Leaseback Transaction and (iii) in the case of clause (11), such Liens cover only the assets of such Subsidiary;

(22) [reserved];

(23) Liens on Capital Stock or other securities or assets of any Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(24) Liens deemed to exist in connection with Investments permitted under clause (4) of the definition of "Cash Equivalents";

(25) Liens on (i) goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Company or any Subsidiary or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments and (ii) specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(26) Liens on vehicles or equipment of the Company or any Restricted Subsidiary in the ordinary course of business or consistent with past practice;

(27) Liens on assets or securities deemed to arise in connection with and solely as a result of the execution, delivery or performance of contracts to sell such assets or securities if such sale is otherwise permitted by this Indenture;

(28) (a) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto, and (b) Liens, pledges, deposits made or other security provided to secure liabilities to, or

indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefits of), insurance carriers in the ordinary course of business or consistent with past practice;

(29) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement permitted under this Indenture;

(30) Liens (i) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted under this Indenture to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment (including any letter of intent or purchase agreement with respect to such Investment), and (ii) consisting of an agreement to sell, transfer, lease or otherwise dispose of any property in an asset sale, in each case, solely to the extent such Investment or sale, transfer, lease or other disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(31) Liens securing Indebtedness and other Obligations in an aggregate principal amount not to exceed the greater of (a) $185 million and (b) 27.5% of LTM EBITDA at the time incurred; *provided* that if such Liens are incurred on the Collateral, such Liens shall have Pari Passu Lien Priority on the Collateral relative to the Notes;

(32) Liens then existing with respect to assets of an Unrestricted Subsidiary on the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary pursuant to Section 3.20;

(33) Liens securing Indebtedness and other Obligations permitted under Section 3.2; *provided* that with respect to Liens securing Indebtedness or other Obligations permitted under this clause, at the time of incurrence and after giving pro forma effect thereto, the Consolidated Secured Leverage Ratio would be no greater than 3.30 to 1.00; *provided further* that if such Liens are incurred on the Collateral, such Liens shall have Pari Passu Lien Priority on the Collateral relative to the Notes;

(34) Liens deemed to exist in connection with Investments in repurchase agreements permitted by the covenant described under Section 3.2, provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(35) Liens arising in connection with a Qualified Securitization Financing or a Receivables Facility;

(36) Settlement Liens;

(37) rights of recapture of unused real property in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any government, statutory or regulatory authority;

(38) the rights reserved to or vested in any Person or government, statutory or regulatory authority by the terms of any lease, license, franchise, grant or permit held by the Company or any Restricted Subsidiary or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(39) restrictive covenants affecting the use to which real property may be put and Liens or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; provided that such Liens or covenants do not interfere with the ordinary conduct of the business of the Company or any Restricted Subsidiary;

(40) Liens on property, assets or Permitted Investments used to defease or to satisfy or discharge Indebtedness; *provided* that such defeasance, satisfaction or discharge is not prohibited by this Indenture;

(41) Liens relating to escrow arrangements securing Indebtedness, including (i) Liens on escrowed proceeds from the issuance of Indebtedness for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, arrangers, trustee or collateral agent thereof) and (ii) Liens on cash or Cash

Equivalents set aside at the time of the incurrence of any Indebtedness, in either case to the extent such cash or Cash Equivalents prefund the payment of interest or premium or discount on such Indebtedness (or any costs related to the issuance of such Indebtedness) and are held in an escrow account or similar arrangement to be applied for such purpose;

(42) Liens securing the Notes (other than any Additional Notes) and the related Guarantees;

(43) Liens on assets securing any Indebtedness owed to any Captive Insurance Subsidiary by the Company or any Restricted Subsidiary; and

(44) Liens arising in connection with any Permitted Intercompany Activities, Permitted Tax Restructuring and related transactions.

In the event that a Permitted Lien meets the criteria of more than one of the types of Permitted Liens (at the time of incurrence or at a later date), the Company in its sole discretion may divide, classify or from time to time reclassify all or any portion of such Permitted Lien in any manner that complies with this Indenture and such Permitted Lien shall be treated as having been made pursuant only to the clause or clauses of the definition of Permitted Lien to which such Permitted Lien has been classified or reclassified.

"Permitted Plan" means any employee benefits plan of the Company or any of its Affiliates and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

"Permitted Tax Amount" means (a) if and for so long as the Company is a member of a group filing a consolidated, combined, unitary, group or affiliated tax return with any Parent Entity, any dividends or other distributions to fund any income Taxes for which such Parent Entity is liable up to an amount not to exceed with respect to such Taxes the amount of any such Taxes that the Company and its Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis calculated as if the Company and its Subsidiaries had paid Tax on a consolidated, combined, group, affiliated or unitary basis on behalf of an affiliated or other group consisting only of the Company and its Subsidiaries; and (b) for any taxable year (or portion thereof) ending after the Issue Date for which the Company is treated as a disregarded entity, partnership, or other flow-through entity for U.S. federal, state, provincial, territorial, and/or local income Tax purposes, the payment of dividends or other distributions to the direct or indirect owner or owners of equity of the Company in an aggregate amount equal to the product of (i) the aggregate taxable income of the Company and its Subsidiaries allocated to such owners for U.S. federal income tax purposes for such taxable year (or portion thereof) and (ii) the highest combined marginal federal, state and/or local income tax rate applicable to a corporation residing in California or New York, New York (whichever is higher for the relevant taxable year or portion thereof).

"Permitted Tax Restructuring" means any reorganizations and other activities related to Tax planning and Tax reorganization entered into prior to, on or after the date hereof so long as such Permitted Tax Restructuring is not adverse to the holders of the Notes in any material respect (as reasonably determined by the Company in good faith).

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

"Post-Petition Interest" means any interest or entitlement to fees or expenses or other charges that accrue after the commencement of any bankruptcy or insolvency proceeding, whether or not allowed or allowable as a claim in any such bankruptcy or insolvency proceeding.

"Predecessor Note" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.11 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Note.

"Preferred Stock," as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"Public Company Costs" means, as to any Person, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs relating to compliance with the provisions of the Securities Act and the Exchange Act or any other comparable body of laws, rules or regulations, as companies with listed equity, directors' compensation, fees and expense reimbursement, costs relating to enhanced accounting functions and investor relations, stockholder meetings and reports to stockholders, directors' and officers' insurance and other executive costs, legal and other professional fees, listing fees and other transaction costs, in each case to the extent arising solely by virtue of the listing of such Person's equity securities on a national securities exchange or issuance of public debt securities.

"Purchase Money Obligations" means any Indebtedness incurred to finance or refinance the acquisition, leasing, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets, or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

"QIB" means any "qualified institutional buyer" as such term is defined in Rule 144A.

"Qualified Securitization Financing" means any Securitization Facility that meets the following conditions: (i) the Board of Directors shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Company and its Restricted Subsidiaries, (ii) all sales of Securitization Assets and related assets by the Company or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made for fair consideration (as determined in good faith by the Company) and (iii) the financing terms, covenants, termination events and other provisions thereof shall be fair and reasonable terms (as determined in good faith by the Company) and may include Standard Securitization Undertakings.

"Rating Agencies" means S&P, Moody's and Fitch or if no rating of the Notes by S&P, Moody's or Fitch is publicly available, as the case may be, the equivalent of such rating selected by the Company by any other Nationally Recognized Statistical Ratings Organization.

"Receivables Assets" means (a) any accounts receivable owed to the Company or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement.

"Receivables Facility" means an arrangement between the Company or a Subsidiary and a commercial bank, an asset based lender or other financial institution or an Affiliate thereof pursuant to which (a) the Company or such Subsidiary, as applicable, sells (directly or indirectly) to such commercial bank, asset based lender or other financial institution (or such Affiliate) Receivables Assets and (b) the obligations of the Company or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Repurchase Obligations) to the Company and such Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Company) and may include Standard Securitization Undertakings, and shall include any guaranty in respect of such arrangements.

"refinance" means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms "*refinances*," "*refinanced*" and "*refinancing*" as used for any purpose in this Indenture shall have a correlative meaning.

"Refinancing Indebtedness" means Indebtedness that is incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness (or unutilized commitment in respect of Indebtedness) existing on the Issue Date or incurred (or established) in compliance with this Indenture (including Indebtedness of the Company that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of the Company or another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness, and Indebtedness incurred pursuant to a commitment that refinances any Indebtedness or unutilized commitment; *provided*, *however*, that:

(1) (a) such Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness being refunded, refinanced, replaced, exchanged, renewed, repaid or extended (or requires no or nominal payments in cash (other than interest payments) prior to the date that is 91 days after the maturity date of the Notes); and (b) to the extent such Refinancing Indebtedness refinances Subordinated Indebtedness, such Refinancing Indebtedness is Subordinated Indebtedness, respectively, and, in the case of Subordinated Indebtedness, is subordinated to the Notes on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being refinanced;

(2) Refinancing Indebtedness shall not include:

(i) Indebtedness of a Subsidiary of the Company that is not a Guarantor that refinances Indebtedness of the Company or a Guarantor; or

(ii) Indebtedness of the Company or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary; and

(3) such Refinancing Indebtedness is incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (x) the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being Refinanced, plus (y) an amount equal to any unutilized commitment relating to the Indebtedness being refinanced or otherwise then outstanding under a Credit Facility or other financing arrangement being refinanced to the extent the unutilized commitment being refinanced could be drawn in compliance with Section 3.2 hereof immediately prior to such refinancing, plus (z) accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing;

provided, that clause (1) above will not apply to any extension, replacement, refunding, refinancing, renewal or defeasance of any Credit Facilities or Secured Indebtedness. Refinancing Indebtedness in respect of any Credit Facility or any other Indebtedness may be incurred from time to time after the termination, discharge or repayment of any such Credit Facility or other Indebtedness.

"Regulation S" means Regulation S under the Securities Act.

"Regulation S-X" means Regulation S-X under the Securities Act.

"Related Taxes" means (i) any Taxes, including sales, use, transfer, rental, *ad valorem*, value added, stamp, property, consumption, franchise, license, capital, registration, business, customs, net worth, gross receipts, excise, occupancy, intangibles or similar Taxes and other fees and expenses (other than (x) Taxes measured by income and (y) withholding Taxes), required to be paid (*provided* such Taxes are in fact paid) by any Parent Entity by virtue of its:

(a) being organized or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than, directly or indirectly, the Company or any of the Company's Subsidiaries) or otherwise maintain its existence or good standing under applicable law,

(b) being a holding company parent, directly or indirectly, of the Company or any Subsidiaries of the Company,

(c) receiving dividends from or other distributions in respect of the Capital Stock of, directly or indirectly, the Company or any Subsidiaries of the Company, or

(d) having made any payment in respect to any of the items for which the Company is permitted to make payments to any Parent Entity pursuant to Section 3.3; and

(e) any Permitted Tax Amount.

"Restricted Investment" means any Investment other than a Permitted Investment.

"Restricted Notes" means Initial Notes and Additional Notes bearing the Restricted Notes Legend.

"Restricted Notes Legend" means the legend set forth in Section 2.1(d)(1).

"Restricted Subsidiary" means any Subsidiary of the Company other than an Unrestricted Subsidiary.

"Rule 144A" means Rule 144A under the Securities Act.

"Rule 3-16 Capital Stock" means any Capital Stock of the Company or any Subsidiary of the Company that cannot be included in the Collateral without creating a requirement pursuant to Rule 3-16 of Regulation S-X (or any other law, rule or regulation) of filing separate financial statements of the Company or such Subsidiary with the SEC (or any other governmental agency).

"S&P" means Standard & Poor's Investors Ratings Services or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"Sale and Leaseback Transaction" means any arrangement providing for the leasing by the Company or any of the Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to a third Person in contemplation of such leasing.

"Screened Affiliate" means any Affiliate of a Holder (i) that makes investment decisions independently from such Holder and any other Affiliate of such Holder that is not a Screened Affiliate, (ii) that has in place customary information screens between it and such Holder and any other Affiliate of such Holder that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to the Company or its Subsidiaries, (iii) whose investment policies are not directed by such Holder or any other Affiliate of such Holder that is acting in concert with such Holder in connection with its investment in the Notes, and (iv) whose investment decisions are not influenced by the investment decisions of such Holder or any other Affiliate of such Holder that is acting in concert with such Holders in connection with its investment in the Notes.

"SEC" means the Securities and Exchange Commission or any successor thereto.

"Secured Indebtedness" means any Indebtedness secured by a Lien other than Indebtedness with respect to Cash Management Obligations.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"Securitization Asset" means (a) any accounts receivable, mortgage receivables, loan receivables, royalty, franchise fee, license fee, patent or other revenue streams and other rights to payment or related assets and the proceeds thereof and (b) all collateral securing such receivable or asset, all contracts and contract rights, guarantees or other obligations in respect of such receivable or asset, lockbox accounts and records with respect to such account

or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in connection with a securitization, factoring or receivable sale transaction.

"Securitization Facility" means any of one or more securitization, financing, factoring or sales transactions, as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, pursuant to which the Company or any of the Restricted Subsidiaries sells, transfers, pledges or otherwise conveys any Securitization Assets (whether now existing or arising in the future) to a Securitization Subsidiary or any other Person.

"Securitization Fees" means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or Receivables Asset or participation interest therein issued or sold in connection with, and other fees, expenses and charges (including commissions, yield, interest expense and fees and expenses of legal counsel) paid in connection with, any Qualified Securitization Financing or Receivables Facility.

"Securitization Repurchase Obligation" means any obligation of a seller of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to repurchase or otherwise make payments with respect to Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"Securitization Subsidiary" means any Subsidiary of the Company in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings or Receivables Facilities and other activities reasonably related thereto or another Person formed for this purpose.

"Senior Secured ABL Facility" means the asset-based revolving credit facility under the credit agreement, dated as of December 15, 2017, among the Company, as borrower, Holdings, the guarantors and lenders from time to time party thereto, and Citibank, N.A., as administrative agent and collateral agent (as amended, restated, amended and restated, replaced, extended, renewed, refinanced, supplemented or otherwise modified from time to time in accordance with the terms thereof)

"Senior Secured Term Credit Facility" means the Senior Secured Term Credit Facility under the credit agreement, dated as of December 15, 2017, among the Company, as borrower, Holdings, the guarantors and lenders from time to time party thereto, and Goldman Sachs Bank USA, as administrative agent and collateral agent (as amended, restated, amended and restated, replaced, extended, renewed, refinanced, supplemented or otherwise modified from time to time in accordance with the terms thereof).

"Senior Secured Term Credit Facility Obligations" means Obligations in respect of the Senior Secured Term Credit Facility and any security or other documents related thereto.

"Series" means, with respect to any Pari Obligations, each of (i) the Notes Obligations, (ii) Senior Secured Term Credit Facility Obligations and (iii) any Additional Pari Obligations incurred which, pursuant to any joinder agreement, are to be represented under the Pari Passu Intercreditor Agreement by a common representative (in its capacity as such for such Additional Pari Obligations).

"Settlement" means the transfer of cash or other property with respect to any credit or debit card charge, check or other instrument, electronic funds transfer, or other type of paper-based or electronic payment, transfer, or charge transaction for which a Person acts as a processor, remitter, funds recipient or funds transmitter in the ordinary course of its business.

"Settlement Asset" means any cash, receivable or other property, including a Settlement Receivable, due or conveyed to a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person or an Affiliate of such Person.

"Settlement Indebtedness" means any payment or reimbursement obligation in respect of a Settlement Payment.

"Settlement Lien" means any Lien relating to any Settlement or Settlement Indebtedness (and may include, for the avoidance of doubt, the grant of a Lien in or other assignment of a Settlement Asset in consideration of a Settlement Payment, Liens securing intraday and overnight overdraft and automated clearing house exposure, and similar Liens).

"Settlement Payment" means the transfer, or contractual undertaking (including by automated clearing house transaction) to effect a transfer, of cash or other property to effect a Settlement.

"Settlement Receivable" means any general intangible, payment intangible, or instrument representing or reflecting an obligation to make payments to or for the benefit of a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person.

"Shared Collateral" means, at any time, Collateral in which the holders (or their collateral agent) of two or more Series of Pari Obligations hold a security interest at such time. If more than two Series of Pari Obligations are outstanding at any time and the holders of less than all Series of Pari Obligations hold a security interest in any Collateral at such time, then such Collateral shall constitute Shared Collateral for those Series of Pari Obligations that hold a security interest in such Collateral at such time and shall not constitute Shared Collateral for any Series which does not have a security interest in such Collateral at such time.

"Short Derivative Instrument" means a Derivative Instrument (i) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to the Performance References and/or (ii) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to the Performance References.

"Significant Subsidiary" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02(w)(2) of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

"Similar Business" means (a) any businesses, services or activities engaged in by the Company or any of its Subsidiaries or any Associates on the Issue Date, (b) any businesses, services and activities engaged in by the Company or any of its Subsidiaries or any Associates that are related, corollary, complementary, synergistic, incidental, ancillary or similar to any of the foregoing (including non-core incidental business acquired in connection with any acquisition or investment) or are extensions or developments of any thereof, and (c) a Person conducting a business, service or activity specified in clauses (a) and (b), and any Subsidiary thereof. For the avoidance of doubt, any Person that invests or owns Capital Stock or Indebtedness of another Person that is engaged in a Similar Business shall be deemed to be engaged in a Similar Business.

"Standard Securitization Undertakings" means representations, warranties, covenants, guarantees and indemnities entered into by the Company or any Subsidiary of the Company which the Company has determined in good faith to be customary in a Securitization Facility or Receivables Facility, including those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivables Facility, a non-credit related recourse accounts receivable factoring arrangement.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"Stock" means shares of capital stock or shares in the capital, as the case may be (whether denominated as common stock or preferred stock or ordinary shares or preferred shares, as the case may be), beneficial, partnership

or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting, provided that any instrument evidencing Indebtedness convertible or exchangeable for Stock shall not be deemed to be Stock unless and until such instrument is so converted or exchanged; provided, further that, solely with respect to any CFC or CFC Holding Company, Stock shall also include any instrument or security treated as stock for U.S. federal income tax purposes.

"Stock Equivalents" shall mean all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable, provided that any instrument evidencing Indebtedness convertible or exchangeable for Stock Equivalents shall not be deemed to be Stock Equivalents unless and until such instrument is so converted or exchanged; provided, further that, solely with respect to any CFC or CFC Holding Company, Stock Equivalent shall also include any instrument or security treated as stock equivalent for U.S. federal income tax purposes.

"Subordinated Indebtedness" means, with respect to any person, any Indebtedness (whether outstanding on the Issue Date or thereafter incurred) which is expressly subordinated in right of payment to the Notes pursuant to a written agreement.

"Subsidiary" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof;

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership interests or otherwise; and

(b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity; or

(3) at the election of the Company, any partnership, joint venture, limited liability company or similar entity of which such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"Subsidiary Guarantor" means any Restricted Subsidiary of the Company that is a Guarantor.

*"*Taxes" means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including interest, penalties and other liabilities with respect thereto) that are imposed by any government or other taxing authority.

"Term Collateral Agent" means Goldman Sachs Bank USA, as administrative agent and collateral agent for the Senior Secured Term Credit Facility or any successor collateral agent.

"Total Assets" means, as of any date, the total consolidated assets of the Company and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Company and its Restricted Subsidiaries, determined on a pro forma basis in a manner consistent with the definition of Fixed Charge Coverage Ratio.

"Transaction Expenses" means any fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) incurred or paid by the Company or any Restricted Subsidiary associated or in connection with the Transactions, including any fees, costs and expenses associated with payments or distributions to dissenting stockholders (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential) with respect thereto).

"Transactions" means the issuance of the Notes and the use of proceeds therefrom to repay borrowings under the Senior Secured Term Credit Facility, the payment of Transaction Expenses, other related transactions as described in the Offering Memorandum and the consummation of any other transaction in connection with the foregoing.

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

"Trust Officer" means, when used with respect to the Trustee or the Notes Collateral Agent, any officer within the corporate trust department of the Trustee or the Notes Collateral Agent, as applicable, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee or the Notes Collateral Agent, as applicable, who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such Person's knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

"Trustee" means Wilmington Trust, National Association, together with its successors and assigns.

"UCC" means the Uniform Commercial Code (or equivalent statute) as in effect from time to time in the State of New York; *provided, however,* that at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of a collateral agent's security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

"Unrestricted Subsidiary" means:

(1) any Subsidiary of the Company that at the time of determination is an Unrestricted Subsidiary (as designated by the Company in the manner provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Company may designate any Subsidiary of the Company, (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein), to be an Unrestricted Subsidiary only if:

(1) at the time of such designation, such Subsidiary or any of its Subsidiaries does not own any Capital Stock of the Company or any other Subsidiary of the Company which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary; and

(2) such designation and the Investment, if any, of the Company in such Subsidiary complies with Section 3.3.

"U.S. Government Obligations" means securities that are (1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally Guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the Company thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such

U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depositary receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depositary receipt.

"Voting Stock" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the quotient (in number of years) obtained by dividing:

(1) the sum of the products obtained by multiplying (i) the number of years (calculated to the nearest one-twelfth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, by (ii) the amount of such payment, by

(2) the sum of all such payments;

provided that, for purposes of determining the Weighted Average Life to Maturity of any Indebtedness, the effects of any prepayments or amortization made on such Indebtedness prior to the date of such determination will be disregarded.

"Wholly Owned" means, with respect to the ownership by a Person of a Subsidiary, that all of the Stock of such Subsidiary (other than directors' qualifying shares or nominee or other similar shares required pursuant to Applicable Law) are owned by such Person or another Wholly Owned Subsidiary of such Person.

"Wholly Owned Domestic Subsidiary" means a Domestic Subsidiary of the Company, all of the Capital Stock of which is owned by the Company or a Subsidiary Guarantor.

SECTION 1.2. Other Definitions.

Term	**Defined in Section**
"Acceptable Commitment"	**3.5(a)(3)(ii)**
"Accounting Change"	**"GAAP"**
"Accredited Investor Note"	**2.1(b)**
"Action"	**12.7(v)**
"Additional Restricted Notes"	**2.1(b)**
"Advance Offer"	**3.5**
"Advance Portion"	**3.5**
"Affiliate Transaction"	**3.8(a)**
"Agent Members"	**2.1(e)(2)**
"Applicable Premium Deficit"	**8.4(1)**
"Approved Foreign Bank"	**"Cash Equivalents"**
"Asset Disposition Offer"	**3.5(a)**
"Authenticating Agent"	**2.2**
"CERCLA"	**12.7(q)**
"Change of Control Offer"	**3.9(a)**

Term	Defined in Section
"Change of Control Payment"	**3.9(a)**
"Change of Control Payment Date"	**3.9(a)(2)**
"Clearstream"	**2.1(b)**
"Collateral Advance Offer"	**3.5**
"Collateral Advance Portion"	**3.5**
"Collateral Asset Disposition Offer"	**3.5**
"Collateral Document Order"	**12.7(r)**
"Collateral Excess Proceeds"	**3.5**
"Covenant Defeasance"	**8.3**
"Declined Collateral Excess Proceeds"	**3.5**
"Defaulted Interest"	**2.15**
"Directing Holder"	**6.1(a)(10)**
"equity incentives"	**"Consolidated Net Income"**
"Euroclear"	**2.1(b)**
"Event of Default"	**6.1(a)**
"Excess Proceeds"	**3.5(a)**
"Foreign Disposition"	**3.5(c)(i)**
"Global Notes"	**2.1(b)**
"Guaranteed Obligations"	**10.1**
"Increased Amount"	**3.6**
"Initial Default"	**6.1(b)**
"Initial Lien"	**3.6**
"Institutional Accredited Investor Global Notes"	**2.1(b)**
"Institutional Accredited Investor Notes"	**2.1(b)**
"Issuer Order"	**2.2**
"Judgment Currency"	**13.19**
"LCT Election"	**1.4(c)**
"LCT Public Offer"	**1.4(c)**

"LCT Test Date"	**1.4(c)**
"Legal Defeasance"	**8.2**
"Legal Holiday"	**13.6**
"Noteholder Direction"	**6.1(a)(10)**
"Notes Register"	**2.3**
"Other Guarantee"	**10.2(b)(5)**
"Position Representation"	**6.1(a)(10)**
"primary obligations"	**"Contingent Obligations"**
"protected purchaser"	**2.11**
"Redemption Date"	**5.7(a)**
"Registrar"	**2.3**
"Regulation S Global Note"	**2.1(b)**
"Regulation S Notes"	**2.1(b)**

Term	Defined in Section
"Related Person"	**12.7(b)**
"Resale Restriction Termination Date"	**2.6(b)**
"Reserved Indebtedness Amount"	**3.2(c)(9)**
"Restricted Payment"	**3.3(a)**
"Restricted Period"	**2.1(b)**
"Rule 144A Global Note"	**2.1(b)**
"Rule 144A Notes"	**2.1(b)**
"Special Interest Payment Date"	**2.15(a)**
"Special Record Date"	**2.15(a)**
"Successor Company"	**4.1(a)(1)**
"Suspended Covenants"	**3.21**
"Suspension Period"	**3.21**
"Treasury Capital Stock"	**3.3(b)**
"Verification Covenant"	**6.1(a)(10)**

SECTION 1.3. [Reserved].

SECTION 1.4. Rules of Construction.

(a) Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) "including" means including without limitation;

(5) words in the singular include the plural and words in the plural include the singular;

(6) "will" shall be interpreted to express a command;

(7) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the Issuer dated such date prepared in accordance with GAAP;

(8) the principal amount of any preferred stock shall be (i) the maximum liquidation value of such preferred stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such preferred stock, whichever is greater;

(9) all amounts expressed in this Indenture or in any of the Notes in terms of money refer to the lawful currency of the United States of America;

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

(11) except as otherwise stated, (a) references herein to Articles, Sections and Exhibit mean the Articles and Sections of and Exhibits to this Indenture and (b) each reference herein to a particular Article or Section includes the Sections, subsections and paragraphs subsidiary thereto;

(12) unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person; and

(13) the use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the UCC; notwithstanding anything herein to the contrary, neither the Trustee nor the Notes Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee or the Notes Collateral Agent pursuant to reasonable procedures approved by the Trustee or the Notes Collateral Agent, as applicable.

(b) Notwithstanding anything to the contrary herein, in the event an item of Indebtedness (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on any ratio based exceptions, thresholds and baskets, such ratio(s) shall be calculated with respect to such incurrence, issuance or other transaction without giving effect to amounts being utilized under any other exceptions, thresholds or baskets (other than ratio based baskets) on the same date. Each item of Indebtedness that is incurred or issued, each Lien incurred and each other transaction undertaken will be deemed to have been incurred, issued or taken first, to the extent available, pursuant to the relevant ratio based test.

Notwithstanding anything to the contrary herein, in the event an item of Indebtedness (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on any ratio based exceptions, thresholds and baskets, such ratio(s) shall be calculated without regard to the incurrence of any Indebtedness under any revolving facility or letter of credit facility immediately prior to or in connection therewith.

Any calculation or measure that is determined with reference to the Company's financial statements (including Consolidated EBITDA, Consolidated Interest Expense, Consolidated Net Income, Fixed Charges, Fixed Charge Coverage Ratio, Consolidated Secured Leverage Ratio and Consolidated Total Leverage Ratio) may be determined with reference to the financial statements of a Parent Entity instead, so long as such Parent Entity does not hold any material assets other than, directly or indirectly, the Capital Stock of the Company.

(c) When calculating the availability under any basket or ratio under this Indenture or compliance with any provision of this Indenture in connection with any Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence, issuance or assumption of Indebtedness and the use of proceeds thereof, the incurrence or creation of Liens, repayments, Restricted Payments and Asset Dispositions), in each case, at the option of the Company (the Company's election to exercise such option, an "*LCT Election*"), the date of determination for availability under any such basket or ratio and whether any such action or transaction is permitted (or any requirement or condition therefor is complied with or satisfied (including as to the absence of any continuing Default or Event of Default)) under this Indenture shall be deemed to be the date (the "*LCT Test Date*") either (a) the definitive agreement for such Limited Condition Transaction is entered into (or, if applicable, the date of delivery of an irrevocable declaration of a Restricted Payment or similar event), or (b) solely in connection with an acquisition to which the United Kingdom City Code on Takeovers and Mergers applies, the date on which a "Rule 2.7 announcement" of a firm intention to make an offer (or equivalent announcement in another jurisdiction) (an "*LCT Public Offer*") in respect of a target of a Limited Condition Transaction and, in each case, if, after giving pro forma effect to the Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence, issuance or assumption

of Indebtedness and the use of proceeds thereof, the incurrence or creation of Liens, repayments, Restricted Payments and Asset Dispositions) and any related pro forma adjustments, the Company or any of its Restricted Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCT Test Date in compliance with such ratio, test or basket (and any related requirements and conditions), such ratio, test or basket (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes (in the case of Indebtedness, for example, whether such Indebtedness is committed, issued, assumed or incurred at the LCT Test Date or at any time thereafter); *provided*, that (a) if financial statements for one or more subsequent fiscal quarters shall have become available, the Company may elect, in its sole discretion, to redetermine all such ratios, tests or baskets on the basis of such financial statements, in which case, such date of redetermination shall thereafter be the applicable LCT Test Date for purposes of such ratios, tests or baskets, (b) except as contemplated in the foregoing clause (a), compliance with such ratios, test or baskets (and any related requirements and conditions) shall not be determined or tested at any time after the applicable LCT Test Date for such Limited Condition Transaction and any actions or transaction related thereto (including acquisitions, Investments, the incurrence, issuance or assumption of Indebtedness and the use of proceeds thereof, the incurrence or creation of Liens, repayments, Restricted Payments and Asset Dispositions) and (c) Consolidated Interest Expense for purposes of the Fixed Charge Coverage Ratio will be calculated using an assumed interest rate as reasonably determined by the Company.

For the avoidance of doubt, if the Company has made an LCT Election, (1) if any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would at any time after the LCT Test Date have been exceeded or otherwise failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in EBITDA or Total Assets of the Company or the Person subject to such Limited Condition Transaction, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been complied with as a result of such fluctuations; (2) if any related requirements and conditions (including as to the absence of any continuing Default or Event of Default) for which compliance or satisfaction was determined or tested as of the LCT Test Date would at any time after the LCT Test Date not have been complied with or satisfied (including due to the occurrence or continuation of an Default or Event of Default), such requirements and conditions will not be deemed to have been failed to be complied with or satisfied (and such Default or Event of Default shall be deemed not to have occurred or be continuing); and (3) in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Limited Condition Transaction following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or date for redemption, purchase or repayment specified in an irrevocable notice for such Limited Condition Transaction is terminated, expires or passes (or, if applicable, the irrevocable notice is terminated, expires or passes or, as applicable, the offer in respect of an LCT Public Offer for, such acquisition is terminated), as applicable, without consummation of such Limited Condition Transaction, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Limited Condition Transaction.

ARTICLE II

THE NOTES

SECTION 2.1. Form, Dating and Terms.

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited. The Initial Notes issued on the date hereof will be in an aggregate principal amount of $1,000,000,000. In addition, the Issuer may issue, from time to time in accordance with the provisions of this Indenture, Additional Notes (as provided herein). Furthermore, Notes may be authenticated and delivered upon registration of transfer, exchange or in lieu of, other Notes pursuant to Sections 2.2, 2.6, 2.11, 2.13, 5.6 or 9.5, in connection with an Asset Disposition Offer, Collateral Asset Disposition Offer or Collateral Advance Offer or Advance Offer pursuant to Section 3.5 or in connection with a Change of Control Offer pursuant to Section 3.9.

Notwithstanding anything to the contrary contained herein, the Issuer may not issue any Additional Notes, unless such issuance is in compliance with Section 3.2.

With respect to any Additional Notes, the Issuer shall set forth in one or more indentures supplemental hereto, the following information:

(A) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;

(B) the issue price and the issue date of such Additional Notes, including the date from which interest shall accrue; and

(C) whether such Additional Notes shall be Restricted Notes.

In authenticating and delivering Additional Notes, the Trustee shall be entitled to receive and shall be fully protected in relying upon, in addition to the Opinion of Counsel and Officer's Certificate required by Section 13.2, an Opinion of Counsel as to the due authorization, execution, delivery, validity and enforceability of such Additional Notes.

The Initial Notes and the Additional Notes shall be considered collectively as a single class for all purposes of this Indenture, *provided* that any Additional Notes will not be issued with the same CUSIP, ISIN or other identifying number as the Initial Notes unless such Additional Notes are fungible with the Initial Notes for U.S. federal income tax purposes. Holders of the Initial Notes and the Additional Notes will vote and consent together on all matters to which such Holders are entitled to vote or consent as one class, and none of the Holders of the Initial Notes or the Additional Notes shall have the right to vote or consent as a separate class on any matter to which such Holders are entitled to vote or consent.

(b) The Initial Notes are being offered and sold by the Issuer pursuant to a Purchase Agreement, dated September 11, 2020, among the Issuer, the Guarantors and J.P. Morgan Securities LLC as representative for the several Initial Purchasers. The Initial Notes and any Additional Notes (if issued as Restricted Notes) (the "Additional Restricted Notes") will be resold initially only to (A) Persons they reasonably believe to be QIBs in reliance on Rule 144A and (B) Non-U.S. Persons in reliance on Regulation S. Such Initial Notes and Additional Restricted Notes may thereafter be transferred to, among others, persons reasonably believed to be QIBs, purchasers in reliance on Regulation S, and AIs and IAIs in accordance with Rule 501 under the Securities Act in each case, in accordance with the procedure described herein. Additional Notes offered after the date hereof may be offered and sold by the Issuer from time to time pursuant to one or more purchase agreements in accordance with applicable law.

Initial Notes and Additional Restricted Notes offered and sold to persons reasonably believed to be QIBs in the United States of America in reliance on Rule 144A (the "Rule 144A Notes") shall be issued in the form of a permanent global Note substantially in the form of Exhibit A, which is hereby incorporated by reference and made a part of this Indenture, including appropriate legends as set forth in Section 2.1(d) (the "Rule 144A Global Note"), deposited with the Trustee, as custodian for DTC, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. The Rule 144A Global Note may be represented by more than one certificate if so required by DTC's rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Rule 144A Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Notes and any Additional Restricted Notes offered and sold to non-U.S. Persons outside the United States of America (the "Regulation S Notes") in reliance on Regulation S shall be issued in the form of a permanent global Note substantially in the form of Exhibit A including appropriate legends as set forth in Section 2.1(d) (the "Regulation S Global Note"). Each Regulation S Global Note will be deposited upon issuance with, or on behalf of, the Trustee as custodian for DTC in the manner described in this Article II. Prior to the 40th day after the later of the commencement of the offering of the Initial Notes and the Issue Date (such period through and including such 40th day, the "Restricted Period"), interests in the Regulation S Global Note may only be transferred to non-U.S. persons pursuant to Regulation S, unless exchanged for interests in a Global Note in accordance with the transfer and certification requirements described herein.

Investors may hold their interests in the Regulation S Global Note through organizations other than Euroclear Bank S.A./N.V. ("Euroclear") or Clearstream Banking, *société anonyme* ("Clearstream") that are participants in DTC's system or directly through Euroclear or Clearstream, if they are participants in such systems, or indirectly through organizations which are participants in such systems. If such interests are held through Euroclear or Clearstream, Euroclear and Clearstream will hold such interests in the applicable Regulation S Global Note on behalf of their participants through customers' securities accounts in their respective names on the books of their respective depositaries. Such depositaries, in turn, will hold such interests in the applicable Regulation S Global Note in customers' securities accounts in the depositaries' names on the books of DTC.

The Regulation S Global Note may be represented by more than one certificate if so required by DTC's rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Notes and Additional Restricted Notes resold to IAIs (the "Institutional Accredited Investor Notes") in the United States of America will be issued in the form of a permanent global Note substantially in the form of Exhibit A including appropriate legends as set forth in Section 2.1(d) (the "Institutional Accredited Investor Global Note") deposited with the Trustee, as custodian for DTC, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. The Institutional Accredited Investor Global Note may be represented by more than one certificate, if so required by DTC's rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Institutional Accredited Investor Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Notes and Additional Restricted Notes resold to AIs in the United States of America will be issued in the form of a Definitive Note substantially in the form of Exhibit A including the legend as set forth in Section 2.1(d) (an "Accredited Investor Note").

The Rule 144A Global Note, the Regulation S Global Note and the Institutional Accredited Investor Global Note are sometimes collectively herein referred to as the "Global Notes."

The principal of (and premium, if any) and interest on the Notes shall be payable at the office or agency of the Paying Agent designated by the Issuer maintained for such purpose (which shall initially be the office of the Trustee maintained for such purpose), or at such other office or agency of the Issuer as may be maintained for such purpose pursuant to Section 2.3; *provided*, *however*, that, at the option of the Paying Agent, each installment of interest may be paid by (i) check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Notes Register or (ii) wire transfer to an account located in the United States maintained by the payee, subject to the last sentence of this paragraph. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) will be made by wire transfer of immediately available funds to the accounts specified by DTC. Payments in respect of Notes represented by Definitive Notes (including principal, premium, if any, and interest) held by a Holder of at least $1,000,000 aggregate principal amount of Notes represented by Definitive Notes will be made in accordance with the Notes Register, or by wire transfer to a Dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 15 days immediately preceding the relevant due date for payment (or such other date as the Trustee or Paying Agent, as applicable, may accept in its discretion).

The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage, in addition to those set forth on Exhibit A and in Section 2.1(d). The Issuer shall approve any notation, endorsement or legend on the Notes. Each Note shall be dated the date of its authentication. The terms of the Notes set forth in Exhibit A are part of the terms of this Indenture and, to the extent applicable, the Issuer, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to be bound by such terms.

(c) Denominations. The Notes shall be issuable only in fully registered form in minimum denominations of $2,000 and any integral multiple of $1,000 in excess thereof.

(d) Restrictive and Global Note Legends.

(1) Unless and until an Initial Note or an Additional Note issued as a Restricted Note is sold under an effective registration statement or the Issuer receives an Opinion of Counsel satisfactory to it to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act, the Rule 144A Global Note, the Regulation S Global Note, the Institutional Accredited Investor Global Note and the Accredited Investor Note shall each bear the following legend on the face thereof:

THIS SECURITY NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A")), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT ("REGULATION S"), OR (C) IT IS AN "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"),AGREES TO OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER SUCH SECURITY PRIOR TO THE DATE THAT IS [ONE YEAR][40 DAYS] AFTER THE LATER OF THE DATE THIS SECURITY WAS ISSUED AND THE LAST DATE THAT THE ISSUER OR ANY OF ITS AFFILIATES WAS THE OWNER OF THIS SECURITY OR ANY PREDECESSOR OF THIS SECURITY ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) OUTSIDE THE UNITED STATES PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS IN AN OFFSHORE TRANSACTION PURSUANT TO REGULATION S MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF NOTES OF $250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S OR THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM.

(2) Each Global Note, whether or not an Initial Note, shall bear the following legend on the face thereof:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW

YORK, TO THE ISSUER OR THE AGENT OF THE ISSUER FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

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

In the case of the Regulation S Global Note: BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.

(e) Book-Entry Provisions. (i) This Section 2.1(e) shall apply only to Global Notes deposited with the Trustee, as custodian for DTC, and for which the applicable procedures of DTC shall govern.

(1) Each Global Note initially shall (x) be registered in the name of DTC or the nominee of DTC, (y) be delivered to the Notes Custodian for DTC and (z) bear legends as set forth in Section 2.1(d)(2). Transfers of a Global Note (but not a beneficial interest therein) will be limited to transfers thereof in whole, but not in part, to DTC, its successors or its respective nominees, except as set forth in Section 2.1(e)(4) and 2.1(f). If a beneficial interest in a Global Note is transferred or exchanged for a beneficial interest in another Global Note, the Notes Custodian will (x) record a decrease in the principal amount of the Global Note being transferred or exchanged equal to the principal amount of such transfer or exchange and (y) record a like increase in the principal amount of the other Global Note. Any beneficial interest in one Global Note that is transferred to a Person who takes delivery in the form of an interest in another Global Note, or exchanged for an interest in another Global Note, will, upon transfer or exchange, cease to be an interest in such Global Note and become an interest in the other Global Note and, accordingly, will thereafter be subject to all transfer and exchange restrictions, if any, and other procedures applicable to beneficial interests in such other Global Note for as long as it remains such an interest.

(2) Members of, or participants in, DTC ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by DTC or by the Notes Custodian as the custodian of DTC or under such Global Note, and DTC may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Note.

(3) In connection with any transfer of a portion of the beneficial interest in a Global Note pursuant to Section 2.1(f) to beneficial owners who are required to hold Definitive Notes, the Notes Custodian shall reflect on its books and records the date and a decrease in the principal amount of such Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note to be transferred, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, one or more Definitive Notes of like tenor and amount.

(4) In connection with the transfer of an entire Global Note to beneficial owners pursuant to Section 2.1(f), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations.

(5) The registered Holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(6) Any Holder of a Global Note shall, by acceptance of such Global Note, agree that transfers of beneficial interests in such Global Note may be effected only through a book-entry system maintained by the Holder of such Global Note (or its agent) or any holder of a beneficial interest in such Global Note, and that ownership of a beneficial interest in such Global Note shall be required to be reflected in a book entry.

(f) Definitive Notes. Except as provided below, owners of beneficial interests in Global Notes will not be entitled to receive Definitive Notes. Definitive Notes shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Note if (A) DTC notifies the Issuer that it is unwilling or unable to continue as Depositary for such Global Note or DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depositary, and in each case a successor depositary is not appointed by the Issuer within 90 days of such notice, (B) the Issuer in its sole discretion executes and deliver to the Trustee and Registrar an Officer's Certificate stating that such Global Note shall be so exchangeable or (C) an Event of Default has occurred and is continuing and the Registrar has received a written request from DTC. In the event of the occurrence of any of the events specified in the second preceding sentence or in clause (A), (B) or (C) of the preceding sentence, the Issuer shall promptly make available to the Registrar a reasonable supply of Definitive Notes. In addition, any Note transferred to an affiliate (as defined in Rule 405 under the Securities Act) of the Issuer or evidencing a Note that has been acquired by an affiliate in a transaction or series of transactions not involving any public offering must, until one year after the last date on which either the Issuer or any affiliate of the Issuer was an owner of the Note, be in the form of a Definitive Note and bear the legend regarding transfer restrictions in Section 2.1(d)(1). If required to do so pursuant to any applicable law or regulation, beneficial owners may also obtain Definitive Notes in exchange for their beneficial interests in a Global Note upon written request in accordance with DTC's and the Registrar's procedures.

(1) Any Definitive Note delivered in exchange for an interest in a Global Note pursuant to Section 2.1(e) shall, except as otherwise provided by Section 2.6(d), bear the applicable legend regarding transfer restrictions applicable to the Global Note set forth in Section 2.1(d)(1).

(2) If a Definitive Note is transferred or exchanged for a beneficial interest in a Global Note, the Trustee will (x) cancel such Definitive Note, (y) record an increase in the principal amount of such Global Note equal to the principal amount of such transfer or exchange and (z) in the event that such transfer or exchange involves less than the entire principal amount of the canceled Definitive Note, the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to the transferring Holder a new Definitive Note representing the principal amount not so transferred.

(3) If a Definitive Note is transferred or exchanged for another Definitive Note, (x) the Trustee will cancel the Definitive Note being transferred or exchanged, (y) the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, one or more new Definitive Notes in authorized denominations having an aggregate principal amount equal to the principal amount of such transfer or exchange to the transferee (in the case of a transfer) or the Holder of the canceled Definitive Note (in the case of an exchange), registered in the name of such transferee or Holder, as applicable, and (z) if such transfer or exchange involves less than the entire principal amount of the canceled Definitive Note, the Issuer shall execute, and the Trustee shall authenticate and make available for delivery to the Holder thereof, one or more Definitive Notes in authorized denominations having an aggregate principal amount

equal to the untransferred or unexchanged portion of the canceled Definitive Notes, registered in the name of the Holder thereof.

(4) Notwithstanding anything to the contrary in this Indenture, in no event shall a Definitive Note be delivered upon exchange or transfer of a beneficial interest in the Regulation S Global Note prior to the end of the Restricted Period.

SECTION 2.2. Execution and Authentication. One Officer of the Issuer shall sign the Notes for the Issuer by manual, facsimile or PDF signature. If the Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized officer of the Trustee manually authenticates the Note. The signature of the Trustee on a Note shall be conclusive evidence that such Note has been duly and validly authenticated and issued under this Indenture. A Note shall be dated the date of its authentication.

At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery: (1) Initial Notes for original issue on the Issue Date in an aggregate principal amount of $1,000,000,000, and (2) subject to the terms of this Indenture, Additional Notes for original issue in an unlimited principal amount, in each case upon a written order of the Issuer signed by one Officer (the "Issuer Order"). Such Issuer Order shall specify whether the Notes will be in the form of Definitive Notes or Global Notes, the amount of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated, the Holder of the Notes and whether the Notes are to be Initial Notes or Additional Notes.

The Trustee may appoint an agent (the "Authenticating Agent") reasonably acceptable to the Issuer to authenticate the Notes. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Issuer. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent. An Authenticating Agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

In case any of the Issuer or any Guarantor, pursuant to Article IV or Section 10.2, as applicable, shall be consolidated or merged with or into any other Person or shall convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which the Issuer or any Guarantor shall have been merged, or the Person which shall have received a conveyance, transfer, lease or other disposition as aforesaid, shall have executed an indenture supplemental hereto with the Trustee pursuant to Article IV, any of the Notes authenticated or delivered prior to such consolidation, merger, conveyance, transfer, lease or other disposition may (but shall not be required), from time to time, at the request of the successor Person, be exchanged for other Notes executed in the name of the successor Person with such changes in phraseology and form as may be appropriate to reflect such successor Person, but otherwise in substance of like tenor as the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon the Issuer Order of the successor Person, shall authenticate and make available for delivery Notes as specified in such order for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this Section 2.2 in exchange or substitution for or upon registration of transfer of any Notes, such successor Person, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time outstanding for Notes authenticated and delivered in such new name.

SECTION 2.3. Registrar and Paying Agent. The Issuer shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (the "Registrar") and an office or agency where Notes may be presented for payment. The Registrar shall keep a register of the Notes and of their transfer and exchange (the "Notes Register"). The Issuer may have one or more co-registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent and the term "Registrar" includes any co-registrar.

The Issuer shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee in writing of the name and address of each such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.7. The Issuer or any Guarantor may act as Paying Agent, Registrar or Transfer Agent.

The Issuer initially appoints DTC to act as Depositary with respect to the Global Notes. The Issuer initially appoints the Trustee as Registrar and Paying Agent for the Notes. The Issuer may change any Registrar or Paying Agent without prior notice to the Holders, but upon written notice to such Registrar or Paying Agent and to the Trustee; *provided*, *however*, that no such removal shall become effective until (i) acceptance of any appointment by a successor as evidenced by an appropriate agreement entered into by the Issuer and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee and the passage of any waiting or notice periods required by DTC procedures or (ii) written notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Issuer and the Trustee.

SECTION 2.4. Paying Agent to Hold Money in Trust. By no later than 11:00 a.m. (New York City time) on the date on which any principal of, premium, if any, or interest on any Note is due and payable, the Issuer shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal, premium or interest when due. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of, premium, if any, or interest on the Notes (whether such assets have been distributed to it by the Issuer or other obligors on the Notes), shall notify the Trustee in writing of any default by the Issuer or any Guarantor in making any such payment and shall during the continuance of any default by the Issuer (or any other obligor upon the Notes) in the making of any payment in respect of the Notes, upon the written request of the Trustee, forthwith deliver to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Notes together with a full accounting thereof. If the Issuer or a Subsidiary of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuer at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds or assets disbursed by such Paying Agent. Upon complying with this Section 2.4, the Paying Agent (if other than the Issuer or a Subsidiary of the Issuer) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

SECTION 2.5. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Issuer, on its own behalf and on behalf of each of the Guarantors, shall furnish or cause the Registrar to furnish to the Trustee, in writing at least five (5) Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

SECTION 2.6. Transfer and Exchange.

(a) A Holder may transfer a Note (or a beneficial interest therein) to another Person or exchange a Note (or a beneficial interest therein) for another Note or Notes of any authorized denomination by presenting to the Registrar a written request therefor stating the name of the proposed transferee or requesting such an exchange, accompanied by any certification, opinion or other document required by this Section 2.6. The Registrar will promptly register any transfer or exchange that meets the requirements of this Section 2.6 by noting the same in the Notes Register maintained by the Registrar for the purpose, and no transfer or exchange will be effective until it is registered in such Notes Register. The transfer or exchange of any Note (or a beneficial interest therein) may only be made in accordance with this Section 2.6 and Section 2.1(e) and 2.1(f), as applicable, and, in the case of a Global Note (or a beneficial interest therein), the applicable rules and procedures of DTC, Euroclear and Clearstream. The Registrar shall refuse to register any requested transfer or exchange that does not comply with this paragraph.

(b) Transfers of Rule 144A Notes and Institutional Accredited Investor Notes. The following provisions shall apply with respect to any proposed registration of transfer of a Rule 144A Note or an Institutional Accredited Investor Note prior to the date that is one year after the later of the date of its original issue and the last date on which the Issuer or any Affiliate of the Issuer was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date"):

(1) a registration of transfer of a Rule 144A Note or an Institutional Accredited Investor Note or a beneficial interest therein to a QIB shall be made upon the representation of the transferee in the form as set forth on the reverse of the Note that it is purchasing for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A; *provided* that no such written representation or other written certification shall be required in connection with the transfer of a beneficial interest in the Rule 144A Global Note to a transferee in the form of a beneficial interest in that Rule 144A Global Note in accordance with this Indenture and the applicable procedures of DTC;

(2) a registration of transfer of a Rule 144A Note or an Institutional Accredited Investor Global Note or a beneficial interest therein to an IAI or an AI shall be made upon receipt by the Registrar or its agent of a certificate substantially in the form set forth in Section 2.8 or Section 2.10, respectively, from the proposed transferee and the delivery of an Opinion of Counsel, certification and/or other information satisfactory to the Issuer; and

(3) a registration of transfer of a Rule 144A Note or an Institutional Accredited Investor Note or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Registrar or its agent of a certificate substantially in the form set forth in Section 2.9 from the proposed transferee and the delivery of an Opinion of Counsel, certification and/or other information satisfactory to the Issuer.

(c) Transfers of Regulation S Notes. The following provisions shall apply with respect to any proposed transfer of a Regulation S Note prior to the expiration of the Restricted Period:

(1) a transfer of a Regulation S Note or a beneficial interest therein to a QIB shall be made upon the representation of the transferee, in the form of assignment on the reverse of the certificate, that it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(2) a transfer of a Regulation S Note or a beneficial interest therein to an IAI or an AI shall be made upon receipt by the Registrar or its agent of a certificate substantially in the form set forth in Section 2.8 or Section 2.10, respectively, from the proposed transferee and the delivery of an Opinion of Counsel, certification and/or other information satisfactory to the Issuer; and

(3) a transfer of a Regulation S Note or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Registrar or its agent of a certificate substantially in the form set forth in Section 2.9 hereof from the proposed transferee and receipt by the Registrar or its agent of an Opinion of Counsel, certification and/or other information satisfactory to the Issuer.

After the expiration of the Restricted Period, interests in the Regulation S Note may be transferred in accordance with applicable law without requiring the certification set forth in Section 2.9 or any additional certification.

(d) Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes not bearing a Restricted Notes Legend, the Registrar shall deliver Notes that do not bear a Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes bearing a Restricted Notes Legend, the Registrar shall deliver only Notes that bear a Restricted Notes Legend unless an Initial Note is being transferred pursuant to an effective registration statement, Initial Notes are being exchanged for Notes that do not bear the Restricted Notes Legend in accordance with Section 2.6(e) or there is delivered to the Registrar an Opinion of Counsel reasonably satisfactory to the Issuer to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act. Any Additional Notes sold in a registered offering shall not be required to bear the Restricted Notes Legend.

(e) [Reserved].

(f) Retention of Written Communications. The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.1 or this Section 2.6. The Issuer shall have the right to inspect and make copies of all such letters, notices or other written communications, at the Issuer's expense, at any reasonable time upon the giving of reasonable prior written notice to the Registrar.

(g) Obligations with Respect to Transfers and Exchanges of Notes. To permit registrations of transfers and exchanges, the Issuer shall, subject to the other terms and conditions of this Article II, execute and the Trustee shall authenticate Definitive Notes and Global Notes at the Issuer's and the Registrar's written request.

No service charge shall be made to a Holder for any registration of transfer or exchange, but the Issuer may require the Holder to pay a sum sufficient to cover any transfer tax assessments or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to Sections 2.2, 2.6, 2.11, 2.13, 3.5, 5.6 or 9.5).

The Issuer (and the Registrar) shall not be required to register the transfer of or exchange of any Note (A) for a period beginning (1) fifteen (15) calendar days before the mailing (or electronic delivery) of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing (or electronic delivery) or (2) fifteen (15) calendar days before an interest payment date and ending on such interest payment date or (B) called for redemption, except the unredeemed portion of any Note being redeemed in part.

Prior to the due presentation for registration of transfer of any Note, the Issuer, the Trustee, the Paying Agent or the Registrar may deem and treat the person in whose name a Note is registered as the owner of such Note for the purpose of receiving payment of principal of, premium, if any, and (subject to paragraph 2 of the forms of Notes attached hereto as Exhibit A) interest on such Note and for all other purposes whatsoever, including without limitation the transfer or exchange of such Note, whether or not such Note is overdue, and none of the Issuer, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any Definitive Note delivered in exchange for an interest in a Global Note pursuant to Section 2.1(f) shall, except as otherwise provided by Section 2.6(d), bear the applicable legend regarding transfer restrictions applicable to the Definitive Note set forth in Section 2.1(d)(1).

All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(h) No Obligation of the Trustee. The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in, DTC or other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any

ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption or purchase) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to or upon the order of the registered Holders (which shall be DTC or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Trustee and the Notes Collateral Agent may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

Neither the Registrar nor the Trustee shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among DTC participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. None of the Trustee, the Notes Collateral Agent nor any of their agents shall have any responsibility for any actions taken or not taken by DTC.

SECTION 2.7. [Reserved].

SECTION 2.8. Form of Certificate to be Delivered in Connection with Transfers to IAIs.

[Date]

Avaya Holdings Corp.
4655 Great America Parkway
Santa Clara, CA 95054
Attention: General Counsel

Wilmington Trust, National Association, as Trustee
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Avaya, Inc. Notes Administrator
Telecopy: (612) 217-5651

Re: Avaya Inc. (the "Issuer")

Ladies and Gentlemen:

This certificate is delivered to request a transfer of $[ ] principal amount of the 6.125% Senior First Lien Notes due 2028 (the "Notes") of Avaya Inc. (the "Issuer").

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name:__

Address: __

Taxpayer ID Number: __

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")) purchasing for our own account or for the

account of such an institutional "accredited investor" of at least $250,000 principal amount of the Notes, and we are acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of our investment in the Notes and we invest in or purchase securities similar to the Notes in the normal course of our business. We and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

2. We understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Notes to offer, sell or otherwise transfer such Notes prior to the date that is one year after the later of the date of original issue and the last date on which the Issuer or any affiliate of the Issuer was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) to the Issuer or any Subsidiary thereof, (b) pursuant to an effective registration statement under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act, to a person we reasonably believe is a "qualified institutional buyer" under Rule 144A of the Securities Act (a "QIB") that is purchasing for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (d) pursuant to offers and sales to non-U.S. persons that occur outside the United States within the meaning of Regulation S under the Securities Act, (e) to an institutional "accredited investor" within the meaning of Rule 501(a) (1), (2), (3) or (7) under the Securities Act that is purchasing for its own account or for the account of such an institutional "accredited investor," in each case in a minimum principal amount of Notes of $250,000 for investment purposes and not with a view to or for offer or sale in connection with any distribution in violation of the Securities Act or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Notes is proposed to be made pursuant to clause (e) above prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Issuer and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) and that it is acquiring such Notes for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Issuer and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Termination Date of the Notes pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Issuer.

3. We [are][are not] an Affiliate of the Issuer.

TRANSFEREE:_____

BY:_____

SECTION 2.9. Form of Certificate to be Delivered in Connection with Transfers Pursuant to Regulation S.

[Date]

Avaya Holdings Corp.
4655 Great America Parkway
Santa Clara, CA 95054
Attention: General Counsel

Wilmington Trust, National Association, as Trustee
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Avaya, Inc. Notes Administrator
Telecopy: (612) 217-5651

Re: Avaya Inc. (the "Issuer")

6.125% Senior First Lien Notes due 2028 (the "Notes")

Ladies and Gentlemen:

In connection with our proposed sale of $[_____] aggregate principal amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S ("Regulation S") under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

(a) the offer of the Notes was not made to a person in the United States;

(b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(a)(2) or Rule 904(a)(2) of Regulation S, as applicable; and

(d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(b)(2), Rule 903(b)(3) or Rule 904(b)(1) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(b)(2), Rule 903(b)(3) or Rule 904(b)(1), as the case may be.

We also hereby certify that we [are][are not] an Affiliate of the Issuer and, to our knowledge, the transferee of the Notes [is][is not] an Affiliate of the Issuer.

The Trustee and the Issuer are entitled to conclusively rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate and not otherwise defined herein have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: ____
Authorized Signature

SECTION 2.10. Form of Certificate to be Delivered in Connection with Transfers to AIs.

[Date]

Avaya Holdings Corp.
4655 Great America Parkway
Santa Clara, CA 95054
Attention: General Counsel

Wilmington Trust, National Association, as Trustee
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Avaya, Inc. Notes Administrator
Telecopy: (612) 217-5651

Re: Avaya Inc. (the "Issuer")

Ladies and Gentlemen:

This certificate is delivered to request a transfer of $[ ] principal amount of the 6.125% Senior First Lien Notes due 2028 (the "Notes") of Avaya Inc. (the "Issuer").

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name:__

Address: __

Taxpayer ID Number: __

The undersigned represents and warrants to you that:

1. I am an "accredited investor" (as defined in Rule 501(a)(4) under the U.S. Securities Act of 1933, as amended (the "Securities Act")) and I am acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. I have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of my investment in the Notes and I invest in or purchase securities similar to the Notes in the normal course of my business. I am able to bear the economic risk of my investment.

2. I understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. I agree on my own behalf to offer, sell or otherwise transfer such Notes prior to the date that is one year after the later of the date of original issue and the last date on which the Issuer or any affiliate of the Issuer was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) to the Issuer or any Subsidiary thereof, (b) pursuant to an effective registration statement under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act, to a person I reasonably believe is a "qualified institutional buyer" under Rule 144A of the Securities Act (a "QIB") that is purchasing for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (d) pursuant to offers and sales to non-U.S. persons that occur outside the United States within the meaning of Regulation S under the Securities Act, (e) to an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is purchasing for its own account or for the account of such an institutional "accredited investor," in each case in a minimum principal amount of Notes of $250,000 for investment purposes and not with a view to or for offer or sale in connection with any distribution in violation of the Securities Act or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law

that the disposition of my property be at all times within my control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. Each purchaser acknowledges that the Issuer and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Termination Date of the Notes pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Issuer.

3. I understand and acknowledge that upon the issuance thereof, and until such time as the same is no longer required under applicable requirements of the Securities Act or state securities laws, the Notes that I acquire will be certificated Notes that will bear, and all certificates issued in exchange therefor or in substitution thereof will bear, a restrictive legend set forth in Section 2.1(d) of the Indenture.

4. I [am][am not] an Affiliate of the Issuer.

TRANSFEREE:____
BY:_____

SECTION 2.11. Mutilated, Destroyed, Lost or Stolen Notes.

If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Note if the requirements of Section 8-405 of the UCC are met, such that the Holder satisfies the Issuer and the Trustee that such Note has been lost, destroyed or wrongfully taken within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar has not registered a transfer prior to receiving such notification, makes such request to the Issuer and the Trustee prior to the Note being acquired by a protected purchaser as defined in Section 8-303 of the UCC (a "protected purchaser"), satisfies any other reasonable requirements of the Trustee and provides an indemnity bond, as more fully described below; *provided*, *however*, if after the delivery of such replacement Note, a protected purchaser of the Note for which such replacement Note was issued presents for payment or registration such replaced Note, the Trustee and/or the Issuer shall be entitled to recover such replacement Note from the Person to whom it was issued and delivered or any Person taking therefrom, except a protected purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Issuer or the Trustee in connection therewith. Such Holder shall furnish an indemnity bond sufficient in the judgment of the (i) Trustee to protect the Trustee and (ii) the Issuer to protect the Issuer, the Trustee, the Paying Agent and the Registrar, from any loss which any of them may suffer if a Note is replaced, and, in the absence of notice to the Issuer, any Guarantor or the Trustee that such Note has been acquired by a protected purchaser, the Issuer shall execute, and upon receipt of an Issuer Order, the Trustee shall authenticate and make available for delivery, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 2.11, the Issuer may require that such Holder pay a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of counsel and of the Trustee) in connection therewith.

Subject to the proviso in the initial paragraph of this Section 2.11, every new Note issued pursuant to this Section 2.11, in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuer, any Guarantor (if applicable) and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.11 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 2.12. Outstanding Notes. Notes outstanding at any time are all Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those paid pursuant to Section 2.11 and those described in this Section 2.12 as not outstanding. A Note does not cease to be outstanding in the event the Issuer or an Affiliate of the Issuer holds the Note; *provided*, *however*, that (i) for purposes of determining which are outstanding for consent or voting purposes hereunder, the provisions of Section 13.4 shall apply and (ii) in determining whether the Trustee shall be protected in making a determination whether the Holders of the requisite principal amount of outstanding Notes are present at a meeting of Holders of Notes for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, or relying upon any such quorum, consent or vote, only Notes which a Trust Officer of the Trustee actually knows to be held by the Issuer or an Affiliate of the Issuer shall not be considered outstanding.

If a Note is replaced pursuant to Section 2.11 (other than a mutilated Note surrendered for replacement), it ceases to be outstanding unless the Trustee and the Issuer receive proof satisfactory to them that the replaced Note is held by a protected purchaser. A mutilated Note ceases to be outstanding upon surrender of such Note and replacement pursuant to Section 2.11.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a Redemption Date or maturity date, money sufficient to pay all principal, premium, if any, and accrued interest payable on that date with respect to the Notes (or portions thereof) to be redeemed or maturing, as the case may be, and the Paying Agent is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture, then on and after that date such Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.13. Temporary Notes. In the event that Definitive Notes are to be issued under the terms of this Indenture, until such Definitive Notes are ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Notes. Temporary Notes shall be substantially in the form, and shall carry all rights, of Definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Notes. After the preparation of Definitive Notes, the temporary Notes shall be exchangeable for Definitive Notes upon surrender of the temporary Notes at any office or agency maintained by the Issuer for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Issuer shall execute, and the Trustee shall, upon receipt of an Issuer Order, authenticate and make available for delivery in exchange therefor, one or more Definitive Notes representing an equal principal amount of Notes. Until so exchanged, the Holder of temporary Notes shall in all respects be entitled to the same benefits under this Indenture as a Holder of Definitive Notes.

SECTION 2.14. Cancellation. The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment or cancellation and dispose of such Notes in accordance with its internal policies and customary procedures (subject to the record retention requirements of the Exchange Act and the Trustee). If the Issuer or any Guarantor acquires any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.14. The Issuer may not issue new Notes to replace Notes it has paid or delivered to the Trustee for cancellation for any reason other than in connection with a transfer or exchange.

At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Notes, transferred, redeemed, repurchased or canceled, such Global Note shall be returned by DTC to the Trustee for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Definitive Notes, transferred in exchange for an interest in another Global Note, redeemed, repurchased or canceled, the principal amount of Notes represented by such Global Note shall be reduced

and an adjustment shall be made on the books and records of the Trustee (if it is then the Notes Custodian for such Global Note) with respect to such Global Note, by the Trustee or the Notes Custodian, to reflect such reduction.

SECTION 2.15. Payment of Interest; Defaulted Interest. Interest on any Note which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the Person in whose name such Note (or one or more Predecessor Notes) is registered at the close of business on the regular record date for such payment at the office or agency of the Issuer maintained for such purpose pursuant to Section 2.3.

Any interest on any Note which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days shall forthwith cease to be payable to the Holder on the regular record date, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Notes (such defaulted interest and interest thereon herein collectively called "Defaulted Interest") shall be paid by the Issuer, at its election, as provided in clause (a) or (b) below:

(a) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date (not less than 30 days after such notice) of the proposed payment (the "Special Interest Payment Date"), and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Section 2.15(a). Thereupon the Issuer shall fix a record date (the "Special Record Date") for the payment of such Defaulted Interest, which date shall be not more than twenty (20) calendar days and not less than fifteen (15) calendar days prior to the Special Interest Payment Date and not less than ten (10) calendar days after the receipt by the Trustee of the notice of the proposed payment. The Issuer shall promptly notify the Trustee in writing of such Special Record Date, and in the name and at the expense of the Issuer, the Trustee shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in Section 13.1, not less than ten (10) calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest shall be paid on the Special Interest Payment Date to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the provisions in Section 2.15(b).

(b) The Issuer may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Issuer to the Trustee of the proposed payment pursuant to this Section 2.15(b), such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section 2.15, each Note delivered under this Indenture upon registration of, transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.16. CUSIP and ISIN Numbers.

The Issuer in issuing the Notes may use "CUSIP" and "ISIN" numbers and, if so, the Trustee shall use "CUSIP and "ISIN" numbers in notices of redemption or purchase as a convenience to Holders; *provided*, *however*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption or purchase and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption or purchase shall not be affected by any defect in or omission of such CUSIP and ISIN numbers. The Issuer shall promptly notify the Trustee in writing of any change in the CUSIP and ISIN numbers.

ARTICLE III
COVENANTS

SECTION 3.1. Payment of Notes. The Issuer shall promptly pay the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. Principal, premium, if any, and interest shall be considered paid on the date due if by 11:00 a.m. New York City time on such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal, premium, if any, and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

The Issuer shall pay interest on overdue principal at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Notwithstanding anything to the contrary contained in this Indenture, the Issuer may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder.

SECTION 3.2. Limitation on Indebtedness.

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, incur any Indebtedness (including Acquired Indebtedness); *provided, however*, that the Company and any of the Restricted Subsidiaries may incur Indebtedness (including Acquired Indebtedness), if on the date of such incurrence and after giving pro forma effect thereto (including pro forma application of the proceeds thereof), either (x) the Fixed Charge Coverage Ratio of the Company and its Restricted Subsidiaries is greater than or equal to 2.00 to 1.00 or (y) the Consolidated Total Leverage Ratio of the Company and its Restricted Subsidiaries is no greater than 3.30 to 1.00; *provided, further*, that the aggregate amount of Indebtedness incurred by Non-Guarantors under this Section 3.2(a), when combined with the principal amount of all other Indebtedness incurred by Non-Guarantors pursuant to this Section 3.2(a) and any Indebtedness incurred by Non-Guarantors pursuant to Section 3(b)(11) and then outstanding, shall not exceed the greater of (a) $160 million and (b) 25% of LTM EBITDA.

(b) Section 3.2(a) will not prohibit the incurrence of the following Indebtedness (collectively, "Permitted Debt"):

(1) Indebtedness incurred under any Credit Facility (including letters of credit or bankers' acceptances issued or created under any Credit Facility), and Guarantees in respect of such Indebtedness, up to an aggregate principal amount at the time of incurrence not exceeding the sum of (a) $1,660 million, (b) the greater of $800 million and 100% of LTM EBITDA, (c) an additional amount (with any amounts incurred under this clause (c) deemed to be Secured Indebtedness for this purpose) after all amounts have been incurred under clauses (1)(a) and (b), if after giving pro forma effect to the incurrence of such additional amount and the application of the proceeds therefrom, the Consolidated Secured Leverage Ratio would be no greater than 3.30 to 1.00 outstanding at any one time, and (d) the greater of $200 million and the Borrowing Base, and any Refinancing Indebtedness in respect thereof;

(2) Guarantees by the Company or any Restricted Subsidiary of Indebtedness or other obligations of the Company or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations is not prohibited by the terms of this Indenture;

(3) Indebtedness of the Company to any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary to the Company or any Restricted Subsidiary; *provided, however*, that:

(i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary, and

(ii) any sale or other transfer of any such Indebtedness to a Person other than the Company or a Restricted Subsidiary,

shall be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be;

(4) Indebtedness represented by (a) the Notes (other than any Additional Notes), including any Guarantee thereof, (b) any Indebtedness (other than Indebtedness incurred pursuant to clauses (1), (3) or (4)(a) of this Section 3.2(b)) outstanding on the Issue Date and any Guarantees thereof, (c) Refinancing Indebtedness (including, with respect to the Notes and any Guarantee thereof) incurred in respect of any Indebtedness described in this clause (4) or clause (5) of this Section 3.2(b) or incurred pursuant to Section 3.2(a), and (d) Management Advances;

(5) Indebtedness of (x) the Company or any Restricted Subsidiary incurred or issued to finance an acquisition or Investment or (y) Persons that are acquired by the Company or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Company or a Restricted Subsidiary in accordance with the terms of this Indenture (including designating an Unrestricted Subsidiary as a Restricted Subsidiary); *provided* that such Indebtedness is in an aggregate amount not to exceed (i) the greater of $185 million and 27.5% of LTM EBITDA at the time of incurrence (when taken together with the principal amount of all other Indebtedness incurred pursuant to this subclause (i) and then outstanding), plus (ii) unlimited additional Indebtedness if after giving pro forma effect to such acquisition, merger, amalgamation or consolidation, either:

(a) the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to Section 3.2(a);

(b) either (x) the Fixed Charge Coverage Ratio of the Company and its Restricted Subsidiaries would not be lower or (y) the Consolidated Total Leverage Ratio of the Company and its Restricted Subsidiaries would not be higher, in each case, than it was immediately prior to such acquisition, merger, amalgamation or consolidation; or

(c) such Indebtedness constitutes Acquired Indebtedness (other than Indebtedness incurred in contemplation of the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by the Company or a Restricted Subsidiary); provided that, in the case of this clause (c), the only obligors with respect to such Indebtedness shall be those Persons who were obligors of such Indebtedness prior to such acquisition, merger, amalgamation or consolidation.

(6) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(7) Indebtedness (i) represented by Capitalized Lease Obligations or Purchase Money Obligations in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this subclause (i) and then outstanding, will not exceed the greater of (a) $160 million and (b) 25% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof and (ii) arising out of Sale and Leaseback Transactions in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this subclause (ii) and then outstanding, will not exceed the greater of (a) $185 million and (b) 27.5% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof;

(8) Indebtedness in respect of (a) workers' compensation claims, health, disability or other employee benefits, property, casualty or liability insurance, self-insurance obligations, customer guarantees, performance, indemnity, surety, judgment, bid, appeal, advance payment (including progress premiums), customs, value added or other tax or other guarantees or other similar bonds, instruments or obligations, completion guarantees and warranties or relating to liabilities, obligations or guarantees incurred in the ordinary course of business or consistent

with past practice; (b) the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with past practice; (c) customer deposits and advance payments (including progress premiums) received from customers for goods or services purchased in the ordinary course of business or consistent with past practice; (d) letters of credit, bankers' acceptances, discounted bills of exchange, discounting or factoring of receivables or payables for credit management purposes, warehouse receipts, guarantees or other similar instruments or obligations issued or entered into, or relating to liabilities or obligations incurred in the ordinary course of business or consistent with past practice; (e) Cash Management Obligations; and (f) Settlement Indebtedness;

(9) Indebtedness arising from agreements providing for guarantees, indemnification, obligations in respect of earn-outs, deferred purchase price or other adjustments of purchase price or, in each case, similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets, a Person (including any Capital Stock of a Subsidiary) or Investment (other than Guarantees of Indebtedness incurred by any Person acquiring or disposing of such business, assets, Person or Investment for the purpose of financing such acquisition or disposition);

(10) Indebtedness in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause and then outstanding, will not exceed 100% of the net cash proceeds received by the Company from the issuance or sale (other than to a Restricted Subsidiary) of its Capital Stock or otherwise contributed to the equity (in each case, other than through the issuance of Disqualified Stock, Designated Preferred Stock or an Excluded Contribution) of the Company, in each case, subsequent to the Issue Date, and any Refinancing Indebtedness in respect thereof; provided, however, that (i) any such net cash proceeds that are so received or contributed shall not increase the amount available for making Restricted Payments to the extent the Company and its Restricted Subsidiaries incur Indebtedness in reliance thereon and (ii) any net cash proceeds that are so received or contributed shall be excluded for purposes of incurring Indebtedness pursuant to this clause to the extent such net cash proceeds or cash have been applied to make Restricted Payments;

(11) Indebtedness of Non-Guarantors in an aggregate amount which, when combined with the principal amount of all other Indebtedness incurred pursuant to this clause (11) and any Indebtedness incurred by Non-Guarantors pursuant to Section 3.2(a) and then outstanding, will not exceed the greater of (a) $160 million and (b) 25% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof;

(12) (a) Indebtedness issued by the Company or any of its Subsidiaries to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Entity, in each case to finance the purchase or redemption of Capital Stock of the Company or any Parent Entity that is permitted by Section 3.3 and (b) Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in the ordinary course of business, consistent with past practice or in connection with the Transactions, any Investment or any acquisition (by merger, consolidation, amalgamation or otherwise);

(13) Indebtedness of the Company or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business or consistent with past practice;

(14) Indebtedness in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause and then outstanding, will not exceed the greater of (i) $185 million and (ii) 27.5% of LTM EBITDA and any Refinancing Indebtedness in respect thereof;

(15) Indebtedness in respect of any Qualified Securitization Financing or any Receivables Facility;

(16) any obligation, or guaranty of any obligation, of the Company or any Restricted Subsidiary to reimburse or indemnify a Person extending credit to customers of the Company or a Restricted Subsidiary incurred

in the ordinary course of business or consistent with past practice for all or any portion of the amounts payable by such customers to the Person extending such credit;

(17) Indebtedness to a customer to finance the acquisition of any equipment necessary to perform services for such customer; *provided* that the terms of such Indebtedness are consistent with those entered into with respect to similar Indebtedness prior to the Issue Date, including, if so consistent, that (i) the repayment of such Indebtedness is conditional upon such customer ordering a specific amount of goods or services and (ii) such Indebtedness does not bear interest or provide for scheduled amortization or maturity;

(18) Indebtedness incurred by the Company or any of its Restricted Subsidiaries to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy or discharge the Notes or exercise the Company's legal defeasance or covenant defeasance, in each case, in accordance with this Indenture;

(19) Indebtedness owing to the seller of any business or assets permitted to be acquired by the Company or any Restricted Subsidiary under this Indenture in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause and then outstanding, will not exceed the greater of (a) $160 million and (b) 25% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof;

(20) Obligations in respect of Disqualified Stock in an aggregate principal amount or liquidation preference which, when taken together with the principal amount or liquidation preference of all other Obligations in respect of Disqualified Stock incurred pursuant to this clause and then outstanding, will not exceed the greater of (a) $25 million and (b) 4% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof;

(21) Indebtedness of any Minority Investments or Indebtedness incurred on behalf thereof or representing guarantees of such Indebtedness of any Minority Investment, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause and then outstanding, will not exceed the greater of (a) $160 million and (b) 25% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof; and

(22) Indebtedness of the Company or any of its Restricted Subsidiaries arising pursuant to any Permitted Intercompany Activities, Permitted Tax Restructuring and related transactions.

(c) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness incurred pursuant to and in compliance with, this Section 3.2:

(1) in the event that all or any portion of any item of Indebtedness meets the criteria of more than one of the types of Indebtedness described in Sections 3.2(a) and (b), the Company, in its sole discretion, shall classify, and may from time to time reclassify, such item of Indebtedness (or any portion thereof) and only be required to include the amount and type of such Indebtedness in Section 3.2(a) or one of the clauses of Section 3.2(b);

(2) additionally, all or any portion of any item of Indebtedness may later be reclassified as having been incurred pursuant to any type of Indebtedness described in Sections 3.2(a) or (b) so long as such Indebtedness is permitted to be incurred pursuant to such provision and any related Liens are permitted to be incurred at the time of reclassification (it being understood that any Indebtedness incurred pursuant to one of the clauses of Section 3.2(b) shall cease to be deemed incurred or outstanding for purposes of such clause but shall be deemed incurred for the purposes of the Section 3.2(a) from and after the first date on which the Company or its Restricted Subsidiaries could have incurred such Indebtedness under Section 3.2(a) without reliance on such clause);

(3) notwithstanding the foregoing, all Indebtedness outstanding on the Issue Date (x) under the Senior Secured Term Credit Facility will be treated as incurred on the Issue Date under Section 3.2(b)(1)(a) and (y) under

the Senior Secured ABL Facility will be treated as incurred on the Issue Date under Section 3.2(b)(1)(d), and in each case, may not later be reclassified;

(4) in the case of any Refinancing Indebtedness, when measuring the outstanding amount of such Indebtedness, such amount shall not include the aggregate amount of accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing;

(5) Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(6) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are incurred pursuant to any Credit Facility and are being treated as incurred pursuant to Section 3.2(a) or any clause of Section 3.2(b) and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;

(7) the principal amount of any Disqualified Stock of the Company or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(8) Indebtedness permitted by this Section 3.2 need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this Section 3.2 permitting such Indebtedness;

(9) for all purposes under this Indenture, including for purposes of calculating the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable, in connection with the incurrence, issuance or assumption of any Indebtedness pursuant to Section 3.2(a) or Section 3.2(b) or the incurrence or creation of any Lien pursuant to the definition of "Permitted Liens," the Company may elect, at its option, to treat all or any portion of the committed amount of any Indebtedness (and the issuance and creation of letters of credit and bankers' acceptances thereunder) which is to be incurred (or any commitment in respect thereof) or secured by such Lien, as the case may be (any such committed amount elected until revoked as described below, the "Reserved Indebtedness Amount"), as being incurred as of such election date, and, if such Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio, the Consolidated Total Leverage Ratio or other provision of this Indenture, as applicable, is complied with (or satisfied) with respect thereto on such election date, any subsequent borrowing or reborrowing thereunder (and the issuance and creation of letters of credit and bankers' acceptances thereunder) will be deemed to be permitted under this Section 3.2 or the definition of "Permitted Liens," as applicable, whether or not the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio, the Consolidated Total Leverage Ratio or other provision of this Indenture, as applicable, at the actual time of any subsequent borrowing or reborrowing (or issuance or creation of letters of credit or bankers' acceptances thereunder) is complied with (or satisfied) for all purposes (including as to the absence of any continuing Default or Event of Default); provided that for purposes of subsequent calculations of the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio, the Consolidated Total Leverage Ratio or other provision of this Indenture, as applicable, the Reserved Indebtedness Amount shall be deemed to be outstanding, whether or not such amount is actually outstanding, for so long as such commitments are outstanding or until the Company revokes an election of a Reserved Indebtedness Amount;

(10) notwithstanding anything in this Section 3.2 to the contrary, in the case of any Indebtedness incurred to refinance Indebtedness initially incurred in reliance on Section 3.2(b) measured by reference to a percentage of LTM EBITDA at the time of incurrence, if such refinancing would cause the percentage of LTM EBITDA restriction to be exceeded if calculated based on the percentage of LTM EBITDA on the date of such refinancing, such percentage of LTM EBITDA restriction shall not be deemed to be exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being

refinanced, plus accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing; and

(11) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP.

Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in GAAP, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 3.2.

If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary as of such date (and, if such Indebtedness is not permitted to be incurred as of such date under this Section 3.2, the Company shall be in default of this Section 3.2).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided, that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (a) the principal amount of such Indebtedness being refinanced plus (b) the aggregate amount of accrued and unpaid interest, dividends, premiums (including tender premiums) defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing.

Notwithstanding any other provision of this Section 3.2, the maximum amount of Indebtedness that the Company or a Restricted Subsidiary may incur pursuant to this Section 3.2 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

Nothing in this Indenture will be deemed to treat (1) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (2) senior Indebtedness as subordinated or junior to any other senior Indebtedness merely because it has a junior priority with respect to the same collateral or is secured by different collateral or because it is guaranteed by different obligors.

SECTION 3.3. Limitation on Restricted Payments.

(a) The Company shall not, and shall not permit any of the Restricted Subsidiaries, directly or indirectly, to:

(1) declare or pay any dividend or make any distribution on or in respect of the Company's or any Restricted Subsidiary's Capital Stock (including any such payment in connection with any merger or consolidation involving the Company or any of the Restricted Subsidiaries) except:

(i) dividends, payments or distributions payable in Capital Stock of the Company (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Company;

(ii) dividends, payments or distributions payable to the Company or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock other than the Company or another Restricted Subsidiary on no more than a *pro rata* basis); and

(iii) dividends or distributions payable to any Parent Entity to fund interest payments in respect of Indebtedness of such Parent Entity which is Guaranteed by the Company or any Restricted Subsidiary;

(2) purchase, repurchase, redeem, retire or otherwise acquire or retire for value any Capital Stock of the Company or any Parent Entity held by Persons other than the Company or a Restricted Subsidiary;

(3) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than (i) any such purchase, repurchase, redemption, defeasance or other acquisition or retirement in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement and (ii) any Indebtedness incurred pursuant to Section 3.2(b)(3)); or

(4) make any Restricted Investment;

(any such dividend, distribution, payment, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (1) through (4) above are referred to herein as a "Restricted Payment"), if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(i) an Event of Default shall have occurred and be continuing (or would immediately thereafter result therefrom);

(ii) the Company is not able to incur an additional $1.00 of Indebtedness pursuant to Section 3.2(a) immediately after giving effect, on a pro forma basis, to such Restricted Payment; or

(iii) the aggregate amount of such Restricted Payment and all other Restricted Payments made subsequent to the Issue Date (and not returned or rescinded) (including Permitted Payments made pursuant to Section 3.3(b)(1) (without duplication) and Section 3.3(b)(7), but excluding all other Restricted Payments permitted by Section 3.3(b)) would exceed the sum of (without duplication):

(A) 50% of Consolidated Net Income for the period (treated as one accounting period) from the first day of the first fiscal quarter in which December 15, 2017 occurs to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which consolidated financial statements are available (which may, at the Company's election, be internal financial statements) (or, in the case such Consolidated Net Income is a deficit, minus 100% of such deficit);

(B) 100% of the aggregate amount of cash, and the fair market value of property or assets or marketable securities, received by the Company from the issue or sale of its Capital Stock or as the result of a merger or consolidation with another Person subsequent to the Issue Date or otherwise contributed to the equity (in each case other than through the issuance of Disqualified Stock or Designated Preferred Stock) of the Company or a Restricted Subsidiary (including the aggregate principal amount of any Indebtedness of the Company or a Restricted Subsidiary contributed to the

Company or a Restricted Subsidiary for cancellation) or that becomes part of the capital of the Company or a Restricted Subsidiary through consolidation or merger subsequent to the Issue Date (other than (x) net cash proceeds or property or assets or marketable securities received from an issuance or sale of such Capital Stock to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of their employees to the extent funded by the Company or any Restricted Subsidiary, (y) cash or property or assets or marketable securities to the extent that any Restricted Payment has been made from such proceeds in reliance on Section 3.3(b)(6) or Section 3.3(b)(24) and (z) Excluded Contributions);

(C) 100% of the aggregate amount of cash, and the fair market value of property or assets or marketable securities, received by the Company or any Restricted Subsidiary from the issuance or sale (other than to the Company or a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of their employees to the extent funded by the Company or any Restricted Subsidiary) by the Company or any Restricted Subsidiary subsequent to the Issue Date of any Indebtedness, Disqualified Stock or Designated Preferred Stock that has been converted into or exchanged for Capital Stock of the Company (other than Disqualified Stock or Designated Preferred Stock) plus, without duplication, the amount of any cash, and the fair market value of property or assets or marketable securities, received by the Company or any Restricted Subsidiary upon such conversion or exchange;

(D) 100% of the aggregate amount received in cash and the fair market value, as determined in good faith by the Company, of marketable securities or other property received by means of: (i) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of, or other returns on Investment from, Restricted Investments made by the Company or the Restricted Subsidiaries and repurchases and redemptions of, or cash distributions or cash interest received in respect of, such Investments from the Company or the Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Company or the Restricted Subsidiaries, in each case after the Issue Date; or (ii) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of the Capital Stock of an Unrestricted Subsidiary or a dividend, payment or distribution from an Unrestricted Subsidiary (other than to the extent of the amount of the Investment that constituted a Permitted Investment or was made under Section 3.3(b)(17) and will increase the amount available under the applicable clause of the definition of "Permitted Investment" or Section 3.3(b)(17), as the case may be) or a dividend from a Person that is not a Restricted Subsidiary after the Issue Date;

(E) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Company or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Company or a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred), as determined in good faith by the Company at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation or consolidation or transfer of assets (after taking into consideration any Indebtedness associated with the Unrestricted Subsidiary so designated or merged, amalgamated or consolidated or Indebtedness associated with the assets so transferred), other than to the extent of the amount of the Investment that constituted a Permitted Investment or was made

under Section 3.3(b)(17) and will increase the amount available under the applicable clause of the definition of "Permitted Investment" or Section 3.3(b)(17), as the case may be; and

(F) the greater of $240 million and 35% of LTM EBITDA.

(b) Section 3.3(a) will not prohibit any of the following (collectively, "Permitted Payments"):

(1) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Indenture or the redemption, repurchase or retirement of Indebtedness if, at the date of any redemption notice, such payment would have complied with the provisions of this Indenture as if it were and is deemed at such time to be a Restricted Payment at the time of such notice;

(2) (a) any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Capital Stock, including any accrued and unpaid dividends thereon ("Treasury Capital Stock") or Subordinated Indebtedness made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company or any Parent Entity to the extent contributed to the Company (in each case, other than Disqualified Stock or Designated Preferred Stock) ("Refunding Capital Stock"), (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than through the issuance of Disqualified Stock or Designated Preferred Stock) to a Subsidiary of the Company or to an employee stock ownership plan or any trust established by the Company or any of its Subsidiaries) and (c) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under Section 3.3(b)(13), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Capital Stock of a Parent Entity) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge, retirement or other acquisition of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be incurred pursuant to Section 3.2;

(4) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge, retirement or other acquisition of Preferred Stock of the Company or a Restricted Subsidiary made by exchange for, or out of the proceeds of the substantially concurrent sale of, Preferred Stock of the Company or a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be incurred pursuant to Section 3.2;

(5) any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Subordinated Indebtedness of the Company or a Restricted Subsidiary:

(i) from net cash proceeds to the extent permitted under Section 3.5, but only if the Company shall have first complied with Section 3.5 and purchased all Notes tendered pursuant to any offer to repurchase all the Notes required thereby, prior to prepaying, purchasing, repurchasing, redeeming, defeasing, discharging, retiring or otherwise acquiring such Subordinated Indebtedness; or

(ii) to the extent required by the agreement governing such Subordinated Indebtedness, following the occurrence of (i) a Change of Control (or other similar event

described therein as a "change of control") or (ii) an Asset Disposition (or other similar event described therein as an "asset disposition" or "asset sale"), but only if the Company shall have first complied with Section 3.5 or Section 3.9, as applicable, and purchased all Notes tendered pursuant to the offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness; or

(iii) consisting of Acquired Indebtedness (other than Indebtedness incurred (A) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by the Company or a Restricted Subsidiary or (B) otherwise in connection with or contemplation of such acquisition);

(6) a Restricted Payment to pay for the prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Capital Stock (other than Disqualified Stock) of the Company or any Parent Entity held by any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Entity pursuant to any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement (including, for the avoidance of doubt, any principal and interest payable on any Indebtedness issued by the Company or any Parent Entity in connection with such prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition), including any Capital Stock rolled over, accelerated or paid out by or to any employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Entity in connection with any transaction; *provided, however*, that the aggregate Restricted Payments made under this clause do not exceed the greater of $20 million and 3% of LTM EBITDA in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of the greater of $40 million and 6% of LTM EBITDA in any calendar year); *provided, further,* that such amount in any calendar year may be increased by an amount not to exceed:

(i) the cash proceeds from the sale of Capital Stock (other than Disqualified Stock or Designated Preferred Stock) of the Company and, to the extent contributed to the capital of the Company, the cash proceeds from the sale of Capital Stock of any Parent Entity, in each case, to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Entity that occurred after the Issue Date, to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the payment of Restricted Payments by virtue of Section 3.3(a)(iii); *plus*

(ii) the cash proceeds of key man life insurance policies received by the Company or its Restricted Subsidiaries (or any Parent Entity to the extent contributed to the Company) after the Issue Date; *less*

(iii) the amount of any Restricted Payments made in previous calendar years pursuant to clauses (i) and (ii) of this clause (6);

provided, further, that (i) cancellation of Indebtedness owing to the Company or any Restricted Subsidiary from any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or Restricted Subsidiaries or any Parent Entity in connection with a repurchase of Capital Stock of the Company or any Parent Entity and (ii) the repurchase of Capital Stock deemed to occur upon the exercise of options, warrants or similar instruments if such Capital Stock represents all or a portion of the exercise

price thereof and payments, in lieu of the issuance of fractional shares of such Capital Stock or withholding to pay other taxes payable in connection therewith, in the case of each of clauses (i) and (ii), will not be deemed to constitute a Restricted Payment for purposes of this Section 3.3 or any other provision of this Indenture;

(7) the declaration and payment of dividends on Disqualified Stock of the Company or any of its Restricted Subsidiaries or Preferred Stock of a Restricted Subsidiary, issued in accordance with Section 3.2;

(8) payments made or expected to be made by the Company or any Restricted Subsidiary in respect of withholding or similar taxes payable in connection with the exercise or vesting of Capital Stock or any other equity award by any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or any Restricted Subsidiary or any Parent Entity and purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise, conversion or exchange of stock options, warrants, equity-based awards or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof or payments in respect of withholding or similar taxes payable upon exercise or vesting thereof;

(9) dividends, loans, advances or distributions to any Parent Entity or other payments by the Company or any Restricted Subsidiary in amounts equal to (without duplication):

(i) the amounts required for any Parent Entity to pay any Parent Entity Expenses or any Related Taxes;

(ii) amounts constituting or to be used for purposes of making payments to the extent specified in Sections 3.8(b)(2), (3), (5), (11), (12), (13), (15) and (19);

(iii) so long as no Event of Default has occurred and is continuing (or would result therefrom), in an aggregate amount not to exceed $5 million per fiscal quarter; and

(iv) in an aggregate amount not to exceed the greater of $2 million and 0.5% of LTM EBITDA per calendar year;

(10) (a) the declaration and payment of dividends on the common stock or common equity interests of the Company or any Parent Entity (and any equivalent declaration and payment of a distribution of any security exchangeable for such common stock or common equity interests to the extent required by the terms of any such exchangeable securities and any Restricted Payment to any such Parent Entity to fund the payment by such Parent Entity of dividends on such entity's Capital Stock), in an amount in any fiscal year not to exceed the greater of (i) 6% of the amount of net cash proceeds received by or contributed to the Company or any of its Restricted Subsidiaries from any public offering of such common stock or common equity interests (or such exchangeable securities, as applicable) and (ii) 6% of Market Capitalization; or (b) in lieu of all or a portion of the dividends permitted by subclause (a), any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of the Company's Capital Stock (and any equivalent declaration and payment of a distribution of any security exchangeable for such common stock or common equity interests to the extent required by the terms of any such exchangeable securities and any Restricted Payment to any such Parent Entity to fund the payment by such Parent Entity of dividends on such entity's Capital Stock) for aggregate consideration that, when taken together with dividends permitted by subclause (a), does not exceed the amount contemplated by subclause (a);

(11) payments by the Company, or loans, advances, dividends or distributions to any Parent Entity to make payments, to holders of Capital Stock of the Company or any Parent Entity in lieu of the issuance of fractional shares of such Capital Stock; *provided*, *however*, that any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this Section 3.3

or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Company);

(12) Restricted Payments that are made (a) in an amount not to exceed the amount of Excluded Contributions or (b) in an amount equal to the amount of net cash proceeds from an asset sale or disposition in respect of property or assets acquired, if the acquisition of such property or assets was financed with Excluded Contributions, *provided*, that such amount will not increase the amount available pursuant to Section 3.3(a)(iii);

(13) the declaration and payment of dividends on Designated Preferred Stock of the Company or any of its Restricted Subsidiaries issued after the Issue Date; the declaration and payment of dividends to a Parent Entity in an amount sufficient to allow the Parent Entity to pay dividends to holders of its Designated Preferred Stock issued after the Issue Date; and the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock; *provided*, *however*, that, in the case of clause (ii), the amount of dividends paid to a Person pursuant to such clause shall not exceed the cash proceeds received by the Company or the aggregate amount contributed in cash to the equity of the Company (other than through the issuance of Disqualified Stock or an Excluded Contribution of the Company), from the issuance or sale of such Designated Preferred Stock; *provided further*, in the case of clauses (i) and (iii), that for the most recently ended four fiscal quarters for which consolidated financial statements are available (which may, at the Company's election, be internal financial statements) immediately preceding the date of issuance of such Designated Preferred Stock or declaration of such dividends on such Refunding Capital Stock, after giving effect to such payment on a pro forma basis, the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the test set forth in Section 3.2(a);

(14) distributions, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, or equity interests in, an Unrestricted Subsidiary (or a Restricted Subsidiary that owns one or more Unrestricted Subsidiaries and no other material assets), or Indebtedness owed to the Company or a Restricted Subsidiary by an Unrestricted Subsidiary (or a Restricted Subsidiary that owns one or more Unrestricted Subsidiaries and no other material assets), in each case, other than Unrestricted Subsidiaries, substantially all of the assets of which are cash and Cash Equivalents or proceeds thereof;

(15) distributions or payments of Securitization Fees, sales contributions and other transfers of Securitization Assets or Receivables Assets and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Repurchase Obligation, in each case in connection with a Qualified Securitization Financing or Receivables Facility;

(16) any Restricted Payment made in connection with the Transactions and any fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) related thereto, including Transaction Expenses, or used to fund amounts owed to Affiliates in connection with the Transactions (including dividends to any Parent Entity to permit payment by such Parent Entity of such amounts);

(17) so long as no Event of Default has occurred and is continuing (or would result therefrom), (i) Restricted Payments (including loans or advances) in an aggregate amount outstanding at the time made not to exceed the greater of $185 million and 27.5% of LTM EBITDA at such time, and (ii) any Restricted Payments, so long as, immediately after giving pro forma effect to the payment of any such Restricted Payment and the incurrence of any Indebtedness the net proceeds of which are used to make such Restricted Payment, the Consolidated Total Leverage Ratio shall be no greater than 2.30 to 1.00;

(18) mandatory redemptions of Disqualified Stock issued as a Restricted Payment or as consideration for a Permitted Investment;

(19) so long as no Event of Default has occurred and is continuing (or would result therefrom), the redemption, defeasance, repurchase, exchange or other acquisition or retirement of

Subordinated Indebtedness of the Company or any Subsidiary Guarantor in an aggregate amount outstanding at the time made, taken together with all other redemptions, defeasances, repurchases, exchanges or other acquisitions or retirements of Subordinated Indebtedness made pursuant to this clause (19), not to exceed the greater of $160 million and 25% of LTM EBITDA at such time;

(20) payments or distributions to dissenting stockholders pursuant to applicable law (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a merger, amalgamation, consolidation or transfer of assets that complies with Section 4.1 hereof;

(21) Restricted Payments to a Parent Entity to finance Investments that would otherwise be permitted to be made pursuant to this Section 3.3 if made by the Company; *provided* that (a) such Restricted Payment shall be made substantially concurrently with the closing of such Investment, (b) such Parent Entity shall, promptly following the closing thereof, cause (1) all property acquired (whether assets or Capital Stock) to be contributed to the capital of the Company or one of its Restricted Subsidiaries or (2) the merger or amalgamation of the Person formed or acquired into the Company or one of its Restricted Subsidiaries (to the extent not prohibited by Section 4.1) to consummate such Investment, (c) such Parent Entity and its Affiliates (other than the Company or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Company or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Indenture, (d) any property received by the Company shall not increase amounts available for Restricted Payments pursuant to Section 3.3(a)(iii), except to the extent the fair market value at the time of such receipt of such property exceeds the Restricted Payments made pursuant to this clause and (e) such Investment shall be deemed to be made by the Company or such Restricted Subsidiary pursuant to another provision of this Section 3.3 (other than pursuant to Section 3.3(b)(12) hereof) or pursuant to the definition of "Permitted Investment" (other than pursuant to clause (12) thereof);

(22) investments or other Restricted Payments in an aggregate amount not to exceed an amount equal to the sum of Declined Collateral Excess Proceeds and Declined Excess Proceeds;

(23) any Restricted Payment made in connection with any Permitted Intercompany Activities or Permitted Tax Restructuring; and

(24) any Restricted Payment made to Holdings (i) to pay the cash interest on, or (ii) to repay, repurchase, defease, acquire or retire for value, the Convertible Notes and any accrued and unpaid interest or premium thereon, or any Refinancing Indebtedness issued by Holdings in respect thereof.

For purposes of determining compliance with this Section 3.3, in the event that a Restricted Payment or Investment (or portion thereof) meets the criteria of more than one of the categories of Permitted Payments described in the clauses above, or is permitted pursuant to Section 3.3(a) and/or one or more of the clauses contained in the definition of "Permitted Investment", the Company will be entitled to divide or classify (or later divide, classify or reclassify in whole or in part in its sole discretion) such Restricted Payment or Investment (or portion thereof) in any manner that complies with this Section 3.3, including as an Investment pursuant to one or more of the clauses contained in the definition of "Permitted Investment."

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and the fair market value of any non-cash Restricted Payment, property or assets other than cash shall be determined conclusively by the Company acting in good faith.

Unrestricted Subsidiaries may use value transferred from the Company and its Restricted Subsidiaries in a Permitted Investment to purchase or otherwise acquire Indebtedness or Capital Stock of the Company, any Parent Entity or any of the Company's Restricted Subsidiaries, and to transfer value to the holders of the Capital Stock of

the Company or any Restricted Subsidiary or any Parent Entity and to Affiliates thereof, and such purchase, acquisition, or transfer will not be deemed to be a "direct or indirect" action by the Company or its Restricted Subsidiaries.

If the Company or a Restricted Subsidiary makes a Restricted Payment which at the time of the making of such Restricted Payment would in the good faith determination of the Company be permitted under the provisions of this Indenture, such Restricted Payment shall be deemed to have been made in compliance with this Indenture notwithstanding any subsequent adjustments made in good faith to the Company's financial statements affecting Consolidated Net Income or Consolidated EBITDA of the Company for any period.

For the avoidance of doubt, this Section 3.3 shall not restrict the making of, or dividends or other distributions in amounts sufficient to make, any "AHYDO catch-up payment" with respect to any Indebtedness of any Parent Entity, the Company or any of its Restricted Subsidiaries permitted to be incurred under this Indenture.

SECTION 3.4. Limitation on Restrictions on Distributions from Restricted Subsidiaries.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions in cash or otherwise on its Capital Stock or pay any Indebtedness or other obligations owed to the Company or any Restricted Subsidiary;

(2) make any loans or advances to the Company or any Restricted Subsidiary; or

(3) sell, lease or transfer any of its property or assets to the Company or any Restricted Subsidiary;

provided that (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness incurred by the Company or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

(b) The provisions of Section 3.4(a) shall not prohibit:

(1) any encumbrance or restriction pursuant to any Credit Facility or any other agreement or instrument, in each case, in effect at or entered into on the Issue Date;

(2) any encumbrance or restriction pursuant to the Note Documents;

(3) any encumbrance or restriction pursuant to applicable law, rule, regulation or order;

(4) any encumbrance or restriction pursuant to an agreement or instrument of a Person or relating to any Capital Stock or Indebtedness of a Person, entered into on or before the date on which such Person was acquired by or merged, consolidated or otherwise combined with or into the Company or any Restricted Subsidiary, or was designated as a Restricted Subsidiary or on which such agreement or instrument is assumed by the Company or any Restricted Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by the Company or was merged, consolidated or otherwise combined with or into the Company or any Restricted Subsidiary or entered into in contemplation of or in connection with such transaction) and outstanding on such date; *provided* that, for the purposes of this clause (4), if another Person is the Successor Company, any Subsidiary thereof or

agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed by the Company or any Restricted Subsidiary when such Person becomes the Successor Company;

(5) any encumbrance or restriction: that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract or agreement, or the assignment or transfer of any lease, license or other contract or agreement; contained in mortgages, pledges, charges or other security agreements permitted under this Indenture or securing Indebtedness of the Company or a Restricted Subsidiary permitted under this Indenture to the extent such encumbrances or restrictions restrict the transfer or encumbrance of the property or assets subject to such mortgages, pledges, charges or other security agreements; contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Company or any of its Restricted Subsidiaries is a party entered into in the ordinary course of business or consistent with past practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Company or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Company or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary; or (iv) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;

(6) any encumbrance or restriction pursuant to Purchase Money Obligations and Capitalized Lease Obligations permitted under this Indenture, in each case, that impose encumbrances or restrictions on the property so acquired;

(7) any encumbrance or restriction imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of the Company or any Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

(8) customary provisions in leases, licenses, equityholder agreements, joint venture agreements, organizational documents and other similar agreements and instruments;

(9) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, or required by any regulatory authority;

(10) any encumbrance or restriction on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business or consistent with past practice;

(11) any encumbrance or restriction pursuant to Hedging Obligations;

(12) other Indebtedness of Foreign Subsidiaries permitted to be incurred or issued subsequent to the Issue Date pursuant to Section 3.2 that impose restrictions solely on the Foreign Subsidiaries party thereto or their Subsidiaries;

(13) restrictions created in connection with any Qualified Securitization Financing or Receivables Facility that, in the good faith determination of the Company, are necessary or advisable to effect such Securitization Facility or Receivables Facility;

(14) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be incurred subsequent to the Issue Date pursuant to Section 3.2 if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Holders than (i) the encumbrances and restrictions contained in the Credit Agreement, together with the Collateral Documents associated therewith, or this Indenture as in effect on the Issue Date or (ii) in comparable financings (as determined in good faith by the Company) and where, in the case of clause (ii), either (A) the Company determines at the time of entry into such agreement or

instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Company's ability to make principal or interest payments on the Notes or (B) such encumbrance or restriction applies only during the continuance of a default in respect of a payment relating to such agreement or instrument;

(15) any encumbrance or restriction existing by reason of any lien permitted under Section 3.6; or

(16) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness incurred pursuant to, or that otherwise refinances, an agreement or instrument referred to in the clauses above or this clause (16) (an "Initial Agreement") or contained in any amendment, supplement or other modification to an agreement referred to in the clauses above or this clause (16); *provided*, *however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement or instrument are no less favorable in any material respect to the Holders taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such refinancing or amendment, supplement or other modification relates (as determined in good faith by the Company).

SECTION 3.5. Limitation on Sales of Assets and Subsidiary Stock.

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Company, of the shares and assets subject to such Asset Disposition (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap);

(2) in any such Asset Disposition, or series of related Asset Dispositions (except to the extent the Asset Disposition is a Permitted Asset Swap), with a purchase price in excess of $70 million, at least 75% of the consideration from such Asset Disposition, together with all other Asset Dispositions since the Issue Date (on a cumulative basis), (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; and

(3) within 450 days from the later of (A) the date of such Asset Disposition and (B) the receipt of the Net Available Cash from such Asset Disposition (as may be extended by an Acceptable Commitment as set forth below, the "*Proceeds Application Period*"), an amount equal to 100% of such Net Available Cash is applied, to the extent the Company or any Restricted Subsidiary, as the case may be, elects:

(i) (a) to the extent such Net Available Cash are from an Asset Disposition of Collateral, (x) to reduce, prepay, repay or purchase any Pari Obligations (other than the Notes), including indebtedness under the Senior Secured Term Credit Facility; *provided* that the Company ratably reduces, prepays, repays or purchases the Notes, (y) to reduce or repay ABL Obligations, if such Net Available Cash are from an Asset Disposition of ABL Priority Collateral, or (z) to make an offer (in accordance with the procedures set forth below for a Collateral Asset Disposition Offer), redeem Notes as described under Section 5.7 or purchase Notes through open-market purchases or in privately negotiated transactions (in each case, other than Indebtedness owed to the Company or any Restricted Subsidiary); *provided*, *however*, that, in connection with any reduction, prepayment, repayment or purchase of Indebtedness pursuant to this clause (i)(a), the Company or such Restricted Subsidiary will retire such Indebtedness and will cause the related

commitment (other than obligations in respect of any asset-based credit facility (including Indebtedness under the Senior Secured ABL Facility or any Refinancing Indebtedness in respect thereof) to the extent the assets sold or otherwise disposed of in connection with such Asset Disposition constituted "borrowing base assets") to be reduced in an amount equal to the principal amount so reduced, prepaid, repaid or purchased;

(b) to the extent such Net Available Cash are from an Asset Disposition that does not constitute Collateral, (w) to reduce, prepay, repay or purchase any Indebtedness secured by a Lien on such asset, (x) to reduce, prepay, repay or purchase Pari Passu Indebtedness (other than the Notes); *provided*, that the Company ratably reduces, prepays, repays or purchases the Notes, (y) to make an offer (in accordance with the procedures set forth below for an Asset Disposition Offer), redeem Notes as described under Section 5.7 or purchase Notes through open-market purchases or in privately negotiated transactions, or (z) to reduce, prepay, repay or purchase any Indebtedness of a Non-Guarantor (in each case, other than Indebtedness owed to the Company or any Restricted Subsidiary); *provided, however*, that, in connection with any reduction, prepayment, repayment or purchase of Indebtedness pursuant to this clause (i)(b), the Company or such Restricted Subsidiary will retire such Indebtedness and will cause the related commitment (other than obligations in respect of any asset-based credit facility (including Indebtedness under the Senior Secured ABL Facility or any Refinancing Indebtedness in respect thereof) to the extent the assets sold or otherwise disposed of in connection with such Asset Disposition constituted "borrowing base assets") to be reduced in an amount equal to the principal amount so reduced, prepaid, repaid or purchased;

(ii) (a) to invest (including capital expenditures) in or commit to invest in Additional Assets (including by means of an investment in Additional Assets by a Restricted Subsidiary); or (b) to invest (including capital expenditures) in any one or more businesses (provided that any such business shall be a Restricted Subsidiary), properties or assets that replace the businesses, properties and/or assets that are the subject of such Asset Disposition, with any such investment made by way of a capital or other lease valued at the present value of the minimum amount of payments under such lease (as reasonably determined by the Company); provided, however, that a binding agreement shall be treated as a permitted application of Net Available Cash from the date of such commitment with the good faith expectation that an amount equal to Net Available Cash will be applied to satisfy such commitment within 180 days of such commitment (an "*Acceptable Commitment*"); *provided*, *further*, that if any Acceptable Commitment is later cancelled or terminated for any reason before such amount is applied, then such Net Available Cash shall constitute Collateral Excess Proceeds or Excess Proceeds, as the case may be; or

(iii) any combination of the foregoing;

provided that (1) pending the final application of the amount of any such Net Available Cash pursuant to this Section 3.5, the Company or the applicable Restricted Subsidiaries may apply such Net Available Cash temporarily to reduce Indebtedness (including under the Credit Facility) or otherwise apply such Net Available Cash in any manner not prohibited by this Indenture, and (2) the Company (or any Restricted Subsidiary, as the case may be) may elect to invest in Additional Assets prior to receiving the Net Available Cash attributable to any given Asset Disposition (*provided* that such investment shall be made no earlier than the earliest of notice to the Trustee of the relevant Asset Disposition, execution of a definitive agreement for the relevant Asset Disposition, and consummation of the relevant Asset Disposition) and deem the amount so invested to be applied pursuant to and in accordance with clause (ii) above with respect to such Asset Disposition.

If, with respect to any Asset Disposition of Collateral, at the expiration of the Proceeds Application Period with respect to such Asset Disposition, there remains Net Available Cash in excess of the greater of $70 million and 10% of LTM EBITDA (such amount, "Collateral Excess Proceeds"), then subject to the limitations with respect to Foreign Dispositions set forth below, the Company shall make an offer (a "Collateral Asset Disposition Offer") no later than ten business days after the expiration of the Proceeds Application Period

to all Holders of Notes and, if required by the terms of any Pari Obligations or Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of (which Lien is not subordinate to the Lien of the Notes with respect to the Collateral), to all holders of such Pari Obligations or other Obligations, to purchase the maximum principal amount of such Notes and Pari Obligations or other Obligations, as appropriate, on a pro rata basis, that may be purchased out of such Collateral Excess Proceeds, if any, at an offer price, in the case of the Notes, in cash in an amount equal to 100% of the principal amount thereof (or in the event such other Indebtedness was issued with original issue discount, 100% of the accreted value thereof), plus accrued and unpaid interest, if any (or such lesser price with respect to Pari Obligations or other Obligations, if any, as may be provided by the terms of such other Indebtedness), to, but not including, the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture and the agreement governing the Pari Obligations or other Obligations, as applicable, in minimum denominations of $2,000 and in integral multiples of $1,000 in excess thereof. Notices of a Collateral Asset Disposition Offer shall be sent by first class mail or sent electronically, at least 10 days but not more than 60 days before the purchase date to each Holder of the Notes at such Holder's registered address or otherwise in accordance with the applicable procedures of DTC, with a copy to the Trustee. The Company may satisfy the foregoing obligation with respect to the Net Available Cash from an Asset Disposition by making an Asset Disposition Offer prior to the expiration of the Proceeds Application Period (the "Collateral Advance Offer") with respect to all or a part of the Net Available Cash (the "Collateral Advance Portion") in advance of being required to do so by this Indenture.

To the extent that the aggregate amount (or accreted value, as applicable) of Notes and, if applicable, any other Pari Obligations or Obligations secured by a Lien permitted under this Indenture on the Collateral disposed of, as the case may be, validly tendered or otherwise surrendered in connection with a Collateral Asset Disposition Offer is less than the amount offered in a Collateral Asset Disposition Offer (or, in the case of a Collateral Advance Offer, the Collateral Advance Portion), the Company may use any remaining Collateral Excess Proceeds (or, in the case of an Collateral Advance Offer, the Collateral Advance Portion) (the "Declined Collateral Excess Proceeds") for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount (or accreted value, as applicable) of the Notes or, if applicable, Pari Obligations or other Obligations, as the case may be, validly tendered pursuant to any Collateral Asset Disposition Offer exceeds the amount of Collateral Excess Proceeds (or, in the case of a Collateral Advance Offer, the Collateral Advance Portion), the Company shall allocate the Collateral Excess Proceeds among the Notes, Pari Obligations and other Obligations to be purchased on a pro rata basis on the basis of the aggregate principal amount (or accreted value, as applicable) of tendered Notes, Pari Obligations and other Obligations; *provided* that no Notes, Pari Obligations or other Obligations will be selected and purchased in an unauthorized denomination. Upon completion of any Collateral Asset Disposition Offer, the amount of Collateral Excess Proceeds shall be reset at zero.

If, with respect to any Asset Disposition that does not constitute Collateral, at the expiration of the Proceeds Application Period with respect to such Asset Disposition, there remains Net Available Cash in excess of the greater of $70 million and 10% of LTM EBITDA (such amount, "Excess Proceeds"), then subject to the limitations with respect to Foreign Dispositions set forth below, the Company shall make an offer (an "Asset Disposition Offer") no later than ten business days after the expiration of the Proceeds Application Period to all Holders of Notes and, if required by the terms of any Pari Passu Indebtedness, to all holders of such Pari Passu Indebtedness, to purchase the maximum principal amount of such Notes and Pari Passu Indebtedness, as appropriate, on a pro rata basis, that may be purchased out of such Excess Proceeds, if any, at an offer price, in the case of the Notes, in cash in an amount equal to 100% of the principal amount thereof (or in the event such other Indebtedness was issued with original issue discount, 100% of the accreted value thereof), plus accrued and unpaid interest, if any (or such lesser price with respect to Pari Passu Indebtedness, if any, as may be provided by the terms of such other Indebtedness), to, but not including, the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture and the agreement governing the Pari Passu Indebtedness, as applicable, in minimum denominations of $2,000 and in integral multiples of $1,000 in excess thereof. Notices of an Asset Disposition Offer shall be sent by first class mail or sent electronically, at least 10 days but not more than 60 days before the purchase date to each Holder of the Notes at such Holder's registered

address or otherwise in accordance with the applicable procedures of DTC, with a copy to the Trustee. The Company may satisfy the foregoing obligation with respect to the Net Available Cash from an Asset Disposition by making an Asset Disposition Offer prior to the expiration of the Proceeds Application Period (the "Advance Offer") with respect to all or a part of the Net Available Cash (the "Advance Portion") in advance of being required to do so by this Indenture.

(b) To the extent that the aggregate amount (or accreted value, as applicable) of Notes and, if applicable, any other Pari Passu Indebtedness validly tendered or otherwise surrendered in connection with an Asset Disposition Offer is less than the amount offered in an Asset Disposition Offer (or, in the case of an Advance Offer, the Advance Portion), the Company may use any remaining Excess Proceeds (or, in the case of an Advance Offer, the Advance Portion) (the "Declined Excess Proceeds") for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount (or accreted value, as applicable) of the Notes or, if applicable, Pari Passu Indebtedness validly tendered pursuant to any Asset Disposition Offer exceeds the amount of Excess Proceeds (or, in the case of an Advance Offer, the Advance Portion), the Company shall allocate the Excess Proceeds among the Notes and Pari Passu Indebtedness to be purchased on a pro rata basis on the basis of the aggregate principal amount (or accreted value, as applicable) of tendered Notes and Pari Passu Indebtedness; *provided* that no Notes or other Pari Passu Indebtedness will be selected and purchased in an unauthorized denomination. Upon completion of any Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero.

To the extent that any portion of Net Available Cash payable in respect of the Notes is denominated in a currency other than Dollars, the amount thereof payable in respect of the Notes shall not exceed the net amount of funds in Dollars that is actually received by the Company upon converting such portion into Dollars.

(c) Notwithstanding any other provisions of this Section 3.5,

(i) to the extent that any of or all the Net Available Cash of any Asset Disposition is received or deemed to be received by a Foreign Subsidiary (a "Foreign Disposition") is (x) prohibited or delayed by applicable local law, (y) restricted by applicable organizational documents or any agreement or (z) subject to other onerous organizational or administrative impediments, in each case, from being repatriated to the United States, the portion of such Net Available Cash so affected will not be required to be applied in compliance with this Section 3.5, and such amounts may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law, documents or agreements will not permit repatriation to the United States (the Company hereby agreeing to use reasonable efforts (as determined in the Company's reasonable business judgment) to otherwise cause the applicable Foreign Subsidiary to within one year following the date on which the respective payment would otherwise have been required, promptly take all actions reasonably required by the applicable local law, applicable organizational impediments or other impediment to permit such repatriation), and if within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Available Cash is permitted under the applicable local law, applicable organizational impediment or other impediment, such repatriation will be promptly effected and the amount of such repatriated Net Available Cash will be promptly (and in any event not later than five Business Days after such repatriation could be made) applied (net of additional Taxes payable or reserved against as a result thereof) (whether or not repatriation actually occurs) in compliance with this Section 3.5; and

(ii) to the extent that the Company has determined in good faith that repatriation of any of or all the Net Available Cash of any Foreign Disposition would have an adverse Tax consequence (which for the avoidance of doubt, includes, but is not limited to, any prepayment out of such Net Available Cash whereby doing so the Company, any of its Subsidiaries, any Parent Entity or any of their respective affiliates and/or equity owners would incur a Tax liability, including as a result of a Tax dividend, deemed dividend pursuant to Code Section 956 or a withholding Tax), the Net Available Cash so affected may be retained by the applicable Foreign

Subsidiary. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default.

(d) For the purposes of Section 3.5(a)(2) hereof, the following will be deemed to be cash:

(1) the assumption by the transferee of Indebtedness or other liabilities, contingent or otherwise, of the Company or a Restricted Subsidiary (other than Subordinated Indebtedness of the Company or a Guarantor) or the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness or other liability in connection with such Asset Disposition;

(2) securities, notes or other obligations received by the Company or any Restricted Subsidiary from the transferee that are converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash and Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 180 days following the closing of such Asset Disposition;

(3) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Company and each other Restricted Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Asset Disposition;

(4) consideration consisting of Indebtedness of the Company (other than Subordinated Indebtedness) received after the Issue Date from Persons who are not the Company or any Restricted Subsidiary; and

(5) any Designated Non-Cash Consideration received by the Company or any Restricted Subsidiary in such Asset Dispositions having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this Section 3.5 that is at that time outstanding, not to exceed the greater of $160 million and 25% of LTM EBITDA, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value.

(e) To the extent that the provisions of any securities laws, rules or regulations, including Rule 14e-1 under the Exchange Act, conflict with the provisions of this Indenture, the Company shall not be deemed to have breached its obligations described in this Indenture by virtue of compliance therewith.

(f) The provisions of this Indenture relative to the Company's obligation to make an offer to repurchase the Notes as a result of an Asset Disposition may be waived or modified with the written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding.

SECTION 3.6. Limitation on Liens. The Company shall not, and shall not permit any Subsidiary Guarantor to, directly or indirectly, create, incur or permit to exist any Lien (except Permitted Liens) (each, an "Initial Lien") that secures obligations under any Indebtedness or any related guarantee, on any asset or property of the Company or any Subsidiary Guarantor, unless:

(1) in the case of Initial Liens on any Collateral, (i) such Initial Lien expressly has Junior Lien Priority on the Collateral relative to the Notes and the Note Guarantees or (ii) such Initial Lien is a Permitted Lien; and

(2) in the case of any Initial Lien on any asset or property that is not Collateral, (i) the Notes (or a Note Guarantee in the case of Initial Liens on assets or property of a Subsidiary Guarantor) are equally and ratably secured with (or on a senior basis to, in the case such Initial Lien secures any Subordinated Indebtedness) the Obligations secured by such Initial Lien until such time as such Obligations are no longer secured by such Initial Lien or (ii) such Initial Lien is a Permitted Lien,

except that the foregoing shall not apply to Liens securing the Notes (other than any Additional Notes) and the related Guarantees.

Any Lien created for the benefit of the Holders pursuant to the preceding sentence shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

SECTION 3.7. Limitation on Guarantees.

(a) The Company shall not permit any of its Wholly Owned Domestic Subsidiaries that are Restricted Subsidiaries (and non-Wholly Owned Domestic Subsidiaries if such non-Wholly Owned Domestic Subsidiaries guarantee other capital markets debt securities of the Company), other than a Guarantor, a Captive Insurance Subsidiary, a Foreign Subsidiary, a Securitization Subsidiary, to Guarantee the payment of (i) any syndicated Credit Facility permitted under Section 3.2(b)(1) or (ii) capital markets debt securities of the Company or any other Guarantor unless:

(1) such Restricted Subsidiary within 60 days executes and delivers a supplemental indenture to this Indenture providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Company or any Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes or such Guarantor's Guarantee of the Notes, and joinders to the Collateral Documents or new Collateral Documents, together with any filings and agreements required by the Collateral Documents to create or perfect the security interests for the benefit of the Holders in the Collateral of such Subsidiary, including all actions (if any) required to be taken with respect to such Restricted Subsidiary in order to satisfy the Collateral Requirement; and

(2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee until payment in full of Obligations under this Indenture;

provided that this Section 3.7 shall not be applicable (i) to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary, or (ii) in the event that the Note Guarantee of the Company's obligations under the Notes or this Indenture by such Subsidiary would not be permitted under applicable law.

(b) The Company may elect, in its sole discretion, to cause or allow, as the case may be, any Subsidiary or any of its Parent Entities that is not otherwise required to be a Guarantor to become a Guarantor, in which case, such Subsidiary or Parent Entity shall not be required to comply with the 60-day period described in Section 3.7(a) and such Guarantee may be released at any time in the Company's sole discretion so long as any Indebtedness of such Subsidiary then outstanding could have been incurred by such Subsidiary (either (x) when so incurred or (y) at the time of the release of such Guarantee) assuming such Subsidiary were not a Guarantor at such time; *provided* that for so long as Holdings (or any other Parent Entity that assumes the Obligations of Holdings under its Guarantee of the Notes) guarantees the obligations under the Senior Secured Term Credit Facility, Holdings (or such other Parent Entity) shall continue to Guarantee the Notes.

(c) If any Subsidiary Guarantor becomes an Immaterial Subsidiary, the Company shall have the right, by delivery of a supplemental indenture executed by the Company to the Trustee, to cause such Immaterial Subsidiary to automatically and unconditionally cease to be a Guarantor, subject to the requirement described in Section 3.7(a) above that such Subsidiary shall be required to become a Guarantor if it ceases to be an Immaterial Subsidiary (except that if such Subsidiary has been properly designated as an Unrestricted Subsidiary it shall not be so required to become a Guarantor or execute a supplemental indenture); *provided*, that such Immaterial Subsidiary shall not be permitted to Guarantee the Credit Agreement or other Indebtedness of the Company or the other Guarantors, unless it again becomes a Guarantor.

SECTION 3.8. Limitation on Affiliate Transactions.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Company (an "Affiliate Transaction") involving aggregate value in excess of the greater of $25 million and 5% of LTM EBITDA unless:

(1) the terms of such Affiliate Transaction taken as a whole are not materially less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's length dealings with a Person who is not such an Affiliate; and

(2) in the event such Affiliate Transaction involves an aggregate value in excess of the greater of $50 million and 10% of LTM EBITDA, the terms of such transaction have been approved by a majority of the members of the Board of Directors of the Company.

Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in clause (2) of this Section 3.8(a) if such Affiliate Transaction is approved by a majority of the Disinterested Directors of the Company, if any.

(b) The provisions of Section 3.8(a) above shall not apply to:

(1) any Restricted Payment permitted to be made pursuant to Section 3.3 (including Permitted Payments) or any Permitted Investment;

(2) any issuance, transfer or sale of (a) Capital Stock (other than Disqualified Stock), options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise to any Parent Entity, Permitted Holder or future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any of its Parent Entities and (b) directors' qualifying shares and shares issued to foreign nationals as required under applicable law;

(3) any Management Advances and any waiver or transaction with respect thereto;

(4) (a) any transaction between or among the Company and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries and (b) any merger, amalgamation or consolidation with any Parent Entity, *provided* that such Parent Entity shall have no material liabilities and no material assets other than cash, Cash Equivalents and the Capital Stock of the Company and such merger, amalgamation or consolidation is otherwise permitted under this Indenture;

(5) the payment of compensation, fees, costs and expenses to, and indemnities (including under insurance policies) and reimbursements, employment and severance arrangements, and employee benefit and pension expenses provided on behalf of, or for the benefit of, future, current or former employees, directors, officers, managers, contractors, consultants, distributors or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any Parent

Entity or any Restricted Subsidiary (whether directly or indirectly and including through their Controlled Investment Affiliates or Immediate Family Members);

(6) the entry into and performance of obligations of the Company or any of the Restricted Subsidiaries under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the Issue Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this Section 3.8 or to the extent not disadvantageous in any material respect in the reasonable determination of the Company to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date;

(7) any transaction effected as part of a Qualified Securitization Financing or Receivables Facility, any disposition or acquisition of Securitization Assets, Receivables Assets or related assets in connection with any Qualified Securitization Financing or Receivables Facility;

(8) transactions with customers, vendors, clients, joint venture partners, suppliers, contractors, distributors or purchasers or sellers of goods or services, in each case in the ordinary course of business or consistent with past practice, which are fair to the Company or the its Restricted Subsidiaries, in the reasonable determination of the Company, or are on terms, taken as a whole, that are not materially less favorable as might reasonably have been obtained at such time from an unaffiliated party;

(9) any transaction between or among the Company or any Restricted Subsidiary and any Person (including (x) a joint venture or (y) an Unrestricted Subsidiary) that is an Affiliate of the Company or an Associate or similar entity solely because the Company or a Restricted Subsidiary or any Affiliate of the Company or a Restricted Subsidiary or any Affiliate of any Permitted Holder owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity;

(10) any issuance, sale or transfer of Capital Stock (other than Disqualified Stock or Designated Preferred Stock) of the Company, any Parent Entity or any of its Restricted Subsidiaries or options, warrants or other rights to acquire such Capital Stock and the granting of registration and other customary rights (and the performance of the related obligations) in connection therewith or any contribution to capital of the Company or any Restricted Subsidiary;

(11) (i) payments by the Company or any Restricted Subsidiary (or distributions or dividends by the Company in lieu of such payments) to any Permitted Holder (whether directly or indirectly), including to its affiliates or its designees, of management, consulting, monitoring, refinancing, transaction, advisory, indemnities and other fees, costs and expenses (plus any unpaid management, consulting, monitoring, transaction, advisory, indemnities and other fees, costs and expenses accrued in any prior year) and any exit and termination fees (including any such cash lump sum or present value fee upon the consummation of a corporate event, including an initial public offering) pursuant to any management services or similar agreements or the management services or other relevant provisions in an investor rights agreement, limited partnership agreement, limited liability company agreement or other equityholders' agreement, as the case may be, with terms reasonably consistent with the terms of similar agreements entered into by similar financial sponsors and portfolio companies as reasonably determined by the Company or any Parent Entity on behalf of the Company at the time such management or similar agreement is entered into and (ii) payments by the Company or any Restricted Subsidiary to any Permitted Holder (whether directly or indirectly, including through any Parent Entity) for financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved in the case of each of clauses (i) and (ii) in the reasonable determination of the Company;

(12) payment to any Permitted Holder of all out of pocket expenses incurred by such Permitted Holder in connection with its direct or indirect investment in the Company and its Subsidiaries;

(13) the Transactions and the payment of all fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) related to the Transactions, including Transaction Expenses;

(14) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 3.8(a)(1);

(15) the existence of, or the performance by the Company or any Restricted Subsidiary of its obligations under the terms of, any equityholders, investor rights or similar agreement (including any registration rights agreement or purchase agreements related thereto) to which it is party as of the Issue Date and any similar agreement that it (or any Parent Entity) may enter into thereafter; *provided* that the existence of, or the performance by the Company or any Restricted Subsidiary (or any Parent Entity) of its obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date will only be permitted under this clause to the extent that the terms of any such amendment or new agreement are not otherwise, when taken as a whole, more disadvantageous to the Holders in any material respect in the reasonable determination of the Company than those in effect on the Issue Date;

(16) any purchases by the Company's Affiliates of Indebtedness or Disqualified Stock of the Company or any of the Restricted Subsidiaries the majority of which Indebtedness or Disqualified Stock is purchased by Persons who are not the Company's Affiliates; *provided* that such purchases by the Company's Affiliates are on the same terms as such purchases by such Persons who are not the Company's Affiliates;

(17) (i) investments by Affiliates in securities or loans of the Company or any of the Restricted Subsidiaries (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Company or such Restricted Subsidiary generally to other non-affiliated third party investors on the same or more favorable terms and (ii) payments to Affiliates in respect of securities or loans of the Company or any of the Restricted Subsidiaries contemplated in the foregoing subclause (i) or that were acquired from Persons other than the Company and its Restricted Subsidiaries, in each case, in accordance with the terms of such securities or loans;

(18) payments by any Parent Entity, the Company and its Restricted Subsidiaries pursuant to any tax sharing or receivable agreements or other equity agreements in respect of Related Taxes among any such Parent Entity, the Company and its Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of the Company and its Subsidiaries;

(19) payments, Indebtedness and Disqualified Stock (and cancellation of any thereof) of the Company and its Restricted Subsidiaries and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any of its Parent Entities pursuant to any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement with any such employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) that are, in each case, approved by the Company in good faith;

(20) any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or

arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement between the Company or its Restricted Subsidiaries and any distributor, employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) approved by the reasonable determination of the Company or entered into in connection with the Transactions;

(21) any transition services arrangement, supply arrangement or similar arrangement entered into in connection with or in contemplation of the disposition of assets or Capital Stock in any Restricted Subsidiary permitted under Section 3.5 or entered into with any Business Successor, in each case, that the Company determines in good faith is either fair to the Company or otherwise on customary terms for such type of arrangements in connection with similar transactions;

(22) transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary as described in Section 3.20 and pledges of Capital Stock of Unrestricted Subsidiaries;

(23) (i) any lease entered into between the Company or any Restricted Subsidiary, as lessee, and any Affiliate of the Company, as lessor and (ii) any operational services or other arrangement entered into between the Company or any Restricted Subsidiary and any Affiliate of the Company, in each case, which is approved as being on arms-length terms by the reasonable determination of the Company;

(24) intellectual property licenses and research and development agreements in the ordinary course of business or consistent with past practice;

(25) payments to or from, and transactions with, any Subsidiary or any joint venture in the ordinary course of business or consistent with past practice (including any cash management arrangements or activities related thereto);

(26) the payment of fees, costs and expenses related to registration rights and indemnities provided to equityholders pursuant to equityholders, investor rights, registration rights or similar agreements;

(27) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium;

(28) Permitted Intercompany Activities, Permitted Tax Restructurings, Intercompany License Agreements and related transactions; and

(29) Transactions related to a Permitted Change of Control, the payment of Permitted Change of Control Costs and the issuance of Capital Stock to the management of the Company or any of its Restricted Subsidiaries in connection with a Permitted Change of Control.

In addition, if the Company or any of its Restricted Subsidiaries (i) purchases or otherwise acquires assets or properties from a Person which is not an Affiliate, the purchase or acquisition by an Affiliate of the Company of an interest in all or a portion of the assets or properties acquired shall not be deemed an Affiliate Transaction (or cause such purchase or acquisition by the Company or a Restricted Subsidiary to be deemed an Affiliate Transaction) or (ii) sells or otherwise disposes of assets or other properties to a Person who is not an Affiliate, the sale or other disposition by an Affiliate of the Company of an interest in all or a portion of the assets or properties sold shall not be deemed an Affiliate Transaction (or cause such sale or other disposition by the Company or a Restricted Subsidiary to be deemed an Affiliate Transaction).

SECTION 3.9. Change of Control.

(a) If a Change of Control Triggering Event occurs, unless a third party makes a Change of Control offer or the Company has previously or substantially concurrently therewith delivered a redemption notice with respect to all of the outstanding Notes as set forth under Section 5.7(a) or Section 5.7(d), the Company shall make an offer (the "Change of Control Offer") to purchase all of the Notes at a price in cash (the "Change of Control Payment") equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to but excluding the date of repurchase; provided that if the repurchase date is on or after the record date and on or before the corresponding interest payment date, then Holders in whose names the Notes are registered at the close of business on such record date will receive the interest on the repurchase date. Within 30 days following any Change of Control Triggering Event, the Issuer will deliver or cause to be delivered a notice of such Change of Control Offer electronically in accordance with the applicable procedures of DTC or by first class mail, with a copy to the Trustee, to each Holder of Notes at the address of such Holder appearing in the security register or otherwise in accordance with the applicable procedures of DTC, with the following information:

(1) that a Change of Control Offer is being made pursuant to this Section 3.9, and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;

(2) the purchase price and the purchase date, which will be no earlier than 10 days nor later than 60 days from the date such notice is delivered (the "Change of Control Payment Date");

(3) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(4) that unless the Issuer defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest, on the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the applicable Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date, or otherwise comply with DTC procedures;

(6) that Holders will be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes; *provided* that the applicable Paying Agent receives, not later than the close of business on the second Business Day prior to the expiration date of the Change of Control Offer, a telegram, facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased, or otherwise comply with DTC procedures;

(7) that Holders whose Notes are being purchased only in part will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to at least $2,000 or any integral multiple of $1,000 in excess of $2,000;

(8) if such notice is delivered prior to the occurrence of a Change of Control Triggering Event, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control Triggering Event; and

(9) the other instructions, as determined by the Issuer, consistent with this Section 3.9, that a Holder must follow.

The applicable Paying Agent will promptly deliver to each Holder of the Notes tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book-entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in a minimum principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Issuer will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

If the Change of Control Payment Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest will be paid on the Change of Control Payment Date to the Person in whose name a Note is registered at the close of business on such record date.

(b) On the Change of Control Payment Date, the Issuer will, to the extent permitted by law,

(1) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,

(2) deposit with the applicable Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered, and

(3) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer's Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuer.

(c) The Issuer will not be required to make a Change of Control Offer following a Change of Control Triggering Event if (x) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer or (y) a notice of redemption of all outstanding Notes has been given pursuant to Section 5.7 hereof unless and until there is a default in the payment of the redemption price on the applicable redemption date or the redemption is not consummated due to the failure of a condition precedent contained in the applicable redemption notice to be satisfied.

(d) Notwithstanding anything to the contrary in this Section 3.9, a Change of Control Offer may be made in advance of a Change of Control Triggering Event, conditional upon such Change of Control Triggering Event.

(e) [Reserved]

(f) While the Notes are in global form and the Issuer makes an offer to purchase all of the Notes pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the Notes through the facilities of DTC, subject to its rules and regulations.

(g) The Issuer will comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws, rules and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws, rules or regulations conflict with the provisions of this Indenture, the Issuer shall not be deemed to have breached its obligations described in this Indenture by virtue of compliance therewith.

SECTION 3.10. Reports.

(a) Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such

annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, from and after the Issue Date, the Company shall deliver to the Trustee, within 15 days after the time periods specified below:

(1) within 120 days after the end of each fiscal year ending after the Issue Date (or if such day is not a Business Day, on the next succeeding Business Day), all financial information that would be required to be contained in an annual report on Form 10-K, or any successor or comparable form, filed with the SEC, including a "Management's discussion and analysis of financial condition and results of operations" and a report on the annual financial statements by the Company's independent registered public accounting firm;

(2) within 60 days after the end of each of the first three fiscal quarters of each fiscal year ending after the Issue Date (or if such day is not a Business Day, on the next succeeding Business Day), all financial information that would be required to be contained in a quarterly report on Form 10-Q, or any successor or comparable form, filed with the SEC, including a "Management's discussion and analysis of financial condition and results of operations," and financial statements prepared in accordance with GAAP; and

(3) promptly after the occurrence of any of the following events, all current reports that would be required to be filed with the SEC on Form 8-K as in effect on the Issue Date (if the Company had been a reporting company under Section 15(d) of the Exchange Act); *provided*, that the foregoing shall not obligate the Company to make available (i) any information regarding the occurrence of any of the following events if the Company determines in its reasonable determination that such event that would otherwise be required to be disclosed is not material to the Holders or the business, assets, operations, financial positions or prospects of the Company and its Restricted Subsidiaries taken as a whole, (ii) an exhibit or a summary of the terms of, any employment or compensatory arrangement, agreement, plan or understanding between the Company or any of its Subsidiaries and any director, officer or manager of the Company or any of its Subsidiaries, (iii) copies of any agreements, financial statements or other items that would be required to be filed as exhibits to a current report on Form 8-K or (iv) any trade secrets, privileged or confidential information obtained from another Person and competitively sensitive information:

(A) the entry into or termination of material agreements;

(B) significant acquisitions or dispositions (which shall only be with respect to acquisitions or dispositions that are significant pursuant to the definition of "Significant Subsidiary");

(C) bankruptcy;

(D) cross-default under direct material financial obligations;

(E) a change in the Company's certifying independent auditor;

(F) the appointment or departure of directors or executive officers (with respect to the principal executive officer, president, principal financial officer, principal accounting officer and principal operating officer only);

(G) non-reliance on previously issued financial statements; and

(H) change of control transactions,

in each case, in a manner that complies in all material respects with the requirements specified in such form, except as described above or below and subject to exceptions consistent with the presentation of information in the Offering Memorandum; *provided*, *however*, that the Company shall not be required to provide (i) segment reporting and disclosure (including any required by FASB Accounting Standards Codification Topic 280), (ii) separate financial

statements or other information contemplated by Rules 3-05, 3-09, 3-10, 3-16 or 4-08 of Regulation S-X (or any successor provisions) or any schedules required by Regulation S-X, (iii) information required by Regulation G under the Exchange Act or Item 10, Item 302, Item 402 or Item 601 of Regulation S-K (or any successor provision), (iv) XBRL exhibits, (v) earnings per share information, (vi) information regarding executive compensation and related party disclosure related to SEC Release Nos. 33-8732A, 34-54302A and IC-27444A, and (vii) other information customarily excluded from an offering memorandum, including any information that is not otherwise of the type and form currently included or incorporated by reference in the Offering Memorandum. In addition, notwithstanding the foregoing, the Company will not be required to (i) comply with Sections 302, 906 and 404 of the Sarbanes-Oxley Act of 2002, as amended, or (ii) otherwise furnish any information, certificates or reports required by Items 307 or 308 of Regulation S-K (or any successor provision). To the extent any such information is not so filed or furnished, as applicable, within the time periods specified above and such information is subsequently filed or furnished, as applicable, the Company will be deemed to have satisfied its obligations with respect thereto at such time and any Default with respect thereto shall be deemed to have been cured; *provided* that such cure shall not otherwise affect the rights of the Holders under Section 6.1 hereof if Holders of at least 30% in aggregate principal amount of the outstanding Notes have declared the principal, premium, if any, interest and any other monetary obligations on all the outstanding Notes to be due and payable immediately and such declaration shall not have been rescinded or cancelled prior to such cure. In addition, to the extent not satisfied by the foregoing, the Company shall agree that, for so long as any Notes are outstanding, it shall furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(b) If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries and such Unrestricted Subsidiaries or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, would constitute a Significant Subsidiary of the Company, then the annual and quarterly financial information required by Section 3.10(a)(1) and (2) will include a presentation of selected financial metrics, in the Company's sole discretion, of such Unrestricted Subsidiaries as a group in the "Management's Discussion and Analysis of Financial Condition and Results of Operations."

(c) Substantially concurrently with the furnishing or making such information available to the Trustee pursuant to Section 3.10(a), the Company shall also use its commercially reasonable efforts to post copies of such information required by Section 3.10(a) on a website (which may be nonpublic, require a confidentiality acknowledgement and may be maintained by the Company or a third party) to which access will be given to the Holders, bona fide prospective investors in the Notes (which prospective investors shall be limited to "qualified institutional buyers" within the meaning of Rule 144A of the Securities Act or non-U.S. persons (as defined in Regulation S under the Securities Act) that certify their status as such to the reasonable satisfaction of the Company), and securities analysts (to the extent providing analysis of an investment in the Notes) and market making financial institutions that are reasonably satisfactory to the Company who agree to treat such information and reports as confidential; *provided* that the Company may deny access to any competitively-sensitive information and reports otherwise to be provided pursuant to this paragraph to any Holder, bona fide prospective investors, security analyst or market maker that is a competitor of the Company and its Subsidiaries to the extent that the Company determines in good faith that the provision of such information and reports to such Person would be competitively harmful to the Company and its Subsidiaries. The Company may condition the delivery of any such reports to such Holders, prospective investors in the Notes and securities analysts and market making financial institutions on the agreement of such Persons to (i) treat all such reports (and the information contained therein) and information as confidential, (ii) not use such reports (and the information contained therein) and information for any purpose other than their investment or potential investment in the Notes and (iii) not publicly disclose any such reports (and the information contained therein) and information.

(d) The Company will participate in quarterly conference calls (which may be a single conference call together with investors and lenders holding other securities or Indebtedness of the Company, its Restricted Subsidiaries and/or Holdings) to discuss results of operations. The conference call will be following the last day of each fiscal quarter of the Company and not later than twenty (20) Business Days from the time that the Company distributes the financial information as set forth in Section 3.10(a)(1) and (2). No fewer than two days prior to the conference call, the Company will issue a press release or otherwise announce the time and date of such conference

call and providing instructions for Holders, prospective investors in the Notes, securities analysts and market making financial institutions to obtain access to such call.

(e) The Company may satisfy its obligations pursuant to this Section 3.10 with respect to financial information relating to the Company by furnishing financial information relating to any Parent Entity (including, without limitation, Holdings); *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Entity (and other Parent Entities included in such information, if any), on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand. For the avoidance of doubt, the consolidating information referred to in the proviso in the preceding sentence need not be audited.

(f) Notwithstanding anything to the contrary set forth in this Section 3.10, if the Company or any Parent Entity has furnished to the Holders of Notes or filed with the SEC the reports described in Section 3.10 with respect to the Company or any Parent Entity, the Company shall be deemed to be in compliance with the provisions of this Section 3.10.

(g) Delivery of reports, information and documents to the Trustee under this Indenture is for informational purposes only and the information and Trustee's receipt of the foregoing shall not constitute actual or constructive notice of any information contained therein, or determinable from information contained therein including the Company's compliance with any of its covenants thereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate). The Trustee shall have no duty to determine whether any filings or postings described in this Section 3.10 have been made or to review or analyze reports delivered to it.

SECTION 3.11. [Reserved].

SECTION 3.12. Maintenance of Office or Agency.

The Issuer will maintain an office or agency where the Notes may be presented or surrendered for payment, where, if applicable, the Notes may be surrendered for registration of transfer or exchange. The corporate trust office of the Trustee, which initially shall be located at Wilmington Trust, National Association, 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402, Attention: Avaya, Inc. Notes Administrator, shall be such office or agency of the Issuer, unless the Issuer shall designate and maintain some other office or agency for one or more of such purposes. The Issuer will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made or served at the corporate trust office of the Trustee, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations and surrenders.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency. No office of the Trustee shall be an office or agency of the Issuer for the purposes of service of legal process on the Issuer or any Guarantor.

SECTION 3.13. [Reserved].

SECTION 3.14. [Reserved]

SECTION 3.15. After-Acquired Collateral.

(a) From and after the Issue Date, if (a) any Subsidiary becomes a Guarantor or (b) the Company or any Subsidiary Guarantor acquires any property or rights which are of a type constituting Collateral under any Collateral Document (excluding, for the avoidance of doubt, any Excluded Collateral or assets not required to be Collateral pursuant to this Indenture or the Collateral Documents), the Company or such Subsidiary Guarantor will

be required to execute and deliver such security instruments, financing statements and such certificates as are required under this Indenture or any Collateral Document to vest in the Notes Collateral Agent a security interest (subject to Permitted Liens, including any *pari passu* liens that secure obligations in respect of any other Pari Obligations and prior liens that secure ABL Obligations with respect to ABL Priority Collateral) in such after-acquired collateral (or all of its assets, except Excluded Collateral, in the case of a new Guarantor) and to take such actions to add such after-acquired collateral to the Collateral and satisfy the Collateral Requirement in respect thereof, and thereupon all provisions of this Indenture and the Collateral Documents relating to the Collateral shall be deemed to relate to such after-acquired collateral to the same extent and with the same force and effect.

(b) Notwithstanding the foregoing, opinions of counsel will not be required in connection with any additional Guarantors entering into the Collateral Documents or to vest in the Notes Collateral Agent a perfected security interest in after-acquired collateral owned by such Guarantors.

SECTION 3.16. Compliance Certificate. The Issuer shall deliver to the Trustee within 120 days after the end of each fiscal year of the Issuer an Officer's Certificate, the signer of which shall be the principal executive officer, principal financial officer, principal accounting officer, principal legal officer, secretary or treasurer of the Issuer, stating that in the course of the performance by the signer of his or her duties as an Officer of the Issuer he or she would normally have knowledge of any Default or Event of Default and whether or not the signer knows of any Default or Event of Default that occurred during the previous fiscal year; *provided* that no such Officer's Certificate shall be required for any fiscal year ended prior to the Issue Date. If such Officer does have such knowledge, the certificate shall describe the Default or Event of Default, its status and the action the Issuer is taking or proposes to take with respect thereto.

SECTION 3.17. Further Instruments and Acts. Upon request of the Trustee or as necessary to comply with future developments or requirements, the Issuer will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 3.18. [Reserved].

SECTION 3.19. Statement by Officers as to Default. The Issuer shall deliver to the Trustee, as soon as possible and in any event within 30 days after the Issuer becomes aware of the occurrence of any Default or Event of Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the actions which the Issuer is taking or proposes to take with respect thereto. The Trustee will not be deemed to have knowledge of any Defaults or Events of Default unless written notice of an event, which is in fact a Default, has been delivered to the Trustee pursuant to the notice provisions in this Indenture.

SECTION 3.20. Designation of Restricted and Unrestricted Subsidiaries. The Company may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause an Event of Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate fair market value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments pursuant to Section 3.3 hereof or under one or more clauses of the definition of Permitted Investments, as determined by the Company. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Company may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause an Event of Default.

Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary will be evidenced to the Trustee by delivering to the Trustee an Officer's Certificate certifying that such designation complies with the preceding conditions and was permitted by Section 3.3 hereof. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary as of such date and, if such Indebtedness is not permitted to be incurred as of such date by Section 3.2 hereof, the Company will be in default of such covenant.

The Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted under Section 3.2 hereof (including pursuant to Section 3.2(b)(5) treating such redesignation as an acquisition for the purpose of such clause), calculated on a *pro forma* basis as if such designation had occurred at the beginning of the applicable reference period; and (2) no Default or Event of Default would be in existence following such designation. Any such designation by the Company shall be evidenced to the Trustee by delivering to the Trustee an Officer's Certificate certifying that such designation complies with the preceding conditions.

SECTION 3.21. Suspension of Certain Covenants on Achievement of Investment Grade Status Beginning on the first day (a) the Notes have achieved Investment Grade Status and (b) no Default or Event of Default has occurred and is continuing under this Indenture, and ending on a Reversion Date (such period a "Suspension Period"), the Company and its Restricted Subsidiaries will not be subject to Sections 3.2, 3.3, 3.4, 3.5, 3.7, 3.8 and 4.1(a)(3) (the "Suspended Covenants").If at any time the Notes cease to have such Investment Grade Status, then the Suspended Covenants shall thereafter be reinstated as if such covenants had never been suspended (the "Reversion Date") and be applicable pursuant to the terms of this Indenture (including in connection with performing any calculation or assessment to determine compliance with the terms of this Indenture), unless and until the Notes subsequently attain Investment Grade Status and no Default or Event of Default is in existence (in which event the Suspended Covenants shall no longer be in effect for such time that the Notes maintain an Investment Grade Status); provided, however, that no Default, Event of Default or breach of any kind shall be deemed to exist under this Indenture, the Notes or the Note Guarantees with respect to the Suspended Covenants based on, and none of the Company or any of its Subsidiaries shall bear any liability for, any actions taken or events occurring during the Suspension Period, or any actions taken at any time pursuant to any contractual obligation arising prior to the Reversion Date, regardless of whether such actions or events would have been permitted if the applicable Suspended Covenants remained in effect during such period.

On the Reversion Date, all Indebtedness Incurred during the Suspension Period will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under Section 3.2(b)(4)(b). On and after the Reversion Date, all Liens created during the Suspension Period will be considered Permitted Liens pursuant to clause (11) of such definition. Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Section 3.3 will be made as though Section 3.3 had been in effect since the Issue Date and prior to, but not during, the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will not reduce the amount available to be made as Restricted Payments under Section 3.3(a). In addition, any future obligation to grant further Note Guarantees shall be released. All such further obligations to grant Guarantees shall be reinstated on the Reversion Date. As described above, however, no Default or Event of Default shall be deemed to have occurred as a result of the Reversion Date occurring on the basis of any actions taken or the continuance of any circumstances resulting from actions taken or the performance of obligations under agreements entered into by the Company or any of the Restricted Subsidiaries during the Suspension Period (other than agreements to take actions after the Reversion Date that would not be permitted outside of the Suspension Period entered into in contemplation of the Reversion Date).

On and after each Reversion Date, the Company and its Subsidiaries will be permitted to consummate the transactions contemplated by any contract entered into during the Suspension Period, so long as such contract and such consummation would have been permitted during such Suspension Period.

The Trustee shall have no duty to monitor the ratings of the Notes, shall not be deemed to have any knowledge of the ratings of the Notes and shall have no duty to notify Holders if the Notes achieve Investment Grade Status or of the occurrence of a Reversion Date.

ARTICLE IV

SUCCESSOR COMPANY; SUCCESSOR PERSON

Section 4.1. Merger and Consolidation.

(a) The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets, in one transaction or a series of related transactions, to any Person, unless:

(1) the Company is the surviving Person or the resulting, surviving or transferee Person (the "*Successor Company*") will be a Person organized or existing under the laws of the jurisdiction of the Company or the United States of America, any State of the United States or the District of Columbia or any territory thereof and the Successor Company (if not the Company) will expressly assume all the obligations of the Company under the Note Documents pursuant to supplemental indentures or other documents and instruments;

(2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the applicable Successor Company or any Subsidiary of the applicable Successor Company as a result of such transaction as having been incurred by the applicable Successor Company or such Subsidiary at the time of such transaction), no Event of Default shall have occurred and be continuing;

(3) immediately after giving pro forma effect to such transaction, either (a) the applicable Successor Company or the Company would be able to incur at least an additional $1.00 of Indebtedness pursuant to Section 3.2(a) hereof, or (b) the Fixed Charge Coverage Ratio of the Company and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such transaction;

(4) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture and an Opinion of Counsel stating that such supplemental indenture (if any) is a legal and binding agreement enforceable against the Successor Company; *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact, including as to satisfaction of clauses (2) and (3) above; and

(5) to the extent any assets of the Person which is merged or consolidated with or into the Company are assets of the type which would constitute Collateral under the Collateral Documents, the Company or the Successor Company, as applicable, will take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Collateral Documents in the manner and to the extent required in this Indenture or the applicable Collateral Documents and shall take all reasonably necessary action so that such Lien is perfected to the extent required by the applicable Collateral Documents.

(b) [Reserved].

(c) The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under the Notes and this Indenture, and the Company will automatically and unconditionally be released and discharged from its obligations under the Notes and this Indenture (except in the case of a lease).

(d) Notwithstanding any other provisions of this Section 4.1, (i) the Company may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to a Subsidiary Guarantor, (ii) the Company may consolidate or otherwise combine with or merge into an Affiliate organized or existing under the laws of the jurisdiction of the Company or the United States of America, any State of the United States or the District of Columbia incorporated or organized for the purpose of changing the legal domicile of the Company,

reincorporating the Company in another jurisdiction, or changing the legal form of the Company, (iii) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to the Company or a Subsidiary Guarantor, (iv) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to any other Restricted Subsidiary and (v) the Company and its Restricted Subsidiaries may complete any Permitted Tax Restructuring.

(e) The foregoing provisions (other than the requirements of clause (a)(2)) shall not apply to the creation of a new Subsidiary as a Restricted Subsidiary.

(f) Subject to Section 10.2(b), no Subsidiary Guarantor may consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its assets, in one or a series of related transactions, to any Person, unless:

(1)(a) the other Person is the Company or any Restricted Subsidiary that is a Subsidiary Guarantor or becomes a Subsidiary Guarantor concurrently with the transaction; or

either (x) the Company or a Subsidiary Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all the obligations of the Subsidiary Guarantor under its Note Guarantee, the applicable Collateral Documents and this Indenture;

(b) immediately after giving effect to the transaction, no Event of Default shall have occurred and be continuing; and

(c) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into such Guarantor are assets of the type which would constitute Collateral under the Collateral Documents, such Guarantor or the Successor Person will take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Collateral Documents in the manner and to the extent required in this Indenture or the applicable Collateral Documents and shall take all reasonably necessary action so that such Lien in perfected to the extent required by the applicable Collateral Documents; or

(2) the transaction constitutes a sale, disposition or transfer of the Subsidiary Guarantor or the conveyance, transfer or lease of all or substantially all of the assets of the Subsidiary Guarantor (in each case other than to the Company or a Restricted Subsidiary) otherwise permitted by this Indenture.

Notwithstanding any other provision of this Section 4.1, any Subsidiary Guarantor may (a) consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to another Subsidiary Guarantor or the Company, (b) consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Subsidiary Guarantor, reincorporating the Subsidiary Guarantor in another jurisdiction, or changing the legal form of the Subsidiary Guarantor, (c) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Subsidiary Guarantor, (d) liquidate or dissolve or change its legal form if the Company determines in good faith that such action is in the best interests of the Company and (e) complete any Permitted Tax Restructuring. Notwithstanding anything to the contrary in this Section 4.1, the Company may contribute Capital Stock of any or all of its Subsidiaries to any Subsidiary Guarantor.

Any reference herein to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability

company, limited partnership or trust that is a Subsidiary, Restricted Subsidiary, Unrestricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE V

REDEMPTION OF SECURITIES

SECTION 5.1. Notices to Trustee. Subject to Section 5.9 hereof, if the Issuer elects to redeem Notes pursuant to the optional redemption provisions of Section 5.7 hereof, it must furnish to the Trustee, at least 10 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Any optional redemption referenced in such Officer's Certificate may be cancelled by the Issuer at any time prior to notice of redemption being sent to any Holder and thereafter shall be null and void.

SECTION 5.2. Selection of Notes to Be Redeemed or Purchased. If less than all of the Notes are to be redeemed pursuant to Section 5.7 or purchased in an Asset Disposition Offer pursuant to Section 3.5 or a redemption pursuant to Section 5.9, the Trustee will select Notes for redemption or purchase if the Notes are in global form, on a pro rata basis, by lot, or by such other method in accordance with the applicable procedures of DTC and if the Notes are in definitive form in their entirety, on a pro rata basis (subject to adjustments to maintain the authorized Notes denomination requirements) or by lot, except if otherwise required by law.

No Notes in an unauthorized denomination or of $2,000 in aggregate principal amount or less shall be redeemed in part. In the event of partial redemption, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 10 days nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase; *provided* that the Issuer shall provide the Trustee with sufficient notice of such partial redemption to enable the Trustee to select the Notes for partial redemption.

The Trustee will promptly notify the Issuer in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will be in minimum principal amounts of $2,000 and whole multiples of $1,000 in excess of $2,000; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not in a minimum principal amount of $2,000 or a multiple of $1,000 in excess thereof, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

SECTION 5.3. Notice of Redemption. Subject to Section 5.9 hereof, at least 10 days but not more than 60 days before the redemption date, the Issuer will send or cause to be sent, by electronic delivery or by first class mail postage prepaid, a notice of redemption to each Holder (with a copy to the Trustee) whose Notes are to be redeemed at the address of such Holder appearing in the security register or otherwise in accordance with the applicable procedures of DTC, except that redemption notices may be delivered electronically or mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles VIII or XI hereto.

The notice will identify the Notes (including the CUSIP or ISIN number) to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;

(4) the name and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(6) that, unless the Issuer defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(8) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Issuer's request, the Trustee will give the notice of redemption in the Issuer's name and at its expense; *provided*, *however*, that the Issuer has delivered to the Trustee, at least three (3) Business Days (or if any of the Notes to be redeemed are in definitive form, five (5) Business Days) prior to the date on which the Issuer instructs the Trustee to give the notice (or such shorter period as the Trustee may agree), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Notice of any redemption of the Notes may, at the Issuer's discretion, be given prior to the completion of a transaction (including but not limited to an Equity Offering, an incurrence of Indebtedness, a Change of Control or other transaction) and any redemption notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a related transaction. If such redemption or purchase is so subject to satisfaction of one or more conditions precedent such notice shall describe each such condition, and if applicable, shall state that, in the Issuer's discretion, the redemption date may be delayed until such time (including more than 60 days after the date the notice of redemption was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied, or such redemption or purchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date as so delayed. In addition, the Issuer may provide in such notice that payment of the redemption price and performance of the Issuer's obligations with respect to such redemption may be performed by another Person.

SECTION 5.4. [Reserved].

SECTION 5.5. Deposit of Redemption or Purchase Price. Prior to 11:00 a.m. New York City Time on the redemption or purchase date, the Issuer will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest, if any, on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will promptly return, on or following the applicable redemption or repurchase date, to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest, if any, on all Notes to be redeemed or purchased.

If the Issuer complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a record date but on or prior to the corresponding interest payment date, then any accrued and unpaid interest up to, but excluding, the redemption date or purchase date shall be paid on the redemption date or purchase date to the Person in whose name such Note was registered at the close of business on such record date in accordance with the applicable procedures of DTC. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 3.1 hereof.

SECTION 5.6. Notes Redeemed or Purchased in Part. Upon surrender of a Note issued in physical form that is redeemed or purchased in part, the Issuer will issue and the Trustee will authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered; *provided*, that each such new Note will be in a minimum principal amount of $2,000 or integral multiple of $1,000 in excess thereof.

In the case of a Note issued as a global note, an appropriate notation will be made on such Note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof; *provided*, that the unredeemed portion thereof will be in a minimum principal amount of $2,000 or integral multiple of $1,000 in excess thereof.

SECTION 5.7. Optional Redemption.

(a) At any time prior to September 15, 2023, the Company may redeem the Notes in whole or in part, at its option, upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, at a redemption price (expressed as a percentage of the principal amount of the Notes to be redeemed) equal to 100.000% plus the relevant Applicable Premium as of, and accrued and unpaid interest, if any, to but excluding, the date of redemption (the "Redemption Date"), subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date.

(b) At any time and from time to time prior to September 15, 2023, the Company may, on one or more occasions, upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, redeem up to 40.000% of the original aggregate principal amount of Notes issued under this Indenture on the Issue Date (together with Additional Notes) at a redemption price (expressed as a percentage of the principal amount of Notes to be redeemed) equal to 106.125% of the principal amount of such Notes, plus accrued and unpaid interest, if any, to but excluding, the applicable Redemption Date, subject to the right of Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date, with the net cash proceeds received by the Company of one or more Equity Offerings of the Company; *provided* that not less than 50.0% of the original aggregate principal amount of then-outstanding Notes issued under this Indenture remains outstanding immediately after the occurrence of each such redemption (including Additional Notes but excluding Notes held by the Company or any of its Restricted Subsidiaries), unless all such Notes are redeemed substantially concurrently; *provided further* that each such redemption occurs not later than 180 days after the date of closing of the related Equity Offering. The Trustee shall select the Notes to be purchased in the manner described under Sections 5.1 through 5.6.

(c) Except pursuant to clauses (a) and (b) of this Section 5.7, the Notes will not be redeemable at the Company's option prior to September 15, 2023.

(d) At any time and from time to time on or after September 15, 2023, the Company may redeem the Notes, in whole or in part, upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth in the table below, plus accrued and unpaid interest thereon, if any, to but excluding the applicable Redemption Date, subject to the right of

Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date, if redeemed during the twelve-month period beginning on September 15 of each of the years indicated in the table below:

Year	Percentage
2023	103.063%
2024	101.531%
2025 and thereafter	100.000%

(e) Notwithstanding the foregoing, in connection with any tender offer for the Notes, including a Change of Control Offer, Collateral Asset Disposition Offer or Asset Disposition Offer, if Holders of not less than 90.0% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company or such third party shall have the right upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, given not more than 30 days following such purchase date to redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price offered to each other Holder (excluding any early tender or incentive fee) in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to but not including, the date of such redemption. In determining whether the Holders of at least 90% of the aggregate principal amount of the outstanding Notes have validly tendered and not validly withdrawn such Notes in a tender offer, including a Change of Control Offer, Collateral Asset Disposition Offer or Asset Disposition Offer, Notes owned by the Company or its Affiliates or by funds controlled or managed by any Affiliate of the Company, or any successor thereof, shall be deemed to be outstanding for the purposes of such tender offer.

(f) Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable Redemption Date.

(g) Any redemption pursuant to this Section 5.7 shall be made pursuant to the provisions of Sections 5.1 through 5.6.

SECTION 5.8. Mandatory Redemption. The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes; *provided*, however, that under certain circumstances, the Company may be required to offer to purchase Notes under Section 3.5 and Section 3.9.

SECTION 5.9. [Reserved].

ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 6.1. Events of Default

(a) Each of the following is an "Event of Default":

(1) default in any payment of interest on any Note when due and payable, continued for 30 days;

(2) default in the payment of the principal amount of or premium, if any, on any Note issued under this Indenture when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(3) failure by the Company or any Guarantor to comply for 60 days after written notice by the Trustee on behalf of the Holders or by the Holders of at least 30% in aggregate principal amount of the outstanding Notes with any agreement or obligation contained in this Indenture; *provided* that in the case of a failure to comply with this Indenture provisions described under Section 3.10, such period of continuance of such default or breach shall be 270 days after written notice described in this clause has been given;

(4) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary) (or the payment of which is Guaranteed by the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary)) other than Indebtedness owed to the Company or a Restricted Subsidiary whether such Indebtedness or Guarantee now exists, or is created after the date hereof, which default:

(A) is caused by a failure to pay principal of such Indebtedness, at its stated final maturity (after giving effect to any applicable grace periods provided in such Indebtedness); or

(B) results in the acceleration of such Indebtedness prior to its stated final maturity;

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default of principal at its stated final maturity (after giving effect to any applicable grace periods) or the maturity of which has been so accelerated, aggregates to $100 million or more at any one time outstanding;

(5) failure by the Company or a Significant Subsidiary (or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary) to pay final judgments aggregating in excess of $100 million other than any judgments covered by indemnities provided by, or insurance policies issued by, reputable and creditworthy companies, which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(6) (A) (x) any Guarantee of the Notes by Holdings or a Significant Subsidiary ceases to be in full force and effect or (y) a Guarantor that is a Parent Entity or a Significant Subsidiary denies or disaffirms its obligations under its Guarantee of the Notes, other than, in the case of (x) and (y), in accordance with the terms of this Indenture, or (B) in connection with the bankruptcy of a Guarantor, so long as the aggregate assets of such Guarantor and any other Guarantor whose Note Guarantee ceased or ceases to be in full force as a result of a bankruptcy are less than $100 million;

(7) the Company or a Significant Subsidiary (or any group of Restricted Subsidiaries, that taken together as of the latest audited consolidated financial statements of the Company and its Restricted Subsidiaries, would constitute a Significant Subsidiary) pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case or proceeding;

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

(C) consents to the appointment of a Custodian of it or for substantially all of its property;

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

(E) consents to or acquiesces in the institution of a bankruptcy or an insolvency proceeding against it; or

(F) takes any comparable action under any foreign laws relating to insolvency;

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

(A) is for relief against the Company or a Significant Subsidiary (or any group of Restricted Subsidiaries, that taken together as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries, would constitute a Significant Subsidiary) in an involuntary case;

(B) appoints a Custodian of the Company or a Significant Subsidiary (or any group of Restricted Subsidiaries, that taken together as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries, would constitute a Significant Subsidiary) for substantially all of its property;

(C) orders the winding up or liquidation of the Company or a Significant Subsidiary (or any group of Restricted Subsidiaries, that taken together as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries, would constitute a Significant Subsidiary); or

(D) or any similar relief is granted under any foreign laws and the order, decree or relief remains unstayed and in effect for 60 consecutive days;

(9) (i) the Liens created by the Collateral Documents shall at any time not constitute a valid and perfected Lien on any material portion of the Collateral intended to be covered thereby (unless perfection is not required by this Indenture or the Collateral Documents) other than (A) in accordance with the terms of the relevant Collateral Document and this Indenture, (B) the satisfaction in full of all Obligations under this Indenture or (C) any loss of perfection that results from the failure of the Notes Collateral Agent to maintain possession of certificates delivered to it representing securities pledged under the Collateral Documents and (ii) such default continues for 30 days after receipt of written notice given by the Trustee or the Holders of not less than 30% in aggregate principal amount of the then outstanding Notes; and

(10) the Company or any Guarantor that is a Significant Subsidiary (or any group of Subsidiary Guarantors that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary) shall assert, in any pleading in any court of competent jurisdiction, that any security interest in any Collateral Document is invalid or unenforceable;

provided that a Default under clause (3), (4), (5) or (9) above will not constitute an Event of Default until the Trustee or the Holders of at least 30% in principal amount of the outstanding Notes notify the Company of the Default and, with respect to clauses (3), (5) and (9), the Company does not cure such Default within the time specified in clause (3), (5) or (9) after receipt of such notice; *provided* that a notice of Default may not be given with respect to any action taken, and reported publicly or to Holders, more than two years prior to such notice of Default. Any notice of Default, notice of acceleration or instruction to the Trustee or the Notes Collateral Agent, as applicable, to provide a notice of Default, notice of acceleration or take any other action (a "*Noteholder Direction*") provided by any one or more Holders (each a "*Directing Holder*") must be accompanied by a written representation from each such Holder delivered to the Company and the Trustee and the Notes Collateral Agent, if applicable, that such Holder is not (or, in the case such Holder is

DTC or its nominee, that such Holder is being instructed solely by beneficial owners that are not) Net Short (a "*Position Representation*"), which representation, in the case of a Noteholder Direction relating to the delivery of a notice of Default shall be deemed a continuing representation until the resulting Event of Default is cured or otherwise ceases to exist or the Notes are accelerated. In addition, each Directing Holder is deemed, at the time of providing a Noteholder Direction, to covenant to provide the Company with such other information as the Company may reasonably request from time to time in order to verify the accuracy of such Noteholder's Position Representation within five Business Days of request therefor (a "*Verification Covenant*"). In any case in which the Holder is DTC or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the beneficial owner of the Notes in lieu of DTC or its nominee and DTC shall be entitled to conclusively rely on such Position Representation and Verification Covenant in delivering its direction to the Trustee or the Notes Collateral Agent, as applicable.

(b) If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company determines in good faith that there is a reasonable basis to believe a Directing Holder was, at any relevant time, in breach of its Position Representation and provides to the Trustee an Officer's Certificate stating that the Company has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Holder was, at such time, in breach of its Position Representation, and seeking to invalidate any Default, Event of Default or acceleration (or notice thereof) that resulted from the applicable Noteholder Direction, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to such Default or Event of Default shall be automatically reinstituted and any remedy stayed pending a final and non-appealable determination of a court of competent jurisdiction on such matter. If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company provides to the Trustee an Officer's Certificate stating that a Directing Holder failed to satisfy its Verification Covenant, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to any Default or Event of Default that resulted from the applicable Noteholder Direction shall be automatically reinstituted and any remedy stayed pending satisfaction of such Verification Covenant. Any breach of the Position Representation shall result in such Holder's participation in such Noteholder Direction being disregarded; and, if, without the participation of such Holder, the percentage of Notes held by the remaining Holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction, such Noteholder Direction shall be void ab initio, with the effect that such Default or Event of Default shall be deemed never to have occurred, acceleration voided and the Trustee and the Notes Collateral Agent, as applicable, shall be deemed not to have received such Noteholder Direction or any notice of such Default or Event of Default.

(c) Notwithstanding anything in Sections 6.1(a) or (b) to the contrary, any Noteholder Direction delivered to the Trustee or Notes Collateral Agent, as applicable, during the pendency of an Event of Default as the result of a bankruptcy or similar proceeding shall not require compliance with Sections 6.1(a) or (b). For the avoidance of doubt, the Trustee and the Notes Collateral Agent, as applicable, shall be entitled to conclusively rely on any Noteholder Direction delivered to it in accordance with this Indenture, shall have no duty to inquire as to or investigate the accuracy of any Position Representation, enforce compliance with any Verification Covenant, verify any statements in any Officer's Certificate delivered to it, or otherwise make calculations, investigations or determinations with respect to Derivative Instruments, Net Shorts, Long Derivative Instruments, Short Derivative Instruments or otherwise. Neither the Trustee nor the Notes Collateral Agent shall have any liability to the Company, any Holder or any other Person in acting in good faith on a Noteholder Direction.

(d) If a Default for a failure to report or failure to deliver a required certificate in connection with another default (the "Initial Default") occurs, then at the time such Initial Default is cured, such Default for a failure to report or failure to deliver a required certificate in connection with another default that resulted solely because of that Initial Default shall also be cured without any further action.

(e) Any Default or Event of Default for the failure to comply with the time periods prescribed in Section 3.10 hereof or otherwise to deliver any notice or certificate pursuant to any other provision of this

Indenture shall be deemed to be cured upon the delivery of any such report required by such provision or such notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in this Indenture.

SECTION 6.2. Acceleration. If any Event of Default (other than an Event of Default described in clause (7) or (8) of Section 6.1(a)) occurs and is continuing, the Trustee by written notice to the Company or the Holders of at least 30% in principal amount of the outstanding Notes by written notice to the Company and the Trustee, may declare the principal of and accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal and accrued and unpaid interest, will be due and payable immediately.

In the event of any Event of Default specified in clause (4) of Section 6.1(a), such Event of Default and all consequences thereof shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 30 days after such Event of Default arose:

(1) (x) the Indebtedness that gave rise to such Event of Default shall have been discharged in full; or

(y) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(z) if the default that is the basis for such Event of Default has been cured; and

(2) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction.

If an Event of Default described in clause (7) or (8) of Section 6.1(a) occurs and is continuing, the principal of and accrued and unpaid interest, on all Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

SECTION 6.3. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or premium, if any, or interest, if any, on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.4. Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, waive, by their consent (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), an existing Default or Event of Default and its consequences under this Indenture and the Collateral Documents except a Default or Event of Default in the payment of the principal of, or interest, on a Note or a Default or Event of Default in respect of a provision that under Section 9.2 cannot be amended without the consent of each Holder affected and rescind any acceleration with respect to the Notes and its consequences if such rescission would not conflict with any judgment or decree of a court of competent jurisdiction, all existing Events of Default have been cured or waived except nonpayment of principal, premium, if any, interest, if any, that has become due solely because of the acceleration, to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid, the Issuer has paid the Trustee its compensation and reimbursed the Trustee for its reasonable expenses, disbursements and advances and in the event of the cure or waiver of an Event of Default of the type described in clause (4) of Section 6.1(a), the Trustee shall have received an Officer's Certificate and an Opinion of Counsel stating that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or impair any right consequent thereto. When a Default or Event of Default is waived, it is

deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

SECTION 6.5. Control by Majority. The Holders of a majority in aggregate principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Notes Collateral Agent or of exercising any trust or power conferred on the Trustee or the Notes Collateral Agent. However, the Trustee or the Notes Collateral Agent, as applicable, may refuse to follow any direction that conflicts with law or this Indenture or the Notes or, subject to Sections 7.1 and 7.2, that the Trustee determines is unduly prejudicial to the rights of other Holders or would involve the Trustee or Notes Collateral Agent in personal liability (it being understood that the Trustee has no duty to determine whether any action is prejudicial to any Holder); *provided*, *however*, that the Trustee or Notes Collateral Agent, as applicable, may take any other action deemed proper by the Trustee or Notes Collateral Agent that is not inconsistent with such direction. Prior to taking any such action hereunder, the Trustee or Notes Collateral Agent, as applicable, shall be entitled to indemnification satisfactory to it against all fees, losses, liabilities and expenses (including attorney's fees and expenses) caused by taking or not taking such action.

SECTION 6.6. Limitation on Suits. Subject to Section 6.7, a Holder may not pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 30% in aggregate principal amount of the outstanding Notes have requested in writing the Trustee to pursue the remedy;

(3) such Holders have offered in writing and, if requested, provided to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the written request and the offer of security or indemnity; and

(5) Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a written direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 6.7. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.6), the contractual right of any Holder to receive payment of interest on the Notes held by such Holder or to institute suit for the enforcement of any such payment on or with respect to such Holder's Notes shall not be impaired or affected without the consent of such Holder (and, for the avoidance of doubt, the amendment, supplement or modification in accordance with the terms of this Indenture of Articles III and IV and Section 6.1(a)(3), (4), (5) and (6) and the related definitions shall be deemed not to impair the contractual right of any Holder to receive payments of principal of and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any such payment on or with respect to such Holder's Note).

SECTION 6.8. Collection Suit by Trustee. If an Event of Default specified in clauses (1) or (2) of Section 6.1(a) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.7.

SECTION 6.9. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Notes Collateral Agent, and each of their agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuer, its Subsidiaries or its or their respective creditors or properties and, unless prohibited by law or applicable regulations, may be entitled and empowered to participate as a member of any official committee of creditors appointed in such matter and may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the compensation, expenses, disbursements and advances of the Trustee, the Notes Collateral Agent, their agents and counsel, and any other amounts due the Trustee or Notes Collateral Agent under Section 7.7.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10. Priorities.

(a) Subject to the Intercreditor Agreements, if the Trustee collects any money or property pursuant to this Article VI (including upon exercise of remedies with respect to the Collateral), it shall pay out the money or property in the following order:

FIRST: to the Trustee and to the Notes Collateral Agent, in each case for amounts due to it under Section 7.7;

SECOND: to Holders for amounts due and unpaid on the Notes for principal of, or premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal of, or premium, if any, and interest, respectively; and

THIRD: to the Issuer, or to the extent the Trustee collects any amount for any Guarantor, to such Guarantor.

(b) The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10. At least 15 days before such record date, the Issuer shall send or cause to be sent to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by the Issuer, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 20.0% in outstanding aggregate principal amount of the Notes.

ARTICLE VII

TRUSTEE

SECTION 7.1. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing and is known to the Trustee, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its

exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default known to the Trustee:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of gross negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, opinions or orders furnished to the Trustee and conforming to the requirements of this Indenture or the Notes, as the case may be. However, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture or the Notes, as the case may be (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of Section 7.1(b);

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5; and

(4) No provision of this Indenture or the Notes shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or thereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to clauses (a), (b) and (c) of this Section 7.1.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.1.

SECTION 7.2. Rights of Trustee. Subject to Section 7.1:

(a) The Trustee may conclusively rely on and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document. The Trustee shall receive and retain financial

reports and statements of the Company as provided herein, but shall have no duty to review or analyze such reports or statements to determine compliance with covenants or other obligations of the Issuer.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officer's Certificate or Opinion of Counsel.

(c) The Trustee may execute any of the trusts and powers hereunder or perform any duties hereunder either directly or by or through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care by it hereunder.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this Indenture.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel relating to this Indenture or the Notes shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder or under the Notes in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be deemed to have notice of any Default or Event of Default or whether any entity or group of entities constitutes a Significant Subsidiary unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or of any such Significant Subsidiary is received by the Trustee at the corporate trust office of the Trustee specified in Section 3.12, and such notice references the Notes and this Indenture.

(g) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder, including the Notes Collateral Agent.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or the Notes at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered and, if requested, provided to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby.

(i) The Trustee shall not be deemed to have knowledge of any fact or matter unless such fact or matter is known to a Trust Officer of the Trustee.

(j) Whenever in the administration of this Indenture or the Notes the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder or thereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of negligence or willful misconduct on its part, conclusively rely upon an Officer's Certificate.

(k) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Issuer and the Restricted Subsidiaries, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(l) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(m) The Trustee may request that the Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture or the Notes.

(n) In no event shall the Trustee be liable to any Person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if the Trustee has been advised of the likelihood of such loss or damage.

(o) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer shall be sufficient if signed by one Officer of the Issuer.

(p) The permissive rights of the Trustee under this Indenture and the other Note Documents shall not be construed as duties.

SECTION 7.3. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer, Guarantors or their Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11. In addition, the Trustee shall be permitted to engage in transactions with the Issuer and its Affiliates and Subsidiaries.

SECTION 7.4. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Notes, the Intercreditor Agreements or the Collateral Documents, shall not be accountable for the Issuer's use of the proceeds from the sale of the Notes, shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee or any money paid to the Issuer pursuant to the terms of this Indenture and shall not be responsible for any statement of the Issuer in this Indenture, the Intercreditor Agreements, the Collateral Documents or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication.

SECTION 7.5. Notice of Defaults. If a Default or Event of Default occurs and is continuing and if a Trust Officer has actual knowledge thereof, the Trustee shall send electronically or by first class mail to each Holder at the address set forth in the Notes Register notice of the Default or Event of Default within 60 days after it is actually known to a Trust Officer. Except in the case of a Default or Event of Default in payment of principal of or interest, if any, on any Note (including payments pursuant to the optional redemption or required repurchase provisions of such Note), the Trustee may withhold the notice if and so long it in good faith determines that withholding the notice is in the interests of Holders.

SECTION 7.6. [Reserved].

SECTION 7.7. Compensation and Indemnity. The Issuer shall pay to the Trustee and the Notes Collateral Agent from time to time compensation for its services hereunder and under the Notes as the Issuer and the Trustee and the Notes Collateral Agent shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee and the Notes Collateral Agent upon request for all reasonable out-of-pocket expenses incurred or made by it, including, but not limited to, costs of collection, costs of preparing reports, certificates and other documents, costs of preparation and mailing of notices to Holders. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the agents, counsel, accountants and experts of the Trustee and the Notes Collateral Agent, as applicable. The Issuer and Guarantors, jointly and severally, shall indemnify the Trustee and the Notes Collateral Agent, and their directors, officers, employees and agents against any and all loss, liability, damages, claims or expense, including taxes (other than taxes based upon the income of the Trustee or the Notes Collateral Agent) (including reasonable attorneys' and agents' fees and expenses) incurred by it without willful

misconduct or gross negligence, as determined by a final nonappealable order of a court of competent jurisdiction, on its part in connection with the administration of this trust and the performance of its duties hereunder and under the other Note Documents, including the costs and expenses of enforcing this Indenture (including this Section 7.7) and the Other Notes Documents and of defending itself against any claims (whether asserted by any Holder, the Issuer or otherwise). The Trustee or Notes Collateral Agent, as applicable, shall notify the Issuer promptly of any claim for which it may seek indemnity of which it has received written notice. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Issuer shall defend the claim and the Trustee shall provide reasonable cooperation at the Issuer's expense in the defense. The Trustee and the Notes Collateral Agent , as applicable, may have separate counsel and the Issuer shall pay the fees and expenses of such counsel; *provided that* the Issuer shall not be required to pay the fees and expenses of such separate counsel if it assumes the Trustee's or Notes Collateral Agent, as applicable, defense, and, in the reasonable judgment of outside counsel to the Trustee or Notes Collateral Agent, as applicable, there is no conflict of interest between the Issuer and the Trustee or Notes Collateral Agent, as applicable, in connection with such defense; *provided further that*, the Company shall be required to pay the reasonable fees and expenses of such counsel in evaluating such conflict.

To secure the Issuer's payment obligations in this Section 7.7, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes. Such lien shall survive the satisfaction and discharge of this Indenture. The Trustee's and Notes Collateral Agent's respective right to receive payment of any amounts due under this Section 7.7 shall not be subordinate to any other liability or Indebtedness of the Issuer.

The Issuer's payment obligations pursuant to this Section 7.7 shall survive the discharge of this Indenture and any resignation or removal of the Trustee under Section 7.8 or Notes Collateral Agent under Section 12.7(f). Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs fees, expenses or renders services after the occurrence of a Default specified in clause (7) or clause (8) of Section 6.1(a), the fees and expenses (including the reasonable fees and expenses of its counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.8. Replacement of Trustee. The Trustee may resign at any time by so notifying the Issuer in writing not less than 30 days prior to the effective date of such resignation. The Holders of a majority in aggregate principal amount of the Notes may remove the Trustee by so notifying the removed Trustee in writing not less than 30 days prior to the effective date of such removal and may appoint a successor Trustee with the Issuer's written consent, which consent will not be unreasonably withheld. The Issuer shall remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged bankrupt or insolvent;

(3) a receiver or other public officer takes charge of the Trustee or its property; or

(4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Issuer or by the Holders of a majority in principal amount of the Notes and such Holders do not reasonably promptly appoint a successor Trustee as described in the preceding paragraph, or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall, at the expense of the Issuer, promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.7.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of at least 10% in aggregate principal amount of the Notes may petition, at the Issuer's expense, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Holder, who has been a bona fide holder of a Note for at least six months, may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section 7.8, the Issuer's obligations under Section 7.7 shall continue for the benefit of the retiring Trustee. The predecessor Trustee shall have no liability for any action or inaction of any successor Trustee.

SECTION 7.9. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; *provided* that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall only apply to its successor or successors by merger, consolidation or conversion.

SECTION 7.10. Eligibility; Disqualification. This Indenture shall always have a Trustee. The Trustee shall have a combined capital and surplus of at least $100 million as set forth in its most recent published annual report of condition.

SECTION 7.11. [Reserved].

SECTION 7.12. Trustee's Application for Instruction from the Issuer. Any application by the Trustee for written instructions from the Issuer may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any Officer of the Issuer actually receives such application, unless any such Officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

SECTION 7.13. Collateral Documents; Intercreditor Agreements. By their acceptance of the Notes, the Holders hereby authorize and direct the Trustee and the Notes Collateral Agent, as the case may be, to execute and deliver the Intercreditor Agreements and any other Collateral Documents in which the Trustee or the Notes Collateral Agent, as applicable, is named as a party, including any Collateral Documents executed on or after the Issue Date. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Notes Collateral Agent are not responsible for the terms or contents of such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose or for the perfection thereof. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under, the Intercreditor Agreements or any other Collateral Documents, the Trustee and the Notes Collateral Agent each shall have all of the rights, privileges, benefits, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other agreement or agreements).

SECTION 7.14. Limitation on Duty of Trustee in Respect of Collateral; Indemnification.

(a) Beyond the exercise of reasonable care in the custody thereof, the Trustee shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and neither the Trustee nor the Notes Collateral Agent shall be responsible for filing any financing or continuation statements or amendments or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Notes Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Notes Collateral Agent in good faith.

(b) The Trustee and Notes Collateral Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Issuer to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral (except with respect to certificates delivered to the Notes Collateral Agent representing securities pledged under the Collateral Documents). The Trustee and Notes Collateral Agent shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the Intercreditor Agreements or the Collateral Documents by the Issuer, any Guarantor, the Term Collateral Agent, the ABL Collateral Agent or any representative of any other series of Secured Indebtedness.

ARTICLE VIII
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 8.1. Option to Effect Legal Defeasance or Covenant Defeasance; Defeasance. The Issuer may, at its option and at any time, elect to have either Section 8.2 or 8.3 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article VIII.

SECTION 8.2. Legal Defeasance and Discharge. Upon the Issuer's exercise under Section 8.1 hereof of the option applicable to this Section 8.2, the Issuer and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Guarantees) and the Collateral Documents with respect to such Series on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer and the Guarantors will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.5 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all of their other obligations under the Note Documents (and the Trustee, on written demand of and at the expense of the Issuer, shall execute such instruments reasonably requested by the Issuer acknowledging the same) and the Collateral Documents, and to have cured all then existing Events of Default, except for the following provisions which will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of Notes issued under this Indenture to receive payments in respect of the principal of, premium, if any, and interest, if any, on the Notes when such payments are due solely out of the trust referred to in Section 8.4 hereof;

(2) the Issuer's obligations with respect to the Notes under Article II concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and Section 3.12 hereof concerning the maintenance of an office or agency for payment and money for security payments held in trust;

(3) the rights, powers, trusts, duties and immunities of the Trustee and the Issuer's or Guarantors' obligations in connection therewith; and

(4) this Article VIII with respect to provisions relating to Legal Defeasance.

SECTION 8.3. Covenant Defeasance. Upon the Issuer's exercise under Section 8.1 hereof of the option applicable to this Section 8.3, the Issuer and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be released from each of their obligations under the covenants contained in Section 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, , 3.15, 3.16, 3.19, 3.20, 3.21, and Section 4.1 (except Section 4.1(a)(1) and (a)(2)) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.4 hereof are satisfied (hereinafter, "Covenant Defeasance"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder. For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Guarantees, the Issuer and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1(a) hereof, but, except as specified above, the remainder of this Indenture and such Notes and Guarantees will be unaffected thereby. In addition, upon the Issuer's exercise under Section 8.1 hereof of the option applicable to this Section 8.3, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, Sections 6.1(a)(3) (other than with respect to Section 4.1(a)(1) and (a)(2)), 6.1(a)(4), 6.1(a)(5), 6.1(a)(6), 6.1(a)(7) (with respect only to a Guarantor that is a Significant Subsidiary or any group of Guarantors that taken together would constitute a Significant Subsidiary), 6.1(a)(8) (with respect only to a Guarantor that is a Significant Subsidiary or any group of Guarantors that taken together would constitute a Significant Subsidiary), 6.1(a)(9) and 6.1(a)(10) hereof shall not constitute Events of Default.

SECTION 8.4. Conditions to Legal or Covenant Defeasance. In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.2 or 8.3 hereof:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in Dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of and premium, if any, interest, due on the Notes issued under this Indenture on the stated maturity date or on the applicable redemption date, as the case may be, and the Issuer must specify whether such Notes are being defeased to maturity or to a particular redemption date; *provided*, that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the date of redemption (any such amount, the "*Applicable Premium Deficit*") only required to be deposited with the Trustee on or prior to the date of redemption. Any Applicable Premium Deficit shall be set forth in an Officer's Certificate delivered to the Trustee at least two (2) Business Days prior to the redemption date that confirms that such Applicable Premium Deficit shall be applied toward such redemption;

(2) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, subject to customary assumptions and exclusions;

(A) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling; or

(B) since the issuance of such Notes, there has been a change in the applicable U.S. federal income tax law;

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the beneficial owners of the Notes, in their capacity as beneficial owners of the Notes, will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, subject to customary assumptions and exclusions, the beneficial owners of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default (other than that resulting from borrowing funds to be applied to make such deposit and the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the Credit Facilities or any other material agreement or instrument (other than this Indenture) to which, the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(6) [reserved];

(7) the Issuer shall have delivered to the Trustee an Officer's Certificate to the effect that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying, defrauding or preferring any creditors of the Issuer or any Guarantor; and

(8) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each to the effect that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

SECTION 8.5. Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions. Subject to Section 8.6 hereof, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.5, the "Trustee") pursuant to Section 8.4 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or U.S. Government Obligations deposited pursuant to Section 8.4 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article VIII to the contrary, the Trustee will deliver or pay to the Issuer from time to time upon the request of the Issuer any money or U.S. Government Obligations held by it as provided in Section 8.4 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.4(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 8.6. Repayment to the Issuer. Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium or interest on, any Note and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Issuer on its written request unless an abandoned property law designates another Person or (if then held by the Issuer) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Issuer for payment thereof unless an abandoned property law designates another Person, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, shall at the expense of the Issuer cause to be published once, in The New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

SECTION 8.7. Reinstatement. If the Trustee or Paying Agent is unable to apply any money or Dollars or U.S. Government Obligations in accordance with Section 8.2 or 8.3 hereof, as the case may be, by reason of any order or judgment of any court or Governmental Authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's and the Guarantors' obligations under this Indenture and the Notes and the Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.2 or 8.3 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.2 or 8.3 hereof, as the case may be; *provided*, *however*, that, if the Issuer make any payment of principal of, premium, or interest on, any Note following the reinstatement of its obligations, the Issuer will be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE IX
AMENDMENTS

SECTION 9.1. Without Consent of Holders. Notwithstanding Section 9.2 of this Indenture, the Issuer, any Guarantor (with respect to its Guarantee, this Indenture or the Collateral Documents), the Trustee and/or the Notes Collateral Agent may amend, supplement or modify this Indenture, any Guarantee, the Collateral Documents and the Notes without the consent of any Holder:

(1) to cure any ambiguity, omission, mistake, defect, error or inconsistency, conform any provision to any provision under the heading "Description of Notes" in the Offering Memorandum or reduce the minimum denomination of the Notes;

(2) to provide for the assumption by a successor Person of the obligations of the Issuer or a Guarantor under any Note Document or to comply with Section 4.1;

(3) to provide for uncertificated Notes in addition to or in place of certificated Notes or to alter the provisions of this Indenture relating to the form of the Notes (including related definitions);

(4) to add to or modify the covenants or provide for a Note Guarantee for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Restricted Subsidiary;

(5) to make any change (including changing the CUSIP or other identifying number on any Notes) that would provide any additional rights or benefits to the Holders or that does not materially and adversely affect the rights of any Holder in any material respect;

(6) at the Issuer's election, comply with any requirement of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act, if such qualification is required;

(7) make such provisions as necessary for the issuance of Additional Notes;

(8) provide for any Restricted Subsidiary to provide a Guarantee in accordance with Section 3.2, to add Guarantees with respect to the Notes, to add security to or for the benefit of the Notes, or to confirm and evidence the release, termination, discharge or retaking of any Guarantee or Lien with respect to or securing the Notes when such release, termination, discharge or retaking is provided for under this Indenture;

(9) evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee, a successor Notes Collateral Agent or successor Paying Agent thereunder pursuant to the requirements hereof or to provide for the accession by the Trustee to any Note Document;

(10) secure the Notes and/or the related Guarantees or to add collateral thereto;

(11) add an obligor or a Guarantor under this Indenture;

(12) make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including to facilitate the issuance and administration of Notes; *provided, however*, that such amendment does not materially and adversely affect the rights of Holders to transfer the Notes;

(13) comply with the rules and procedures of any applicable securities depositary;

(14) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Trustee or the Notes Collateral Agent for the benefit of the Holders, as additional security for the payment and performance of all or any portion of the Notes Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Notes Collateral Agent pursuant to this Indenture, any of the Collateral Documents or otherwise;

(15) to add additional secured parties to any Collateral Documents;

(16) to enter into any intercreditor agreement having substantially similar terms with respect to the Holders as those set forth in the Intercreditor Agreements taken as a whole, or any joinder thereto;

(17) in the case of any Collateral Document, to include therein any legend required to be set forth therein pursuant to any Intercreditor Agreement or to modify any such legend as required by such Intercreditor Agreement; and

(18) to provide for the succession of any parties to the Collateral Documents (and other amendments that are administrative or ministerial in nature) in connection with an amendment, renewal, extension, substitution, refinancing, restructuring, replacement, supplementing or other modification from time to time of the Credit Agreement or any other agreement that is not prohibited by this Indenture.

Subject to Section 9.2, upon the request of the Issuer and upon receipt by the Trustee and the Notes Collateral Agent of the documents described in Sections 9.6 and 13.2 hereof, the Trustee and/or the Notes Collateral Agent will join with the Issuer and the Guarantors in the execution of such amended or supplemental indenture, security documents or intercreditor agreements, unless such amended or supplemental indenture, security documents or intercreditor agreements affects the Trustee's or Notes Collateral Agent's own rights, duties, liabilities or immunities under this Indenture and the Collateral Documents or otherwise, in which case the Trustee or Notes Collateral Agent, as applicable, may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture, security documents or intercreditor agreements.

SECTION 9.2. With Consent of Holders. Except as provided below in this Section 9.2, the Issuer, the Guarantors, the Trustee and the Notes Collateral Agent may amend or supplement this Indenture, any Guarantee, the Collateral Documents and the Notes issued hereunder with the consent of the Holders of at least a majority in

principal amount of all the outstanding Notes issued under this Indenture, including, without limitation, consents obtained before or after a Change of Control or in connection with a purchase of, or tender offer or exchange offer for, Notes, and any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes, the Guarantees or the Collateral Documents may be waived with the consent of the Holders of at least a majority in principal amount of all the outstanding Notes issued under this Indenture (including consents obtained before or after a Change of Control or in connection with a purchase of or tender offer or exchange offer for Notes). Section 2.12 hereof and Section 13.4 hereof shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.2.

Upon the request of the Issuer, and upon delivery to the Trustee and the Notes Collateral Agent, as applicable, of evidence of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee and/or the Notes Collateral Agent of the documents described in Section 9.6 and 13.2 hereof, the Trustee and/or the Notes Collateral Agent will join with the Issuer and the Guarantors in the execution of such amended or supplemental indenture, security documents or intercreditor agreements unless such amended or supplemental indenture, security documents or intercreditor agreements affect the Trustee's or the Notes Collateral Agent's own rights, duties, liabilities or immunities under this Indenture or otherwise, in which case the Trustee or the Notes Collateral Agent, as applicable, may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture, security documents or intercreditor agreements.

Without the consent of each Holder of Notes affected, an amendment, supplement or waiver may not, with respect to any Notes issued thereunder and held by a nonconsenting Holder:

(1) reduce the principal amount of such Notes whose Holders must consent to an amendment;

(2) reduce the stated rate of or extend the stated time for payment of interest on any such Note (other than provisions relating to Section 3.5 and Section 3.9);

(3) reduce the principal of or extend the Stated Maturity of any such Note (other than provisions relating to Section 3.5 and Section 3.9);

(4) reduce the premium payable upon the redemption of any such Note or change the time at which any such Note may be redeemed, in each case as set forth in Section 5.7;

(5) make any such Note payable in currency other than that stated in such Note;

(6) impair the right of any Holder to institute suit for the enforcement of any payment of principal of and interest on such Holder's Notes on or after the due dates therefor;

(7) waive a Default or Event of Default with respect to the nonpayment of principal, premium or interest (except pursuant to a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of such Notes outstanding and a waiver of the payment default that resulted from such acceleration);

(8) make any change in the provisions of any Intercreditor Agreement or this Indenture dealing with the application of the proceeds of Collateral that would adversely affect the Holders in any material respect; or

(9) make any change in the amendment or waiver provisions which require the Holders' consent described in this Section 9.2.

Notwithstanding the foregoing, without the consent of the Holders of at least 66⅔% in aggregate principal amount of the Notes then outstanding, no amendment or waiver may (A) make any change in any Collateral

Document or the provisions in this Indenture dealing with Collateral or application of trust proceeds of the Collateral with the effect of releasing the Liens on all or substantially all of the Collateral which secure the Obligations in respect of the Notes or (B) change or alter the priority of the Liens securing the Obligations in respect of the Notes in any material portion of the Collateral in any way materially adverse, taken as a whole, to the Holders, other than, in each case, as provided under the terms of this Indenture, the Collateral Documents or the Intercreditor Agreements.

It shall not be necessary for the consent of the Holders under this Indenture to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment, supplement or waiver under this Indenture by any Holder of the Notes given in connection with a tender or exchange of such Holder's Notes will not be rendered invalid by such tender or exchange.

SECTION 9.3. [Reserved].

SECTION 9.4. Revocation and Effect of Consents and Waivers. Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent or waiver as to such Holder's Note or portion of its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described in this Section 9.4 or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 9.5. Notation on or Exchange of Notes. The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall, upon receipt of an Issuer Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.6. Trustee to Sign Amendments. The Trustee and the Notes Collateral Agent shall sign any amended or supplemental indenture, security documents or intercreditor agreements authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee or the Notes Collateral Agent, as applicable. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Sections 7.1 and 7.2 hereof) shall be fully protected in conclusively relying upon, in addition to the documents required by Section 13.2 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture or security documents or intercreditor agreements is authorized or permitted by this Indenture and is valid, binding and enforceable against the Issuer or any Guarantor, as the case may be, in accordance with its terms. Notwithstanding the foregoing, no Opinion of Counsel shall be required in connection with a supplemental indenture that is delivered after the Issue Date, which is in the form attached hereto as Exhibit B.

ARTICLE X

GUARANTEE

SECTION 10.1. Guarantee. Subject to the provisions of this Article X, each Guarantor that executes this Indenture or a supplemental indenture hereto will fully, unconditionally and irrevocably guarantee, as primary obligor and not merely as surety, jointly and severally with each other Guarantor, to each Holder, the Trustee and the Notes Collateral Agent the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the principal of, premium, if any, and interest on the Notes and all other obligations and liabilities of the Issuer under this Indenture (including without limitation interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Issuer or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding and the obligations under Section 7.7), (all the foregoing being hereinafter collectively called the "Guaranteed Obligations"). Each Guarantor agrees that the Guaranteed Obligations will rank equally in right of payment with other Indebtedness of such Guarantor, except to the extent such other Indebtedness is subordinate to the Guaranteed Obligations, in which case the obligations of the Guarantors under the Guarantees will rank senior in right of payment to such other Indebtedness.

For the avoidance of doubt, Holdings will not be considered a Guarantor for any other purpose under the Indenture and, except as described under Article XII with respect to any Collateral required to be pledged by Holdings, will not be subject to any covenants in the Indenture.

To evidence its Guarantee set forth in this Section 10.1, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each Guarantor hereby agrees that its Guarantee set forth in this Section 10.1 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantee shall be valid nevertheless.

Each Guarantor further agrees (to the extent permitted by law) that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from it, and that it will remain bound under this Article X notwithstanding any extension or renewal of any Guaranteed Obligation.

Each Guarantor waives presentation to, demand of payment from and protest to the Issuer of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Notes or the Guaranteed Obligations.

Each Guarantor further agrees that its Guarantee herein constitutes a Guarantee of payment when due (and not a Guarantee of collection) and waives any right to require that any resort be had by any Holder to any security held for payment of the Guaranteed Obligations.

Except as set forth in Section 10.2, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Guaranteed Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the Guaranteed Obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by (a) the failure of any Holder to assert any claim or demand or to enforce any right or remedy against the Issuer or any other person under this Indenture, the Notes or any other agreement or otherwise; (b) any extension or renewal

of any thereof; (c) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement; (d) the release of any security held by any Holder for the Guaranteed Obligations; (e) the failure of any Holder to exercise any right or remedy against any other Guarantor; (f) any change in the ownership of the Issuer; (g) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations; or (h) any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

Each Guarantor agrees that its Guarantee herein shall remain in full force and effect until payment in full of all the Guaranteed Obligations or such Guarantor is released from its Guarantee in compliance with Section 10.2, Article VIII or Article XI. Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of, premium, if any, interest on any of the Guaranteed Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Issuer or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Issuer to pay any of the Guaranteed Obligations when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, each Guarantor hereby promises to and will, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders or the Trustee on behalf of the Holders an amount equal to the sum of (i) the unpaid amount of such Guaranteed Obligations then due and owing and (ii) accrued and unpaid interest on such Guaranteed Obligations then due and owing (but only to the extent not prohibited by law) (including interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Issuer or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding).

Each Guarantor further agrees that, as between such Guarantor, on the one hand, and the Holders, on the other hand, (x) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in this Indenture for the purposes of its Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby and (y) in the event of any such declaration of acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purposes of this Guarantee.

Each Guarantor also agrees to pay any and all fees, costs and expenses (including attorneys' fees and expenses) incurred by the Trustee, the Notes Collateral Agent or the Holders in enforcing any rights under this Section 10.1.

SECTION 10.2. Limitation on Liability; Termination, Release and Discharge.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the obligations of each Guarantor hereunder will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal, foreign, state or provincial law and not otherwise being void or voidable under any similar laws affecting the rights of creditors generally.

(b) Any Note Guarantee of a Guarantor shall be automatically and unconditionally released and discharged upon:

(1) with respect to Subsidiary Guarantors, a sale, exchange, transfer or other disposition (including by way of merger, amalgamation, consolidation, dividend distribution or otherwise) of the Capital Stock of such Guarantor as a result of which such Guarantor ceases to be a Restricted Subsidiary, or the sale, exchange, transfer or other disposition, of all or substantially all of the assets of such Guarantor to

a Person other than to the Company or a Restricted Subsidiary and as otherwise permitted by this Indenture;

(2) with respect to Subsidiary Guarantors, the designation in accordance with this Indenture of the Guarantor as an Unrestricted Subsidiary or the occurrence of any event after which the Guarantor is no longer a Restricted Subsidiary;

(3) defeasance or discharge of the Notes pursuant to Article VIII or Article XI;

(4) with respect to Subsidiary Guarantors, to the extent that such Guarantor is not an Immaterial Subsidiary solely due to the operation of clause (i) of the definition of "Immaterial Subsidiary," upon the release of the guarantee referred to in such clause;

(5) such Guarantor being (or being substantially concurrently) released or discharged from all of its Guarantees of payment (i) by the Company of any Indebtedness of the Company under the Senior Secured Term Credit Facility or (ii) in the case of a Note Guarantee made by a Subsidiary Guarantor (each, an "*Other Guarantee*") as a result of its guarantee of other Indebtedness of the Company or a Guarantor pursuant to Section 3.7 hereof, by the Company or the applicable Guarantor of the relevant Indebtedness, except in the case of (i) or (ii), a release as a result of payment under such Guarantee (it being understood that a release subject to a contingent reinstatement is still considered a release, and if any such Indebtedness of such Subsidiary Guarantor under the Senior Secured Term Credit Facility or any Other Guarantee is so reinstated, such Note Guarantee shall also be reinstated);

(6) upon the merger, amalgamation or consolidation of any Guarantor with and into the Company or another Guarantor or upon the liquidation of such Guarantor, in each case, in compliance with the applicable provisions of this Indenture;

(7) upon the occurrence of an Investment Grade Event; *provided* that such Note Guarantee shall be reinstated upon the Reversion Date; or

(8) in accordance with Article IX.

SECTION 10.3. Right of Contribution. Each Guarantor hereby agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made on the obligations under the Guarantees, such Guarantor shall be entitled to seek and receive contribution from and against the Issuer or any other Guarantor who has not paid its proportionate share of such payment. The provisions of this Section 10.3 shall in no respect limit the obligations and liabilities of each Guarantor to the Trustee and the Holders and each Guarantor shall remain liable to the Trustee and the Holders for the full amount guaranteed by such Guarantor hereunder.

SECTION 10.4. No Subrogation. Notwithstanding any payment or payments made by each Guarantor hereunder, no Guarantor shall be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Issuer or any other Guarantor or any collateral security or guarantee or right of offset held by the Trustee or any Holder for the payment of the Guaranteed Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Issuer or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Trustee and the Holders by the Issuer on account of the Guaranteed Obligations are paid in full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Trustee in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Trustee, if required), to be applied against the Guaranteed Obligations.

ARTICLE XI

SATISFACTION AND DISCHARGE

SECTION 11.1, Satisfaction and Discharge. This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(a) either:

(1) all Notes that have been authenticated and delivered, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(2) all such Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise or will become due and payable within one year at their Stated Maturity or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee, in the name, and at the expense of the Issuer;

(b) the Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in Dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on such Notes not previously delivered to the Trustee for cancellation, for principal, premium, if any, and interest to the date of deposit (in the case of Notes that have become due and payable), or to the Stated Maturity or redemption date, as the case may be; *provided* that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, as calculated by the Company or on behalf of the Company by such Person as the Company shall designate, with any Applicable Premium Deficit only required to be deposited with the Trustee on or prior to the date of redemption, and any Applicable Premium Deficit shall be set forth in an Officer's Certificate delivered to the Trustee at least two (2) Business Days prior to the redemption date that confirms that such Applicable Premium Deficit shall be applied toward such redemption;

(c) no Default or Event of Default (other than that resulting from borrowing funds to be applied to make such deposit and the granting of Liens in connection therewith) with respect to this Indenture or the Notes issued hereunder shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under the Credit Facilities or any other material agreement or instrument (other than this Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(d) the Issuer has paid or caused to be paid all sums payable by the Issuer under this Indenture; and

(e) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money in Dollars toward the payment of such Notes issued hereunder at maturity or the redemption date, as the case may be.

In addition, the Issuer shall deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, the Issuer's obligations to the Trustee and Notes Collateral Agent in Section 7.7 hereof and, if money in Dollars has been deposited with the Trustee pursuant to clause (a)(2) of this Section 11.1, the provisions of Sections 11.2 and 8.6 hereof will survive.

SECTION 11.2. Application of Trust Money. Subject to the provisions of Section 8.6 hereof, all money in Dollars or U.S. Government Obligations deposited with the Trustee pursuant to Section 11.1 hereof shall be held in

trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium) and interest for whose payment such money in Dollars or U.S. Government Obligations has been deposited with the Trustee; but such money in Dollars or U.S. Government Obligations need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Section 11.1 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or Governmental Authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.1 hereof; *provided* that if the Issuer have made any payment of principal of, premium or interest on, any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE XII

COLLATERAL

SECTION 12.1. Collateral Documents.

(a) The due and punctual payment of the principal of, premium and interest on the Notes when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium and interest on the Notes and performance of all other Obligations of the Issuer and the Guarantors to the Holders, the Trustee or the Notes Collateral Agent under this Indenture, the Notes, the Note Guarantees, the Intercreditor Agreements and the Collateral Documents, according to the terms hereunder or thereunder, shall be secured as provided in the Collateral Documents, which define the terms of the Liens that secure Notes Obligations, subject to the terms of the Intercreditor Agreements. The Trustee, the Issuer and the Guarantors hereby acknowledge and agree that the Notes Collateral Agent holds the Collateral in trust for the benefit of the Holders, the Trustee and the Notes Collateral Agent and pursuant to the terms of the Collateral Documents and the Intercreditor Agreements. Each Holder, by accepting a Note, consents and agrees to the terms of the Collateral Documents (including the provisions providing for the possession, use, release and foreclosure of Collateral) and the Intercreditor Agreements, each as may be in effect or may be amended from time to time in accordance with their terms and this Indenture, and authorizes and directs the Notes Collateral Agent to enter into the Collateral Documents, the Pari Passu Intercreditor Agreement and the ABL Intercreditor Agreement on the Issue Date, and each additional Collateral Document and Junior Lien Intercreditor Agreement, if any, at any time after the Issue Date, if applicable, and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuer shall deliver to the Notes Collateral Agent copies of all documents required to be filed pursuant to the Collateral Documents, and will do or cause to be done all such acts and things as may be reasonably required by the next sentence of this Section 12.1, to assure and confirm to the Notes Collateral Agent the security interest in the Collateral contemplated hereby, by the Collateral Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. On or following the Issue Date and subject to the ABL Intercreditor Agreement, the Issuer and the Guarantors shall execute, file or cause the filing of any and all further documents, financing statements (including continuation statements and amendments to financing statements), agreements and instruments, and take all further action that may be required under applicable law in order to grant, preserve, maintain, protect and perfect (or continue the perfection of) the validity and priority of the Liens and security interests created or intended to be created by the Collateral Documents in the Collateral and cause the Collateral Requirement to be and remain satisfied; *provided* that for so long as there are outstanding any Senior Secured Term Credit Facility Obligations, no actions shall be required to be taken with respect to the perfection of the security interests in the Collateral to the extent such actions are not required to be taken with respect to the Senior Secured Term Credit Facility.

(b) Notwithstanding anything to the contrary herein, the security interests in the Collateral securing the Notes (other than as set forth in the following proviso) will not be required to be in place on the Issue Date and will not be perfected on such date, but will be required to be put in place and perfected no later than 90 days after the Issue Date or as promptly as reasonably practicable thereafter; *provided*, *however*, that (i) Collateral that may be perfected by the filing of UCC financing statements, (ii) Collateral that may be perfected by the filing with the United States Copyright Office and (iii) pursuant to the Intercreditor Agreements, Collateral that may be perfected by the Term Collateral Agent or ABL Collateral Agent holding possession, custody or control thereof as bailee for the Notes Collateral Agent pursuant to the terms of the Intercreditor Agreements, in each case, shall be required to be delivered or filed, as applicable, on the Issue Date.

SECTION 12.2. Release of Collateral.

(a) Collateral may be released from the Lien and security interest created by the Collateral Documents at any time and from time to time in accordance with the provisions of the Collateral Documents, the Intercreditor Agreements and this Indenture. Notwithstanding anything to the contrary in the Collateral Documents, the Intercreditor Agreements and this Indenture, the Issuer and the Guarantors will be entitled to the release of property and other assets constituting Collateral from the Liens securing the Notes:

(1) in whole, upon a legal defeasance or a covenant defeasance of the Notes pursuant to Section 8.2 or 8.3;

(2) in whole, upon satisfaction and discharge of this Indenture pursuant to Section 11.1;

(3) (1) upon payment in full of the principal of, together with accrued and unpaid interest on, the Notes and all other Obligations under this Indenture, the Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together with accrued and unpaid interest, are paid;

(4) in whole or in part, with the consent of the requisite Holders of the Notes in accordance with Article IX; and

(5) in part, as to any asset constituting Collateral:

(A) that is sold or otherwise disposed of (I) by the Company or any of the Guarantors to any person that is not the Company or a Guarantor in a transaction not prohibited by this Indenture (to the extent of the interest sold or disposed of), (II) if all other liens on that asset securing the Obligations under the Senior Secured Term Credit Facility then secured by that asset are released, so long as the Senior Secured Term Credit Facility remains outstanding, (III) in connection with the taking of an enforcement action by the Controlling Collateral Agent in respect of the obligations under the Senior Secured Term Credit Facility in accordance with the Pari Passu Intercreditor Agreement, or (IV) with respect to ABL Priority Collateral, in conjunction with the taking of an enforcement action by the ABL Collateral Agent;

(B) that is owned by a Guarantor that ceases to be a Guarantor; *provided* that if such Guarantor ceases to be a Guarantor as a result of an Investment Grade Event, and following such Investment Grade Event, a Reversion Date occurs, the Company and the Guarantors shall use commercially reasonable efforts to take all actions reasonably necessary to provide to the Notes Collateral Agent for its benefit and the benefit of the Trustee and the Holders of the Notes valid, perfected, first priority security interests (subject to Permitted Liens) in the Collateral within ninety (90) days after such Reversion Date or as soon as reasonably practicable thereafter;

(C) that becomes Excluded Collateral; or

(D) that is otherwise released in accordance with, and as expressly provided for by the terms of, this Indenture, the ABL Intercreditor Agreement, the Pari Passu Intercreditor Agreement or the Collateral Documents; *provided* that on the date of the repayment in full of the obligations under the Senior Secured Term Credit Facility, the Liens on the Collateral securing the Notes Obligations will only be released to the extent that such Collateral or any portion thereof was disposed of in compliance with the terms of the Note Documents in order to repay obligations under the Senior Secured Term Credit Facility secured by such Collateral (it being understood that any Liens on the Collateral or any portion thereof not so disposed of shall continue to secure the Notes Obligations)

(b) With respect to any release of Collateral, upon receipt of an Officer's Certificate stating that all conditions precedent under this Indenture, the Collateral Documents and the Intercreditor Agreements, as applicable, to such release have been met and that it is permitted for the Trustee and/or Notes Collateral Agent to execute and deliver the documents requested by the Issuer in connection with such release and any necessary or proper instruments of termination, satisfaction or release prepared by the Issuer, the Trustee and the Notes Collateral Agent shall, execute, deliver or acknowledge (at the Issuer's expense) such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Indenture or the Collateral Documents or the Intercreditor Agreements and shall do or cause to be done (at the Issuer's expense) all acts reasonably requested of them to release such Lien as soon as is reasonably practicable. Neither the Trustee nor the Notes Collateral Agent shall be liable for any such release undertaken in reliance upon any such Officer's Certificate, and notwithstanding any term hereof or in any Collateral Document or in the Intercreditor Agreements to the contrary, the Trustee and the Notes Collateral Agent shall not be under any obligation to release any such Lien and security interest, or execute and deliver any such instrument of release, satisfaction or termination, unless and until it receives such Officer's Certificate, upon which it shall be entitled to conclusively rely.

SECTION 12.3. Suits to Protect the Collateral.

Subject to the provisions of Article VII and the Collateral Documents and the Intercreditor Agreements, the Trustee may or may direct the Notes Collateral Agent to take all actions it determines in order to:

(a) enforce any of the terms of the Collateral Documents; and

(b) collect and receive any and all amounts payable in respect of the Obligations hereunder.

Subject to the provisions of the Collateral Documents and the Intercreditor Agreements, the Trustee and the Notes Collateral Agent shall have the power to institute and to maintain such suits and proceedings as the Trustee or the Notes Collateral Agent may determine to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Collateral Documents or this Indenture, and such suits and proceedings as the Trustee or the Notes Collateral Agent may determine to preserve or protect its interests and the interests of the Holders in the Collateral. Nothing in this Section 12.3 shall be considered to impose any such duty or obligation to act on the part of the Trustee or the Notes Collateral Agent.

SECTION 12.4. Authorization of Receipt of Funds by the Trustee Under the Collateral Documents.

Subject to the provisions of the Intercreditor Agreements, the Trustee is authorized to receive any funds for the benefit of the Holders distributed under the Collateral Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture.

SECTION 12.5. Purchaser Protected

In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Notes Collateral Agent or the Trustee to execute the applicable release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other

transferee of any property or rights permitted by this Article XII to be sold be under any obligation to ascertain or inquire into the authority of the Issuer or the applicable Guarantor to make any such sale or other transfer.

SECTION 12.6. Powers Exercisable by Receiver or Trustee.

In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article XII upon the Issuer or a Guarantor with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or a Guarantor or of any Officer or Officers thereof required by the provisions of this Article XII; and if the Trustee or the Notes Collateral Agent shall be in the possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee or the Notes Collateral Agent.

SECTION 12.7. Notes Collateral Agent.

(a) The Issuer and each of the Holders by acceptance of the Notes hereby designates and appoints the Notes Collateral Agent as its agent under this Indenture, the Collateral Documents and the Intercreditor Agreements and the Issuer and each of the Holders by acceptance of the Notes hereby irrevocably authorizes the Notes Collateral Agent to take such action on its behalf under the provisions of this Indenture, the Collateral Documents and the Intercreditor Agreements and to exercise such powers and perform such duties as are expressly delegated to the Notes Collateral Agent by the terms of this Indenture, the Collateral Documents and the Intercreditor Agreements and consents and agrees to the terms of the Intercreditor Agreements and each Collateral Document, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms. The Notes Collateral Agent agrees to act as such on the express conditions contained in this Section 12.7. Each Holder agrees that any action taken by the Notes Collateral Agent in accordance with the provisions of this Indenture, the Intercreditor Agreements and the Collateral Documents, and the exercise by the Notes Collateral Agent of any rights or remedies set forth herein and therein shall be authorized and binding upon all Holders. Notwithstanding any provision to the contrary contained elsewhere in this Indenture, the Collateral Documents and the Intercreditor Agreements, the duties of the Notes Collateral Agent shall be ministerial and administrative in nature, and the Notes Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the Collateral Documents and the Intercreditor Agreements to which the Notes Collateral Agent is a party, nor shall the Notes Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder or any Grantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, the Collateral Documents and the Intercreditor Agreements or otherwise exist against the Notes Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Notes Collateral 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Notes Collateral Agent may perform any of its duties under this Indenture, the Collateral Documents or the Intercreditor Agreements by or through receivers, agents, employees, attorneys-in-fact or with respect to any specified Person, such Person's Affiliates, and the respective officers, directors, employees, agents, advisors and attorneys-in-fact of such Person and its Affiliates (a "Related Person"), and shall be entitled to advice of counsel concerning all matters pertaining to such duties, and shall be entitled to act upon, and shall be fully protected in taking action in reliance upon any advice or opinion given by legal counsel. The Notes Collateral Agent shall not be responsible for the negligence or misconduct of any receiver, agent, employee, attorney-in-fact or Related Person that it selects as long as such selection was made in good faith and with due care.

(c) The Notes Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, certification, telephone message, statement, or other communication, document or conversation (including those by telephone or e-mail) believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons,

and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer or any other Grantor), independent accountants and other experts and advisors selected by the Notes Collateral Agent. The Notes Collateral Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document. The Notes Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture, the Collateral Documents or the Intercreditor Agreements unless it shall first receive such advice or concurrence of the Trustee or the Holders of a majority in aggregate principal amount of the Notes as it determines and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Notes Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Indenture, the Collateral Documents or the Intercreditor Agreements in accordance with a request, direction, instruction or consent of the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(d) [Reserved]

(e) The Notes Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Trust Officer of the Notes Collateral Agent shall have received written notice from the Trustee or the Issuer referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default." The Notes Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with Article VI or the Holders of a majority in aggregate principal amount of the Notes (subject to this Section 12.7).

(f) The Notes Collateral Agent may resign at any time by 30 days' written notice to the Trustee and the Issuer, such resignation to be effective upon the acceptance of a successor agent to its appointment as Notes Collateral Agent. If the Notes Collateral Agent resigns under this Indenture, the Issuer shall appoint a successor collateral agent. If no successor collateral agent is appointed prior to the intended effective date of the resignation of the Notes Collateral Agent (as stated in the notice of resignation), the Trustee, at the direction of the Holders of a majority of the aggregate principal amount of the Notes then outstanding, may appoint a successor collateral agent, subject to the consent of the Issuer (which consent shall not be unreasonably withheld and which shall not be required during a continuing Event of Default). If no successor collateral agent is appointed and consented to by the Issuer pursuant to the preceding sentence within thirty (30) days after the intended effective date of resignation (as stated in the notice of resignation) the Notes Collateral Agent shall be entitled to petition a court of competent jurisdiction to appoint a successor. Upon the acceptance of its appointment as successor collateral agent hereunder, such successor collateral agent shall succeed to all the rights, powers and duties of the retiring Notes Collateral Agent, and the term "Notes Collateral Agent" shall mean such successor collateral agent, and the retiring Notes Collateral Agent's appointment, powers and duties as the Notes Collateral Agent shall be terminated. After the retiring Notes Collateral Agent's resignation hereunder, the provisions of this Section 12.7 (and Section 7.7 hereof) shall continue to inure to its benefit and the retiring Notes Collateral Agent shall not by reason of such resignation be deemed to be released from liability as to any actions taken or omitted to be taken by it while it was the Notes Collateral Agent under this Indenture.

(g) Wilmington Trust, National Association shall initially act as Notes Collateral Agent and shall be authorized to appoint co-Notes Collateral Agents as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Collateral Documents or the Intercreditor Agreements, neither the Notes Collateral Agent nor any of its respective officers, directors, employees or agents or other Related Persons shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Notes Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Notes Collateral Agent nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction.

(h) The Notes Collateral Agent is authorized and directed to (i) enter into the Collateral Documents to which it is party, whether executed on or after the Issue Date, (ii) enter into the Pari Passu Intercreditor Agreement and the ABL Intercreditor Agreement on the Issue Date, (iii) enter into any Junior Lien Intercreditor Agreement after the Issue Date, (iv) make the representations of the Holders set forth in the Collateral Documents or the Intercreditor Agreements, (v) bind the Holders on the terms as set forth in the Collateral Documents and the Intercreditor Agreements and (vi) perform and observe its obligations under the Collateral Documents and the Intercreditor Agreements.

(i) If at any time or times the Trustee shall receive (i) by payment, foreclosure, set-off or otherwise, any proceeds of Collateral or any payments with respect to the Obligations arising under, or relating to, this Indenture, except for any such proceeds or payments received by the Trustee from the Notes Collateral Agent pursuant to the terms of this Indenture, or (ii) payments from the Notes Collateral Agent in excess of the amount required to be paid to the Trustee pursuant to Article VI, the Trustee shall promptly turn the same over to the Notes Collateral Agent, in kind, and with such endorsements as may be required to negotiate the same to the Notes Collateral Agent such proceeds to be applied by the Notes Collateral Agent pursuant to the terms of this Indenture, the Collateral Documents and the Intercreditor Agreements.

(j) The Notes Collateral Agent is each Holder's agent for the purpose of perfecting the Holders' security interest in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession. Should the Trustee obtain possession of any such Collateral, upon request from the Issuer, the Trustee shall notify the Notes Collateral Agent thereof and promptly shall deliver such Collateral to the Notes Collateral Agent or otherwise deal with such Collateral in accordance with the Notes Collateral Agent's instructions.

(k) The Notes Collateral Agent shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by any Grantor or is cared for, protected, or insured or has been encumbered, or that the Notes Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all or the Grantor's property constituting Collateral intended to be subject to the Lien and security interest of the Collateral Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Notes Collateral Agent pursuant to this Indenture, any Collateral Document or the Intercreditor Agreements other than pursuant to the instructions of the Holders of a majority in aggregate principal amount of the Notes or as otherwise provided in the Collateral Documents.

(l) If the Issuer or any Guarantor (i) incurs any obligations with Pari Passu Lien Priority or Junior Lien Priority on the Collateral relative to the Notes at any time when no applicable intercreditor agreement is in effect or at any time when Indebtedness with Pari Passu Lien Priority or Junior Lien Priority on the Collateral relative to the Notes entitled to the benefit of an existing Intercreditor Agreement is concurrently retired, and (ii) delivers to the Trustee and the Notes Collateral Agent an Officer's Certificate so stating and requesting the Trustee and Notes Collateral Agent, if applicable, to enter into an intercreditor agreement (on substantially the same terms as the applicable Intercreditor Agreement) in favor of a designated agent or representative for the holders of the Pari Obligations or junior lien Obligations so incurred, together with an Opinion of Counsel, the Notes Collateral Agent and Trustee, if applicable, shall (and is hereby authorized and directed to) enter into such intercreditor agreement (at the sole expense and cost of the Issuer, including legal fees and expenses of the Trustee and Notes Collateral Agent), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder; provided that neither an Officer's Certificate nor an Opinion of Counsel shall be required in connection with the Pari Passu Intercreditor Agreement to be entered into by the Notes Collateral Agent and Trustee on the Issue Date.

(m) No provision of this Indenture, the Intercreditor Agreements or any Collateral Document shall require the Notes Collateral Agent (or the Trustee) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action

hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in the case of the Notes Collateral Agent) unless it shall have received indemnity satisfactory to the Notes Collateral Agent and the Trustee against potential costs and liabilities incurred by the Notes Collateral Agent relating thereto. Notwithstanding anything to the contrary contained in this Indenture, the Intercreditor Agreements or the Collateral Documents, in the event the Notes Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Notes Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the mortgages or take any such other action if the Notes Collateral Agent has determined that the Notes Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances. The Notes Collateral Agent shall at any time be entitled to cease taking any action described in this clause (m) if it no longer reasonably deems any indemnity, security or undertaking from the Issuer or the Holders to be sufficient.

(n) The Notes Collateral Agent (i) shall not be liable for any action taken or omitted to be taken by it in connection with this Indenture, the Intercreditor Agreements and the Collateral Documents or instrument referred to herein or therein, except to the extent that any of the foregoing are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct, (ii) shall not be liable for interest on any money received by it except as the Notes Collateral Agent may agree in writing with the Issuer (and money held in trust by the Notes Collateral Agent need not be segregated from other funds except to the extent required by law) and (iii) may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel. The grant of permissive rights or powers to the Notes Collateral Agent shall not be construed to impose duties to act.

(o) Neither the Notes Collateral Agent nor the Trustee shall be liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Neither the Notes Collateral Agent nor the Trustee shall be liable for any indirect, special, punitive, incidental or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action.

(p) The Notes Collateral Agent does not assume any responsibility for any failure or delay in performance or any breach by the Issuer or any other Grantor under this Indenture, the Intercreditor Agreements and the Collateral Documents. The Notes Collateral Agent shall not be responsible to the Holders or any other Person for any recitals, statements, information, representations or warranties contained in this Indenture, the Collateral Documents, the Intercreditor Agreements or in any certificate, report, statement, or other document referred to or provided for in, or received by the Notes Collateral Agent under or in connection with, this Indenture, the Intercreditor Agreements or any Collateral Document; the execution, validity, genuineness, effectiveness or enforceability of the Intercreditor Agreements and any Collateral Documents of any other party thereto; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any obligor; or for any failure of any obligor to perform its Obligations under this Indenture, the Intercreditor Agreements and the Collateral Documents. The Notes Collateral Agent shall have no obligation to any Holder or any other Person to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any obligor of any terms of this Indenture, the Intercreditor Agreements and the Collateral Documents, or the satisfaction of any conditions precedent contained in this Indenture, the Intercreditor Agreements and any Collateral Documents. The Notes Collateral Agent shall not be required to initiate or conduct any litigation or collection or other proceeding under this Indenture, the Intercreditor Agreements and the Collateral Documents unless expressly set forth hereunder or thereunder. The Notes Collateral Agent shall have the right at any time to seek instructions from the Holders with respect to the administration of this Indenture, the Collateral Documents and the Intercreditor Agreements.

(q) The parties hereto and the Holders hereby agree and acknowledge that neither the Notes Collateral Agent nor the Trustee shall assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture, the Intercreditor Agreements, the Collateral Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that in the exercise of its rights under this Indenture, the Intercreditor Agreements and the Collateral Documents, the Notes Collateral Agent may hold or obtain indicia of ownership primarily to protect the security interest of the Notes Collateral Agent in the Collateral and that any such actions taken by the Notes Collateral Agent shall not be construed as or otherwise constitute any participation in the management of such Collateral. In the event that the Notes Collateral Agent or the Trustee is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in either of the Notes Collateral Agent or the Trustee's sole discretion may cause the Notes Collateral Agent or the Trustee, as applicable, to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause the Notes Collateral Agent or the Trustee to incur liability under CERCLA or any other federal, state or local law, each of the Notes Collateral Agent and the Trustee reserves the right, instead of taking such action, to either resign as the Notes Collateral Agent or the Trustee or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Neither the Notes Collateral Agent nor the Trustee shall be liable to the Issuer, the Guarantors or any other Person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of either of the Notes Collateral Agent's or the Trustee's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment. If at any time it is necessary or advisable for property to be possessed, owned, operated or managed by any Person (including the Notes Collateral Agent or the Trustee) other than the Issuer or the Guarantors, Holders of a majority in aggregate principal amount of the then outstanding Notes shall direct the Notes Collateral Agent or the Trustee to appoint an appropriately qualified Person (excluding the Notes Collateral Agent or the Trustee) who they shall designate to possess, own, operate or manage, as the case may be, the property.

(r) Upon the receipt by the Notes Collateral Agent of a written request of the Issuer signed by an Officer (a "Collateral Document Order"), the Notes Collateral Agent is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the Trustee, any Collateral Document or amendment or supplement thereto to be executed after the Issue Date; provided that the Notes Collateral Agent shall not be required to execute or enter into any such Collateral Document which, in the Notes Collateral Agent's reasonable opinion is reasonably likely to adversely affect the rights, duties, liabilities or immunities of the Notes Collateral Agent or that the Notes Collateral Agent determines is reasonably likely to involve the Notes Collateral Agent in personal liability. Such Collateral Document Order shall (i) state that it is being delivered to the Notes Collateral Agent pursuant to, and is a Collateral Document Order referred to in, this Section 12.7(r), and (ii) instruct the Notes Collateral Agent to execute and enter into such Collateral Document. Other than as set forth in this Indenture, any such execution of a Collateral Document shall be at the direction and expense of the Issuer, upon delivery to the Notes Collateral Agent of an Officer's Certificate and Opinion of Counsel stating that all conditions precedent to the execution and delivery of the Collateral Document have been satisfied. The Holders, by their acceptance of the Notes, hereby authorize and direct the Notes Collateral Agent to execute such Collateral Documents (subject to the first sentence of this Section 12.7(r)).

(s) Subject to the provisions of the applicable Collateral Documents and the Intercreditor Agreements each Holder, by acceptance of the Notes, agrees that the Notes Collateral Agent shall execute and deliver the Intercreditor Agreements and the Collateral Documents to which it is a party and all agreements, documents and instruments incidental thereto, and act in accordance with the terms thereof. For the avoidance of doubt, the Notes Collateral Agent shall have no discretion under this Indenture, the Intercreditor Agreements or the Collateral Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders of a majority in aggregate principal amount of the then outstanding

Notes or the Trustee, as applicable. Each Holder, by acceptance of the Notes, authorizes and directs the Trustee to execute and deliver the Pari Passu Intercreditor Agreement and the ABL Intercreditor Agreement, in its capacity as Authorized Representative (as defined therein) and all agreements, documents and instruments incidental thereto, and act in accordance with the terms thereof.

(t) After the occurrence and continuance of an Event of Default, the Trustee, acting at the direction of the Holders of a majority of the aggregate principal amount of the Notes then outstanding, may direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture, the Collateral Documents or the Intercreditor Agreements.

(u) The Notes Collateral Agent is authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the Collateral Documents or the Intercreditor Agreements and to the extent not prohibited under the Intercreditor Agreements for turnover to the Trustee to make further distributions of such funds to itself, the Trustee and the Holders in accordance with the provisions of Section 6.10 and the other provisions of this Indenture.

(v) In each case that the Notes Collateral Agent may or is required hereunder or under any Collateral Document or the Intercreditor Agreements to take any action (an "Action"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any Collateral Document or the Intercreditor Agreements, the Notes Collateral Agent may seek direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. The Notes Collateral Agent shall not be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. If the Notes Collateral Agent shall request direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes with respect to any Action, the Notes Collateral Agent shall be entitled to refrain from such Action unless and until the Notes Collateral Agent shall have received direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes, and the Notes Collateral Agent shall not incur liability to any Person by reason of so refraining.

(w) Notwithstanding anything to the contrary in this Indenture or in any Collateral Document or the Intercreditor Agreements, in no event shall the Notes Collateral Agent or the Trustee be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture, the Collateral Documents, the Pari Passu Intercreditor Agreement, the ABL Intercreditor Agreement or the Junior Lien Intercreditor Agreement, if any (including without limitation the filing or continuation of any UCC financing or continuation statements or amendments or similar documents or instruments), nor shall the Notes Collateral Agent or the Trustee be responsible for, and neither the Notes Collateral Agent nor the Trustee makes any representation regarding, the validity, effectiveness or priority of any of the Collateral Documents or the security interests or Liens intended to be created thereby.

(x) Before the Notes Collateral Agent acts or refrains from acting in each case at the request or direction of the Issuer or the Guarantors, other than as set forth in this Indenture, it may require an Officer's Certificate and an Opinion of Counsel, which shall conform to the provisions of this Section 12.7 and Section 13.2 hereof. The Notes Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(y) Notwithstanding anything to the contrary contained herein, the Notes Collateral Agent shall act pursuant to the instructions of the Holders and the Trustee with respect to the Collateral Documents and the Collateral.

(z) The rights, privileges, benefits, immunities, indemnities and other protections given to the Trustee are extended to, and shall be enforceable by, the Notes Collateral Agent as if the Notes Collateral Agent were named as the Trustee herein and the Collateral Documents were named as this Indenture herein. The Notes Collateral Agent shall be entitled to compensation, reimbursement and indemnity as set forth in Section 7.7.

ARTICLE XIII

MISCELLANEOUS

SECTION 13.1. Notices. Any notice, request, direction, consent or communication made pursuant to the provisions of this Indenture or the Notes shall be in writing and delivered in person, sent by facsimile, sent by electronic mail in pdf format, delivered by commercial courier service or mailed by first-class mail, postage prepaid, addressed as follows:

if to the Issuer or to any Guarantor:

Avaya Holdings Corp.
4655 Great America Parkway
Santa Clara, CA 95054
Attention: General Counsel

with a copy to:

Kirkland & Ellis LLP
601 Lexington Ave
New York, New York 10022
Attention: Joshua Korff, Esq.
Michael Kim, Esq.
Facsimile: (212) 446-4900

if to the Trustee and the Notes Collateral Agent, at its corporate trust office, which corporate trust office for purposes of this Indenture is at the date hereof located at:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Attention: Avaya, Inc. Notes Administrator
Telecopy: (612) 217-5651

The Issuer, the Trustee or the Notes Collateral Agent, by written notice to the others, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to the Issuer or the Guarantors shall be deemed to have been given or made as of the date so delivered if personally delivered or if delivered electronically, in pdf format; when receipt is acknowledged, if telecopied; and seven (7) calendar days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee). Any notice or communication to the Trustee or Notes Collateral Agent shall be deemed delivered upon receipt.

Any notice or communication sent to a Holder shall be electronically delivered or mailed to the Holder at the Holder's address as it appears in the Notes Register and shall be sufficiently given if so sent within the time prescribed.

Failure to mail or deliver electronically a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee shall be effective only upon receipt.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to DTC (or its designee) pursuant to the standing instructions from DTC or its designee.

SECTION 13.2. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Issuer or any of the Guarantors to the Trustee and/or the Notes Collateral Agent to take or refrain from taking any action under this Indenture, the Issuer or such Guarantor, as the case may be, shall furnish to the Trustee or, if such action relates to a Collateral Document or an Intercreditor Agreement, the Notes Collateral Agent:

(1) an Officer's Certificate in form satisfactory to the Trustee or the Notes Collateral Agent, as applicable, (which shall include the statements set forth in Section 13.3 hereof) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel in form satisfactory to the Trustee or the Notes Collateral Agent, as applicable, (which shall include the statements set forth in Section 13.3 hereof) stating that, in the opinion of such counsel, all such conditions precedent have been satisfied and all covenants have been complied with.

SECTION 13.3. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture:

(1) a statement that the individual making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officer's Certificate or on certificates of public officials.

SECTION 13.4. When Notes Disregarded. In determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer, any Guarantor or any Affiliate of them shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Also, subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

SECTION 13.5. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by, or at meetings of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 13.6. Legal Holidays. A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York, New York or the jurisdiction

of the place of payment. If a payment date or a Redemption Date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 13.7. Governing Law. THIS INDENTURE, THE NOTES AND THE GUARANTEES AND THE RIGHTS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 13.8. Jurisdiction. The Issuer and the Guarantors agree that any suit, action or proceeding against the Issuer or any Guarantor brought by any Holder, the Trustee or the Notes Collateral Agent arising out of or based upon this Indenture, the Guarantee or the Notes may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, and any appellate court from any thereof, and each of them irrevocably submits to the non-exclusive jurisdiction of such courts in any suit, action or proceeding. The Issuer and the Guarantors irrevocably waive, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with this Indenture, the Guarantee or the Notes, including such actions, suits or proceedings relating to securities laws of the United States of America or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. The Issuer and the Guarantors agree that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon the Issuer or the Guarantors, as the case may be, and may be enforced in any court to the jurisdiction of which the Issuer or the Guarantors, as the case may be, are subject by a suit upon such judgment.

SECTION 13.9. Waivers of Jury Trial. **EACH OF THE ISSUER, THE GUARANTORS, THE NOTES COLLATERAL AGENT AND THE TRUSTEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE GUARANTEES AND FOR ANY COUNTERCLAIM THEREIN.**

SECTION 13.10. USA PATRIOT Act. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee and the Notes Collateral Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The parties to this Indenture agree that they will provide the Trustee and the Notes Collateral Agent with such information as it may request in order to satisfy the requirements of the USA PATRIOT Act.

SECTION 13.11. No Recourse Against Others. No director, officer, employee, incorporator or shareholder of the Issuer or any of its respective Subsidiaries or Affiliates, or such (other than the Issuer and the Guarantors), shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees or this Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

SECTION 13.12. Successors. All agreements of the Issuer and each Guarantor in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee and the Notes Collateral Agent in this Indenture shall bind their respective successors.

SECTION 13.13. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 13.14. Table of Contents; Headings. The table of contents, cross-reference table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 13.15. Force Majeure. In no event shall the Trustee or the Notes Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that the Trustee and Notes Collateral Agent shall use reasonable best efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.16. Severability. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 13.17. [Reserved].

SECTION 13.18. Waiver of Immunities. To the extent that the Issuer or any Guarantor or any of its properties, assets or revenues may have or may hereafter become entitled to, or have attributed to them, any right of immunity, on the grounds of sovereignty, from any legal action, suit or proceeding, from set-off or counterclaim, from the jurisdiction of any court, from service of process, from attachment upon or prior to judgment, or from attachment in aid of execution of judgment, or from execution of judgment, or other legal process or proceeding for the giving of any relief or for the enforcement of any judgment, in any jurisdiction in which proceedings may at any time be commenced, with respect to their obligations, liabilities or any other matter under or arising out of or in connection with this Indenture, the Notes or the Note Guarantees, the Issuer and each Guarantor hereby irrevocably and unconditionally, to the extent permitted by applicable law, waives and agrees not to plead or claim any such immunity and consents to such relief and enforcement.

SECTION 13.19. Judgment Currency. The Issuer and each Guarantor agrees to indemnify the recipient against any loss incurred by such recipient as a result of any judgment or order being given or made against the Issuer or any Guarantor for any amount due hereunder and such judgment or order being expressed and paid in a currency (the "Judgment Currency") other than Dollars and as a result of any variation as between (i) the rate of exchange at which the Dollar amount is converted into the Judgment Currency for the purpose of such judgment or order, and (ii) the rate of exchange in The City of New York at which such party on the date of payment of such judgment or order is able to purchase Dollars with the amount of the Judgment Currency actually received by such party if such party had utilized such amount of Judgment Currency to purchase Dollars as promptly as practicable upon such party's receipt thereof. The foregoing indemnity shall constitute a separate and independent obligation of the Issuer and each Guarantor and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant currency.

SECTION 13.20. Intercreditor Agreements. Each Holder of the Notes, by accepting such Note, will be deemed to have (i) appointed and authorized the Notes Collateral Agent and the Trustee to give effect to the provisions in the Intercreditor Agreements, any additional intercreditor agreements and the Collateral Documents and perform the duties and exercise the rights, powers and discretions that are specifically given to it under the Intercreditor Agreements and the Collateral Documents securing such Indebtedness, together with any other incidental rights, power and discretions, (ii) agreed to be bound by the provisions of the Intercreditor Agreements, any additional intercreditor agreements and the Collateral Documents (including, for the avoidance of doubt, consenting to the subordination of Liens provided for in the ABL Intercreditor Agreement) and (iii) irrevocably appointed the Notes Collateral Agent and the Trustee to act on its behalf to enter into and comply with the provisions of the Intercreditor Agreements, any additional intercreditor agreements and the Collateral Documents (including the execution of, and compliance with, any waiver, modification, amendment, renewal or replacement expressed to be executed by the Trustee or the Notes Collateral Agent on its behalf).

[Signature on following pages]

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

AVAYA INC.

By: /s/ Kieran J. McGrath
Name: Kieran J. McGrath
Title: Executive Vice President & Chief Financial Officer

AVAYA HOLDINGS CORP.

By: /s/ Kieran J. McGrath
Name: Kieran J. McGrath
Title: Executive Vice President & Chief Financial Officer

AVAYA MANAGEMENT L.P.

By: AVAYA INC., as General Partner

By: /s/ Kieran J. McGrath
Name: Kieran J. McGrath
Title: Executive Vice President & Chief Financial Officer

AVAYA CALA INC.
AVAYA CLOUD INC.
AVAYA EMEA LTD.
AVAYA FEDERAL SOLUTIONS, INC.
AVAYA HOLDINGS LLC
AVAYA INTEGRATED CABINET SOLUTIONS LLC
AVAYA MANAGEMENT SERVICES INC.
AVAYA WORLD SERVICES INC.
CAAS TECHNOLOGIES, LLC
HYPERQUALITY, INC.
HYPERQUALITY II, LLC
INTELLISIST, INC.
SIERRA ASIA PACIFIC INC.
UBIQUITY SOFTWARE CORPORATION
VPNET TECHNOLOGIES, INC.

By: ___/s/ Kieran J. McGrath___
Name: Kieran J. McGrath
Title: Vice President

[Signature Page to this Indenture]

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Jane Y. Schweiger
Name: Jane Y. Schweiger
Title: Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Notes Collateral Agent

By: /s/ Jane Y. Schweiger
Name: Jane Y. Schweiger
Title: Vice President

[Signature Page to this Indenture]

EXHIBIT A

[FORM OF FACE OF GLOBAL RESTRICTED NOTE]
[Applicable Restricted Notes Legend]
[Depository Legend, if applicable]
[OID Legend, if applicable]

No. [___] Principal Amount $[_____] [as revised by the Schedule of Increases and Decreases in Global Note attached hereto][1]
CUSIP NO. _____

AVAYA INC.
6.125% Senior First Lien Notes due 2028

Avaya Inc., a Delaware corporation (the "Issuer"), promises to pay to [Cede & Co.],[2] or its registered assigns, the principal sum of _____ U. S. dollars, [as revised by the Schedule of Increases and Decreases in Global Note attached hereto],[3] on September 15, 2028.

Interest Payment Dates: March 15 and September 15, commencing on March 15, 2021

Record Dates: March 1 and September 1

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

[1] Insert in Global Notes only.

[2] Insert in Global Notes only.

[3] Insert in Global Notes only.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be duly executed.

AVAYA INC.

By: ____
Name:
Title:

TRUSTEE CERTIFICATE OF AUTHENTICATION

This Note is one of the 6.125% Senior First Lien Notes due 2028 referred to in the within-mentioned Indenture.

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Dated: __

[FORM OF REVERSE SIDE OF NOTE]
AVAYA INC.
6.125% SENIOR FIRST LIEN NOTES DUE 2028
Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture.

1. Interest

The Issuer promises to pay interest on the principal amount of this Note at 6.125% per annum from September 25, 2020 until maturity. The Issuer will pay interest semi-annually in arrears every March 15 and September 15 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "Interest Payment Date"). Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided*, that the first Interest Payment Date shall be March 15, 2021. The Issuer shall pay interest on overdue principal at the rate specified herein, and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful. Interest on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal of, premium, if any, or interest, on any Note is due and payable, the Issuer shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal, premium, interest when due. Interest on any Note which is payable, and is timely paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Note (or one or more Predecessor Notes) is registered at the close of business on the preceding March 1 and September 1 at the office or agency of the Issuer maintained for such purpose pursuant to Section 2.3 of the Indenture. The principal of (and premium, if any) and interest on the Notes shall be payable at the office or agency of Paying Agent or Registrar designated by the Issuer maintained for such purpose (which shall initially be the office of the Trustee maintained for such purpose), or at such other office or agency of the Issuer as may be maintained for such purpose pursuant to Section 2.3 of the Indenture; *provided*, *however*, that, at the option of the Paying Agent, each installment of interest may be paid by (i) check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Notes Register or (ii) wire transfer to an account located in the United States maintained by the payee, subject to the third to the last sentence of this paragraph. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) will be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company or any successor depository. Payments in respect of Notes represented by Definitive Notes (including principal, premium, if any, and interest) held by a Holder of at least $1,000,000 aggregate principal amount of Notes represented by Definitive Notes will be made in accordance with the Notes Register, or by wire transfer to a Dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 15 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion). If an Interest Payment Date or a Redemption Date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

3. Paying Agent and Registrar

The Issuer initially appoints Wilmington Trust, National Association (the "Trustee") as Registrar and Paying Agent for the Notes. The Issuer may change any Registrar or Paying Agent without prior notice to the Holders. The Issuer or any Guarantor may act as Paying Agent, Registrar or transfer agent.

4. Indenture

The Issuer issued the Notes under an Indenture dated as of September 25, 2020, among the Issuer, the Guarantors named therein, the Trustee and the Notes Collateral Agent (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Indenture"). The terms of the Notes include those stated in the Indenture. The Notes are subject to all terms and provisions of the Indenture, and Holders are referred to the Indenture for a statement of those terms. In the event of a conflict between the terms of the Notes and the terms of the Indenture, the terms of the Indenture shall control.

The Notes are senior secured obligations of the Issuer. The aggregate principal amount of Notes that may be authenticated and delivered under the Indenture is unlimited. This Note is one of the 6.125% Senior First Lien Notes due 2028 referred to in the Indenture. The Notes include (i) $1,000,000,000 principal amount of the Issuer's 6.125% Senior First Lien Notes due 2028 issued under the Indenture on September 25, 2020 (the "Initial Notes") and (ii) if and when issued, additional Notes that may be issued from time to time under the Indenture subsequent to September 25, 2020 (the "Additional Notes") as provided in Section 2.1(a) of the Indenture. The Initial Notes and the Additional Notes shall be considered collectively as a single class for all purposes of the Indenture; *provided* that the Additional Notes will not be issued with the same CUSIP as the existing Notes unless such Additional Notes are fungible with the existing Notes for U.S. federal income tax purposes. The Indenture imposes certain limitations on the incurrence of indebtedness, the making of restricted payments, the sale of assets, the incurrence of certain liens, the making of payments for consents, the entering into of agreements that restrict distribution from restricted subsidiaries and the consummation of mergers and consolidations. The Indenture also imposes requirements with respect to the provision of financial information and the provision of guarantees of the Notes by certain subsidiaries.

5. Guarantees

From and after the Issue Date, to guarantee the due and punctual payment of the principal, premium, if any, interest (including post-filing or post-petition interest in any proceeding under Bankruptcy Law) on the Notes and all other amounts payable by the Issuer under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, each Guarantor will unconditionally guarantee (and future guarantors, jointly and severally with the Guarantors, will fully and unconditionally Guarantee) such obligations on a senior secured basis pursuant to the terms of the Indenture.

6. Redemption

(a) At any time prior to September 15, 2023, the Company may redeem the Notes in whole or in part, at its option, upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, at a redemption price (expressed as a percentage of the principal amount of the Notes to be redeemed) equal to 100.000% plus the relevant Applicable Premium as of, and accrued and unpaid interest, if any, to but excluding the date of redemption (the "Redemption Date"), subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date.

(b) At any time and from time to time prior to September 15, 2023, the Company may on one or more occasions, upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, redeem up to 40.0% of the original principal amount of Notes issued under the Indenture on the Issue Date (together with Additional Notes) at a redemption price (expressed as a percentage of the principal amount of Notes to be redeemed) equal to 106.125% of the principal amount of such Notes, plus accrued and unpaid interest, if any, to but excluding, the applicable Redemption Date, subject to the right of Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date, with the Net Cash Proceeds received by the Company of one or more Equity Offerings of the Company; *provided* that not less than 50.0% of the original principal amount of the then-outstanding Notes initially issued under the Indenture remains outstanding immediately after the occurrence of each such redemption (including Additional Notes but excluding Notes held by the Company or any of its Restricted

Subsidiaries), unless all such notes are redeemed substantially concurrently; *provided further* that each such redemption occurs not later than 180 days after the date of closing of the related Equity Offering. The Trustee shall select the Notes to be purchased in the manner described under Sections 5.1 through 5.6 of the Indenture.

(c) Except pursuant to clauses (a) and (b) of this paragraph 6, the Notes will not be redeemable at the Company's option prior to September 15, 2023.

(d) At any time and from time to time on or after September 15, 2023, the Company may redeem the Notes, in whole or in part, upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth in the table below, plus accrued and unpaid interest thereon, if any, to but excluding the applicable Redemption Date, subject to the right of Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date, if redeemed during the twelve-month period beginning on September 15 of each of the years indicated in the table below:

Year	Percentage
2023	103.063%
2024	101.531%
2025 and thereafter	100.000%

(e) Notwithstanding the foregoing, in connection with any tender offer for the Notes, including a Change of Control Offer, Collateral Asset Disposition Offer or Asset Disposition Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company or such third party shall have the right upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, given not more than 30 days following such purchase date, to redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price offered to each other Holder (excluding any early tender or incentive fee) in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but excluding, the date of such redemption. In determining whether the Holders of at least 90% of the aggregate principal amount of the outstanding Notes have validly tendered and not validly withdrawn such Notes in a tender offer, including a Change of Control Offer, Collateral Asset Disposition Offer or Asset Disposition Offer, Notes owned by the Company or its Affiliates or by funds controlled or managed by any Affiliate of the Company, or any successor thereof, shall be deemed to be outstanding for the purposes of such tender offer.

(f) Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable Redemption Date.

(g) Any redemption pursuant to this paragraph 6 shall be made pursuant to the provisions of Section 5.1 through 5.6 of the Indenture.

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

7. Reserved

8. Repurchase Provisions

If a Change of Control Triggering Event occurs, unless a third party makes a Change of Control offer or the Company has previously or substantially concurrently therewith delivered a redemption notice with respect to all of

the outstanding Notes as set forth under Section 5.7(a) or Section 5.7(d) of the Indenture, each Holder will have the right to require the Issuer to repurchase from each Holder all or any part (equal to a minimum denomination of $2,000 or an integral multiple of $1,000 in excess thereof) of such Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, to but excluding the date of purchase; provided that if the repurchase date is on or after the record date and on or before the corresponding interest payment date, then Holders in whose name the Notes are registered at the close of business on such record date will receive the interest due on the repurchase date, as provided in, and subject to the terms of, the Indenture.

Upon certain Asset Dispositions, the Issuer may be required to use the Excess Proceeds or Collateral Excess Proceeds from such Asset Dispositions to offer to purchase Notes and, at the Issuer's option, (x) Pari Passu Indebtedness out of the Excess Proceeds or (y) Pari Obligations out of Collateral Excess Proceeds, in each case,in accordance with the procedures set forth in Section 3.5 and in Article V of the Indenture.

9. Denominations; Transfer; Exchange

The Notes shall be issuable only in fully registered form in minimum denominations of principal amount of $2,000 and any integral multiple of $1,000 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay a sum sufficient to cover any tax and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange of any Note (A) for a period beginning (1) fifteen (15) calendar days before the mailing of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing or (2) fifteen (15) calendar days before an Interest Payment Date and ending on such Interest Payment Date or (B) called for redemption, except the unredeemed portion of any Note being redeemed in part.

10. Persons Deemed Owners

The registered Holder of this Note may be treated as the owner of it for all purposes.

11. Unclaimed Money

If money for the payment of principal, premium, if any, interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuer at its written request unless an abandoned property law designates another Person to receive such money. After any such payment, Holders entitled to the money must look only to the Issuer and not to the Trustee for payment as general creditors unless an abandoned property law designates another person for payment.

12. Discharge and Defeasance

Subject to certain exceptions and conditions set forth in the Indenture, the Issuer at any time may terminate some or all of its obligations under the Notes and the Indenture if the Issuer deposits with the Trustee money or U.S. Government Obligations for the payment of principal, premium, if any and interest on the Notes to redemption or maturity, as the case may be.

13. Amendment, Supplement, Waiver

Subject to certain exceptions contained in the Indenture, the Indenture, the Notes and the Collateral Documents may be amended, or a Default thereunder may be waived, with the consent of the Holders of a majority in aggregate principal amount of the outstanding Notes. Without notice to or the consent of any Holder, the Issuer, the Guarantors, the Trustee and the Notes Collateral Agent, as applicable, may amend or supplement the Indenture, the Notes and the Collateral Documents as provided in the Indenture.

14. Defaults and Remedies

If an Event of Default (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Issuer or certain Guarantors) occurs and is continuing, the Trustee by notice to the Issuer, or the Holders of at least 30% in aggregate principal amount of the outstanding Notes by notice to the Issuer and the Trustee, may declare the principal of and accrued and unpaid interest, and any other monetary obligations on all the Notes to be due and payable immediately. Upon the effectiveness of such declaration, such principal, interest, and other monetary obligations will be due and payable immediately. If a bankruptcy, insolvency or reorganization of the Issuer or a Significant Subsidiary (or any group of Restricted Subsidiaries, that taken together as of the latest audited consolidated financial statements for the Issuer and its Restricted Subsidiaries, would constitute a Significant Subsidiary) occurs and is continuing, the principal of and accrued and unpaid interest and any other monetary obligations on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders. Under certain circumstances, the Holders of a majority in aggregate principal amount of the outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences. A notice of Default may not be given with respect to any action taken, and reported publicly or to Holders, more than two years prior to such notice of Default.

Any Noteholder Direction provided by any one or more Directing Holders must be accompanied by a Position Representation, which representation, in the case of a Noteholder Direction relating to the delivery of a notice of Default shall be deemed a continuing representation until the resulting Event of Default is cured or otherwise ceases to exist or the Notes are accelerated. In addition, each Directing Holder is deemed, at the time of providing a Noteholder Direction, to make a Verification Covenant. In any case in which the Holder is DTC or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the beneficial owner of the Notes in lieu of DTC or its nominee and DTC shall be entitled to conclusively rely on such Position Representation and Verification Covenant in delivering its direction to the Trustee or the Notes Collateral Agent, as applicable.

If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company determines in good faith that there is a reasonable basis to believe a Directing Holder was, at any relevant time, in breach of its Position Representation and provides to the Trustee an Officer's Certificate stating that the Company has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Holder was, at such time, in breach of its Position Representation, and seeking to invalidate any Default, Event of Default or acceleration (or notice thereof) that resulted from the applicable Noteholder Direction, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to such Default or Event of Default shall be automatically reinstituted and any remedy stayed pending a final and non-appealable determination of a court of competent jurisdiction on such matter. If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company provides to the Trustee an Officer's Certificate stating that a Directing Holder failed to satisfy its Verification Covenant, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to any Default or Event of Default that resulted from the applicable Noteholder Direction shall be automatically reinstituted and any remedy stayed pending satisfaction of such Verification Covenant. Any breach of the Position Representation shall result in such Holder's participation in such Noteholder Direction being disregarded; and, if, without the participation of such Holder, the percentage of Notes held by the remaining Holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction, such Noteholder Direction shall be void ab initio, with the effect that such Default or Event of Default shall be deemed never to have occurred, acceleration voided and the Trustee and the Notes Collateral Agent, as applicable, shall be deemed not to have received such Noteholder Direction or any notice of such Default or Event of Default.

Notwithstanding anything in the preceding two paragraphs, any Noteholder Direction delivered to the Trustee or Notes Collateral Agent, as applicable, during the pendency of an Event of Default as the result of a bankruptcy or similar proceeding shall not require compliance with the preceding two paragraphs.

15. Trustee Dealings with the Issuer

Subject to certain limitations set forth in the Indenture, the Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer, Guarantors or their Affiliates with the same rights it would have if it were not Trustee. In addition, the Trustee shall be permitted to engage in transactions with the Issuer and its Affiliates and Subsidiaries.

16. No Recourse Against Others

No director, officer, employee, incorporator or shareholder of the Issuer or any of its Subsidiaries or Affiliates, as such (other than the Issuer and the Guarantors), shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

17. Authentication

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Note.

18. Abbreviations

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

19. CUSIP and ISIN Numbers

The Issuer has caused CUSIP and ISIN numbers, if applicable, to be printed on the Notes and has directed the Trustee to use CUSIP and ISIN numbers, if applicable, in notices of redemption or purchase as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption or purchase and reliance may be placed only on the other identification numbers placed thereon.

20. Governing Law

This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

21. Security

The Notes and the related Guarantees will be secured by the Collateral on the terms and subject to the conditions set forth in the Indenture and the Collateral Documents. The Trustee and the Notes Collateral Agent, as the case may be, hold the Collateral in trust for the benefit of the Holders of the Notes, in each case pursuant to the Collateral Documents and the Intercreditor Agreements, if any. Each Holder, by accepting this Note, consents and agrees to the terms of the Collateral Documents (including the provisions providing for the foreclosure and release of Collateral) and the Intercreditor Agreements, if any, each as may be in effect or may be amended from time to time in accordance with their terms and the Indenture, and authorizes and directs each of the Trustee and the Notes Collateral Agent, as applicable, to enter into the Collateral Documents, the Pari Passu Intercreditor Agreement and the ABL Intercreditor Agreement on the Issue Date, and any additional Collateral Documents and the Junior Lien Intercreditor Agreements, if any, at any time after the Issue Date, if applicable, and to perform its obligations and exercise its rights thereunder in accordance therewith.

The Issuer will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture. Requests may be made to:

Avaya Holdings Corp.
4655 Great America Parkway
Santa Clara, CA 95054
Attention: General Counsel

ASSIGNMENT FORM

To assign this Note, fill in the form below:
I or we assign and transfer this Note to:

__

(Print or type assignee's name, address and zip code)

__

(Insert assignee's social security or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: Your Signature: __

Signature Guarantee: __

(Signature must be guaranteed)

__
Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

The undersigned hereby certifies that it is / is not an Affiliate of the Issuer and that, to its knowledge, the proposed transferee is / is not an Affiliate of the Issuer.

In connection with any transfer or exchange of any of the Notes evidenced by this certificate occurring prior to the date that is one year after the later of the date of original issuance of such Notes and the last date, if any, on which such Notes were owned by the Issuer or any Affiliate of the Issuer, the undersigned confirms that such Notes are being:

CHECK ONE BOX BELOW:

(1) ☐ acquired for the undersigned's own account, without transfer; or

(2) ☐ transferred to the Issuer; or

(3) ☐ transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"); or

(4) ☐ transferred pursuant to an effective registration statement under the Securities Act; or

(5) ☐ transferred pursuant to and in compliance with Regulation S under the Securities Act; or

(6) ☐ transferred to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) or an "accredited investor" (as defined in Rule 501(a)(4) under the Securities Act), that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter appears as Section 2.8 or 2.10 of the Indenture, respectively); or

(7) ☐ transferred pursuant to another available exemption from the registration requirements of the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered Holder thereof; *provided*, *however*, that if box (5), (6) or (7) is checked, the Issuer may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Issuer may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, as amended, such as the exemption provided by Rule 144 under such Act.

____
Signature

Signature Guarantee:

___ ____
(Signature must be guaranteed) Signature

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

TO BE COMPLETED BY PURCHASER IF BOX (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

_____
Dated:

[TO BE ATTACHED TO GLOBAL NOTES]
SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTES

The following increases or decreases in this Global Note have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Notes Custodian

OPTION OF HOLDER TO ELECT PURCHASE

If you elect to have this Note purchased by the Issuer pursuant to Section 3.5 or 3.9 of the Indenture, check either box:
Section 3.5 ☐ Section 3.9 ☐

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 3.5 or 3.9 of the Indenture, state the amount in principal amount (must be in minimum denominations of $2,000 or an integral multiple of $1,000 in excess thereof): $_____ and specify the denomination or denominations (which shall not be less than the minimum authorized denomination) of the Notes to be issued to the Holder for the portion of the within Note not being repurchased (in the absence of any such specification, one such Note will be issued for the portion not being repurchased): _____.

Date: _____ Your Signature _____
(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

EXHIBIT B

Form of Supplemental Indenture to Add Guarantors

[ ] SUPPLEMENTAL INDENTURE, (this "Supplemental Indenture") dated as of [ ], by and among the parties that are signatories hereto as Guarantors (the "Guaranteeing Entities" and each a "Guaranteeing Entity"), Avaya Inc., as Issuer, and Wilmington Trust, National Association, a national banking association, as Trustee and Notes Collateral Agent under the Indenture referred to below.

W I T N E S S E T H:

WHEREAS, each of the Issuer, the Guarantors named therein, the Trustee and the Notes Collateral Agent have heretofore executed and delivered an indenture dated as of September 25, 2020 (as amended, supplemented, waived or otherwise modified, the "Indenture"), providing for the issuance of an aggregate principal amount of $1,000 million of 6.125% Senior First Lien Notes due 2028 of the Issuer (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances each Guaranteeing Entity shall execute and deliver to the Trustee a supplemental indenture pursuant to which such Guaranteeing Entity shall unconditionally guarantee, on a joint and several basis with the other Guarantors, all of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the "Guarantee"); and

WHEREAS, pursuant to Section 9.1 of the Indenture, the Issuer, any Guarantor, the Trustee and the Notes Collateral Agent are authorized to execute and deliver a supplemental indenture to add additional Guarantors, without the consent of any Holder;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Entity, the Issuer, the other Guarantors, the Trustee and the Notes Collateral Agent mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

ARTICLE I

DEFINITIONS

Section 1.1. *Defined Terms*. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recitals hereto are used herein as therein defined. The words "herein," "hereof" and "hereby" and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular Section hereof.

ARTICLE II

AGREEMENT TO BE BOUND; GUARANTEE

Section 2.1. *Agreement to be Bound*. Each Guaranteeing Entity hereby becomes a party to the Indenture as a Guarantor and as such will have all of the rights and be subject to all of the obligations and agreements of a Guarantor under the Indenture.

Section 2.2. *Guarantee*. Each Guaranteeing Entity agrees, on a joint and several basis with all the existing Guarantors [and the other Guaranteeing Entities], to fully, unconditionally and irrevocably Guarantee to each Holder of the Notes and the Trustee the Guaranteed Obligations pursuant to Article X of the Indenture on a senior secured basis.

ARTICLE III

MISCELLANEOUS

Section 3.1. *Notices*. All notices and other communications to the Guaranteeing Entities shall be given as provided in the Indenture to such Guaranteeing Entities, at their addresses set forth below, with a copy to the Issuer as provided in the Indenture for notices to the Issuer.

[INSERT ADDRESS]

Section 3.2. *Merger and Consolidation*. No Guaranteeing Entity shall sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into another Person (other than the Issuer or any Restricted Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction) except in accordance with Section 4.1(f) of the Indenture.

Section 3.3. *Release of Guarantee*. This Guarantee shall be released in accordance with Section 10.2 of the Indenture.

Section 3.4. *Parties*. Nothing expressed or mentioned herein is intended or shall be construed to give any Person, firm or corporation, other than the Holders and the Trustee, any legal or equitable right, remedy or claim under or in respect of this Supplemental Indenture or the Indenture or any provision herein or therein contained.

Section 3.5. *Governing Law*. This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 3.6. *Severability*. In case any provision in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 3.7. *Benefits Acknowledged*. Each Guaranteeing Entity's Guarantee is subject to the terms and conditions set forth in the Indenture. Each Guaranteeing Entity acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

Section 3.8. *Ratification of Indenture; Supplemental Indentures Part of Indenture*. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

Section 3.9. *The Trustee and the Notes Collateral Agent*. The Trustee and the Notes Collateral Agent make no representation or warranty as to the validity or sufficiency of this Supplemental Indenture or with respect to the recitals contained herein, all of which recitals are made solely by the other parties hereto.

Section 3.10. *Counterparts*. The parties hereto may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 3.11. *Execution and Delivery*. Each Guaranteeing Entity agrees that its Guarantee shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of any such Guarantee.

Section 3.12. *Headings*. The headings of the Articles and the Sections in this Supplemental Indenture are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

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

[GUARANTEEING ENTITY],
as a Guarantor

By: _____
Name:
Title:

[AVAYA INC.]

By: _____
Name:
Title:

[Signature Page to Supplemental Indenture]

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee and Notes Collateral Agent

By: _____
Name:
Title:

AMENDMENT NO. 2

AMENDMENT NO. 2, dated as of September 25, 2020 (this "**Amendment**"), in respect of that certain Term Loan Credit Agreement, dated as of December 15, 2017 (as amended by that certain Amendment No. 1, dated as of June 18, 2018 and as further amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "**Credit Agreement**"), among Avaya Inc., a Delaware corporation (the "**Borrower**"), Avaya Holdings Corp., a Delaware corporation ("**Holdings**"), the Lenders from time to time party thereto, Goldman Sachs Bank USA, as the Administrative Agent and the Collateral Agent, and the other parties from time to time party thereto. Capitalized terms used but not defined in this Amendment shall have the meanings assigned to them in the Credit Agreement.

RECITALS

WHEREAS, the Borrower intends, on the date hereof, to issue senior secured notes in an aggregate principal amount equal to $1,000,000,000 (the "**New Secured Notes**");

WHEREAS, the Borrower, the Consenting Lenders (as defined below), which collectively constitute the Required Lenders as of the date hereof, and the Administrative Agent desire to amend the Credit Agreement as hereinafter set forth;

WHEREAS, each Lender under the Credit Agreement immediately prior to the Second Amendment Effective Date (as defined below) (collectively, the "**Existing Lenders**" and the Term Loans of the Existing Lenders, the "**Existing Term Loans**") that executes and delivers a consent to this Amendment in the form of the "Lender Consent" attached hereto as Annex I (each, a "**Lender Consent**") and selects Option A thereunder (the "**Continuing Consenting Lenders**") thereby agrees to the amendments to the Credit Agreement set forth in Section 1 of this Amendment, to the extent such consent is required under the Credit Agreement;

WHEREAS, each Existing Lender that executes and delivers a Lender Consent and selects Option B thereunder or Option C1 thereunder (but, solely with respect to such Lender's Non-Extended Term Loans (as defined below)) (the "**Non-Continuing Consenting Lenders**" and, together with the Continuing Consenting Lenders, the "**Non-Extending Consenting Lenders**") thereby agrees to the amendments to the Credit Agreement set forth in Section 1 of this Amendment to the extent such consent is required under the Credit Agreement and agrees that it shall, upon the Second Amendment Effective Date, be deemed to have executed a counterpart of the Master Assignment and Assumption Agreement substantially in the form attached hereto as Annex II (the "**Master Assignment**") and shall in accordance therewith and with Section 13.6(b)(ii) of the Credit Agreement, sell and assign all of its aggregate outstanding principal amount of its Existing Term Loans (or, in the case of a Lender selecting Option C1 on its Lender Consent, its Non-Extended Term Loans) or, if less, all of its Assigned Term Loans (as defined below) to the Borrower as assignee (in such capacity, the "**Borrower Assignee**"), as further set forth in this Amendment;

WHEREAS, the Borrower desires, pursuant to Section 2.15(a) of the Credit Agreement, to extend the scheduled maturity date of the 2020 Extended Term Loans (as defined below);

WHEREAS, each Existing Lender that executes and delivers a Lender Consent and selects Option C thereunder (the "**Extending Consenting Lenders**" and, together with the Non-Extending Consenting Lenders, the "**Consenting Lenders**") thereby agrees (i) to extend the maturity of an aggregate principal amount of its Existing Term Loans equal to its *pro rata* share (calculated solely by reference to it and the other Extending Consenting Lenders) of $800,000,000 (with respect to such Extending Consenting Lender, its "**2020 Extended Term Loans**"; the Term Loans held by Extending Consenting Lenders in excess of its *pro rata* share of $800,000,000, its "**Non-Extended Term Loans**") and to the other amendments to the Credit Agreement set forth in Section 1 of this Amendment to effectuate such maturity extension and (ii) to the other amendments to the Credit Agreement set forth in Section 1 of this Amendment with respect to all of the 2020 Extended Term Loans held by such Existing Lender on the Second Amendment Effective Date;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Amendments to Credit Agreement.

(a) The Credit Agreement is, effective as of the Second Amendment Effective Date, and subject to the satisfaction (or waiver) of the conditions precedent set forth in Section 3 below, 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 of the Credit Agreement attached as Exhibit A hereto. With effect from the effectiveness from the Second Amendment Effective Date, (i) each of the Extending Consenting Lenders shall (x) with respect to its 2020 Extended Term Loans, constitute a Lender, an Extending Lender and a Tranche B-1 Term Lender (as defined in the Credit Agreement as amended by this Amendment) and (y) with respect to its Existing Term Loans that are not extended pursuant to this Amendment, a Lender and a Tranche B Term Lender and (ii) each 2020 Extended Term Loan shall constitute a Term Loan, an Extended Term Loan and a Tranche B-1 Term Loan (as defined in the Credit Agreement as amended by this Amendment).

SECTION 2. Continuation of Existing Loans; Non-Continuing Consenting Lenders; Other Terms and Agreements.

(a) Assignment of Tranche B Term Loans of Non-Continuing Consenting Lenders.

(i) Each Non-Continuing Consenting Lender hereby consents and agrees (subject to the effectiveness of the assignment referred to in the following clause (ii)) to sell and assign the entire principal amount of its Existing Term Loans (or, in the case of a Lender selecting Option C1 on its Lender Consent, its Non-Extended Term Loans) (or such other amount constituting its Assigned Term Loans as set forth in clause (ii) below) to the Borrower Assignee on the earlier to occur of (x) 5:00 pm New York City time on the date hereof and (y) the Second Amendment Effective Date at the sale price indicated on its applicable Lender Consent pursuant to the Master Assignment. By executing a Lender Consent and selecting Option B or Option C1, each Non-

Continuing Consenting Lender shall be deemed to have executed a counterpart to the Master Assignment to give effect, solely upon the consent and acceptance by the Borrower Assignee, to the assignment described in the immediately preceding sentence.

(ii) Adjustment of Assigned Term Loans. In the event that the aggregate outstanding principal amount of the Term Loans of the Non-Continuing Consenting Lenders (calculated, in the case of Lenders selecting Option C1 on their Lender Consents solely by reference to such Lenders' Non-Extended Term Loans) (the "**Non-Continuing Consenting Term Loans**") exceeds the net cash proceeds from the issuance of the New Secured Notes (the "**New Secured Notes Net Proceeds**"), the Term Loans of each Non-Continuing Consenting Lender assigned to the Borrower Assignee pursuant to the Master Assignment shall be reduced to such Non-Continuing Consenting Lender's *pro rata* share (calculated, in the case of Lenders selecting Option C1 on their Lender Consents solely by reference to such Lenders' Non-Extended Term Loans) of the New Secured Notes Net Proceeds. The Term Loans of such Non-Continuing Consenting Lender in such amount representing the *pro rata* share of the New Secured Net Proceeds assigned to the Borrower Assignee pursuant to the Master Assignment are referred to herein as the "**Assigned Term Loans**". The Lead Arranger (as defined below) shall provide written notice to each Non-Continuing Consenting Lender of the aggregate principal amount of its Assigned Term Loans as calculated pursuant to this paragraph (ii).

(iii) The Assigned Term Loans shall be deemed retired and cancelled on the Second Amendment Effective Date, immediately upon acquisition thereof by the Borrower Assignee.

(iv) The Borrower Assignee represents and warrants to the Administrative Agent and each of the Non-Continuing Consenting Lenders that (x) no proceeds of any ABL Loans shall be used to purchase the Assigned Term Loans and (y) no Event of Default has occurred or is continuing under the Credit Agreement as of the date of the assignment effected pursuant to this Section 2 and the Master Assignment.

(b) Mandatory Prepayment of Tranche B Term Loans. To the extent that the New Secured Notes Net Proceeds exceed the aggregate outstanding principal amount of the Non-Continuing Consenting Term Loans of the Non-Continuing Consenting Lenders, then the Borrower hereby notifies the Administrative Agent (and the Administrative Agent is hereby deemed to have notified each Lender) that such excess Indebtedness shall be deemed incurred pursuant to Section 10.1(v)(i) of the Credit Agreement and the Net Cash Proceeds of such excess shall be the subject of a mandatory prepayment in respect of the Term Loans pursuant to Section 5.2(a)(iii)(A) of the Credit Agreement. Each of the Continuing Consenting Lenders and each of the Extending Consenting Lenders hereby rejects (and this Amendment is deemed notification to the Administrative Agent and Borrower of such rejection) its respective *pro rata* share of such prepayment. Each Non-Continuing Consenting Lender hereby rejects (and this Amendment is deemed notification to the Administrative Agent and Borrower of such rejection) such prepayment with respect to the amount of its Assigned Term Loans. The Borrower shall redirect such Declined Proceeds to prepay the Tranche B Term Loans of the other Lenders and the Tranche B Term Loans of the Non-Continuing Consenting Lenders not constituting Assigned Term Loans on a *pro rata* basis.

SECTION 3. Conditions of Second Amendment Effective Date. The effectiveness of this Amendment is subject to the satisfaction (or waiver) of the following conditions (the date of satisfaction of such conditions being referred to herein as the "**Second Amendment Effective Date**"):

(a) this Amendment shall have been duly executed by the Borrower and the other Credit Parties and the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method), and delivered to the Administrative Agent, and the Administrative Agent shall have received (x) solely with respect to such provisions that would only require the consent of the Extending Consenting Lenders under the Credit Agreement, the consent of such Extending Consenting Lenders and (y) with respect to any other provision that would require the consent of the Required Lenders under the Credit Agreement, Lender Consents from Consenting Lenders constituting Required Lenders immediately prior to giving effect to the assignment of Assigned Term Loans to the Borrower Assignee pursuant to Section 2(a) and the Master Assignment (and, for the avoidance of doubt, immediately after giving effect to the mandatory prepayment of Tranche B Term Loans (if any) pursuant to Section 2(b));

(b) the representations and warranties set forth in Section 4 are true and correct.

(c) the Administrative Agent and the Lead Arranger shall have received all fees separately agreed with the Lead Arranger and all payment for all reasonable and documented costs and expenses to the extent required to be paid or reimbursed by the Borrower under Section 13.5 of the Credit Agreement or that certain Engagement Letter, dated as of September 14, 2020 (the "**Engagement Letter**") among the Borrower and JPMorgan Chase Bank, N.A. (the "**Lead Arranger**"), in each case, for which invoices have been presented a reasonable period of time prior to the Second Amendment Effective Date;

(d) the Lead Arranger shall have received payment from or on behalf of the Borrower for the account of (x) each Non-Continuing Consenting Lender of an exit fee for each such Non-Continuing Consenting Lender in an amount equal to 0.25% of the aggregate principal amount of the Assigned Term Loans of such Non-Continuing Consenting Lender as of the Second Amendment Effective Date and (y) each Extending Consenting Lender of an extension fee for each such Extending Consenting Lender in an amount equal to 2.00% of the aggregate principal amount of the 2020 Extended Term Loans of such Extending Consenting Lender as of the Second Amendment Effective Date.

(e) the Lead Arranger shall have received:

(i) a certificate of each Credit Party, dated the Second Amendment Effective Date, substantially consistent with the certificates delivered on the Closing Date pursuant to Section 6.4 of the Credit Agreement or otherwise reasonably acceptable to the Lead Arranger;

(ii) a certificate of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Credit Party; and

(iii) a legal opinion of Kirkland & Ellis LLP, counsel to Holdings, the Borrower and its Subsidiaries, in form and substance reasonably satisfactory to the Lead Arranger.

SECTION 4. Representations of Credit Parties. Each of the Credit Parties hereby represents and warrants that immediately prior to and immediately after giving effect to the transactions contemplated by this Amendment:

(a) this Amendment has been duly executed and delivered by the Borrower and the Credit Agreement, as amended by this Amendment, constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy insolvency, reorganization, receivership, moratorium or other Laws affecting creditors' rights generally and by general principles of equity;

(b) all representations and warranties made by any Credit Party contained herein or in the other Credit Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the Second Amendment Effective Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date and except where such representations and warranties are qualified by materiality, Material Adverse Effect, or similar language, in which case such representation or warranty shall be true and correct in all respects after giving effect to such qualification); and

(c) no Default or Event of Default shall have occurred and be continuing.

SECTION 5. Effect of Amendment; Reaffirmation; Etc.

(a) Except as expressly set forth herein or in the Credit Agreement, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Agents under the Credit Agreement or under any other Credit Document and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other provision of the Credit Agreement or of any other Credit Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Without limiting the foregoing, (i) each Credit Party acknowledges and agrees that (A) each Credit Document to which it is a party is hereby confirmed and ratified and shall remain in full force and effect according to its respective terms (in the case of the Credit Agreement, as amended hereby) and (B) the Security Documents do, and all of the Collateral does, and in each case shall continue to, secure the payment of all First Lien Obligations (or equivalent terms in the Security Documents) (including, for the avoidance of doubt, the 2020 Extended Term Loans) on the terms and conditions set forth in the Security Documents, and hereby confirms and, to the extent necessary, ratifies the security interests granted by it pursuant to the Security Documents to which it is a party and (ii) each Guarantor hereby confirms and ratifies its continuing unconditional

obligations as Guarantor under the Guarantee with respect to all of the First Lien Obligations (including, for the avoidance of doubt, the 2020 Extended Term Loans).

(b) This Amendment constitutes an "Extension Amendment", a "Credit Document" and an "Extension Request" (each as defined in the Credit Agreement).

SECTION 6. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 7. Miscellaneous. Sections 13.1, 13.2, 13.5, 13.9, 13.10, 13.11, 13.13 and 13.15 of the Credit Agreement are incorporated herein by reference and apply *mutatis mutandis*.

SECTION 8. Counterparts. This Amendment (and the Lender Consents) may be executed by one or more of the parties to this Amendment on any number of separate counterparts (including by facsimile or other electronic transmission (e.g., a "pdf" or "tif")), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

SECTION 9. No Novation. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Credit Agreement or instruments securing the same, which shall remain in full force and effect, except to any extent modified hereby or by instruments executed concurrently herewith and except to the extent repaid as provided herein. Nothing implied in this Amendment or in any other document contemplated hereby shall discharge or release the Lien or priority of any Security Document or any other security therefor or otherwise be construed as a release or other discharge of any of the Credit Parties under any Credit Document from any of its obligations and liabilities as a borrower, guarantor or pledgor under any of the Credit Documents, except, in each case, to any extent modified hereby and except to the extent repaid as provided herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

AVAYA INC.
AVAYA HOLDINGS CORP.

By: _____/s/Kieran J. McGrath__ ___
Name: Kieran J. McGrath
Title: Executive Vice President and Chief Financial Officer

AVAYA MANAGEMENT, L.P.

By: Avaya Inc.
Its: General Partner

By: _____/s/Kieran J. McGrath__ ___
Name: Kieran J. McGrath
Title: Executive Vice President and Chief Financial Officer

AVAYA CALA INC.
AVAYA CLOUD INC.
AVAYA EMEA LTD.
AVAYA FEDERAL SOLUTIONS, INC.
AVAYA HOLDINGS LLC
AVAYA HOLDINGS TWO, LLC
AVAYA INTEGRATED CABINET SOLUTIONS LLC
AVAYA MANAGEMENT SERVICES INC.
AVAYA SERVICES INC.
AVAYA WORLD SERVICES INC.
CAAS TECHNOLOGIES, LLC
HYPERQUALITY II, LLC
HYPERQUALITY, INC.
INTELLISIST, INC.
OCTEL COMMUNICATIONS LLC
SIERRA ASIA PACIFIC INC.
TECHNOLOGY CORPORATION OF AMERICA, INC.
UBIQUITY SOFTWARE CORPORATION
VPNET TECHNOLOGIES, INC.

By: /s/ Kieran J. McGrath

Name: Kieran J. McGrath
Title: Vice President

GOLDMAN SACHS BANK USA, as Administrative Agent

By:/s/ Thomas Manning
Name: Thomas Manning
Title: Authorized Signatory

ANNEX I

LENDER CONSENT TO
AMENDMENT NO. 2 TO CREDIT AGREEMENT

[NAME OF LENDER], as a Lender

By
Name:
Title:

[For Lenders requiring a second signature block]

By
Name:
Title:]

PROCEDURE FOR LENDERS:

The above-named Lender elects to:

OPTION A – CONSENT TO AMENDMENT AND CONTINUATION OF EXISTING LOANS: ☐ (i) Consent and agree to the amendments to the Credit Agreement set forth in Section 1 of this Amendment and continue as a Tranche B Term Lender under the Credit Agreement holding Tranche B Term Loans after giving effect to this Amendment and pursuant to Section 5.2(c) of the Credit Agreement and (ii) reject its *pro rata* share of the mandatory prepayment in respect of the Tranche B Term Loans (if any) pursuant to Section 2(b) of the Amendment.

OPTION B – CONSENT TO AMENDMENT AND NON-CONTINUATION OF EXISTING LOANS: ☐ (i) Consent and agree to the amendments to the Credit Agreement set forth in Section 1 of this Amendment and agree to sell all of its existing Term Loans to the Borrower Assignee pursuant to Section 2(a) of this Amendment and the Master Assignment at a sale price equal to 99.75% of par (it is understood and agreed that, in the event that the aggregate outstanding principal amount of the Term Loans of Lenders selecting this Option B and Non-Extended Term Loans of Lenders selecting Option C1 below exceeds the New Secured Notes Net Proceeds, the Term Loans of each such Lender assigned to the Borrower Assignee pursuant to the Master Assignment shall be reduced to such Lenders' *pro rata* share of the New Secured Notes Net Proceeds) and (ii) reject its *pro rata* share of the mandatory prepayment in respect of its Assigned Term Loans pursuant to Section 2(b) of the Amendment.

OPTION C – CONSENT TO AMENDMENT AND EXTENSION OF MATURITY IN RESPECT OF TERM LOANS: ☐ (i) Consent and agree to the amendments to the Credit Agreement set forth in Sections 1 of this Amendment with respect to its 2020 Extended Term Loans, (ii) continue (x) with respect to its 2020 Extended Term Loans, as a

Tranche B-1 Term Lender under the Credit Agreement holding Tranche B-1 Term Loans after giving effect to this Amendment and (y) with respect to its Existing Term Loans that are not extended pursuant to this Amendment, as a Tranche B Term Lender under the Credit Agreement holding Tranche B Term Loans after giving effect to this Amendment and (iii) agree, pursuant to Section 5.2(c) of the Credit Agreement, to waive its *pro rata* share of the mandatory prepayment in respect of the Tranche B Term Loans and Tranche B-1 Term Loans (if any) pursuant to Section 2(b) of the Amendment.

OPTION C1 – CONSENT TO AMENDMENT AND NON-CONTINUATION OF NON-EXTENDED LOANS: ☐ (i) Consent and agree to the amendments to the Credit Agreement set forth in Section 1 of this Amendment with respect its Non-Extended Term Loans and agrees to sell all of its Non-Extended Term Loans to the Borrower Assignee pursuant to Section 2(a) of this Amendment and the Master Assignment at a sale price equal to 99.75% of par (it is understood and agreed that, in the event that the aggregate outstanding principal amount of the Term Loans of Lenders selecting Option B above and Non-Extended Term Loans of Lenders selecting this Option C1 exceeds the New Secured Notes Net Proceeds, the Term Loans of each such Lender assigned to the Borrower Assignee pursuant to the Master Assignment shall be reduced to such Lenders' *pro rata* share of the New Secured Notes Net Proceeds) and (ii) reject its *pro rata* share of the mandatory prepayment in respect of its Assigned Term Loans pursuant to Section 2(b) of the Amendment. Any Lender that selects this Option C1 will be deemed to have also selected the preceding Option C.

ANNEX II

FORM OF MASTER ASSIGNMENT AND ASSUMPTION AGREEMENT FOR CREDIT AGREEMENT

[Attached]

[FORM OF] MASTER ASSIGNMENT AND ASSUMPTION

This Master Assignment and Assumption (the "Master Assignment") is dated as of the Effective Date set forth below and is entered into by and between each Assignor identified in item 1 below (each, an "Assignor") and the Assignee identified in item 2 below (the "Assignee"). It is understood and agreed that the rights and obligations of the Assignors hereunder are several and not joint. Capitalized terms used but not defined herein shall have the meanings given to them in the Term Loan Credit Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, including by that certain Amendment No. 1 to Term Loan Credit Agreement, dated as of June 18, 2018 and that certain Amendment No. 2 to Term Loan Credit Loan Agreement, dated as of September 25, 2020, among Avaya Holdings Corp., a Delaware corporation, the Borrower, the lending institutions from time to time parties thereto and Goldman Sachs Bank USA, as Administrative Agent and Collateral Agent, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto (the "Standard Terms and Conditions") are hereby agreed to and incorporated herein by reference and made a part of this Master Assignment as if set forth herein in full.

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

1. Assignors: _____

2. Assignee: The Borrower

3. Borrower: Avaya Inc., a Delaware corporation

4. Administrative Agent: Goldman Sachs Bank USA, as the Administrative Agent under the Credit Agreement

5. Credit Agreement: as defined above.

6. Assigned Interests:

Assignors[1]	Assignee	Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/ Loans	CUSIP Number
			$	$	%	
			$	$	%	
			$	$	%	

7. Trade Date: [___], 2020

[Remainder of this page intentionally left blank]

[1] List each Assignor, as appropriate.

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

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

ASSIGNORS
[NAME OF ASSIGNOR]

By:_____
Name:
Title:

ASSIGNEE
AVAYA INC.,

By:_____
Name:
Title:

Consented to and Accepted:

GOLDMAN SACHS BANK USA, as Administrative Agent

By: _____
Name:
Title:

STANDARD TERMS AND CONDITIONS FOR

MASTER ASSIGNMENT

1. Representations and Warranties.

1.1 Assignors. Each Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the relevant Assigned Interest, (ii) such Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Master Assignment and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document, (v) it is sophisticated with respect to decisions to acquire assets of the type represented by such Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire such Assigned Interest, is experienced in acquiring assets of such type and (vi) it acknowledges that each Assignor is an Affiliated Lender and may possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Lenders.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Master Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 13.6(b)(ii) and (iii) and (v) of the Credit Agreement (subject to such consents, if any, as may be required under Section 13.6(b)(i) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interests, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interests and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interests, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 9.1 of the Credit Agreement, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Master Assignment and to purchase the Assigned Interests, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Master Assignment and to purchase the Assigned Interests, (vii) it is not a natural person or an investment vehicle established primarily

for the benefit of a natural person and (viii) it is not a Disqualified Institution; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, any Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

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

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

EXHIBIT A

TERM LOAN CREDIT AGREEMENT

[Attached]

EXECUTION VERSION
Exhibit A
Deal CUSIP: 05349UAW2
Facility CUSIP: 05349UAX0

TERM LOAN CREDIT AGREEMENT

Dated as of December 15, 2017,
as amended by
Amendment No. 1, dated as of June 18, 2018 and
Amendment No. 2, dated as of September 25, 2020

among

AVAYA HOLDINGS CORP.,
as Holdings,

AVAYA INC.,
as the Borrower,

The Several Lenders
from Time to Time Parties Hereto,

GOLDMAN SACHS BANK USA,
as Administrative Agent and Collateral Agent,

GOLDMAN SACHS BANK USA
CITIGROUP GLOBAL MARKETS INC.
BARCLAYS BANK PLC
CREDIT SUISSE SECURITIES (USA) LLC
and
DEUTSCHE BANK SECURITIES INC.,
as Joint Lead Arrangers and Joint Bookrunners,

and

BLACKSTONE HOLDINGS FINANCE CO. L.L.C.
and
BENEFIT STREET PARTNERS LLC
as Co-Managers

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SCHEDULES

EXHIBITS

TERM LOAN CREDIT AGREEMENT (as amended by the First Amendment (as defined below), and as further amended, restated, supplemented or otherwise modified from time to time, the "**Agreement**"), dated as of December 15, 2017, among AVAYA HOLDINGS CORP., a Delaware corporation ("**Avaya Holdings**"), in its capacity as Holdings, AVAYA INC., a Delaware corporation (the "**Borrower**"), the lending institutions from time to time parties hereto (each a "**Lender**" and, collectively, the "**Lenders**") and GOLDMAN SACHS BANK USA, as Administrative Agent and Collateral Agent.

RECITALS:

WHEREAS, capitalized terms used and not defined in the preamble and these recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, on January 19, 2017, Avaya Holdings, the Borrower and certain of the Borrower's Domestic Subsidiaries (collectively, the "**Avaya Debtors**") filed voluntary petitions for relief under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York (such court, together with any other court having exclusive jurisdiction over the Case from time to time and any Federal appellate court thereof, the "**Bankruptcy Court**") and commenced cases, jointly administered under Case No. 17-10089 (collectively, the "**Case**"), and have continued in the possession and operation of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Avaya Debtors are parties to the certain Superpriority Secured Debtor-In-Possession Credit Agreement, dated as of January 24, 2017 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the **"Existing DIP Agreement**"), by and among the Avaya Debtors, Citibank N.A., as administrative agent and collateral agent and the lending institutions from time to time parties thereto;

WHEREAS, the Avaya Debtors filed the Second Amended Joint Chapter 11 Plan of Reorganization of Avaya Inc. and its Debtor Affiliates in the Bankruptcy Court on October 24, 2017 [Docket No. 1372] (together with all schedules, documents and exhibits contained therein, as amended, supplemented, modified or waived from time to time, the "**Plan**");

WHEREAS, on November 28, 2017, the Bankruptcy Court entered an order confirming the Plan with respect to the Avaya Debtors (the "**Confirmation Order**") [Docket No. 1579];

WHEREAS, the Lenders agree, upon the satisfaction (or waiver) of certain conditions precedent set forth in Section 6, to extend credit to the Borrower in the form of term loans in an aggregate principal amount of $2,925,000,000, on the terms and subject to the conditions set forth herein;

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

SECTION 1 Definitions

1.1 Defined Terms

As used herein, the following terms shall have the meanings specified in this Section 1.1 unless the context otherwise requires:

"**ABL Administrative Agent**" shall mean Citibank, N.A. in its capacity as the administrative agent under the ABL Credit Agreement and/or any successor agent under the ABL Credit Documents.

"**ABL Credit Agreement**" shall mean the ABL Credit Agreement dated as of December 15, 2017 among Holdings, the Borrower, the other borrowers party thereto, the ABL Administrative Agent and the several banks and other financial institutions from time to time parties thereto, as such agreement may be amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time, in each case to the extent permitted hereunder and under the Applicable Intercreditor Agreements (unless such agreement, instrument or document expressly provides that it is not intended to be and is not an ABL Credit Agreement).

"**ABL Collateral Agent**" shall mean Citibank, N.A. in its capacity as the collateral agent under the ABL Credit Agreement and/or any successor agent under the ABL Credit Documents.

"**ABL Credit Documents**" shall mean, collectively, (a) the ABL Credit Agreement and (b) the security documents, intercreditor agreements (including the ABL Intercreditor Agreement and the Junior Lien Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection therewith or such other agreements, in each case to the extent permitted hereunder and under the Applicable Intercreditor Agreements, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time.

"**ABL Financial Covenant**" shall mean the financial covenant set forth in Section 10.11 of the ABL Credit Agreement.

"**ABL Intercreditor Agreement**" shall mean the ABL Intercreditor Agreement substantially in the form of Exhibit F, among the Collateral Agent, the ABL Collateral Agent and the representatives for holders of one or more other classes of Indebtedness, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**ABL Loans**" shall mean "ABL Loans" under and as defined in the ABL Credit Agreement.

"**ABL Obligations**" shall mean "Obligations" under and as defined in the ABL Credit Agreement.

"**ABL Priority Collateral**" shall mean the "ABL Priority Collateral" under and as defined in the ABL Intercreditor Agreement.

"**ABR**" shall mean for any day a fluctuating rate per annum equal to the greatest of (a) the Federal Funds Effective Rate *plus* 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by the Wall Street Journal as the "U.S. prime rate" and (c) the LIBOR Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.00%; *provided* that, for the avoidance of doubt, for purposes of calculating the LIBOR Rate pursuant to clause (c), the LIBOR Rate for any day shall be based on the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on such day by reference to the ICE Benchmark Administration (or any successor organization) LIBOR Rate (the "**Relevant LIBOR Rate**") for deposits in Dollars (as published by Reuters or any other commonly available source providing quotations of the Relevant LIBOR Rate as designated by the Administrative Agent) for a period equal to one month. If the Administrative Agent is unable to ascertain the Federal Funds Effective Rate due to its inability to obtain sufficient quotations in accordance with the definition thereof, after notice is provided to the Borrower, the ABR shall be determined without regard to clause (a) above until the circumstances giving rise to such inability no longer exist. Any change in the ABR due to a change in such rate announced by the Administrative Agent or in the Federal Funds Effective Rate shall take effect at the opening of business on the day specified in the public announcement of such change or on the effective date of such change in the Federal Funds Effective Rate or the Relevant LIBOR Rate, as applicable.

"**ABR Loan**" shall mean each Term Loan (including any Tranche B Term Loan and Tranche B-1 Term Loan) bearing interest based on the ABR.

"**Acceptable Reinvestment Commitment**" shall mean a binding commitment of the Borrower or any Restricted Subsidiary entered into at any time prior to the end of the Reinvestment Period to reinvest the proceeds of an Asset Sale Prepayment Event or a Recovery Prepayment Event.

"**Acquired EBITDA**" shall mean, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary (any of the foregoing, a "**Pro Forma Entity**") for any period, the amount for such period of Consolidated EBITDA of such Pro Forma Entity (determined using such definitions as if references to the Borrower and the Restricted Subsidiaries therein were to such Pro Forma Entity and its Restricted Subsidiaries), all as determined on a consolidated basis for such Pro Forma Entity in a manner not inconsistent with GAAP.

"**Acquired Entity or Business**" shall have the meaning provided in the definition of the term "Consolidated EBITDA".

"**Additional Lender**" shall mean any Person (other than (x) a natural person, (y) any investment vehicle established primarily for the benefit of a natural person or (z) a Disqualified Institution) that is not an existing Lender and that has agreed to provide Incremental Commitments pursuant to Section 2.14 or Refinancing Commitments pursuant to Section 2.15(b).

"**Administrative Agent**" shall mean Goldman Sachs Bank USA, as the administrative agent for the Lenders under this Agreement and the other Credit Documents, or any successor administrative agent pursuant to Section 12.9.

"**Administrative Agent's Office**" shall mean the Administrative Agent's address and, as appropriate, account as set forth on Schedule 13.2, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"**Administrative Questionnaire**" shall mean an administrative questionnaire in a form supplied by the Administrative Agent.

"**Advisors**" shall mean legal counsel, financial advisors and third-party appraisers and consultants advising the Agents, the Lenders and their Related Parties in connection with this Agreement, the other Credit Documents and the consummation of the Transactions, limited in the case of legal counsel to one primary counsel for the Agents (as of the Closing Date, Davis Polk & Wardwell LLP) and, if necessary, one firm of local counsel in each appropriate jurisdiction (and, in the case of an actual or perceived conflict of interest where the Person affected by such conflict informs the Borrower of such conflict and thereafter, retains its own counsel, of another firm of counsel for all such affected Persons (taken as a whole)).

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities or by contract. The terms "controlling" and "controlled" shall have meanings correlative thereto.

"**Affiliated Lender**" shall mean any Affiliated Parent Company or Subsidiary of Holdings or the Borrower (or any Lender that is a direct or indirect holding company of any Permitted Acquiror) that purchases or acquires Term Loans pursuant to Section 13.6(g).

"**Affiliated Parent Company**" shall mean a direct or indirect parent entity of Holdings and the Borrower that (a) owns, directly or indirectly, 100% of the Stock of the Borrower, and (b) operates as a "passive holding company", subject to customary exceptions of the type described in Section 10.10.

"**Agent Parties**" shall have the meaning provided in Section 13.17(d).

"**Agents**" shall mean the Administrative Agent, the Collateral Agent, each Joint Lead Arranger and each Co-Manager.

"**Agreement**" shall have the meaning provided in the introductory paragraph hereto.

"**Agreement Currency**" shall have the meaning provided in Section 13.20.

"**AHYDO Catch-Up Payment**" shall mean any payment or redemption of Indebtedness, including any Junior Indebtedness, to avoid the application of Code Section 163(e)(5) thereto or that are necessary to prevent any such Indebtedness from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code.

"**Anti-Corruption Laws**" shall have the meaning provided in Section 8.19.

"**Applicable ABR Margin**" shall mean at any date, with respect to each ABR Loan, 3.25% *per annum*.

"**Applicable Intercreditor Agreements**" shall mean (a) to the extent executed in connection with the incurrence of any Indebtedness secured by Liens on the Collateral that (i) are intended to rank senior in priority to the Liens on the ABL Priority Collateral securing the Obligations and (ii) are intended to rank junior in priority to the Liens on the Term Priority Collateral securing the Obligations, the ABL Intercreditor Agreement and the Junior Lien Intercreditor Agreement, (b) to the extent executed in connection with the incurrence of any Indebtedness secured by Liens on the Collateral that are intended to rank equal in priority to the Liens on the Collateral securing the Obligations (but without regard to control of remedies), each of the ABL Intercreditor Agreement, the First Lien Intercreditor Agreement and the Junior Lien Intercreditor Agreement, (c) to the extent executed in connection with the incurrence of any Indebtedness secured by Liens on the Collateral which are intended to rank junior in priority to the Liens on the Collateral securing the Obligations and the ABL Obligations, an intercreditor agreement substantially consistent with the form of the Junior Lien Intercreditor Agreement and otherwise in form and substance reasonably acceptable to the Borrower and the Collateral Agent and (d) any other intercreditor agreement entered into to implement the intercreditor arrangements set forth in Section 10.2 in form and substance reasonably acceptable to the Borrower and the Collateral Agent.

"**Applicable Laws**" shall mean, as to any Person, any law (including common law), statute, regulation, ordinance, rule, order, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

"**Applicable LIBOR Margin**" shall mean at any date, with respect to each LIBOR Loan, 4.25% *per annum*.

"**Approval Order**" shall mean the Order (I) Authorizing (A) Entry into the Exit Financing Letters and Related Exit ABL/Term Loan Fee Letter and (B) Payment of Associated

Fees and Expenses and (II) Granting Related Relief entered by the Bankruptcy Court on November 1, 2017 [Docket No. 1430].

"**Approved Fund**" shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Asset Sale Prepayment Event**" shall mean any Disposition under and pursuant to Section 10.4(b).

"**Assignment and Assumption**" shall mean (a) an assignment and assumption substantially in the form of Exhibit I, or such other form as may be approved by the Administrative Agent and the Borrower and (b) in the case of any assignment of Term Loans in connection with a Permitted Debt Exchange conducted in accordance with Section 2.17, such form of assignment (if any) as may have been requested by the Administrative Agent in accordance with Section 2.17(a).

"**Auction Agent**" shall mean (a) the Administrative Agent or (b) any other financial institution or advisor designated by Holdings, the Borrower or any Subsidiary thereof (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Permitted Debt Exchange pursuant to Section 2.17 or a Dutch auction pursuant to Section 13.6(g); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent).

"**Authorized Officer**" shall mean the President, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the Treasurer, any Assistant Treasurer, the Controller, any Senior Vice President, with respect to certain limited liability companies or partnerships that do not have officers, any manager, managing member or general partner thereof, any other senior officer of Holdings, the Borrower or any other Credit Party designated as such in writing to the Administrative Agent by Holdings, the Borrower or such other Credit Party, as applicable from time to time, and, with respect to any document delivered on the Closing Date or the First Amendment Effective Date, the Secretary or any Assistant Secretary of any Credit Party. Any document delivered hereunder that is signed by an Authorized Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of Holdings, the Borrower or any other Credit Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Person. Notwithstanding the foregoing, the solvency certificate required to be delivered on the Closing Date shall be delivered by the Chief Financial Officer of Holdings.

"**Available Amount**" shall mean, at any time (the "**Available Amount Reference Time**"), an amount equal to (a) the sum, without duplication, of:

(i) the greater of (x) $240,000,000 and (y) 30% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(ii) 50% of Cumulative Consolidated Net Income (which amount, if less than zero, shall be deemed to be zero for such period) of the Borrower and the Restricted Subsidiaries for the period from the first day of the first fiscal quarter commencing after the Closing Date until the last day of the then-most recent fiscal quarter or Fiscal Year, as applicable, for which Section 9.1 Financials have been delivered;

(iii) all cash repayments of principal received by the Borrower or any Restricted Subsidiary from any Minority Investments or Unrestricted Subsidiaries on account of loans made by the Borrower or any Restricted Subsidiary pursuant to Section 10.5(v)(y) to such Minority Investments or Unrestricted Subsidiaries during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time;

(iv) 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary in cash and the fair market value of marketable securities or other property received by the Borrower or any Restricted Subsidiary by means of (A) the sale or other Disposition (other than to the Borrower or a Restricted Subsidiary) of Investments made pursuant to Section 10.5(v)(y) by the Borrower or any Restricted Subsidiary and repurchases and redemptions (other than by the Borrower or any Restricted Subsidiary) of such Investments from the Borrower or any Restricted Subsidiary and repayments of loans or advances, and releases of guarantees constituting such Investments made by the Borrower or any Restricted Subsidiary, in each case, after the Closing Date; and (B) the sale (other than to the Borrower or a Restricted Subsidiary) of the stock or other ownership interest of Minority Investments or any Unrestricted Subsidiary received pursuant to Section 10.5(v)(y), in each case, after the Closing Date;

(v) in the case of the redesignation of an Unrestricted Subsidiary as, or merger, consolidation or amalgamation of an Unrestricted Subsidiary with or into, a Restricted Subsidiary after the Closing Date, the fair market value of the Investment in such Unrestricted Subsidiary at the time of the redesignation of such Unrestricted Subsidiary as, or merger, consolidation or amalgamation of such Unrestricted Subsidiary with or into, a Restricted Subsidiary;

(vi) 100% of the aggregate Net Cash Proceeds and the fair market value of marketable securities or other property received by the Borrower since immediately after the Closing Date from the issue or sale of Indebtedness or Disqualified Stock of the Borrower or a Restricted Subsidiary that has been converted into or exchanged for Stock or Stock Equivalent of the Borrower or any direct or indirect parent of the Borrower; *provided* that this clause (vi) shall not include the proceeds from (A) Stock or Stock Equivalents or Indebtedness that has been converted or exchanged for Stock or Stock Equivalents of the Borrower sold to a Restricted Subsidiary, as the case may be, (B) Disqualified Stock or Indebtedness that has been converted or exchanged into Disqualified Stock or (C) any contribution or issuance that increases the Available Equity Amount;

(vii) without duplication of any amounts above, any returns, profits, distributions and similar amounts received on account of the Investments initially made pursuant to Section 10.5(v)(y) (except to the extent increasing Consolidated Net Income); and

(viii) the aggregate amount of Retained Declined Proceeds retained by the Borrower during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time;

minus (b) the sum, without duplication, of:

(i) the aggregate amount of Investments made pursuant to Section 10.5(v)(y) following the Closing Date and prior to the Available Amount Reference Time;

(ii) the aggregate amount of Restricted Payments pursuant to Section 10.6(c)(y) following the Closing Date and prior to the Available Amount Reference Time; and

(iii) the aggregate amount of prepayments, repurchases, redemptions and defeasances made pursuant to Section 10.7(a)(iii)(3) following the Closing Date and prior to the Available Amount Reference Time.

Notwithstanding the foregoing, in making any calculation or other determination under this Agreement involving the Available Amount, if the Available Amount at such time is less than zero, then the Available Amount shall be deemed to be zero for purposes of such calculation or determination.

"**Available Amount Reference Time**" shall have the meaning provided in the definition of "Available Amount".

"**Available Equity Amount**" shall mean, at any time (the "**Available Equity Amount Reference Time**"), an amount equal to, without duplication, (a) the amount of any capital contributions made in cash, marketable securities or other property to, or any proceeds of an equity issuance received by the Borrower during the period from and including the Business Day immediately following the Closing Date through and including the Available Equity Amount Reference Time (in the case of any marketable securities or property, up to its fair market value as determined by the Borrower in good faith), including proceeds from the issuance of Stock or Stock Equivalents of Holdings or any direct or indirect parent of Holdings (to the extent the proceeds of any such issuance are contributed to the Borrower), but excluding all proceeds from the issuance of Disqualified Stock,

minus (b) the sum, without duplication, of:

(i) the aggregate amount of Investments made pursuant to Section 10.5(v)(x) following the Closing Date and prior to the Available Equity Amount Reference Time;

(ii) the aggregate amount of Restricted Payments pursuant to Section 10.6(c)(x) following the Closing Date and prior to the Available Equity Amount Reference Time;

(iii) the aggregate amount of prepayments, repurchases, redemptions and defeasances pursuant to Section 10.7(a)(iii)(2) following the Closing Date and prior to the Available Equity Amount Reference Time; and

(iv) the aggregate amount of Indebtedness incurred pursuant to Section 10.1(x) and outstanding at the Available Equity Amount Reference Time;

provided that issuances and contributions pursuant to Sections 10.5(f)(ii), 10.6(a) and 10.6(b)(i) shall not increase the Available Equity Amount.

"**Available Equity Amount Reference Time**" shall have the meaning provided in the definition of "Available Equity Amount".

"**Avaya Debtors**" shall have the meaning provided in the Recitals to this Agreement.

"**Avaya Holdings**" shall have the meaning in the introductory paragraph hereto.

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

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

"**Bankruptcy Code**" shall have the meaning provided in Section 11.5.

"**Bankruptcy Court**" shall have the meaning provided in the preamble to this Agreement.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**Benefited Lender**" shall have the meaning provided in Section 13.8(a).

"**Board**" shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

"**Borrower**" shall have the meaning provided in the preamble to this Agreement.

"**Borrowing**" shall mean and include the incurrence of one Class and Type of Term Loan on a given date (or resulting from conversions on a given date) having a single Maturity Date and in the case of LIBOR Loans, the same Interest Period (*provided* that ABR Loans incurred pursuant to Section 2.10(b) shall be considered part of any related Borrowing of LIBOR Loans).

"**Broker-Dealer Subsidiary**" shall mean any Subsidiary that is registered as a broker-dealer under the Exchange Act or any other Applicable Law requiring similar registration.

"**Business Day**" shall mean any day excluding Saturday, Sunday and any other day on which banking institutions in New York City are authorized by law or other governmental actions to close, and, if such day relates to (a) any interest rate settings as to a LIBOR Loan, (b) any fundings, disbursements, settlements and payments in respect of any such LIBOR Loan, or (c) any other dealings pursuant to this Agreement in respect of any such LIBOR Loan, such day shall be a day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

"**Capital Expenditures**" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capital Leases) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on a consolidated statement of cash flows of the Borrower or the Restricted Subsidiary.

"**Capital Lease**" shall mean, as applied to the Borrower and the Restricted Subsidiaries, any lease of any property (whether real, personal or mixed) by the Borrower or any Restricted Subsidiary as lessee that, in conformity with GAAP, is, or is required to be, accounted for as a capital lease on the balance sheet of the Borrower; *provided*, *however*, that notwithstanding anything to the contrary in this Agreement or in any other Credit Document, any leases that were not capital leases when entered into but are recharacterized as capital leases due to a change in accounting rules that becomes effective after the Closing Date shall for all purposes of this agreement not be treated as Capital Leases.

"**Capitalized Lease Obligations**" shall mean, as applied to the Borrower and the Restricted Subsidiaries at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at such time be required to be capitalized and reflected as a liability on the balance sheet (excluding the footnotes thereto) of the Borrower or the Restricted Subsidiary in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such Capital Lease prior to the first date upon which such Capital Lease may be prepaid by the lessee without payment of a penalty; *provided*, *however*, that notwithstanding anything to the contrary in this Agreement or in any other Credit Document, any obligations that were not required to be included on the balance sheet of the Borrower or the Restricted Subsidiary as capital lease obligations when incurred but are recharacterized as capital lease obligations due to a change in accounting rules that becomes effective after the Closing Date shall for all purposes of this Agreement not be treated as Capitalized Lease Obligations.

"**Capitalized Software Expenditures**" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower.

"**Captive Insurance Subsidiary**" shall mean a Subsidiary of the Borrower established for the purpose of, and to be engaged solely in the business of, insuring the businesses or facilities owned or operated by the Borrower or any of its Subsidiaries or joint ventures or to insure related or unrelated businesses.

"**Case**" shall have the meaning provided in the preamble to this Agreement.

"**Cash Equivalent**" shall mean:

(a) Dollars and cash in such foreign currencies held by the Borrower or any Restricted Subsidiary from time to time in the ordinary course of business;

(b) securities issued or unconditionally guaranteed by the United States government or any agency or instrumentality thereof, in each case having maturities and/or reset dates of not more than 24 months from the date of acquisition thereof;

(c) securities issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than 24 months from the date of acquisition thereof and, at the time of acquisition, having an investment grade rating generally obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from another nationally recognized rating service);

(d) commercial paper or variable or fixed rate notes maturing no more than 12 months after the date of creation thereof and, at the time of acquisition, having a rating of at least A-3 or P-3 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(e) time deposits with, or domestic and LIBOR certificates of deposit or bankers' acceptances maturing no more than two years after the date of acquisition thereof issued by, the Administrative Agent (or any Affiliate thereof), any lender under the ABL Credit Agreement, any Lender or any other bank having combined capital and surplus of not less than $500,000,000 in the case of domestic banks and $100,000,000 (or the dollar equivalent thereof) in the case of foreign banks;

(f) repurchase agreements with a term of not more than 90 days for underlying securities of the type described in clauses (b), (c) and (e) above entered into with

any bank meeting the qualifications specified in clause (e) above or securities dealers of recognized national standing;

(g) marketable short-term money market and similar funds (x) either having assets in excess of $500,000,000 or (y) having a rating of at least A-3 or P-3 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(h) shares of investment companies that are registered under the Investment Company Act of 1940 and substantially all the investments of which are one or more of the types of securities described in clauses (a) through (g) above; and

(i) in the case of Investments by any Restricted Foreign Subsidiary or Investments made in a country outside the United States of America, other customarily utilized high-quality Investments in the country where such Restricted Foreign Subsidiary is located or in which such Investment is made.

"**Cash Management Agreement**" shall mean any agreement or arrangement to provide Cash Management Services.

"**Cash Management Bank**" shall mean any Person that enters into a Cash Management Agreement with the Borrower or any Restricted Subsidiary in its capacity as a provider of Cash Management Services and, in each case, at the time it enters into such Cash Management Agreement or on the Closing Date, is (a) a Joint Lead Arranger, a Lender, an Affiliate of a Lender or a Joint Lead Arranger or (b) any other Person that delivers an accession agreement to the Security Agreement and that is specifically designated by the Borrower as a "Cash Management Bank".

"**Cash Management Obligations**" shall mean obligations owed by the Borrower or any Restricted Subsidiary to any Cash Management Bank or any other provider of Cash Management Services in connection with, or in respect of, any Cash Management Services or under any Cash Management Agreement.

"**Cash Management Services**" shall mean treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer (including automated clearing house fund transfer services), merchant services (other than those constituting a line of credit) and other cash management services.

"Certificated Securities" shall have the meaning provided in Section 8.17.

"**CFC**" shall mean a Subsidiary of the Borrower that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"**CFC Holding Company**" shall mean a Subsidiary of the Borrower that has no material assets other than (a) the equity interests (including, for this purpose, any debt or other

instrument treated as equity for U.S. federal income tax purposes) in (x) one or more Foreign Subsidiaries that are CFCs or (y) one or more other CFC Holding Companies and (b) cash and Cash Equivalents and other assets being held on a temporary basis incidental to the holding of assets described in clause (a) of this definition. It is understood and agreed that Sierra Communication International LLC, a Delaware limited liability company, constitutes a CFC Holding Company on the Closing Date.

"**Change in Law**" shall mean (a) the adoption of any Applicable Law after the Closing Date, (b) any change in any Applicable Law or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any party with any guideline, request, directive or order issued or made after the Closing Date by any central bank or other governmental or quasigovernmental authority (whether or not having the force of law); *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"**Change of Control**" shall mean and be deemed to have occurred if (a) any ~~Person or "group" (within the meaning of~~"person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Second Amendment Effective Date), other than one or more Permitted Holders, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 ~~under~~of the Exchange Act as in effect on the ~~Closing Date), but excluding any employee benefit plan of such Person and its subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, shall have, directly or indirectly, acquired beneficial ownership of Voting Stock representing~~Second Amendment Effective Date) of more than ~~3~~50% of the ~~aggregate~~total voting power ~~represented by the issued and outstanding~~of the Voting Stock of Avaya Holdings~~.~~; *provided* that (x) so long as Avaya Holdings is a Subsidiary of any Parent Entity, no Person shall be deemed to be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of Avaya Holdings unless such Person shall be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such Parent Entity (other than a Parent Entity that is a Subsidiary of another Parent Entity) and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in any Voting Stock of which any such Person is the beneficial owner; (b) Holdings shall at any time cease to be (i) Avaya Holdings or (ii) a Wholly-Owned Subsidiary of Avaya Holdings or (c) Holdings shall not own, directly or indirectly, beneficial ownership of 100% of the Stock and Stock Equivalents of the Borrower. A Permitted Change of Control shall not constitute a Change of Control.

Notwithstanding the preceding or any provision of Section 13d-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the

consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) if any group includes one or more Permitted Holders, the issued and outstanding Voting Stock of Avaya Holdings owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred, (iii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person's parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity and (iv) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

"**Class**", when used in reference to any Term Loan or Borrowing, shall refer to whether such Term Loan or the Term Loans comprising such Borrowing, are Initial Term Loans, Incremental Term Loans, Extended Term Loans, Tranche B Term Loans, Tranche B-1 Term Loans or Refinancing Term Loans and, when used in reference to any Commitment, refers to whether such Commitment is an Initial Term Commitment, an Incremental Term Commitment or a Refinancing Commitment.

"**Claim**" shall have the meaning provided in the definition of "Environmental Claims".

"**Closing Date**" shall mean December 15, 2017, on which the conditions set forth in Section 6 are first satisfied.

"**Closing Refinancing**" shall mean the repayment in full of all outstanding indebtedness of the Avaya Debtors under the Existing DIP Agreement (other than contingent obligations not yet due) and the release of all Liens granted thereunder.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time. Section references to the Code are to the Code, as in effect on the Closing Date, and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefore.

"**Co-Managers**" shall mean Blackstone Holdings Finance Co. L.L.C. and Benefit Street Partners LLC.

"**Collateral**" shall mean all property pledged, mortgaged or purported to be pledged or mortgaged pursuant to the Security Documents (excluding, for the avoidance of doubt, all Excluded Collateral).

"**Collateral Agent**" shall mean Goldman Sachs Bank USA, in its capacity as collateral agent for the Secured Parties under this Agreement and the Security Documents, or any successor collateral agent appointed pursuant hereto.

"**Commitment Letter**" shall mean the amended and restated commitment letter, dated October 31, 2017, among Avaya Holdings, the Borrower, the Joint Lead Arrangers (and their Affiliates), JPMorgan Chase Bank, N.A. and the Co-Managers.

"**Commitments**" shall mean, with respect to each Lender (to the extent applicable), such Lender's Initial Term Commitments, Incremental Term Commitments or Refinancing Commitment.

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

"**Communications**" shall have the meaning provided in Section 13.17(a).

"**Company Material Adverse Change**" shall mean any event, occurrence, fact, condition or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Borrower and its Subsidiaries, taken as a whole or (b) the ability of the Borrower to consummate the Transactions; *provided* that, clause (a) shall exclude events, occurrences, facts, conditions or changes arising out of, relating to or resulting from: (i) changes generally affecting the economy, financial, securities, or capital markets in the United States or globally; (ii) the announcement of the Transactions contemplated by the Commitment Letter (including, for the avoidance of doubt, the announcement of the Plan (as contemplated, described and defined in the Plan)) and the Borrower's compliance with the terms and conditions of the Commitment Letter, the Plan and the Transactions contemplated thereby; (iii) the Borrower's taking of any action contemplated by the Commitment Letter or in connection with confirmation and consummation of the Plan; (iv) any change in GAAP or Applicable Law; (v) national or international political or social conditions, including the engagement by any country, state, republic, union or sovereignty in hostilities, whether or not pursuant to the declaration of a national emergency or war (or any escalation or worsening of such hostilities), or the occurrence of any military or terrorist attack upon any country, state, republic, union or sovereignty, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of any country, state, republic, union or sovereignty; (vi) any conditions resulting from natural disasters; (vii) the failure, in and of itself, to meet internal or published projections, forecasts, budgets, or revenue, sales or earnings predictions for any period (but not the facts or circumstances underlying or contributing to any such failure); (viii) any threatened or pending claim, action, suit, litigation or proceeding relating to the Transactions or the Plan or that is otherwise released and discharged, as of the Closing Date, in connection with the Transactions or the Plan; or (ix) general conditions (or changes therein) in the Borrower's industries; *provided*, *further*, that any event, occurrence, fact, condition or change referred to in clauses (i), (iv), (v), (vi) or (ix) immediately above shall be taken into account in determining whether a Company Material Adverse Change has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a materially

disproportionate effect on the Borrower and its Subsidiaries, taken as a whole, compared to other participants in the industries in which the Borrower and its Subsidiaries conduct their businesses.

"**Company Model**" shall mean the model delivered to the Joint Lead Arrangers on July 31, 2017.

"**Confidential Information**" shall have the meaning provided in Section 13.16.

"**Confirmation Order**" shall have the meaning provided in the Recitals hereto.

"**Consolidated Depreciation and Amortization Expense**" shall mean, with respect to the Borrower and the Restricted Subsidiaries for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees or costs, debt issuance costs, commissions, fees and expenses, capitalized expenditures, Capitalized Software Expenditures, amortization of expenditures relating to software, license and intellectual property payments, amortization of any lease related assets recorded in purchase accounting, customer acquisition costs, unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, amortization of original issue discount resulting from the issuance of Indebtedness at less than par and incentive payments, conversion costs, and contract acquisition costs of the Borrower and the Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated EBITDA**" shall mean, for any period, Consolidated Net Income for such period, *plus*:

(a) without duplication and (except in the case of the add-backs set forth in clauses (vii) and (xi) below) to the extent deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for the Borrower and the Restricted Subsidiaries for such period:

(i) Fixed Charges (including (x) net losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities in each case to the extent included in Consolidated Interest Expense, together with items excluded from Consolidated Interest Expense pursuant to clause (1)(o) - (z) of the definition thereof),

(ii) provision for taxes based on income or profits or capital gains, including federal, foreign, state, franchise, excise, value-added and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) paid or accrued during such period, including any penalties and interest related to such taxes or arising from any tax examination, to the extent the same were deducted (and not added back) in computing such Consolidated Net Income and the net tax expense associated with any adjustments made pursuant to clauses (a) through (t) of the definition of "Consolidated Net Income",

(iii) Consolidated Depreciation and Amortization Expense for such period,

(iv) the amount of any restructuring cost, charge or reserve (including any costs incurred in connection with acquisitions after the Closing Date and costs related to the closure and/or consolidation of facilities) and any one time expense relating to enhanced accounting function or other transaction costs, public company costs, costs and expenses in connection with the implementation of fresh start accounting, and costs related to the implementation of operational and reporting systems and technology initiatives (*provided* that such costs related to the implementation of operation and reporting systems and technology initiatives shall not exceed $50,000,000 for any such period),

(v) any other non-cash charges, expenses or losses, including any non-cash asset retirement costs, non-cash increase in expenses resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments or due to purchase accounting, or any other acquisition, non-cash compensation charges, non-cash expense relating to the vesting of warrants, write-offs or write-downs for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period),

(vi) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary,

(vii) the amount of net cost savings projected by the Borrower in good faith to be realizable as a result of specified actions, operational changes and operational initiatives (including, to the extent applicable, resulting from the Transactions) taken or to be taken prior to or during such period, including any "run-rate" synergies, operating expense reductions and improvements and cost savings that are reasonably identifiable and determined in good faith by the Borrower in connection with the Transactions, acquisitions, Dispositions, any Permitted Change of Control, other customary specified transactions or other cost saving initiatives and other initiatives to result from actions which have been taken or with respect to which substantial steps have been taken or are expected to be taken no later than 24 months following the consummation of the Transactions, any such specified actions, operational changes and operational initiatives (which "run-rate" synergies, operating expense reductions and improvements and cost savings shall be added to Consolidated EBITDA until fully realized, shall be subject to certification by management of the Borrower and shall be calculated on a Pro Forma Basis as though such "run-rate" synergies, operating expense reductions and improvements and cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that no "run-rate" synergies, operating expense reductions and improvements and cost savings shall be added pursuant to this clause (vii) to the extent duplicative of any expenses or

charges relating to such cost savings that are included in clause (iv) above with respect to such period,

(viii) the amount of losses on Dispositions of receivables and related assets in connection with any Permitted Receivables Financing or Qualified Securitization Financing and any losses, costs, fees and expenses in connection with the early repayment, accelerated amortization, repayment, termination or other payoff (including as a result of the exercise of remedies) of any Permitted Receivables Financing or any Qualified Securitization Financing,

(ix) contract termination costs and any costs, charges or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement or other equity-based compensation, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Borrower or Net Cash Proceeds of an issuance of Stock or Stock Equivalents (other than Disqualified Stock) of the Borrower (or any direct or indirect parent thereof) solely to the extent that such Net Cash Proceeds are excluded from the calculation of the Available Equity Amount,

(x) [reserved],

(xi) the proceeds of any business interruption insurance,

(xii) extraordinary, unusual or non-recurring charges, expenses or losses (including unusual or non-recurring expenses), transaction fees and expenses and consulting and advisory fees, indemnities and expenses, severance, integration costs, costs of strategic initiatives, relocation costs, consolidation and closing costs, facility opening and pre-opening costs, business optimization expenses or costs, transition costs, restructuring costs, signing, retention, recruiting, relocation, signing, stay or completion bonuses and expenses (including payments made to employees who are subject to non-compete agreements),

(xiii) any impairment charge or asset write-off or write-down including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets and Investments in debt and equity securities, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP,

(xiv) cash receipts (or any netting arrangements resulting in increased cash receipts) not added in arriving at Consolidated EBITDA or Consolidated Net Income in any period to the extent the non-cash gains relating to such receipts were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added,

(xv) adjustments identified in the Company Model, less

(b) without duplication and to the extent included in arriving at such Consolidated Net Income for the Borrower and the Restricted Subsidiaries, the sum of the following amounts for such period:

(i) non-cash gains increasing Consolidated Net Income for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period),

(ii) extraordinary, unusual or non-recurring gains,

(iii) cash expenditures (or any netting arrangements resulting in increased cash expenditures) not deducted in arriving at Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash losses relating to such expenditures were added in the calculation of Consolidated EBITDA pursuant to paragraph (a) above for any previous period and not deducted, and

(iv) the amount of any minority interest income consisting of Subsidiary losses attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary,

in each case, as determined on a consolidated basis for the Borrower and the Restricted Subsidiaries in accordance with GAAP; *provided* that

(i) there shall be included in determining Consolidated EBITDA for any period, without duplication, (A) the Acquired EBITDA of any Person or business, or attributable to any property, assets, division or line of business acquired by the Borrower or any Restricted Subsidiary during such period (or any property, assets, division or line of business subject to a letter of intent or purchase agreement at such time) (but not the Acquired EBITDA of any related Person or business or any Acquired EBITDA attributable to any property, assets, division or line of business, in each case to the extent not so acquired) to the extent not subsequently sold, transferred, abandoned or otherwise disposed by the Borrower or such Restricted Subsidiary (each such Person, property, assets, division or line of business acquired and not subsequently so disposed of, an "**Acquired Entity or Business**") and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a "**Converted Restricted Subsidiary**"), in each case based on the actual Acquired EBITDA of such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) and (B) an adjustment in respect of each Pro Forma Entity equal to the amount of the Pro Forma Adjustment with respect to such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition), and

(ii) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any

Person, property, business or asset (other than an Unrestricted Subsidiary) sold, transferred, abandoned or otherwise disposed of, closed or classified as discontinued operations by the Borrower or any Restricted Subsidiary during such period (each such Person, property, business or asset so sold, transferred, abandoned or otherwise disposed of, or closed or so classified, a "**Sold Entity or Business**"), and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a "**Converted Unrestricted Subsidiary**"), in each case based on the actual Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer or disposition, closure, classification or conversion).

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes the four fiscal quarters as set forth below, the Consolidated EBITDA for such fiscal quarters shall be deemed to be $226,000,000 for the fiscal quarter ended December 31, 2016, $187,000,000 for the fiscal quarter ended March 31, 2017, $192,000,000 for the fiscal quarter ended June 30, 2017 and $216,000,000 for the fiscal quarter ended September 30, 2017.

"**Consolidated First Lien Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) the sum, without duplication, of (i) the Consolidated Secured Debt constituting (w) the Obligations, (x) the ABL Obligations, (y) any Indebtedness that is secured by a Lien on the Term Priority Collateral that is *pari passu* with the Lien securing the Obligations and (z) any Indebtedness that is secured by a Lien on the ABL Priority Collateral that is senior to or pari passu with the Lien securing the Obligations and (ii) Consolidated Secured Debt of the type described in clause (ii) of the definition thereof, in each case as of the most recent four fiscal quarter period for which financial statements described in Section 9.1(a) or (b) are available to (b) Consolidated EBITDA for such four fiscal quarter period.

"**Consolidated Interest Expense**" shall mean, with respect to any period, without duplication, the sum of:

(1) consolidated interest expense of the Borrower and the Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit, bankers' acceptances or collateral posting facilities, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (o) annual agency fees paid to the administrative agents and collateral agents under this Agreement, the ABL Credit Agreement and the other credit facilities, (p) additional interest with respect to failure to comply with any registration rights

agreement owing to holders of any securities, (q) costs associated with obtaining Hedging Obligations, (r) accretion of asset retirement obligations and accretion or accrual of discounted liabilities not constituting Indebtedness, (s) any expense resulting from the discounting of any Indebtedness in connection with the application of fresh start accounting or purchase accounting, (t) penalties and interest relating to taxes (u) amortization of reacquired Indebtedness, deferred financing fees, debt issuance costs, commissions, fees and expenses, (v) any expensing of bridge, commitment and other financing fees, (w) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Permitted Receivables Financing, (x) any prepayment premium or penalty, (y) any interest expense attributable to a parent entity resulting from push-down accounting and (z) any lease, rental or other expenses from operating leases); *plus*

(2) consolidated capitalized interest of the Borrower and the Restricted Subsidiaries, in each case for such period, whether paid or accrued; *less*

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" shall mean, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding, without duplication, the net after-tax effect of,

(a) any extraordinary, unusual or nonrecurring losses, gains, fees, costs, charges or expenses for such period,

(b) Transaction Expenses and Permitted Change of Control Costs,

(c) the cumulative effect of a change in accounting principles and changes as a result of adoption or modification of accounting policies during such period,

(d) any income (or loss) from disposed, abandoned or discontinued operations and any gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations,

(e) any gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions or abandonments other than in the ordinary course of business, as determined in good faith by the Borrower,

(f) any income (or loss) during such period of any Person that is an Unrestricted Subsidiary, and any income (or loss) during such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; *provided*

that the Consolidated Net Income of the Borrower and the Restricted Subsidiaries shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) by any Unrestricted Subsidiary or such other Person from its income to the Borrower or any Restricted Subsidiary during such period,

(g) solely for the purpose of determining Available Amount, any income (or loss) during such period of any Restricted Subsidiary (other than any Credit Party) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its net income is not at the date of determination wholly permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its Organizational Documents or any agreement, instrument or Applicable Law applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions (i) has been legally waived or otherwise released, (ii) is imposed pursuant to this Agreement and the other Credit Documents, the ABL Credit Documents, Permitted Debt Exchange Instruments or Permitted Other Debt, (iii) any working capital line permitted by Section 10.2 incurred by a Foreign Subsidiary or (iv) arises pursuant to an agreement or instrument if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Lenders than the encumbrances and restrictions contained in the Credit Documents (as determined by the Borrower in good faith); *provided* that Consolidated Net Income of the Borrower and the Restricted Subsidiaries will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to the Borrower or any Restricted Subsidiary during such period, to the extent not already included therein,

(h) all adjustments (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries) in the Borrower's consolidated financial statements pursuant to GAAP, resulting from (i) the application of fresh start accounting principles as a result of the Avaya Debtors' emergence from bankruptcy or (ii) the application of purchase accounting in relation to the Transactions or any consummated acquisition, in each case, including the amortization, write-off or write-down of any assets, any deferred revenue and any other amounts and other similar adjustments and, whether consummated before or after the Closing Date,

(i) any income (or loss) for such period attributable to the early extinguishment of Indebtedness (other than Hedging Obligations, but including, for the avoidance of doubt, debt exchange transactions and the extinguishment of pre-petition indebtedness in connection with the Transactions),

(j) any unrealized income (or loss) for such period attributable to Hedging Obligations or other derivative instruments,

(k) any impairment charge or asset write-off or write-down including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets and investments in debt and equity securities or as a result of a change in law or regulation, in each case pursuant to GAAP,

(l) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights, and any cash charges associated with the rollover, acceleration or payout of Stock or Stock Equivalents by management of the Borrower or any of its direct or indirect parent companies in connection with the Transactions,

(m) accruals and reserves established or adjusted within twelve months after the Closing Date that are so required to be established as a result of the Transactions in accordance with GAAP (or within 12 months after the Permitted Change of Control Effective Date) or changes as a result of adoption of or modification of accounting policies during such period,

(n) any accruals, payments, fees, expenses or charges (including rationalization, legal, tax, structuring, and other costs and expenses, but excluding depreciation or amortization expense) related to, or incurred in connection with, the Transactions (including letter of credit fees), the Plan, any offering of Stock or Stock Equivalents (including any equity offering), the listing of Avaya Holdings on the Closing Date, Investment, acquisition, Disposition, Restricted Payment, recapitalization or the issuance or incurrence of Indebtedness permitted to be incurred by the Borrower and the Restricted Subsidiaries pursuant hereto (including any refinancing transaction or amendment, waiver, or other modification of any debt instrument), in each case whether or not consummated, including (A) such fees, expenses or charges related to the negotiation, execution and delivery and other transactions contemplated by this Agreement, the other Credit Documents and any Permitted Receivables Financing, (B) any amendment or other modification of this Agreement and the other Credit Documents, (C) any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed, (D) any charges or non-recurring merger costs as a result of any such transaction, and (E) earnout obligations paid or accrued during such period with respect to any acquisition or other Investment,

(o) the amount of management, monitoring, consulting and advisory fees and related indemnities and expenses paid in such period to the extent otherwise permitted pursuant to Section 9.9,

(p) restructuring-related or other similar charges, fees, costs, commissions and expenses or other charges incurred during such period in connection with this Agreement, the other Credit Documents, the Credit Facilities, the Case, any

reorganization plan in connection with the Case, and any and all transactions contemplated by the foregoing, including the write-off of any receivables, the termination or settlement of executory contracts, professional and accounting costs fees and expenses, management incentive, employee retention or similar plans (in each case to the extent such plan is approved by the Bankruptcy Court to the extent required), litigation costs and settlements, asset write-downs, income and gains recorded in connection with the corporate reorganization of the Avaya Debtors;

(q) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days),

(r) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption,

(s) any net unrealized gain or loss (after any offset) resulting from currency translation gains or losses relating to currency remeasurements of Indebtedness (including any gain or loss resulting from obligations under any Hedging Obligation for currency exchange risk) and any foreign currency translation gains or losses, and

(t) to the extent non-cash and deducted in calculating net income (or loss), any net pension, post-employment benefit or long-term disability costs, including interest cost, service cost, actuarial expected return on plan assets, amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of unrecognized net obligations (and loss or cost) existing at the date of initial application of FASB Standard 87, 106 and 112 (or their equivalents under the ASC), and any other items of a similar nature and any gain or loss attributable to mark-to-market adjustments in the valuation of pension liabilities, including actuarial gain or loss on pension and post-retirement plans, curtailments and settlements and prior service cost adjustment.

"**Consolidated Secured Debt**" shall mean, as of any date of determination, Consolidated Total Debt at such date which either (i) is secured by a Lien on the Collateral (and other assets of the Borrower or any Restricted Subsidiary pledged to secure the Obligations pursuant to Section 10.2(i)) or (ii) constitutes Capitalized Lease Obligations or purchase money Indebtedness of the Borrower or any Restricted Subsidiary.

"**Consolidated Secured Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) Consolidated Secured Debt as of the most recent four fiscal quarter period for which financial statements described in Section 9.1(a) or (b) are available to (b) Consolidated EBITDA for such four fiscal quarter period.

"**Consolidated Total Assets**" shall mean, as of any date of determination, the amount that would, in conformity with GAAP, be set forth opposite the caption "total assets" (or any like caption), after intercompany eliminations, on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries at such date (or, if such date of determination is a date prior to the first date on which such consolidated balance sheet has been (or is required to have been) delivered pursuant to Section 9.1, on the pro forma financial statements delivered pursuant to Section 6.10 (and, in the case of any determination relating to any Specified Transaction, on a Pro Forma Basis including any property or assets being acquired in connection therewith)).

"**Consolidated Total Debt**" shall mean, as of any date of determination, (a) (i) all Indebtedness of the types described in clauses (a) and (b) (solely to the extent such Indebtedness matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the sole option of the Borrower or any Restricted Subsidiary, to a date more than one year from the date of its creation), clause (d) (but, in the case of clause (d), only to the extent of any unreimbursed drawings under any letter of credit which are not cash collateralized or backstopped) and clause (f) of the definition thereof, in each case actually owing by the Borrower and the Restricted Subsidiaries on such date and to the extent appearing on the balance sheet of the Borrower determined on a consolidated basis in accordance with GAAP (*provided* that the amount of any Capitalized Lease Obligations or any such Indebtedness issued at a discount to its face value shall be determined in accordance with GAAP; *provided*, *further*, that the effects of push-down accounting shall be excluded) and (ii) purchase money Indebtedness (and excluding, for the avoidance of doubt, Qualified Securitization Financing, Permitted Receivables Financing, Hedging Obligations and Cash Management Obligations) *minus* (b) the aggregate amount of all Unrestricted Cash.

"**Consolidated Total Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) Consolidated Total Debt as of the most recent four fiscal quarter period for which financial statements described in Section 9.1(a) or (b) are available to (b) Consolidated EBITDA for such four fiscal quarter period.

"**Consolidated Working Capital**" shall mean, at any date, the excess of (i) all amounts (other than Cash Equivalents) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date over (ii) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or

any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date, but excluding, without duplication, (a) the current portion of any funded Indebtedness, (b) all Indebtedness consisting of revolving loans, swing line loans and letter of credit obligations (including such loan or letters of credit under the ABL Credit Agreement), in each case to the extent otherwise included therein, (c) the current portion of interest, (d) the current portion of current and deferred income taxes, (e) the current portion of any Capitalized Lease Obligations, (f) liabilities in respect of unpaid earnouts, and (g) the current portion of any other long-term liabilities, and in the case of both clauses (i) and (ii), excluding the effects of adjustments pursuant to GAAP resulting from the application of fresh start accounting or purchase accounting, as the case may be, in relation to the Transactions, any Permitted Change of Control or any consummated acquisition.

"**Contingent Obligation**" shall mean indemnification Obligations and other similar contingent Obligations for which no claim has been made in writing.

"**Contract Consideration**" shall have the meaning provided in the definition of the term "Excess Cash Flow".

"**Contractual Requirement**" shall have the meaning provided in Section 8.3.

"**Converted Restricted Subsidiary**" shall have the meaning provided in the definition of the term "Consolidated EBITDA".

"**Converted Unrestricted Subsidiary**" shall have the meaning provided in the definition of the term "Consolidated EBITDA".

"**Corrective Extension Amendment**" shall have the meaning provided in Section 2.15(a)(vi).

"**Credit Documents**" shall mean this Agreement, the Guarantee, the Security Documents, the Fee Letter, any promissory notes issued by the Borrower hereunder, any Incremental Amendment, any Refinancing Amendment, any Extension Amendment and any other document jointly identified by the Borrower and the Administrative Agent as a "Credit Document", provided that, for the avoidance of doubt, Secured Cash Management Agreements and Secured Hedging Agreements shall not constitute Credit Documents.

"**Credit Facility**" shall mean any category of Commitments and/or Term Loans and other extensions of credit thereunder.

"**Credit Party**" shall mean each of Holdings, the Borrower and each of the Subsidiary Guarantors.

"**Cumulative Consolidated Net Income**" shall mean, for any period, Consolidated Net Income for such period, taken as a single accounting period. Cumulative Consolidated Net Income may be a positive or negative amount.

"**Debt Incurrence Prepayment Event**" shall mean any issuance or incurrence by the Borrower or any of the Restricted Subsidiaries of any Indebtedness (other than as permitted to be issued or incurred under Section 10.1).

"**Declined Proceeds**" shall have the meaning provided in Section 5.2(f).

"**Default**" shall mean any event, act or condition that with notice or lapse of time hereunder, or both, would constitute an Event of Default.

"**Default Rate**" shall have the meaning provided in Section 2.8(d).

"**Defaulting Lender**" shall mean any Lender with respect to which a Lender Default is in effect.

"**Deferred Net Cash Proceeds**" shall have the meaning provided such term in the definition of "Net Cash Proceeds".

"**Deferred Net Cash Proceeds Payment Date**" shall have the meaning provided such term in the definition of "Net Cash Proceeds".

"**Designated Non-Cash Consideration**" shall mean the fair market value of non-cash consideration received by the Borrower or any Restricted Subsidiary in connection with a Disposition pursuant to Section 10.4(b) that is designated as Designated Non-Cash Consideration pursuant to a certificate of an Authorized Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash or Cash Equivalent within 180 days following the consummation of the applicable Disposition). A particular item of Designated NonCash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise Disposed of in compliance with Section 10.4.

"**Disposed EBITDA**" shall mean, with respect to any Sold Entity or Business or any Converted Unrestricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary (determined as if references to the Borrower and the Restricted Subsidiaries in the definition of Consolidated EBITDA were references to such Sold Entity or Business or Converted Unrestricted Subsidiary, as applicable, and its respective Subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business or Converted Unrestricted Subsidiary, as the case may be.

"**Disposition**" or "**Dispose**" shall mean (i) the convey, sale, lease, assignment, transfer or other disposition of any of property, business or assets (including receivables and leasehold interests), whether owned on the Closing Date or hereafter acquired or (ii) the sale to any Person (other than to the Borrower or a Subsidiary Guarantor) any shares owned by it of any Subsidiary's Stock and Stock Equivalents.

"**Disqualified Institutions**" shall mean (a) those banks, financial institutions or other Persons separately identified in writing by the Borrower to the Administrative Agent on or prior to October 23, 2017, or to any Affiliates of such banks, financial institutions or other persons identified by the Borrower in writing or that are readily identifiable as Affiliates on the basis of their name and (b) competitors identified in writing to the Administrative Agent from time to time (or Affiliates thereof identified by the Borrower in writing or that are readily identifiable as Affiliates on the basis of their name) of the Borrower or any of its Subsidiaries (other than such Affiliate that is a bona fide debt fund or a fixed-income only investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of business and whose managers have fiduciary duties to the third-party investors in such fund or investment vehicle independent from their duties owed to such competitor); *provided* that no such identification after the date of a relevant assignment shall apply retroactively to disqualify any person that has previously acquired an assignment or participation of an interest in any of the Credit Facilities with respect to amounts previously acquired. The list of all Disqualified Institutions set forth in clauses (a) and (b) shall be made available to any Lender upon request.

"**Disqualified Stock**" shall mean, with respect to any Person, any Stock or Stock Equivalents of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Stock or Stock Equivalents that is not Disqualified Stock), other than as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of such change of control, asset sale or similar event shall be subject to the prior repayment in full of the Term Loans and all other Obligations (other than Hedging Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreements or Contingent Obligations) and the termination of all Commitments, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of such change of control, asset sale or similar event shall be subject to the prior repayment in full of the Term Loans and all other Obligations (other than Hedging Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreements or Contingent Obligations) and the termination of all Commitments), in whole or in part, in each case prior to the date that is ninety-one (91) days after the Latest Maturity Date as determined at the time of the issuance; *provided* that if such Stock or Stock Equivalents are issued to any plan for the benefit of employees of the Borrower or any of its Subsidiaries or by any such plan to such employees, such Stock or Stock Equivalents shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower (or any direct or indirect parent company thereof) or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations; *provided*, *further*, that any Stock or Stock Equivalents held by any present or former employee, officer, director, manager or consultant, of the Borrower, any of its Subsidiaries or any of its direct or indirect parent companies or any other entity in which the Borrower or any Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors of the Borrower, in each case pursuant to any stockholders' agreement, management equity plan or stock incentive plan or any other

management or employee benefit plan or agreement or otherwise in order to satisfy applicable statutory or regulatory obligations or as a result of the termination, death or disability of such employee, officer, director, manager or consultant shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any of its Subsidiaries.

"**Dollars**" and "**$**" shall mean dollars in lawful currency of the United States of America.

"**Domestic Subsidiary**" shall mean each Subsidiary of the Borrower that is organized under the laws of the United States or any state thereof, or the District of Columbia.

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

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Employee Benefit Plan" shall mean an employee benefit plan (as defined in Section 3(3) of ERISA), other than a Foreign Plan, that is maintained or contributed to by Holdings, Borrower or any Subsidiary (or, with respect to an employee benefit plan subject to Title IV of ERISA, any ERISA Affiliate).

"**Environmental Claims**" shall mean any and all actions, suits, proceedings, orders, decrees, demands, demand letters, claims, liens, notices of noncompliance, violation or potential responsibility or investigation (other than reports prepared by or on behalf of Holdings, the Borrower or any other Subsidiary of Holdings (a) in the ordinary course of such Person's business or (b) as required in connection with a financing transaction or an acquisition or disposition of Real Estate) or proceedings in each case relating in any way to any applicable Environmental Law or any permit issued, or any approval given, under any applicable Environmental Law (hereinafter, "**Claims**"), including (i) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief relating to the presence, release or threatened release into the environment of Hazardous Materials or arising from alleged injury or threat of injury to human health or safety (to the extent relating to human exposure to Hazardous Materials), or to the environment, including ambient air, indoor air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands.

"**Environmental Law**" shall mean any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or, with respect to any post-Closing Date requirements of the Credit Documents, hereafter in effect, and in each case as amended, and any legally binding judicial or administrative interpretation thereof, including any legally binding judicial or administrative order, consent decree or judgment, relating to the protection of the environment, including ambient air, indoor air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands, or to human health or safety (to the extent relating to human exposure to Hazardous Materials), or Hazardous Materials.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time. Section references to ERISA are to ERISA as in effect on the Closing Date and any subsequent provisions of ERISA amendatory thereof, supplemental thereto or substituted therefor.

"**ERISA Affiliate**" shall mean each person (as defined in Section 3(9) of ERISA) that together with the Borrower or any Subsidiary of the Borrower would be deemed to be a "single employer" within the meaning of Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"**ERISA Event**" shall mean (i) the failure of any Employee Benefit Plan to comply with any provisions of ERISA and/or the Code or with the terms of such Employee Benefit Plan; (ii) any Reportable Event; (iii) the existence with respect to any Employee Benefit Plan of a non-exempt Prohibited Transaction; (iv) any failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived; (v) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (vi) the occurrence of any event or condition which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or the incurrence by any Credit Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, including but not limited to the imposition of any Lien in favor of the PBGC or any Pension Plan; (vii) the receipt by any Credit Party or any of its ERISA Affiliates from the PBGC or a plan administrator of any written notice to terminate any Pension Plan under Section 4042(a) of ERISA or to appoint a trustee to administer any Pension Plan under Section 4042(b)(1) of ERISA; (viii) the incurrence by any Credit Party or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Pension Plan (or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA) or Multiemployer Plan; (ix) the receipt by any Credit Party or any of its ERISA Affiliates of any notice concerning the imposition on it of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or terminated (within the meaning of Section 4041A of ERISA), (x) a determination that any Pension Plan is or is expected to be in "at risk" status (within the meaning

of Section 430 of the Code or Section 303 of ERISA); or (xi) any other event or condition with respect to a Pension Plan or Multiemployer Plan that could result in liability to the Borrower or any Subsidiary.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" shall have the meaning provided in Section 11.

"**Excess Cash Flow**" shall mean, for any period, an amount (which amount shall not be less than zero) equal to the excess of:

(a) the sum, without duplication, of:

(i) the Consolidated Net Income for such period,

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period,

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or Dispositions by the Borrower and the Restricted Subsidiaries completed during such period or the application of purchase accounting),

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income, and

(v) cash receipts in respect of Hedging Agreements during such Fiscal Year to the extent not otherwise included in such Consolidated Net Income; over

(b) the sum, without duplication, of:

(i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (a)(ii) above) and cash charges included in the definition of Consolidated Net Income (but excluding any cash charges described in clause (q) or (r) of the definition thereof),

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior Fiscal Years, the amount of Capital Expenditures or acquisitions of intellectual property and Capitalized Software Expenditures accrued or made in cash during such

period, except to the extent that such Capital Expenditures or acquisitions were financed with the proceeds of long-term Indebtedness of the Borrower and the Restricted Subsidiaries,

(iii) the aggregate amount of all principal payments of Indebtedness of the Borrower and the Restricted Subsidiaries (including (A) the principal component of payments in respect of Capital Leases, (B) repayments made under Section 2.5(b) and (C) the amount of any mandatory prepayment of Term Loans due to an Asset Sale Prepayment Event to the extent required due to a Disposition that resulted in an increase to such Consolidated Net Income and not in excess of the amount of such increase, but excluding (X) all other prepayments or repurchases of Term Loans or Indebtedness secured on a *pari passu* basis with the Initial Term Loans, and (Y) all prepayments in respect of any revolving credit facility, except, in the case of clause (Y) only, to the extent there is an equivalent permanent reduction in commitments thereunder) made during such period, except to the extent financed with the proceeds of long-term Indebtedness of the Borrower and the Restricted Subsidiaries,

(iv) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or Dispositions by the Borrower and the Restricted Subsidiaries completed during such period or the application of purchase accounting),

(vi) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income unless financed with the proceeds of long-term Indebtedness of the Borrower and the Restricted Subsidiaries,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior Fiscal Years, the amount of Investments made pursuant to Section 10.5(h), (i), (v)(y), (w), (cc) and (ii) during such period unless such Investments were financed with the proceeds of long-term Indebtedness of the Borrower and the Restricted Subsidiaries,

(viii) the amount of Restricted Payments paid during such period pursuant to Sections 10.6(b), (d), (j), (l) and (o) during such period unless such Restricted Payments were financed with the proceeds of long-term Indebtedness of the Borrower and the Restricted Subsidiaries,

(ix) the aggregate amount of expenditures actually made by the Borrower and the Restricted Subsidiaries during such period (including expenditures for the payment of

financing fees) to the extent that such expenditures are not expensed during such period or are not deducted in calculating Consolidated Net Income unless such expenditures were financed with the proceeds of long-term Indebtedness of the Borrower and the Restricted Subsidiaries,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted Subsidiaries during such period that are made in connection with any prepayment of Indebtedness to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income unless any such payments were financed with the proceeds of long-term Indebtedness of the Borrower and the Restricted Subsidiaries,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period relating to Permitted Acquisitions, Capital Expenditures or acquisitions of intellectual property to be consummated or made during the period of four consecutive fiscal quarters of the Borrower following the end of such period; *provided* that, to the extent the aggregate amount actually utilized to finance such Permitted Acquisitions, Capital Expenditures or acquisitions of intellectual property during such period (other than any amount financed with the proceeds of long-term Indebtedness of the Borrower and the Restricted Subsidiaries) of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes paid or tax reserves set aside or payable (without duplication) in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) cash expenditures in respect of Hedging Agreements during such Fiscal Year to the extent not deducted in arriving at such Consolidated Net Income, and

(xiv) the aggregate amount of any Excess Contribution, unless such Excess Contribution is already deducted in the calculation of Net Cash Proceeds in connection with an Asset Sale Prepayment Event or financed with the proceeds with long-term Indebtedness.

"**Excess Contribution**" shall have the meaning provided in the PBGC Stipulation of Settlement.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and rules and regulations promulgated thereunder.

"**Excluded Collateral**" shall mean (i) [reserved], (ii) any vehicles and other assets subject to certificates of title; (iii) letter-of-credit rights to the extent a security interest therein

cannot be perfected by a UCC filing (other than supporting obligations); (iv) any property subject to a Lien permitted under Section 10.2 securing a purchase money agreement, Capital Lease or similar arrangement permitted hereunder in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting Excluded Collateral), to the extent, and for so long as, the creation of a security interest therein is prohibited thereby (or otherwise requires consent, *provided* that there shall be no obligation to seek such consent) or creates a right of termination or favor of a third party, in each case, excluding the proceeds and receivables thereof to the extent not otherwise constituting Excluded Collateral; (v) (x) all leasehold interests in Real Estate (and there shall not be any requirement to obtain any landlord or other third party waivers, estoppels, consents or collateral access letters in respect of such leasehold interests) and (y) any parcel of Real Estate located in the United States and the improvements thereto owned in fee by a Credit Party with a fair market value of $10,000,000 or less (at the time of acquisition) (but not any Collateral located thereon) or any parcel of Real Estate and the improvements thereto owned in fee by a Credit Party outside the United States; (vi) any "intent to use" trademark application filed and accepted in the United States Patent and Trademark Office unless and until an amendment to allege use or a statement of use has been filed and accepted by the United States Patent and Trademark Office to the extent, if any, that, and solely during the period, if any, in which the grant of security interest therein could impair the validity or enforceability of such "intent to use" trademark application under federal law; (vii) any charter, permit, franchise, authorization, lease, license or agreement, in each case, only to the extent and for so long as the grant of a security interest therein (or the assets subject thereto) by the applicable Credit Party (x) would violate invalidate such charter, permit, franchise, authorization, lease, license, or agreement or (y) would give any party (other than a Credit Party) to any such charter, permit, franchise, authorization, lease, license or agreement the right to terminate its obligations thereunder or (z) is permitted under such charter, permit, franchise, lease, license or agreement only with consent of the parties thereto (other than consent of a Credit Party) and such necessary consents to such grant of a security interest have not been obtained (it being understood and agreed that no Credit Party or Restricted Subsidiary has any obligation to obtain such consents) other than, in each case referred to in clauses (x) and (y) and (z), as would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction, in each case excluding the proceeds and receivables thereof which are not otherwise Excluded Collateral; (viii) any Commercial Tort Claim (as defined in the Security Agreement) for which no claim has been made or with a value of less than $10,000,000 for which a claim has been made; (ix) any Excluded Stock and Stock Equivalents; (x) any assets with respect to which, the Borrower and the Collateral Agent reasonably determine, the cost or other consequences of granting a security interest or obtaining title insurance in favor of the Secured Parties under the Security Documents shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom; (xi) any assets with respect to which granting a security interest in such assets in favor of the Secured Parties under the Security Documents could reasonably be expected to result in a material adverse tax consequence as reasonably determined by the Borrower and the Collateral Agent; (xii) any margin stock; (xiii) [reserved]; and (xiv) any assets with respect to which granting a security interest in such assets is prohibited by or would violate law, treaty, rule, or regulation or determination of an arbitrator or a court or other Governmental Authority or

which would require obtaining the consent, approval, license or authorization of any Governmental Authority (unless such consent, approval, license or authorization has been received; *provided* that there shall be no obligation to obtain such consent) or create a right of termination in favor of any governmental or regulatory third party, in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting Excluded Collateral); *provided* that with respect to clauses (iv), (vii) and (xiv), such property shall be Excluded Collateral only to the extent and for so long as such prohibition, violation, invalidation or consent right, as applicable, is in effect and in the case of any such agreement or consent, was not created in contemplation thereof or of the creation of a security interest therein. Notwithstanding anything set forth herein, Excluded Collateral shall not include any assets owned by the Credit Parties that constitute collateral securing the ABL Loans.

"**Excluded Information**" shall have the meaning provided in Section 13.6.

"**Excluded Stock and Stock Equivalents**" shall mean (i) any Stock or Stock Equivalents with respect to which, in the reasonable judgment of the Collateral Agent and the Borrower, the burden or cost of pledging such Stock or Stock Equivalents in favor of the Collateral Agent under the Security Documents shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (ii) (A) solely in the case of any pledge of Voting Stock of (x) any Foreign Subsidiary that is a CFC or (y) any CFC Holding Company, in each case, owned directly by a Credit Party, any Voting Stock in excess of 65% of each outstanding class of Voting Stock of such Foreign Subsidiary that is a CFC or such CFC Holding Company and (B) any Stock or Stock Equivalents of (x) any Foreign Subsidiary that is a CFC or (y) any CFC Holding Company in each case not owned directly by a Credit Party, (iii) any Stock or Stock Equivalents to the extent the pledge thereof would violate any Applicable Law or any Contractual Requirement (including any legally effective requirement to obtain the consent or approval of, or a license from, any Governmental Authority or any other regulatory third party unless such consent, approval or license has been obtained (it being understood that the foregoing shall not be deemed to obligate the Borrower or any Subsidiary of the Borrower to obtain any such consent, approval or license)), (iv) any Stock or Stock Equivalents of each Subsidiary to the extent that a pledge thereof to secure the Obligations is prohibited by any applicable Organizational Document of such Subsidiary or requires third party consent (other than the consent of a Credit Party), unless consent has been obtained to consummate such pledge (it being understood that the foregoing shall not be deemed to obligate the Borrower or any Subsidiary to obtain any such consent), in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting Excluded Collateral), (v) Stock or Stock Equivalents of any non-Wholly Owned Subsidiary, (vi) any Stock or Stock Equivalents of any Subsidiary to the extent that the pledge of such Stock or Stock Equivalents could reasonably be expected to result in material adverse tax or accounting consequences to Holdings or any Subsidiary thereof as reasonably determined by the Borrower and the Collateral Agent, (vii) any Stock or Stock Equivalents that are margin stock, (viii) any Stock or Stock Equivalents owned by a CFC or a CFC Holding Company, and (ix) any Stock and

Stock Equivalents of any Unrestricted Subsidiary or of any Restricted Subsidiary that does not constitute a Material Subsidiary (other than (A) to the extent a perfected security interest therein can be obtained by filing a UCC-1 financing statement or (B) as otherwise agreed to by the Borrower in its sole discretion), any Person not constituting a Subsidiary, any Captive Insurance Subsidiary, any Broker-Dealer Subsidiary, any not-for-profit Subsidiary and any special purpose entity (including any Receivables Entity and any Securitization Subsidiary); *provided* that Excluded Stock and Stock Equivalents shall not include proceeds of the foregoing property to the extent otherwise constituting Collateral.

"**Excluded Subsidiary**" shall mean (a) each Domestic Subsidiary of the Borrower designated by the Borrower for the purpose of this clause (a) from time to time, for so long as any such Domestic Subsidiary does not constitute a Material Subsidiary as of the most recently ended Test Period; *provided* that if such Domestic Subsidiary would constitute a Material Subsidiary as of the end of such Test Period, the Borrower shall cause such Domestic Subsidiary to become a Guarantor pursuant to Section 9.11, (b) each Domestic Subsidiary that is not a Wholly Owned Subsidiary or otherwise constitutes a joint venture (for so long as such Subsidiary remains a non-Wholly Owned Restricted Subsidiary or joint venture), (c) any CFC or CFC Holding Company, (d) each Domestic Subsidiary that is (i) prohibited by any applicable (x) Contractual Requirement, (y) Applicable Law (including without limitation as a result of applicable financial assistance, directors' duties or corporate benefit requirements) or (z) Organizational Document (in the case of clauses (x) and (z), in effect on the Closing Date or any date of acquisition of such Subsidiary (to the extent such prohibition was not entered into in contemplation of the Guarantee)) from guaranteeing or granting Liens to secure the Obligations at the time such Subsidiary becomes a Restricted Subsidiary (and for so long as such restriction or any replacement or renewal thereof is in effect), or (ii) required to obtain consent, approval, license or authorization of a Governmental Authority for such guarantee or grant (unless such consent, approval, license or authorization has already been received); *provided* that there shall be no obligation to obtain such consent, (e) each Domestic Subsidiary that is a Subsidiary of a CFC or CFC Holding Company, (f) any other Domestic Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the cost or other consequences (including any material adverse tax consequences) of guaranteeing the Obligations shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (g) each Unrestricted Subsidiary, (h) any Foreign Subsidiary, (i) any special purpose entity, including any Receivables Entity and any Securitization Subsidiary, (j) any Subsidiary to the extent that the guarantee of the Obligations by such Subsidiary could reasonably be expected to result in material adverse tax consequences (as determined by the Borrower and the Administrative Agent), (k) any Captive Insurance Subsidiary, (l) any non-profit Subsidiary or (m) any Broker-Dealer Subsidiary; *provided* that Excluded Subsidiary shall not include any Domestic Subsidiary of the Borrower to the extent such Domestic Subsidiary guarantees the ABL Loans.

"**Excluded Swap Obligation**" shall mean, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any

rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest would otherwise have become effective with respect to such Swap Obligation but for such Guarantor's failure to constitute an "eligible contract participant" at such time.

"**Excluded Taxes**" shall mean, any of the following Taxes imposed on or with respect to any Agent or any Lender or required to be deducted or withheld from a payment to any Agent or Lender, (a) net income Taxes and franchise and excise Taxes (imposed in lieu of net income Taxes) and any branch profits Taxes imposed on such Agent or Lender imposed as a result of such Agent or Lender 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), (b) any Taxes imposed on any Agent or any Lender as a result of any current or former connection between such Agent or Lender and the jurisdiction of the Governmental Authority imposing such Tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Agent or Lender having executed, delivered or performed its obligations or received a payment under, or having been a party to or having enforced, this Agreement or any other Credit Document), (c) any U.S. federal withholding Tax that is imposed on amounts payable to or for the account of any Agent or Lender under the law in effect at the time such Agent or Lender becomes a party to this Agreement (or designates a new lending office other than a new lending office designated at the request of the Borrower pursuant to Section 13.7(a)); *provided* that this clause (c) shall not apply to the extent that the indemnity payments or additional amounts any Lender would be entitled to receive (without regard to this clause (c)) do not exceed the indemnity payment or additional amounts that the person making the assignment, participation or transfer to such Lender (or designation of a new lending office by such Lender) would have been entitled to receive pursuant to Section 5.4 immediately before such assignment, participation, transfer or change in lending office in the absence of such assignment, participation, transfer or change in lending office (it being understood and agreed, for the avoidance of doubt, that any withholding Tax imposed on a Lender as a result of a Change in Law occurring after the time such Lender became a party to this Agreement (or designates a new lending office) shall not be an Excluded Tax under this clause (c)), (d) any Tax to the extent attributable to such Agent's or Lender's failure to comply with Sections 5.4(e), (f) (in the case of any Non-U.S. Lender) or Section 5.4(i) (in the case of a U.S. Lender) or Section 5.4(j) and (e) any Taxes imposed by FATCA.

"**Existing DIP Agreement**" shall have the meaning provided in the Recitals to this Agreement.

"**Existing Term Loan Class**" shall have the meaning provided in Section 2.15(a)(i).

"**Extended Term Loan Repayment Amount**" shall have the meaning provided in Section 2.5(c).

"**Extended Term Loans**" shall have the meaning provided in Section 2.15(a)(i).

"**Extending Lender**" shall have the meaning provided in Section 2.15(a)(iv).

"**Extension Amendment**" shall have the meaning provided in Section 2.15(a)(v).

"**Extension Election**" shall have the meaning provided in Section 2.15(a)(iv).

"**Extension Minimum Condition**" shall mean a condition to consummating any Extension Series that a minimum amount (to be determined and specified in the relevant Term Loan Extension Request, in the Borrower's sole discretion) of any or all applicable Classes be submitted for extension.

"**Extension Series**" shall mean all Extended Term Loans that are established pursuant to the same Extension Amendment (or any subsequent Extension Amendment to the extent such Extension Amendment expressly provides that the Extended Term Loans provided for therein are intended to be a part of any previously established Extension Series) and that provide for the same interest margins, extension fees and amortization schedule.

"**FATCA**" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and intergovernmental agreement (together with any Applicable Law implementing such agreement) entered into in connection with any of the foregoing.

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

"**Fee Letter**" shall mean the amended and restated fee letter, dated October 31, 2017, among Avaya Holdings, the Borrower, the Joint Lead Arrangers (and their Affiliates) and the Co-Managers.

"**Fees**" shall mean all amounts payable pursuant to, or referred to in, Section 4.1.

"**First Amendment**" shall mean that certain Amendment No. 1, dated as of June 18, 2018 among the Borrower, Holdings, the other Guarantors, the Tranche B Term Lenders party thereto and the Administrative Agent.

"**First Amendment Effective Date**" shall have the meaning provided in the First Amendment.

"**First Lien Intercreditor Agreement**" shall mean an intercreditor agreement substantially in the form attached hereto as Exhibit G or such as form as reasonably agreed between the Borrower and the Administrative Agent.

"**Fiscal Year**" shall have the meaning provided in Section 9.10.

"**Fixed Charges**" shall mean, the sum of, without duplication:

(1) Consolidated Interest Expense; *plus*

(2) all cash dividends or cash distributions (other than return of capital) paid (excluding items eliminated in consolidation) on any series of preferred stock during such period; *plus*

(3) all cash dividends or cash distributions (other than return of capital) paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

"**Foreign Asset Sale**" shall have the meaning provided in Section 5.2(g).

"**Foreign Excess Cash Flow**" shall have the meaning provided in Section 5.2(g).

"**Foreign Plan**" shall mean any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by the Borrower or any of its Subsidiaries with respect to employees employed outside the United States.

"**Foreign Recovery Event**" shall have the meaning provided in Section 5.2(g).

"**Foreign Subsidiary**" shall mean each Subsidiary of the Borrower that is not a Domestic Subsidiary.

"**Fund**" shall mean any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"**GAAP**" shall mean generally accepted accounting principles in the United States of America, as in effect from time to time; *provided*, *however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect

and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"**Governmental Authority**" shall mean any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

"**Granting Lender**" shall have the meaning provided in Section 13.6(f).

"**Guarantee**" shall mean the Guarantee made by each Guarantor in favor of the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit C.

"**Guarantee Obligations**" shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such Indebtedness or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Indebtedness of the ability of the primary obligor to make payment of such Indebtedness or (d) otherwise to assure or hold harmless the owner of such Indebtedness against loss in respect thereof; *provided*, *however* , that the term "**Guarantee Obligations**" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"**Guarantors**" shall mean (a) Holdings, (b) each Domestic Subsidiary (other than an Excluded Subsidiary) that provides the Guarantee on the Closing Date or becomes a party to the Guarantee after the Closing Date pursuant to Section 9.11 or otherwise and (c) the Borrower (other than with respect to its own Obligations).

"**Hazardous Materials**" shall mean (a) any petroleum or petroleum products spilled or released into the environment, radioactive materials, friable asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants", or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or

substance, for which a release into the environment is prohibited, limited or regulated by any Environmental Law.

"**Hedge Bank**" shall mean any Person (other than Holdings, the Borrower or any other Subsidiary of the Borrower) that is (a) a party to any Hedging Agreement and, in each case, at the time it enters into such Hedging Agreement or on the Closing Date, is a Joint Lead Arranger, a Lender, an Affiliate of a Lender or a Joint Lead Arranger or (b) any other Person party to a Hedging Agreement that delivers an accession agreement to the Security Agreement and that is specifically designated by the Borrower as a "Hedge Bank".

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

"**Hedging Obligations**" shall mean, with respect to any Person, the obligations of such Person under Hedging Agreements.

"**Holdings**" shall mean, (a) Avaya Holdings or (b) any other partnership, limited partnership, corporation, limited liability company, or business trust or any successor thereto organized under the laws of the United States or any state thereof or the District of Columbia (the "**New Holdings**") that is a direct or indirect Wholly Owned Subsidiary of Avaya Holdings or that has merged, amalgamated or consolidated with Avaya Holdings (or, in either case, the previous New Holdings, as the case may be) (the "**Previous Holdings**"); *provided* that (i) such New Holdings owns directly or indirectly 100% of the Stock and Stock Equivalents of the Borrower, (ii) the New Holdings shall expressly assume all the obligations of the Previous Holdings under this Agreement and the other Credit Documents to which it is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (iii) such substitution and any supplements to the Credit Documents shall preserve the enforceability of the Guarantee and the perfection and priority of the Liens under the Security Documents, and New Holdings shall have delivered to the Administrative Agent an officer's certificate to that effect and (iv) all assets of the Previous Holdings are contributed or otherwise transferred to such New Holdings; *provided*, *further*, that if the foregoing are satisfied, the Previous Holdings shall be automatically released of all its obligations under the Credit Documents and any reference to

"Holdings" in the Credit Documents shall be meant to refer to the "New Holdings". Notwithstanding anything to the contrary contained in this Agreement, Holdings or any New Holdings may change its jurisdiction of organization or location for purposes of the UCC or its identity or type of organization or corporate structure, subject to compliance with the terms and provisions of the Security Agreement.

"**Increased Amount Date**" shall have the meaning provided in Section 2.14(a).

"**Incremental Amendment**" shall have the meaning provided in Section 2.14(a).

"**Incremental Commitments**" shall have the meaning provided in Section 2.14(a).

"**Incremental Equivalent Debt**" shall have the meaning provided in Section 10.1(v)(ii).

"**Incremental Facilities**" shall mean the facilities represented by the Incremental Commitments and the Incremental Loans thereunder.

"**Incremental Loans**" shall have the meaning provided in Section 2.14(a).

"**Incremental Revolving Commitments**" shall have the meaning provided in Section 2.14(a).

"**Incremental Term Commitments**" shall have the meaning provided in Section 2.14(a).

"**Incremental Term Loan Maturity Date**" shall mean, with respect to any tranche of Incremental Term Loans made pursuant to Section 2.14, the final maturity date thereof.

"**Incremental Term Loan Repayment Amount**" shall have the meaning provided in Section 2.5(c).

"**Incremental Term Loan**" shall have the meaning provided in Section 2.14(c).

"**Indebtedness**" of any Person shall mean (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (c) the deferred purchase price of assets or services that in accordance with GAAP would be included as a liability on the balance sheet of such Person, (d) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder, (e) all Indebtedness of any other Person secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (f) the principal component of all Capitalized Lease Obligations of such Person, (g) the Swap Termination Value of Hedging Obligations of such Person, (h) without duplication, all Guarantee Obligations of such Person, (i) Disqualified Stock of such Person and (j) Receivables Indebtedness of such Person; *provided* that Indebtedness shall not include (i) trade

and other ordinary course payables and accrued expenses arising in the ordinary course of business, (ii) deferred or prepaid revenue, (iii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller, (iv) any Indebtedness defeased by such Person or by any Subsidiary of such Person, (v) contingent obligations incurred in the ordinary course of business and (vi) earnouts or similar obligation until earned, due and payable and not paid for a period of thirty (30) days.

For all purposes hereof, (a) 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 venture, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness constitutes Indebtedness for borrowed money, obligations in respect of Capitalized Lease Obligations and obligations evidenced by bonds, debentures, notes, loan agreement or other similar instruments, (b) the Indebtedness of the Borrower and the Restricted Subsidiaries shall exclude all intercompany Indebtedness among the Borrower and its Subsidiaries having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business and (c) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid principal amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"**indemnified liabilities**" shall have the meaning provided in Section 13.5.

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

"**Independent Financial Advisor**" shall mean an accounting firm, appraisal firm, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is disinterested with respect to the applicable transaction.

"**Initial ABL Facility**" shall have the meaning provided in the ABL Credit Agreement".

"**Initial Term Commitment**" shall mean (a) in the case of any Lender that is a Lender on the Closing Date, the amount set forth opposite such Lender's name on Schedule 1.1(a) as such Lender's "Initial Term Commitment", (b) in the case of any Tranche B Term Lender, the amount of such Lender's Tranche B Term Loan Commitment under the First Amendment (including, for the avoidance of doubt, the amount allocated to each Rollover Lender (as defined in the First Amendment)) and (c) in the case of any Lender that becomes a Lender after the Closing Date or the First Amendment Effective Date, as applicable, the amount specified as such Lender's "Commitment" in the Assignment and Acceptance pursuant to which such Lender assumed a portion of the Initial Term Commitments, in each case as the same may be changed from time to time pursuant to the terms hereof.

"**Initial Term Loan ~~Maturity Date~~**" ~~shall mean December~~**Repayment Amount**" shall have the meaning provided in Section ~~1~~2.5~~, 2024~~(b).

"**Initial Term Loan Repayment ~~Amount~~Date**" shall have the meaning provided in Section 2.5(b).

"**Initial Term Loans**" shall mean (a) prior to the First Amendment Effective Date, the loans made on the Closing Date pursuant to Section 2.1(a) and (b) from and after the First Amendment Effective Date, the Tranche B Term Loans made on the First Amendment Effective Date pursuant to the First Amendment.

"**Insolvent**" shall mean, with respect to any Multiemployer Plan, the condition that such Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA.

"**Intercompany Subordinated Note**" shall mean the Intercompany Note, dated as of the Closing Date, executed by Holdings, the Borrower and each Restricted Subsidiary, as supplemented from time to time.

"**Interest Period**" shall mean, with respect to any Term Loan, the interest period applicable thereto, as determined pursuant to Section 2.9.

"**Investment**" shall mean, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of Stock, Stock Equivalents, bonds, notes, debentures, partnership, limited liability company membership or other ownership interests or other securities of any other Person (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such other Person) (including any partnership or joint venture); (c) the entering into of any Guarantee Obligation with respect to Indebtedness; or (d) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person; *provided* that, in the event that any Investment is made by the Borrower or any Restricted Subsidiary in any Person through substantially concurrent interim transfers of any amount through one or more other Restricted Subsidiaries, then such other substantially concurrent interim transfers shall be disregarded for purposes of Section 10.5 (excluding, in the case of the Borrower and the Restricted Subsidiaries, intercompany loans, advances and Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business). The amount of any Investment outstanding at any time shall be the original cost of such Investment reduced (except in the case of (x) Investments made using the Available Amount pursuant to Section 10.5(v)(y) and (y) Returns which increase the Available Amount pursuant to clauses (a)(iii), (iv), (v) and (vii) of the definition thereof) by any Returns of the Borrower or a Restricted Subsidiary in respect of such Investment (*provided* that, with respect to amounts received other than in the form of cash or Cash Equivalents, such amount shall be equal to the fair market value of such consideration).

"**Joint Lead Arrangers**" shall mean each of Goldman Sachs Bank USA, Citigroup Global Markets Inc., Barclays Bank PLC, Credit Suisse Securities (USA) LLC and Deutsche Bank Securities Inc., as joint lead arrangers and joint bookrunners for the Lenders under this Agreement and the other Credit Documents; provided that, with respect to the Second Amendment, "Joint Lead Arrangers" shall mean each of JPMorgan Chase Bank, N.A., BofA Securitis, Inc., Barclays Bank PLC, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. and Goldman Sachs Bank USA.

"**Judgment Currency**" shall have the meaning provided in Section 13.20.

"**Junior Indebtedness**" shall have the meaning provided in Section 10.7(a).

"**Junior Lien Intercreditor Agreement**" shall mean the Junior Lien Intercreditor Agreement substantially in the form of Exhibit H or such other form as reasonably agreed between the Borrower and the Administrative Agent.

"**Latest Maturity Date**" shall mean, at any date of determination, the latest Maturity Date applicable to any Class of Term Loans or Commitments hereunder as of such date of determination.

"**LCT Election**" shall have the meaning provided in Section 1.11.

"**LCT Test Date**" shall have the meaning provided in Section 1.11.

"**Lender**" shall have the meaning provided in the preamble to this Agreement.

"**Lender Default**" shall mean (a) the refusal or failure (which has not been cured) of a Lender to make available its portion of any Borrowing that it is required to make hereunder, (b) a Lender having notified the Administrative Agent and/or the Borrower that it does not intend to comply with its funding obligations under this Agreement or has made a public statement to that effect with respect to its funding obligations under this Agreement, (c) a Lender has failed to confirm in a manner reasonably satisfactory to the Administrative Agent, the Borrower that it will comply with its funding obligations under this Agreement, (d) a Lender being deemed insolvent or becoming the subject of a bankruptcy or insolvency proceeding or has admitted in writing that it is insolvent, *provided* that a Lender Default shall not be in effect with respect to a Lender solely by virtue of the ownership or acquisition of any Stock or Stock Equivalents 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 or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender or (e) a Lender that has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action.

"**LIBOR Loan**" shall mean any Term Loan (including any Tranche B Term Loan and Tranche B-1 Term Loan) bearing interest at a rate determined by reference to the LIBOR Rate.

"**LIBOR Rate**" shall mean, for any Interest Period with respect to a LIBOR Loan the rate per annum equal to the ICE Benchmark Administration (or any successor organization) LIBOR Rate ("**ICE LIBOR**"), as published by Reuters (or other commercially available source providing quotations of ICE LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "LIBOR Rate" for such Interest Period, as applicable, shall be the rate *per annum* as may be agreed upon by the Borrower and the Administrative Agent to be a rate at which the Administrative Agent could borrow funds in the London interbank market at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period, were it to do so by asking for and then accepting offers in Dollars of amounts in same day funds comparable to the principal amount of the applicable Term Loans for which the LIBOR Rate is then being determined and with maturities comparable to such Interest Period. Notwithstanding anything to the contrary contained herein, with respect to the Initial Term Loans, in no event shall the LIBOR Rate be less than zero.

"**Lien**" shall mean any mortgage, pledge, security interest, hypothecation, collateral assignment, lien (statutory or other) or similar encumbrance (including any conditional sale or other title retention agreement or any Capital Lease).

"**Limited Condition Transaction**" shall mean (i) any Permitted Acquisition or other similar Investment whose consummation is not conditioned on the availability of, or on obtaining, third party financing ~~and~~, (ii) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment and (iii) a Permitted Change of Control.

"**Management Stockholders**" means the members of management of Avaya Holdings (or any Parent Entity) or its Subsidiaries who are holders of Stock and Stock Equivalents of Avaya Holdings or of any Parent Entity on the Second Amendment Effective Date.

"**Master Agreement**" shall have the meaning provided in the definition of the term "Hedging Agreement".

"**Material Adverse Effect**" shall mean a material adverse effect on (a) the business, assets, operations, properties or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole, (b) the ability of the Credit Parties, taken as a whole, to perform their payment obligations under the Credit Facilities, taken as a whole or (c) material rights or remedies (taken as a whole) of the Administrative Agent and the Lenders under the Credit Documents, excluding any matters (i) publicly disclosed prior to October 23, 2017, including in

any first day pleadings or declarations, in each case in connection with the Case and the events and conditions related and/or leading up to the Case and the effects thereof and (ii) publicly disclosed prior to October 23, 2017 in the Annual Report on Form 10-K of the Borrower and/or any subsequently filed quarterly or periodic report of the Borrower.

"**Material Subsidiary**" shall mean, at any date of determination, each Restricted Subsidiary (a) whose total assets (when combined with the assets of such Restricted Subsidiary's Subsidiaries, after eliminating intercompany obligations) at the last day of the most recent Test Period for which Section 9.1 Financials have been delivered were equal to or greater than 5.0% of the Consolidated Total Assets of the Borrower and the Restricted Subsidiaries at such date or (b) whose total revenues (when combined with the revenues of such Restricted Subsidiary's Subsidiaries, after eliminating intercompany obligations) during such Test Period were equal to or greater than 5.0% of the consolidated revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that at any date of determination, Restricted Subsidiaries that are not Material Subsidiaries shall not, in the aggregate, have (x) total assets (when combined with the assets of such Restricted Subsidiary's Subsidiaries, after eliminating intercompany obligations) at the last day of such Test Period equal to or greater than 10.0% of the Consolidated Total Assets of the Borrower and the Restricted Subsidiaries at such date or (y) total revenues (when combined with the revenues of such Restricted Subsidiary's Subsidiaries, after eliminating intercompany obligations) during the most recent Test Period equal to or greater than 10.0% of the consolidated revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP, then (i) for purposes of Sections 8.1, 9.3, 9.5, 11.5 and 11.7, any Restricted Subsidiaries not satisfying the threshold in clause (a) or (b) above shall constitute Material Subsidiaries so that such condition no longer exists and (ii) for other purposes the Borrower shall, on the date on which the officer's certificate delivered pursuant to Section 9.1(c) of this Agreement, designate in writing to the Administrative Agent one or more of such Restricted Subsidiaries as "Material Subsidiaries" so that such condition no longer exists. It is agreed and understood that neither Receivables Entity nor Securitization Subsidiary shall be a Material Subsidiary and they shall be excluded from the Consolidated Total Assets and total revenue of the Borrower and its Restricted Subsidiaries.

"**Maturity Date**" shall mean ~~the Initial~~(x) with respect to the Tranche B Term Loans, the Tranche B Term Loan Maturity Date, ~~any~~(y) with respect to the Tranche B-1 Term Loans, the Tranche B-1 Term Loan Maturity Date and (z) with respect to any other Class of Term Loans, the Incremental Term Loan Maturity Date~~, any~~ or other maturity date related to any Extension Series of Extended Term Loans or any maturity date related to any Refinancing Term Loan, as applicable.

"**Maximum Incremental Facilities Amount**" shall mean the sum of (1) the greater of (x) $800,000,000 and (y) an amount equal to 100.0% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) *minus* all Incremental Facilities and Incremental Equivalent Debt incurred in reliance of this clause (1), *plus* (2) all voluntary prepayments or repurchases of the Term Loans, Incremental Equivalent Debt and any Refinancing Indebtedness in respect of any Incremental Equivalent Debt on or prior to such date

(in each case except to the extent (i) funded with proceeds of long term Indebtedness or (ii) the prepaid Indebtedness was originally incurred under clause (3) below (or any Refinancing Indebtedness thereof), and in the case of buybacks at discount to par, in the amount of the actual purchase price paid in cash) *minus* all Incremental Facilities and Incremental Equivalent Debt incurred in reliance of this clause (2) *plus* (3) an unlimited amount so long as, in the case of this clause (3) only, such amount at such time could be incurred without causing (x) in the case of Indebtedness secured by Liens on the Collateral that rank *pari passu* with the Liens on the Collateral securing the Initial Term Loans, the Consolidated First Lien Net Leverage Ratio (calculated on a Pro Forma Basis) to exceed (A) 3.30:1.00 or (B) if the proceeds are used to finance any Permitted Acquisition or similar Investments, the higher of (I) 3.30:1.00 and (II) the Consolidated First Lien Net Leverage Ratio immediately prior to the incurrence of such Indebtedness, (y) in the case of Indebtedness secured by Liens on the Collateral that rank junior to the Liens on the Collateral securing the Initial Term Loans, the Consolidated Secured Net Leverage Ratio (calculated on a Pro Forma Basis) to exceed (A) 3.30:1.00 or (B) if the proceeds are used to finance any Permitted Acquisition or similar Investments, the higher of (I) 3.30:1.00 and (II) the Consolidated Secured Net Leverage Ratio immediately prior to the incurrence of such Indebtedness, and (z) in the case of unsecured Indebtedness or Indebtedness secured only by Liens on assets that do not constitute Collateral, the Consolidated Total Net Leverage Ratio (calculated on a Pro Forma Basis) to exceed (A) 3.30:1.00 or (B) if the proceeds are used to finance any Permitted Acquisition or similar Investments, the higher of (I) 3.30:1.00 and (II) the Consolidated Total Net Leverage Ratio immediately prior to the incurrence of such Indebtedness, in each case or clauses 3(x), 3(y) and 3(z) above, after giving effect to any acquisition consummated in connection therewith and all other appropriate Pro Forma Adjustments (including giving effect to the prepayment of Indebtedness in connection therewith), and assuming for purposes of this calculation that cash proceeds of any such Incremental Facility or Incremental Equivalent Debt then being incurred shall not be netted from Consolidated Total Debt Indebtedness for purposes of calculating such Consolidated First Lien Net Leverage Ratio, Consolidated Secured Net Leverage Ratio or Consolidated Total Net Leverage Ratio, as applicable; *provided*, *however*, that if amounts incurred under this clause (3) are incurred concurrently with the incurrence of Incremental Facilities in reliance on clause (1) and/or clause (2) above or any other Indebtedness incurred hereunder in reliance of a "dollar" basket, the Consolidated First Lien Net Leverage Ratio, the Consolidated Secured Net Leverage Ratio or the Consolidated Total Net Leverage Ratio shall be permitted to exceed the Consolidated First Lien Net Leverage Ratio, the Consolidated Secured Net Leverage Ratio or Consolidated Total Net Leverage Ratio, as applicable, set forth in clause (3) above to the extent of such amounts incurred in reliance on clause (1) and/or clause (2) or utilizing such other "dollar" basket solely for the purpose of determining whether such concurrently incurred amounts incurred under this clause (3) are permissible (it being understood that (A) if the Consolidated First Lien Net Leverage Ratio, the Consolidated Secured Net Leverage Ratio or the Consolidated Total Net Leverage Ratio, as applicable, incurrence test is met, then, at the election of the Borrower, any Incremental Facility or Incremental Equivalent Debt may be incurred under clause (3) above regardless of whether there is capacity under clause (1) and/or clause (2) above or utilizing such other "dollar" basket and (B) any portion of any Incremental Facility or Incremental Equivalent Debt incurred in reliance on clause (1) and/or clause (2) may be reclassified, as the Borrower

may elect from time to time, as incurred under clause (3) if the Borrower meets the applicable leverage ratio under clause (3) at such time on a Pro Forma Basis).

"**Maximum Tender Condition**" shall have the meaning provided in Section 2.17(b).

"**Minimum Borrowing Amount**" shall mean (a) with respect to a Borrowing of LIBOR Loans, $5,000,000 (or, if less, the entire remaining Commitments of any applicable Credit Facility at the time of such Borrowing), and (b) with respect to a Borrowing of ABR Loans, $1,000,000 (or, if less, the entire remaining Commitments of any applicable Credit Facility at the time of such Borrowing).

"**Minimum Tender Condition**" shall have the meaning provided in Section 2.17(b).

"**Minority Investment**" shall mean any Person (other than a Subsidiary) in which the Borrower or any Restricted Subsidiary owns Stock or Stock Equivalents, including any joint venture (regardless of form of legal entity).

"**MNPI**" shall mean, with respect to Avaya Holdings and its Subsidiaries, any information other than information that is publically available or not material with respect to them or their respective securities for purposes of United States federal and state securities laws.

"**Moody's**" shall mean Moody's Investors Service, Inc. or any successor by merger or consolidation to its business.

"**Mortgage**" shall mean a mortgage or a deed of trust, deed to secure debt, trust deed or other security document entered into by the owner of a Mortgaged Property and the Collateral Agent for the benefit of the Secured Parties in respect of that Mortgaged Property, in a form to be mutually agreed with the Administrative Agent.

"**Mortgaged Property**" shall mean all Real Estate (i) set forth on Schedule 1.1(b) and (ii) with respect to which a Mortgage is required to be granted pursuant to Section 9.12.

"Multiemployer Plan" shall mean a plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA (i) to which any of the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate is then making or has an obligation to make contributions or (ii) with respect to which the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate could incur liability pursuant to Title IV of ERISA.

"**Narrative Report**" shall mean, with respect to the financial statements for which such narrative report is required, a management's discussion and analysis of the financial condition and results of operations of the Borrower and its consolidated Subsidiaries for the applicable period to which such financial statements relate.

"Net Cash Proceeds" shall mean,

(1) with respect to any Asset Sale Prepayment Event or any Recovery Prepayment Event, (a) the gross cash proceeds (including payments from time to time in respect of installment obligations, if applicable, but only as and when received) received by or on behalf of the Borrower or any Restricted Subsidiary in connection therewith, as the case may be, less (b) the sum of:

(i) the amount, if any, of all taxes (including in connection with any repatriation of funds) paid or estimated by the Borrower in good faith to be payable by the Borrower or any Restricted Subsidiary in connection with such Prepayment Event,

(ii) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) associated with the assets that are the subject of such Prepayment Event and (y) retained by the Borrower or any Restricted Subsidiary (including any pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction); *provided* that the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such Prepayment Event occurring on the date of such reduction,

(iii) the amount of (x) any Indebtedness (other than Indebtedness hereunder, the ABL Obligations and any other Indebtedness secured by a Lien that ranks *pari passu* with or is subordinated to the Liens securing the Obligations or the ABL Obligations) secured by a Lien on the assets that are the subject of such Prepayment Event, to the extent that the instrument creating or evidencing such Indebtedness requires that such Indebtedness be repaid upon consummation of such Prepayment Event and (y) any Excess Contribution to be extent required to be made upon the occurrence of such Prepayment Event,

(iv) the amount of any proceeds of such Prepayment Event that the Borrower or any Restricted Subsidiary has reinvested (or intends to reinvest within the Reinvestment Period, has entered into an Acceptable Reinvestment Commitment prior to the last day of the Reinvestment Period to reinvest or, with respect to any Recovery Prepayment Event, provided an Acceptable Reinvestment Commitment or a Restoration Certification prior to the last day of the Reinvestment Period) in the business of the Borrower or any Restricted Subsidiary (subject to Section 9.15), including for the repair, restoration or replacement of an asset or assets subject to such Prepayment Event; *provided* that any portion of such proceeds that has not been so reinvested within such Reinvestment Period (with respect to such Prepayment Event, the "**Deferred Net Cash Proceeds**") shall, unless the Borrower or any Restricted Subsidiary has entered into an Acceptable Reinvestment Commitment or provided a Restoration Certification prior to the last day of such Reinvestment Period to reinvest such proceeds, (x) be deemed to be Net Cash Proceeds of such Prepayment Event occurring on the last day of such

Reinvestment Period or, if later, 180 days after the date the Borrower or such Restricted Subsidiary has entered into such Acceptable Reinvestment Commitment or provided such Restoration Certification, as applicable (such last day or 180th day, as applicable, the "**Deferred Net Cash Proceeds Payment Date**"), and (y) be applied to the repayment of Term Loans in accordance with Section 5.2(a)(i),

(v) in the case of any Asset Sale Prepayment Event, any funded escrow established pursuant to the documents evidencing any such sale or Disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or Disposition; *provided* that the amount of any subsequent reduction of such escrow (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such a Prepayment Event occurring on the date of such reduction solely to the extent that the Borrower and/or any Restricted Subsidiaries receives cash in an amount equal to the amount of such reduction,

(vi) in the case of any Asset Sale Prepayment Event or Recovery Prepayment Event by a non-Wholly Owned Restricted Subsidiary, the *pro rata* portion of the Net Cash Proceeds thereof (calculated without regard to this clause (vi)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a Wholly Owned Restricted Subsidiary as a result thereof, and

(vii) reasonable and customary fees, commissions, expenses (including attorney's fees, investment banking fees, survey costs, title insurance premiums and recording charges, transfer taxes, deed or mortgage recording taxes and other customary expenses and brokerage, consultant and other customary fees), issuance costs, premiums, discounts and other costs paid by the Borrower or any Restricted Subsidiary, as applicable, in connection with such Prepayment Event, in each case only to the extent not already deducted in arriving at the amount referred to in clause (a) above; and

(2) with respect to the incurrence or issuance of any Indebtedness or the issuance of any Stock or Stock Equivalent or capital contribution, the excess, if any, of (a) the sum of cash and Cash Equivalents received in connection with such incurrence or issuance over (b) reasonable and customary fees, commissions, expenses (including attorney's fees, investment banking fees, survey costs, title insurance premiums and recording charges, transfer taxes, deed or mortgage recording taxes and other customary expenses and brokerage, consultant and other customary fees), issuance costs, premiums, discounts and other costs paid by the Borrower or any Restricted Subsidiary in connection with such incurrence or issuance.

"**New Debt Incurrence Prepayment Event**" shall mean any issuance or incurrence by the Borrower or any Restricted Subsidiary of any Indebtedness permitted to be issued or incurred under Section 10.1(v)(i) and any Refinancing Term Loans.

"**New Holdings**" shall have the meaning provided in the definition of "Holdings".

"**New Refinancing Commitments**" shall have the meaning provided in Section 2.15(b).

"**Non-Consenting Lender**" shall have the meaning provided in Section 13.7(b).

"**Non-Defaulting Lender**" shall mean and include each Lender other than a Defaulting Lender.

"**Non-U.S. Lender**" shall mean any Agent or Lender that is not, for U.S. federal income tax purposes, (a) an individual who is a citizen or resident of the U.S., (b) a corporation, partnership or entity treated as a corporation or partnership created or organized in or under the laws of the U.S., or any political subdivision thereof, (c) an estate whose income is subject to U.S. federal income taxation regardless of its source or (d) a trust if a court within the U.S. is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of such trust or a trust that has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

"**Notice of Borrowing**" shall mean a request of the Borrower in accordance with the terms of Section 2.3 and substantially in the form of Exhibit A or such other form as shall be approved by the Administrative Agent (acting reasonably).

"**Notice of Conversion or Continuation**" shall have the meaning provided in Section 2.6(a).

"**Obligations**" shall mean all advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Credit Document or otherwise with respect to any Term Loan or under any Secured Cash Management Agreement or Secured Hedging Agreement, in each case, entered into with Holdings, the Borrower or any Restricted Subsidiary, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Credit Party of any proceeding under any bankruptcy or insolvency law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, in each case, other than Excluded Swap Obligations. Without limiting the generality of the foregoing, the Obligations of the Credit Parties under the Credit Documents (and any of their Restricted Subsidiaries to the extent they have obligations under the Credit Documents) (i) include the obligation (including guarantee obligations) to pay principal, interest, charges, expenses, fees, attorney costs, indemnities and other amounts payable by any Credit Party under any Credit Document and (ii) exclude, notwithstanding any term or condition in this Agreement or any other Credit Documents, any Excluded Swap Obligations.

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

of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Other Taxes**" shall mean any and all present or future stamp, registration, documentary or other similar Taxes arising from any payment made or required to be made under this Agreement or any other Credit Document or from the execution or delivery of, registration or enforcement of, consummation or administration of, or otherwise with respect to, this Agreement or any other Credit Document except any such Taxes that are any Taxes imposed on any Agent or any Lender as a result of any current or former connection between such Agent or Lender and the jurisdiction of the Governmental Authority imposing such Tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Agent or Lender having executed, delivered or performed its obligations or received a payment under, or having been a party to or having enforced, this Agreement or any other Credit Document) imposed with respect to an assignment (other than an assignment made pursuant to Section 13.7 or Section 2.12).

"**Overnight Rate**" shall mean, for any day, the greater of (a) the Federal Funds Effective Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"**Parent Entity**" shall mean any direct or indirect parent of Avaya Holdings.

"**Participant**" shall have the meaning provided in Section 13.6(c)(i).

"**Participant Register**" shall have the meaning provided in Section 13.6(c)(iii).

"**Participating Receivables Grantor**" shall mean the Borrower or any Restricted Subsidiary that is or that becomes a participant or originator in a Permitted Receivables Financing.

"**Patriot Act**" shall have the meaning provided in Section 13.18.

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"**PBGC Stipulation of Settlement**" shall have the meaning assigned to such term in the Plan.

"**Pension Plan**" shall mean any employee pension benefit plan (as defined in Section 3(2) of ERISA, but excluding any Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code or Section 302 of ERISA and is maintained or contributed to by the Borrower, any Subsidiary or ERISA Affiliate or with respect to which the Borrower, any Subsidiary or any ERISA Affiliate could incur liability pursuant to Title IV of ERISA.

"**Perfection Certificate**" shall mean a certificate of the Borrower substantially in the form of Exhibit E or any other form approved by the Administrative Agent (acting reasonably).

"**Permitted Acquiror**" shall mean any Person or group whose acquisition of beneficial ownership constitutes a Permitted Change of Control.

"**Permitted Acquisition**" shall mean the acquisition, by merger or otherwise, by the Borrower or any Restricted Subsidiary of assets (including assets constituting a business unit, line of business or division) or Stock or Stock Equivalents, so long as (a) if such acquisition involves any Stock or Stock Equivalents, such acquisition shall result in the issuer of such Stock or Stock Equivalents and its Subsidiaries becoming a Restricted Subsidiary and a Subsidiary Guarantor, to the extent required by Section 9.11 or designated as an Unrestricted Subsidiary pursuant to the terms hereof, (b) such acquisition shall result in the Collateral Agent, for the benefit of the applicable Secured Parties, being granted a security interest in any Stock, Stock Equivalent or any assets so acquired, to the extent required by Section 9.11, Section 9.12 and/or the Security Agreement, (c) after giving effect to such acquisition, the Borrower and the Restricted Subsidiaries shall be in compliance with Section 9.15 and (d) no Specified Default shall have occurred and be continuing.

"**Permitted Change of Control**" shall mean any transaction or series of transactions that would otherwise constitute a Change of Control, so long as:

(a) the Consolidated Secured Net Leverage Ratio after giving Pro Forma Effect thereto is not greater than 2.05 to 1.00; *provided* that, notwithstanding anything herein to the contrary, when calculating the Consolidated Secured Net Leverage Ratio for purposes of this definition, the Borrower shall be entitled at its option to make such calculations as it would if making calculations of baskets or ratios in connection with a Limited Condition Transaction;

(b) the Borrower shall have obtained (or obtained a reaffirmation of the) public corporate credit rating and public corporate family rating of the Borrower and public ratings of the Term Loans hereunder, in each case (after giving effect to the Permitted Change of Control and all transactions related thereto) from (x) Moody's and (y) either S&P or Fitch, respectively, of at least B (outlook stable), B2 (outlook stable) and B (outlook stable), as applicable;

(c) (i) at least fifteen (15) Business Days prior to the Permitted Change of Control Effective Date, the Borrower shall have delivered notice in writing to the Administrative Agent (for prompt further distribution to each Lender) of such Permitted Change of Control and of the identity of the Permitted Acquiror and (ii) not later than three (3) Business Days prior to the Permitted Change of Control Effective Date, the Permitted Acquiror and/or the Borrower, as applicable, shall have provided to the Administrative Agent (x) all customary information applicable to the Permitted Acquiror that shall have been reasonably requested by the Administrative Agent in writing at least ten (10) Business Days prior to the Permitted Change of Control Effective Date that the

Administrative Agent determines is necessary and is required by United States regulatory authorities to comply with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and (y) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation after giving effect to such Permitted Change of Control, an updated Beneficial Ownership Certification of the Borrower; and

(d) the Administrative Agent shall have a received an officer's certificate from the Borrower stating that the conditions described in clauses (a) through (c) above have been satisfied.

"**Permitted Change of Control Costs**" means all fees, costs and expenses incurred or payable by Holdings, any Parent Entity, the Borrower or any of its Restricted Subsidiaries in good faith in connection with a Permitted Change of Control.

"**Permitted Change of Control Effective Date**" shall mean the date of consummation of a Permitted Change of Control.

"**Permitted Debt Exchange**" shall have the meaning provided in Section 2.17(a).

"**Permitted Debt Exchange Instruments**" shall have the meaning provided in Section 2.17(a).

"**Permitted Debt Exchange Offer**" shall have the meaning provided in Section 2.17(a).

"**Permitted Encumbrances**" shall mean:

(a) Liens for taxes, assessments or governmental charges or claims (including Liens imposed by the PBGC or similar Liens) not yet delinquent or that are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established to the extent required by and in accordance with GAAP or that are not required to be paid pursuant to Section 9.4;

(b) Liens in respect of property or assets of the Borrower or any Restricted Subsidiary imposed by Applicable Law, such as carriers', landlords', construction contractors', warehousemen's and mechanics' Liens and other similar Liens, arising in the ordinary course of business, in respect of amounts not more than 60 days overdue and not being contested so long as such Liens arise in the ordinary course of business and do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens arising from judgments or decrees in circumstances not constituting an Event of Default under Section 11.9;

(d) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance, employee benefit and pension liability and other types

of social security or similar legislation, or to secure the performance of tenders, statutory obligations, trade contracts (other than for payment of Indebtedness), leases, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, surety, performance and return-of-money bonds and other similar obligations, in each case incurred in the ordinary course of business or otherwise constituting Investments permitted by Section 10.5;

(e) ground leases or subleases, licenses or sublicenses in respect of Real Estate on which facilities owned or leased by the Borrower or any of the Restricted Subsidiaries are located;

(f) easements, rights-of-way, licenses, reservations, servitudes, permits, conditions, covenants, rights of others, restrictions (including zoning restrictions), royalty interests and leases, minor defects, exceptions or irregularities in title or survey, encroachments, protrusions and other similar charges or encumbrances (including those to secure health, safety and environmental obligations), which do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(g) with respect to any Mortgaged Property, any exception on the title policy issued and matters shown on the Survey delivered which do not in the aggregate materially adversely affect the value of said property or materially impair its use in the operation of the business of the Borrower or any of the Restricted Subsidiaries;

(h) any interest or title of a lessor, sublessor, licensor, sublicensor or grantor of an easement or secured by a lessor's, sublessor's, licensor's, sublicensor's interest or grantor of an easement under any lease, sublease, license, sublicense or easement to be entered into by the Borrower or any Restricted Subsidiary as lessee, sublessee, licensee, grantee or sublicensee to the extent permitted or not prohibited by this Agreement;

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

(j) leases, licenses, subleases or sublicenses granted to others not interfering in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole or constituting Disposition permitted under Section 10.4;

(k) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings made in respect of operating leases entered into by the Borrower or any Restricted Subsidiary;

(l) any zoning, land use, environmental or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Estate

that does not materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(m) any Lien arising by reason of deposits with or giving of any form of security to any Governmental Authority for any purpose at any time as required by Applicable Law as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Borrower or any Restricted Subsidiary to maintain self-insurance or to participate in any fund for liability on any insurance risks;

(n) rights reserved to or vested in any Governmental Authority by the terms of any right, power, franchise, grant, license or permit, or by any provision of Applicable Law, to terminate or modify such right, power, franchise, grant, license or permit or to purchase or recapture or to designate a purchaser of any of the property of such person;

(o) Liens arising under any obligations or duties affecting any of the property, the Borrower or any Restricted Subsidiary to any Governmental Authority with respect to any franchise, grant, license or permit which do not materially impair the use of such property for the purposes for which it is held;

(p) rights reserved to or vested in any Governmental Authority to use, control or regulate any property of such Person, which do not materially impair the use of such property for the purposes for which it is held;

(q) any obligations or duties, affecting the property of the Borrower or any Restricted Subsidiary, to any Governmental Authority with respect to any franchise, grant, license or permit;

(r) a set-off or netting rights granted by the Borrower or any Restricted Subsidiary pursuant to any Hedging Agreements solely in respect of amounts owing under such agreements;

(s) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.5; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(t) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(u) Liens on cash and Cash Equivalents that are earmarked to be used to satisfy or discharge Indebtedness; *provided* that (i) such cash and/or Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be satisfied

or discharged, (ii) such Liens extend solely to the account in which such cash and/or Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be satisfied or discharged, and (iii) the satisfaction or discharge of such Indebtedness is expressly permitted hereunder;

(v) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by Applicable Laws;

(w) Liens on Stock of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(x) Liens (i) of a collecting bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) or attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking or other financial institutions or other electronic payment service providers arising as a matter of law or customary contract encumbering deposits, including deposits in "pooled deposit" or "sweep" accounts (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(y) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business permitted or not prohibited by this Agreement;

(z) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.5;

(aa) any amounts held by a trustee in the funds and accounts under an indenture securing any revenue bonds issued for the benefit of the Borrower or any Restricted Subsidiary;

(bb) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

(cc) Liens (i) on any cash earnest money deposits or cash advances made by the Borrower or any of the Restricted Subsidiaries in connection with any letter of

intent or purchase agreement permitted under this Agreement, (ii) on other cash advances in favor of the seller of any property to be acquired in an Investment or other acquisition permitted hereunder to be applied against the purchase price for such Investment or other acquisition, (iii) consisting of an agreement to Dispose of any property pursuant to a Disposition permitted hereunder (or reasonably expected to be so permitted by the Borrower at the time such Lien was granted) and (iv) on cash advances in favor of the purchaser of any property to be Disposed of in a Disposition permitted hereunder to secure indemnity, fees and other seller obligations;

(dd) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(ee) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business or consistent with past practice;

(ff) any restrictions on any Stock or Stock Equivalents or other joint venture interests of the Borrower or any Restricted Subsidiary providing for a breach, termination or default under any owners, participation, shared facility, joint venture, stockholder, membership, limited liability company or partnership agreement between such Person and one or more other holders of such Stock or Stock Equivalents or interest of such Person, if a security interest or other Lien is created on such Stock or Stock Equivalents or interest as a result thereof and other similar Liens; and

(gg) Liens securing Indebtedness or other obligations (i) of the Borrower or any Restricted Subsidiary in favor of a Credit Party and (ii) of any other Restricted Subsidiary that is not a Credit Party in favor of any other Restricted Subsidiary that is not a Credit Party.

"**Permitted Holders**" means, collectively, (i) the Management Stockholders (including any Management Stockholders holding Stock and Stock Equivalents through an equityholding vehicle), (ii) any Person who is acting solely as an underwriter in connection with a public or private offering of Stock and Stock Equivalents of any Parent Entity or Avaya Holdings, acting in such capacity, (iii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing, any Permitted Plan or any Person or group that becomes a Permitted Holder specified in the last sentence of this definition are members and any member of such group; *provided* that, in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in subclauses (i) through (ii), collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of Avaya Holdings or any Parent Entity held by such group, and (iv) any Permitted Plan. Any Person or group whose acquisition of

beneficial ownership constitutes a Permitted Change of Control will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"**Permitted Other Debt**" shall mean, collectively, Permitted Other Loans and Permitted Other Notes.

"**Permitted Other Loans**" shall mean senior secured or unsecured loans (which loans, if secured, may either be secured *pari passu* with the Obligations (without regard to control of remedies) or may be secured by a Lien ranking junior to the Lien securing the Obligations), "mezzanine" loans or subordinated loans, in either case issued by the Borrower or a Guarantor (unless permitted to be incurred by a non-Credit Party under Section 10.1(k)), (a) if such Permitted Other Loans are incurred (and for the avoidance of doubt, not "assumed"), the scheduled final maturity and Weighted Average Life to Maturity of which are no earlier than the ~~scheduled final~~Latest ~~m~~Maturity Date and Weighted Average Life to Maturity, respectively, of the Initial Term Loans or, in the case of any Permitted Other Loans that are issued or incurred in exchange for, or which modify, replace, refinance, refund, renew, restructure or extend any other Indebtedness permitted by Section 10.1, no earlier than the scheduled final maturity and Weighted Average Life to Maturity of such exchanged, modified, replaced, refinanced, refunded, renewed, restructured or extended Indebtedness; *provided* that the requirements of the foregoing clause (a) shall not apply to any customary bridge facility so long as the Indebtedness into which such customary bridge facility is to be converted complies with such requirements, (b) the covenants (excluding, for the avoidance of doubt, any pricing, fee, prepayment premiums, optional prepayment or redemption terms) and events of default of which, taken as a whole, are not materially more restrictive to the Borrower and the Restricted Subsidiaries than the terms of the Initial Term Loans unless (1) Lenders under the Initial Term Loans also receive the benefit of such more restrictive terms, (2) such terms reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined in good faith by the Borrower) (it being understood that to the extent that any financial maintenance covenant is included for the benefit of any Permitted Other Loans, such financial maintenance covenant shall be added for the benefit of any Term Loans outstanding hereunder at the time of incurrence of such Permitted Other Loans (except for any financial maintenance covenants applicable only to periods after the Latest Maturity Date, as determined at the time of issuance or incurrence of such Permitted Other Loans)) or (3) any such provisions apply after the Latest Maturity Date as determined at the time of issuance or incurrence of such Permitted Other Loans, (c) unless permitted to be incurred by a non-Credit Party under Section 10.1(k), of which no Subsidiary of the Borrower (other than a Guarantor) is an obligor and (d) if secured, unless permitted to be incurred by a non-Credit Party under Section 10.1(k), are not secured by any assets other than all or any portion of the Collateral.

"**Permitted Other Notes**" shall mean senior secured or unsecured notes (which notes, if secured, may either be secured *pari passu* with the Obligations (without regard to control of remedies) or may be secured by a Lien ranking junior to the Lien securing the Obligations), mezzanine notes or subordinated notes, in either case issued by the Borrower or a Guarantor (unless permitted to be incurred by a non-Credit Party under Section 10.1(k)), (a) if such Permitted Other Notes are incurred (and for the avoidance of doubt, not "assumed"), the

terms of which do not provide for any scheduled repayment, mandatory redemption or sinking fund obligations (other than customary scheduled principal amortization payments, customary offers to repurchase upon a change of control, asset sale or casualty or condemnation event, customary acceleration rights after an event of default, and AHYDO Catch-Up Payments) prior to, at the time of incurrence, the ~~scheduled final~~Latest ~~m~~Maturity ~~d~~Date of the Initial Term Loans or, in the case of any Permitted Other Notes that are issued or incurred in exchange for, or which modify, replace, refinance, refund, renew or extend any other Indebtedness permitted by Section 10.1, prior to the scheduled final maturity date of such exchanged, modified, replaced, refinanced, refunded, renewed or extended Indebtedness (other than customary scheduled principal amortization payments, customary offers to repurchase upon a change of control, asset sale or casualty or condemnation event, customary acceleration rights after an event of default, and AHYDO Catch-Up Payments); *provided* that the requirements of the foregoing clause (a) shall not apply to any customary bridge facility so long as the Indebtedness into which such customary bridge facility is to be converted complies with such requirements, (b) the covenants (excluding, for the avoidance of doubt, any pricing, fee, prepayment premiums, optional prepayment or redemption terms) and events of default of which, taken as a whole, are not materially more restrictive to the Borrower and the Restricted Subsidiaries than the terms of the Initial Term Loans unless (1) Lenders under the Initial Term Loans also receive the benefit of such more restrictive terms, (2) such terms reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined in good faith by the Borrower) (it being understood that to the extent that any financial maintenance covenant is included for the benefit of any Permitted Other Notes, such financial maintenance covenant shall be added for the benefit of any Term Loans outstanding hereunder at the time of incurrence of such Permitted Other Notes (except for any financial maintenance covenants applicable only to periods after the Latest Maturity Date, as determined at the time of issuance or incurrence of such Permitted Other Notes)) or (3) any such provisions apply after the Latest Maturity Date at the time of issuance or incurrence of such Permitted Other Notes, (c) unless permitted to be incurred by a non-Credit Party under Section 10.1(k), of which no Subsidiary of the Borrower (other than a Guarantor) is an obligor and (d) if secured, unless permitted to be incurred by a non-Credit Party under Section 10.1(k), are not secured by any assets other than all or any portion of the Collateral.

"**Permitted Plan**" means any employee benefits plan of Holdings or any of its Affiliates and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

"**Permitted Receivables Financing**" shall mean any of one or more receivables financing programs as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities and other customary forms of support, in each case made in connection with such facilities) to the Borrower and the Restricted Subsidiaries (other than a Receivables Entity) providing for the sale, conveyance, or contribution to capital of Receivables Facility Assets by Participating Receivables Grantors in transactions purporting to be sales of Receivables Facility Assets to either (a) a Person that is not a Restricted Subsidiary or (b) a Receivables Entity that in turn funds such purchase by the direct or indirect

sale, transfer, conveyance, pledge, or grant of participation or other interest in such Receivables Facility Assets to a Person that is not a Restricted Subsidiary.

"**Permitted Reorganization**" shall mean re-organizations and other activities related to tax planning and re-organization, excluding transactions described in Section 10.4(g), so long as, after giving effect thereto, the security interest of the Lenders in the Collateral or the value of the Guarantees, taken as a whole, is not materially impaired (as determined by the Borrower in good faith).

"**Person**" shall mean any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other enterprise or any Governmental Authority.

"**Plan**" shall have the meaning provided in the Recitals to this Agreement.

"**Platform**" shall have the meaning provided in Section 13.17(c).

"**Post-Transaction Period**" shall mean, with respect to any Specified Transaction, the period beginning on the date such Specified Transaction is consummated and ending on the last day of the eighth full consecutive fiscal quarter immediately following the date on which such Specified Transaction is consummated.

"**Prepayment Event**" shall mean any Asset Sale Prepayment Event, Recovery Prepayment Event, Debt Incurrence Prepayment Event or New Debt Incurrence Prepayment Event.

"**Previous Holdings**" shall have the definition provided in the definition of "Holdings".

"**Pro Forma Adjustment**" shall mean, for any Test Period that includes all or any part of a fiscal quarter included in any Post-Transaction Period, with respect to the Acquired EBITDA of the applicable Pro Forma Entity or the Consolidated EBITDA of the Borrower, the pro forma increase or decrease in such Acquired EBITDA or such Consolidated EBITDA (including as the result of any "run-rate" synergies, operating expense reductions and improvements and cost savings), as the case may be, projected by the Borrower in good faith as a result of (a) actions taken or with respect to which substantial steps have been taken or are expected to be taken, prior to or during such Post-Transaction Period for the purposes of realizing cost savings or (b) any additional costs incurred prior to or during such Post-Transaction Period, in each case in connection with the combination of the operations of such Pro Forma Entity with the operations of the Borrower and the Restricted Subsidiaries; *provided* that (A) at the election of the Borrower, such Pro Forma Adjustment shall not be required to be determined for any Pro Forma Entity to the extent the aggregate consideration paid in connection with such acquisition was less than $50,000,000 or the aggregate Pro Forma Adjustment would be less than $50,000,000 and (B) so long as such actions are taken, or to be taken, prior to or during such Post-Transaction Period or such costs are incurred prior to or during such Post-Transaction Period, as applicable, it may be assumed, for purposes of projecting such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may

be, that the applicable amount of such "run rate" synergies, operating expense reductions and improvements and cost savings and other adjustments will be realizable during the entirety of such Test Period, or the applicable amount of such additional "run rate" synergies, operating expense reductions and improvements and cost savings and other adjustments, as applicable, will be incurred during the entirety of such Test Period; *provided*, *further*, that any such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, shall be without duplication for "run rate" synergies, operating expense reductions and improvements and cost savings and other adjustments or additional costs already included in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, for such Test Period.

"**Pro Forma Basis**" and "**Pro Forma Effect**" shall mean, with respect to compliance with any test or covenant hereunder, that (A) to the extent applicable, the Pro Forma Adjustment shall have been made and (B) all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (i) in the case of a Disposition of all or substantially all Stock in any Subsidiary of the Borrower or any division, product line, or facility used for operations of the Borrower or any Subsidiary of the Borrower, shall be excluded, and (ii) in the case of a Permitted Acquisition or Investment described in the definition of "Specified Transaction", shall be included, (b) any retirement or repayment of Indebtedness, and (c) any incurrence or assumption of Indebtedness by the Borrower or any Restricted Subsidiary in connection therewith (it being agreed that (x) if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination, (y) interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by an Authorized Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP and (z) interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate as the Borrower or any applicable Restricted Subsidiary may designate); *provided* that, without limiting the application of the Pro Forma Adjustment pursuant to (A) above (but without duplication thereof), the foregoing pro forma adjustments may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to events (including operating expense reductions) that are (i) (x) directly attributable to such transaction and (y) reasonably identifiable and factually supportable in the good faith judgment of the Borrower or (ii) otherwise consistent with the definition of Pro Forma Adjustment.

"**Pro Forma Entity**" shall have the meaning provided in the definition of the term "Acquired EBITDA".

"**Prohibited Transaction**" shall have the meaning assigned to such term in Section 406 of ERISA or Section 4975(c) of the Code.

"**Projections**" shall have the meaning provided in Section 9.1(g).

"**Public Reporting Entity**" shall mean an entity that (i) complies with the reporting obligations under U.S. securities laws, (ii) is designated by the Borrower as a "Public Reporting Entity" and (iii) whose consolidated financial results include the financial results of the Borrower and its consolidated subsidiaries and customary reconciliations to eliminate the financial results of entities other than the Borrower and its consolidated subsidiaries.

"**Qualified Securitization Financing**" shall mean any Securitization Facility (and any guarantee of such Securitization Facility), that meets the following conditions: (i) the Borrower shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the Restricted Subsidiaries; (ii) all sales or contribution of Securitization Assets and related assets by the Borrower or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in good faith by the Borrower); (iii) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings; and (iv) the obligations under such Securitization Facility are nonrecourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower or any Restricted Subsidiary (other than a Securitization Subsidiary).

"**Real Estate**" shall mean any interest in land, buildings and improvements owned, leased or otherwise held by any Credit Party, but excluding all operating fixtures and equipment.

"**Receivables Entity**" shall mean any Person formed solely for the purpose of (i) facilitating or entering into one or more Permitted Receivables Financings, and (ii) in each case, engaging in activities reasonably related or incidental thereto.

"**Receivables Facility Assets**" shall mean currently existing and hereafter arising or originated Accounts, Payment Intangibles and Chattel Paper (as each such term is defined in the UCC) owed or payable to any Participating Receivables Grantor, and to the extent related to or supporting any Accounts, Chattel Paper or Payment Intangibles, or constituting a receivable, all General Intangibles (as each such term is defined in the UCC) and other forms of obligations and receivables owed or payable to any Participating Receivables Grantor, including the right to payment of any interest, finance charges, late payment fees or other charges with respect thereto (the foregoing, collectively, being "**receivables**"), all of such Participating Receivables Grantor's rights as an unpaid vendor (including rights in any goods the sale of which gave rise to any receivables), all security interests or liens and property subject to such security interests or liens from time to time purporting to secure payment of any receivables or other items described in this definition, all guarantees, letters of credit, security agreements, insurance and other agreements or arrangements from time to time supporting or securing payment of any receivables

or other items described in this definition, all customer deposits with respect thereto, all rights under any contracts giving rise to or evidencing any receivables or other items described in this definition, and all documents, books, records and information (including computer programs, tapes, disks, data processing software and related property and rights) relating to any receivables or other items described in this definition or to any obligor with respect thereto and any other assets customarily transferred together with receivables in connection with a non-recourse accounts receivable factoring arrangement and which are sold, conveyed assigned or otherwise transferred or pledge in connection with a Permitted Receivables Financing, and all proceeds of the foregoing.

"**Receivables Indebtedness**" shall mean, at any time, with respect to any receivables, securitization or similar facility (including any Permitted Receivables Financing or any Qualified Securitization Financing but excluding any account receivable factoring facility entered into incurred in the ordinary course of business), the aggregate principal, or stated amount, of the "indebtedness", fractional undivided interests (which stated amount may be described as a "net investment" or similar term reflecting the amount invested in such undivided interest) or other securities incurred or issued pursuant to such receivables, securitization or similar facility, at such time, in each case outstanding at such time.

"**Recovery Event**" shall mean (a) any damage to, destruction of or other casualty or loss involving any property or asset or (b) any seizure, condemnation, confiscation or taking (or transfer under threat of condemnation) under the power of eminent domain of, or any requisition of title or use of or relating to, or any similar event in respect of, any property or asset.

"**Recovery Prepayment Event**" shall mean the receipt of Net Cash Proceeds with respect to any settlement or payment in connection with any Recovery Event in respect of any property or asset of the Borrower or any Restricted Subsidiary; *provided* that the term "Recovery Prepayment Event" shall not include any Asset Sale Prepayment Event.

"**Redemption Notice**" shall have the meaning provided in Section 10.7(a).

"**Refinanced Debt**" shall have the meaning provided in Section 2.15(b).

"**Refinancing Amendment**" shall have the meaning provided in Section 2.15(b)(vii).

"**Refinancing Commitments**" shall have the meaning provided in Section 2.15(b).

"**Refinancing Facility**" shall mean any new Class of Term Loans or Commitments or increases to existing Classes of Term Loans or Commitments established pursuant to Section 2.15(b).

"**Refinancing Facility Closing Date**" shall have the meaning provided in Section 2.15(b)(iv).

"**Refinancing Increased Amount**" shall have the meaning provided in the definition of Refinancing Indebtedness.

"**Refinancing Indebtedness**" shall mean, with respect to any Person, any modification, refinancing, refunding, renewal, replacement, exchange or extension of any Indebtedness of such Person (including in respect of any previously incurred Refinancing Indebtedness); *provided* that (a) unless incurred by utilizing another basket under Section 10.1, the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced, exchanged or extended except by an amount (the "**Refinancing Increased Amount**") equal to unpaid accrued interest and premium thereon (including tender premiums) plus other reasonable amounts paid, and fees and expenses (including upfront fees and original issue discount) reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement, exchange or extension plus an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Refinancing Indebtedness in respect of Indebtedness permitted pursuant to Section 10.1(h) or (i) or with respect to any customary bridge facility so long as the Indebtedness into which such customary bridge facility is to be converted complies with the requirements in this clause (b), such modification, refinancing, refunding, renewal, replacement, exchange or extension has a scheduled final maturity date equal to or later than the scheduled final maturity date of, and, with respect to term loans or notes, has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced, exchanged or extended (except by virtue of amortization or prepayment of such Indebtedness prior to the time of incurrence of such Refinancing Indebtedness), (c) with respect to a Refinancing Indebtedness in respect of Junior Indebtedness, (i) at the time thereof, no Event of Default shall have occurred and be continuing, (ii) if such Junior Indebtedness is subordinated to the Obligations in right of payment, the Refinancing Indebtedness is subordinated to the Obligations and the applicable Guarantee at least to the same extent as (and on terms that are at least as favorable to the Secured Parties as those contained in) such Junior Indebtedness so refinanced, (iii) if such Junior Indebtedness is unsecured, the Refinancing Indebtedness is unsecured, (iv) if such Indebtedness is subordinated to the Obligations with respect to lien priority, the Refinancing Indebtedness is subordinated to the Obligations with respect to lien priority and (v) unless incurred by utilizing another basket under Section 10.1, such modification, refinancing, refunding, renewal, replacement, exchange or extension is incurred by the Persons who are the obligors of the Indebtedness being modified, refinanced, refunded, renewed, replaced, exchanged or extended, (d) if the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended was subject to any intercreditor agreement (including any Applicable Intercreditor Agreement), to the extent the Refinancing Indebtedness is secured by any Collateral, the holders thereof (or their representative on their behalf) shall become party to each Applicable Intercreditor Agreement, (e) in the case of any Refinancing Indebtedness in respect of the ABL Credit Agreement, Liens on any Collateral securing such Refinancing Indebtedness (i) that are Term Priority Collateral shall rank junior in priority to the Liens on the Term Priority Collateral securing the Obligations and (ii) are subject to the ABL Intercreditor Agreement (or another intercreditor agreement containing terms that are at least as favorable to the Secured Parties as those contained in the ABL Intercreditor Agreement) and (f) in the case of

a Refinancing Indebtedness of any Indebtedness permitted pursuant to Section 10.1(c), (k), (v) or (w), such Indebtedness meets the requirements of the definition of Permitted Other Loans or Permitted Other Notes, as applicable.

"**Refinancing Term Lender**" shall have the meaning provided in Section 2.15(b)(iii).

"**Refinancing Term Loan**" shall have the meaning provided in Section 2.15(b)(ii).

"**Refinancing Term Loan Repayment Amount**" shall have the meaning provided in Section 2.5(b).

"**Refinancing Term Loan Request**" shall have the meaning provided in Section 2.15(b)(i).

"**Register**" shall have the meaning provided in Section 13.6(b)(iii).

"**Regulation T**" shall mean Regulation T of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"**Regulation U**" shall mean Regulation U of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"**Regulation X**" shall mean Regulation X of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"**Reinvestment Period**" shall mean 15 months following the date of receipt of Net Cash Proceeds of an Asset Sale Prepayment Event or Recovery Prepayment Event.

"**Rejection Notice**" shall have the meaning provided in Section 5.2(f).

"**Related Parties**" shall mean, with respect to any specified Person, such Person's Affiliates (or, for purposes of clauses (A) and (B) of the last proviso of Section 13.5 and the penultimate paragraph of Section 13.5, such Person's controlled Affiliates) and the directors, officers, employees, agents, trustees and advisors of such Person and any Person that possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

"**Relevant LIBOR Rate**" shall have the meaning provided in the definition of "ABR".

"**Repayment Amount**" shall mean an Initial Term Loan Repayment Amount, an Extended Term Loan Repayment Amount with respect to any Extension Series, an Incremental Term Loan Repayment Amount and a Refinancing Term Loan Repayment Amount scheduled to be repaid on any date.

"**Reportable Event**" shall mean an event described in Section 4043 of ERISA and the regulations thereunder, other than any event as to which the thirty day notice period has been waived.

"**Repricing Transaction**" shall mean (i) any prepayment or repayment of ~~Initial~~Tranche B-1 Term Loans with the proceeds of, or any conversion of ~~Initial~~Tranche B-1 Term Loans into, any substantially concurrent issuance of new or replacement tranche of syndicated senior secured first lien term loans under credit facilities the primary purpose of which is to reduce the Yield applicable to the ~~Initial~~Tranche B-1 Term Loans and (ii) any amendment to the ~~Initial~~Tranche B-1 Term Loans (or any exercise of any "yank-a-bank" rights in connection therewith) the primary purpose of which is to reduce the Yield applicable to the ~~Initial~~Tranche B-1 Term Loans; *provided* that a Repricing Transaction shall not include any such prepayment, repayment or amendment in connection with (x) a Change of Control or a Permitted Change of Control or (y) a Permitted Acquisition or other Investment by the Borrower or any Restricted Subsidiary that is either (a) not permitted by the terms of this Agreement immediately prior to the consummation of such Permitted Acquisition or other Investment or (b) if permitted by the terms of this Agreement immediately prior to the consummation of such Permitted Acquisition or other Investment, would not provide the Borrower and its Restricted Subsidiaries with adequate flexibility under this Agreement for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith.

"**Required Lenders**" shall mean, at any date, Non-Defaulting Lenders having or holding a majority of the sum of (a) the outstanding amount of the Term Loans in the aggregate at such date, (b) the outstanding amount of the unfunded Commitments in the aggregate at such date.

"**Restoration Certification**" shall mean, with respect to any Recovery Prepayment Event, a certification made by an Authorized Officer of the Borrower or any Restricted Subsidiary, as applicable, to the Administrative Agent prior to the end of the Reinvestment Period certifying that (a) the Borrower or such Restricted Subsidiary intends to use the proceeds received in connection with such Recovery Prepayment Event (x) to repair, restore, refurbish or replace the property or assets in respect of which such Recovery Prepayment Event occurred or (y) or to invest in assets used or useful in a Similar Business, (b) the approximate costs of completion of such repair, restoration, refurbishment or replacement and (c) that such repair, restoration or replacement will be completed within the later of (x) fifteen months after the date on which cash proceeds with respect to such Recovery Prepayment Event were received and (y) 180 days after delivery of such Restoration Certification.

"**Restricted Foreign Subsidiary**" shall mean a Foreign Subsidiary that is a Restricted Subsidiary.

"**Restricted Payment**" shall mean, with respect to the Borrower or any Restricted Subsidiary, any dividend or return any capital to its stockholders or any other distribution, payment or delivery of property or cash to its stockholders on account of such Stock and Stock Equivalents, or redemption, retirement, purchase or other acquisition, directly or indirectly, for

consideration, any shares of any class of its Stock or Stock Equivalents or set aside any funds for any of the foregoing purposes, other than dividends payable solely in its Stock or Stock Equivalents (other than Disqualified Stock). For the avoidance of doubt, any Excess Contribution shall not constitute a Restricted Payment hereunder on account of any equity interests in Avaya Holdings by the PBGC.

"**Restricted Subsidiary**" shall mean any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

"**Retained Declined Proceeds**" shall have the meaning provided in Section 5.2(f).

"**Returns**" shall mean, with respect to any Investment, any dividend, distribution, interest, fees, premium, return of capital, repayment of principal, income, profits (from a Disposition or otherwise) and other amounts received or realized in respect of such Investment.

"**S&P**" shall mean Standard & Poor's Financial Services LLC or any successor by merger or consolidation to its business.

"**Sanctions**" shall have the meaning provided in Section 8.19.

"**Sanctions Laws**" shall have the meaning provided in Section 8.19.

"**SEC**" shall mean the Securities and Exchange Commission or any successor thereto.

"**Second Amendment**" shall mean that certain Amendment No. 2, dated as of September 25, 2020, among the Borrower, Holdings, the other Guarantors, the Consenting Term Lenders (as defined therein) party thereto and the Administrative Agent.

"**Second Amendment Effective Date**" shall have the meaning provided in the Second Amendment.

"**Section 9.1 Financials**" shall mean the financial statements delivered, or required to be delivered, pursuant to Section 9.1(a) or (b), together with the accompanying officer's certificate delivered, or required to be delivered, pursuant to Section 9.1(c).

"**Section 2.15(a) Additional Amendment**" shall have the meaning provided in Section 2.15(a)(iii).

"**Secured Cash Management Agreement**" shall mean any Cash Management Agreement that is entered into by and between the Borrower or any Restricted Subsidiary and any Cash Management Bank.

"**Secured Hedging Agreement**" shall mean any Hedging Agreement that is entered into by and between the Borrower or any Restricted Subsidiary and any Hedge Bank.

"**Secured Parties**" shall mean the Administrative Agent, the Collateral Agent, each Lender, each Hedge Bank, each Cash Management Bank and each sub-agent pursuant to Section 12 appointed by the Administrative Agent with respect to matters relating to the Credit Facilities or appointed by the Collateral Agent with respect to matters relating to any Security Document.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Securitization Asset**" shall mean (a) any accounts receivable, royalty or other revenue streams and other rights to payment or related assets and the proceeds thereof, in each case, subject to a Securitization Facility and (b) all collateral securing such receivable or asset, all contracts and contract rights, guaranties or other obligations in respect of such receivable or asset, lockbox accounts and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted), together with accounts or assets in a securitization financing and which in the case of clause (a) and (b) above are sold, conveyed, assigned or otherwise transferred or pledged in connection with a Qualified Securitization Financing.

"**Securitization Facility**" shall mean any transaction or series of securitization financings that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Borrower or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Borrower or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

"**Securitization Repurchase Obligation**" shall mean any obligation of a seller (or any guaranty of such obligation) of (i) Receivables Facility Assets under a Permitted Receivables Financing to repurchase Receivables Facility Assets or (ii) Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets, in either case, arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"**Securitization Subsidiary**" shall mean any Subsidiary of the Borrower in each case formed for the purpose of, and that solely engages in, one or more Qualified Securitization Financings and other activities reasonably related thereto or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Restricted Subsidiary makes an Investment and to which the Borrower or such Restricted Subsidiary transfers Securitization Assets and related assets.

"**Security Agreement**" shall mean the Security Agreement, dated as of the Closing Date, in substantially the form attached hereto as Exhibit D (as the same may be amended, restated, amended and restated, supplemented or otherwise modified or replaced from

time to time), entered into by the Borrower, the other grantors party thereto and the Collateral Agent for the benefit of the Secured Parties.

"**Security Documents**" shall mean, collectively, (a) the Security Agreement, (b) the Mortgages, (c) all Applicable Intercreditor Agreements and (d) each intellectual property security agreement and each other security agreement or other instrument or document executed and delivered pursuant to Section 9.11 or 9.12 or pursuant to any other such Security Documents.

"**Series**" shall have the meaning provided in Section 2.14(a).

"**Similar Business**" shall mean any business conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries, taken as a whole, on the Closing Date or any other business activities which are reasonable extensions thereof or otherwise similar, incidental, corollary, complementary, synergistic, reasonably related, or ancillary to any of the foregoing (including non-core incidental businesses acquired in connection with any Permitted Acquisition or permitted Investment), in each case as determined by the Borrower in good faith.

"**Sold Entity or Business**" shall have the meaning provided in the definition of the term "Consolidated EBITDA".

"**Solvent**" shall mean, with respect to any Person, that as of the Closing Date, (i) the present fair saleable value of the property (on a going concern basis) of such Person is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business, (ii) such Person is not engaged in, and are not about to engage in, business contemplated as of the date hereof for which they have unreasonably small capital and (iii) such Person is able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured in the ordinary course of business, and (iv) the fair value of the assets (on a going concern basis) of such Person exceeds, their debts and liabilities, subordinated, contingent or otherwise. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"**Specified Default**" shall mean any Event of Default under Sections 11.1 or 11.5; provided that for purposes of the definition of Permitted Acquisitions, Section 2.14(a), Section 12.9, Section 13.6(b)(i) and Section 13.6(b)(ii), any such Event of Default under Section 11.5 shall be limited to an Event of Default solely with respect to the Borrower.

"**Specified Representations**" shall mean the representations and warranties made by the Borrower and the Guarantors, set forth in (i) Section 8.1(a) (solely with respect to valid existence), (ii) Section 8.2, (iii) Section 8.3(c) (solely with respect to the Organizational Documents of any Credit Party), (iv) Section 8.5, (v) Section 8.7, (vi) Section 8.16 (which shall

be satisfied by the delivery of a solvency certificate substantially in the form of the solvency certificate attached as Annex III to Exhibit C of the Commitment Letter), (vii) Section 8.17, and (viii) the last sentence of Section 8.19.

"**Specified Transaction**" shall mean, with respect to any period, any Investment, any Permitted Change of Control, any Disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, Subsidiary designation, the incurrence of any Incremental Facilities or other event that by the terms of this Agreement requires any test or covenant to be calculated on a "Pro Forma Basis".

"**SPV**" shall have the meaning provided in Section 13.6(f).

"**Standard Securitization Undertakings**" shall mean representations, warranties, covenants and indemnities entered into by the Borrower or any Restricted Subsidiary which the Borrower has determined in good faith to be customary in a Securitization Facility, including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"**Stated Maturity**" shall mean, with respect to any installment of principal on any series of Indebtedness, the date on which such payment of principal was scheduled to be paid in the original documentation governing such Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for payment thereof.

"**Stock**" shall mean shares of capital stock or shares in the capital, as the case may be (whether denominated as common stock or preferred stock or ordinary shares or preferred shares, as the case may be), beneficial, partnership or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting, *provided* that any instrument evidencing Indebtedness convertible or exchangeable for Stock shall not be deemed to be Stock unless and until such instrument is so converted or exchanged; *provided*, *further* that, solely with respect to any CFC or CFC Holding Company, Stock shall also include any instrument or security treated as stock for U.S. federal income tax purposes.

"**Stock Equivalents**" shall mean all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable, *provided* that any instrument evidencing Indebtedness convertible or exchangeable for Stock Equivalents shall not be deemed to be Stock Equivalents unless and until such instrument is so converted or exchanged; *provided*, *further* that, solely with respect to any CFC or CFC Holding Company, Stock Equivalent shall also include any instrument or security treated as stock equivalent for U.S. federal income tax purposes.

"**Subsequent Transaction**" shall have the meaning provided in Section 1.11.

"**Subsidiary**" of any Person shall mean and include (a) any corporation more than 50% of whose Stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time Stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (b) any limited liability company, unlimited company, partnership, association, joint venture or other entity of which such Person directly or indirectly through Subsidiaries has more than a 50% voting equity interest at the time or is a controlling general partner. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Borrower.

"**Subsidiary Guarantor**" shall mean each Guarantor that is a Subsidiary of the Borrower.

"**Successor Borrower**" shall have the meaning provided in Section 10.3(a).

"**Survey**" shall mean a survey of any Mortgaged Property (and all improvements thereon), including a survey based on aerial photography that is (a) (i) prepared by a licensed surveyor or engineer, (ii) certified by the surveyor (in a manner reasonable in light of the size, type and location of the Real Estate covered thereby) to the Administrative Agent and the Collateral Agent and (iii) sufficient, either alone or in connection with a survey (or "no change") affidavit in form and substance customary in the applicable jurisdiction, for the applicable title company to remove (to the extent permitted by Applicable Law) or amend all standard survey exceptions from the title insurance policy (or commitment) relating to such Mortgaged Property and issue such endorsements or other survey coverage, to the extent available in the applicable jurisdiction, as the Collateral Agent may reasonably request or (b) otherwise reasonably acceptable to the Collateral Agent, taking into account the size, type and location of the Real Estate covered thereby.

"**Swap Obligation**" shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

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

"**Taxes**" shall mean any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings or other similar charges imposed by any Governmental

Authority whether computed on a separate, consolidated, unitary, combined or other basis and any interest, fines, penalties or additions to tax with respect to the foregoing.

"**Tax Distribution**" shall have the meaning provided in Section 10.6(d)(i)

"**Term Loan Increase**" shall have the meaning provided in Section 2.14(a).

"**Term Loan Extension Request**" shall have the meaning provided in Section 2.15(a)(i).

"**Term Loans**" shall mean the Initial Term Loans, the Tranche B Term Loans, the Tranche B-1 Term Loans, any Incremental Term Loan, any Refinancing Term Loans or any Extended Term Loans, as applicable.

"**Term Priority Collateral**" shall have the meaning under and as defined in the ABL Intercreditor Agreement.

"**Test Period**" shall mean, for any determination under this Agreement, the four consecutive fiscal quarters of the Borrower then last ended and for which Section 9.1 Financials have been or were required to have been delivered (or, for purposes of any calculation of a financial ratio under this Agreement, for which the financial statements described in Section 9.1(a) or (b) are otherwise available).

"**Tranche B Term Lender**" shall have the meaning provided in the First Amendment.

"**Tranche B Term Loan**" shall have the meaning provided in the First Amendment.

"**Tranche B Term Loan Commitment**" shall have the meaning provided in the First Amendment.

"**Tranche B Term Loan Maturity Date**" shall mean December 15, 2024.

"**Tranche B-1 Term Lender**" shall mean the Extending Consenting Term Lenders as defined in the Second Amendment.

"**Tranche B-1 Term Loan**" shall mean the 2020 Extending Term Loans as defined in the Second Amendment.

"Tranche B-1 Term Loan Maturity Date" shall mean December 15, 2027.

"**Transaction Expenses**" shall mean any fees, costs, liabilities or expenses incurred or paid by Avaya Holdings, the Borrower or any of its respective Subsidiaries in connection with the Transactions, this Agreement and the other Credit Documents and the transactions contemplated hereby and thereby including in respect of the commitments,

negotiation, syndication, documentation and closing (and post-closing actions in connection with the Collateral) of the Credit Facilities.

"**Transactions**" shall mean, collectively, the (i) consummation of the Closing Refinancing, (ii) the consummation of the Plan, (iii) the execution of and funding under the Credit Documents and the ABL Credit Documents, (iv) the other transactions contemplated by the Plan, and (v) the payment of fees, costs, liabilities and expenses in connection with each of the foregoing and the consummation of any other transaction connected with the foregoing.

"**Transferee**" shall have the meaning provided in Section 13.6(e).

"**Type**" shall mean, as to any Term Loan, its nature as an ABR Loan or a LIBOR Loan.

"**UCC**" shall mean the Uniform Commercial Code of the State of New York, or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**Unfunded Current Liability**" of any Pension Plan shall mean the amount, if any, by which the Accumulated Benefit Obligation (as defined under Statement of Financial Accounting Standards No. 87 ("**SFAS 87**")) under the Pension Plan as of the close of its most recent plan year, determined in accordance with SFAS 87 as in effect on the Closing Date, exceeds the fair market value of the assets allocable thereto.

"**Unrestricted Cash**" shall mean, without duplication, all cash and Cash Equivalents included in the cash and Cash Equivalents accounts listed on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as at such date, excluding any cash and Cash Equivalents with respect to which a Lien (other than any Lien permitted under clause (x) or (bb) of the definition of Permitted Encumbrance) senior to the Lien securing the Obligations is granted for the benefit of other Indebtedness or obligations (but may include cash and Cash Equivalents securing the ABL Obligations along with the Obligations pursuant to the Applicable Intercreditor Agreements).

"**Unrestricted Escrow Subsidiary**" shall have the meaning provided in Section 1.10.

"**Unrestricted Subsidiary**" shall mean (a) any Subsidiary of the Borrower that is formed or acquired after the Closing Date; *provided* that at such time (or promptly thereafter) the Borrower designates such Subsidiary an Unrestricted Subsidiary in a written notice to the Administrative Agent, (b) any Restricted Subsidiary designated as an Unrestricted Subsidiary by the Borrower after the Closing Date in a written notice to the Administrative Agent; *provided* that in each case of clauses (a) and (b), (x) such designation shall be deemed to be an Investment (or reduction in an outstanding Investment, in the case of a designation of an Unrestricted Subsidiary as a Restricted Subsidiary) on the date of such designation in an amount equal to the net book value of the investment therein and such designation shall be permitted only to the extent permitted under Section 10.5 on the date of such designation and (y) subject to Section

1.10, no Event of Default exists or would result from such designation after giving Pro Forma Effect thereto and (c) each Subsidiary of an Unrestricted Subsidiary. No Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would constitute a "Restricted Subsidiary" under the definitive documentation in respect of any Indebtedness in a principal amount of not less than $100,000,000 (to the extent such concept exists under the definitive documentation in respect of such Indebtedness). The Borrower may, by written notice to the Administrative Agent, re-designate any Unrestricted Subsidiary as a Restricted Subsidiary, and thereafter, such Subsidiary shall no longer constitute an Unrestricted Subsidiary, but only if, subject to Section 1.10, no Event of Default exists or would result from such re-designation.

"**U.S. Lender**" shall have the meaning provided in Section 5.4(h).

"**Voting Stock**" shall mean, with respect to any Person, such Person's Stock or Stock Equivalents having the right to vote for the election of directors or other governing body of such Person under ordinary circumstances; *provided* that for the purpose of the definition of "Excluded Stock and Stock Equivalents" and in each reference to the Voting Stock of any CFC or CFC Holding Company, Voting Stock shall also include any instrument treated as voting stock or stock equivalent for U.S. federal income tax purposes.

"**Weighted Average Life to Maturity**" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then-outstanding principal amount of such Indebtedness; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness (the "**Applicable Indebtedness**"), the effects of any prepayments or amortization made on such Applicable Indebtedness prior to the date of the applicable determination date shall be disregarded.

"**Wholly Owned**" shall mean, with respect to the ownership by a Person of a Subsidiary, that all of the Stock of such Subsidiary (other than directors' qualifying shares or nominee or other similar shares required pursuant to Applicable Law) are owned by such Person or another Wholly Owned Subsidiary of such Person.

"**Withdrawal Liability**" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

"**Write-Down and Conversion Powers**" shall mean, 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.

"**Yield**" shall mean, with respect to any Initial Term Commitments, Initial Term Loans or any other commitments or loans, on any date of determination, the yield to maturity, in

each case, based on the interest rate and any original issue discount or upfront fees (amortized over four years), but excluding any amendment, structuring, underwriting, ticking, arrangement, commitment and other similar fees not payable to all Lenders generally providing such Commitments and/or Term Loans; *provided* that if such other commitment and loans (including Incremental Term Commitments and Incremental Term Loans) include an interest rate floor greater than the applicable interest rate floor under the Initial Term Loans, such differential between interest rate floors shall be equated to the applicable interest rate margin, but only to the extent an increase in the interest rate floor in the Initial Term Loans would cause an increase in the interest rate then in effect thereunder.

1.2 Other Interpretive Provisions

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

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "herein", "hereto", "hereof" and "hereunder" and words of similar import when used in any Credit Document shall refer to such Credit Document as a whole and not to any particular provision thereof.

(c) Article, Section, Exhibit and Schedule references are to the Credit Document in which such reference appears.

(d) The term "including" is by way of example and not limitation.

(e) 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.

(f) The words "asset" and "property" shall be construed to have the same meaning and effect and refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(g) All references to "knowledge" or "awareness" of any Credit Party or a Restricted Subsidiary thereof means the actual knowledge of an Authorized Officer of a Credit Party or such Restricted Subsidiary.

(h) 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".

(i) Any reference herein to any Person shall be construed to include such Person's successors and permitted assigns and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all of the functions thereof.

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

(k) For purposes of determining compliance with any one of Sections 9.9, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7 and 1.1, (i) in the event that any Lien, Investment, Indebtedness, merger, consolidation, amalgamation or similar fundamental change, Disposition, Restricted Payment, Affiliate transaction, contractual obligation or prepayment of Junior Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Section, such transaction (or portion thereof) at any time and from time to time shall be permitted under one or more of such clauses as determined by the Borrower (and the Borrower shall be entitled to redesignate use of any such clauses from time to time) in its sole discretion at such time; *provided* that (x) all Indebtedness outstanding under the Credit Documents will be deemed at all times to have been incurred in reliance only on the exception in clause (a) of Section 10.1 and (y) all Indebtedness outstanding under the ABL Credit Documents (and any Refinancing Indebtedness thereof) will be deemed at all times to have been incurred in reliance only on the exception in clause (b) of Section 10.1 and (ii) with respect to any Lien, Investment, Indebtedness, merger, consolidation, amalgamation or similar fundamental change, Disposition, Restricted Payment, Affiliate transaction, contractual obligation or prepayment of Junior Indebtedness or other applicable transaction in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Lien, Investment, Indebtedness, merger, consolidation, amalgamation or similar fundamental change, Disposition, Restricted Payment, Affiliate transaction, contractual obligation or prepayment of Junior Indebtedness or other applicable transaction is made (so long as such Lien, Investment, Indebtedness, merger, consolidation, amalgamation or similar fundamental change, Disposition, Restricted Payment, Affiliate transaction, contractual obligation or prepayment of Junior Indebtedness or other applicable transaction at the time incurred or made was permitted hereunder).

(l) All references to "in the ordinary course of business" of the Borrower or any Subsidiary thereof means (i) in the ordinary course of business of, or in furtherance of an objective that is in the ordinary course of business of the Borrower or such Subsidiary, as applicable, (ii) customary and usual in the industry or industries of the Borrower and its Subsidiaries in the United States or any other jurisdiction in which the Borrower or any Subsidiary does business, as applicable, or (iii) generally consistent with the past or current practice of the Borrower or such Subsidiary, as applicable, or any similarly situated businesses in the United States or any other jurisdiction in which the Borrower or any Subsidiary does business, as applicable.

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. Notwithstanding anything set forth herein, the financial data, financial ratios and

other financial calculations shall not give effect to the impact of Accounting Standards Update 2016-12, Revenue from Contracts with Customers (Topic 606) or similar revenue recognition policies.

(b) Notwithstanding anything to the contrary herein, (i) for purposes of determining compliance with any test or covenant contained in this Agreement with respect to any period during which any Specified Transaction occurs (or, for purposes of determining compliance with any test or covenant governing the permissibility of any transaction hereunder, during such period and thereafter and on or prior to such date of determination), the Consolidated Total Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, and the Consolidated Secured Net Leverage Ratio shall each be calculated with respect to such period and such Specified Transaction on a Pro Forma Basis and (ii) for purposes of determining compliance with any ratio governing the permissibility of any transaction to be consummated on a Pro Forma Basis hereunder, (A) the cash proceeds of any incurrence of debt then being incurred in connection with such transaction shall not be netted from Consolidated Total Debt and (B) Consolidated Total Debt shall be calculated after giving effect to any prepayment of Indebtedness, in each case for purposes of calculating the Consolidated First Lien Net Leverage Ratio, Consolidated Secured Net Leverage Ratio or Consolidated Total Net Leverage Ratio, as applicable. If since the beginning of any applicable Test Period, any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of the Restricted Subsidiaries, in each case, since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this definition, then such financial ratio or test (or Consolidated EBITDA or Consolidated Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this definition.

1.4 Rounding

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.5 References to Agreements, Laws, Etc

Unless otherwise expressly provided herein, (a) references to organizational documents, agreements (including the Credit Documents) and other Contractual Requirements shall be deemed to include all subsequent amendments, restatements, amendment and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendment and restatements, extensions, supplements and other modifications are permitted or not prohibited by any Credit Document and (b) references to any Applicable Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

1.6 Times of Day

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

1.7 Timing of Payment or Performance

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

1.8 Currency Equivalents Generally

In determining whether any Indebtedness, Investment, Lien, Disposition, Restricted Payment or any other amount under a "fixed amount" basket denominated in Dollars may be incurred in a currency other than Dollars, such amount shall be determined based on the currency exchange rate determined at the time of such incurrence (or, in the case of any revolving Indebtedness or any amount committed to be made, at the time it is first committed); provided that no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness, Investment, Lien, Disposition, Restricted Payment or such other amount is incurred or made; provided, further that for purpose of determining Consolidated Net Income, Consolidated EBITDA, Consolidated Total Debt or any other amount or ratio determined based on Consolidated Net Income, Consolidated EBITDA or Consolidated Total Debt, amounts in currencies other than Dollars shall be translated into Dollars at the currency exchange rates used in preparing the most recently delivered Section 9.1 Financials.

1.9 Classification of Loans and Borrowings

For purposes of this Agreement, Term Loans may be classified and referred to by Class (e.g., an "Initial Term Loan") or by Type (e.g., a "LIBOR Loan") or by Class and Type (e.g., a "LIBOR Initial Term Loan"). Borrowings also may be classified and referred to by Class (e.g., an "Initial Term Loan Borrowing") or by Type (e.g., a "LIBOR Borrowing") or by Class and Type (e.g., a "LIBOR Initial Term Loan Borrowing").

1.10 Unrestricted Escrow Subsidiary

Any Indebtedness permitted to be incurred hereunder (including any Incremental Facilities and Refinancing Facilities) may be incurred, at the option of the Borrower, by a newly created and newly designated Unrestricted Subsidiary (an "**Unrestricted Escrow Subsidiary**") with no assets other than the cash proceeds of such incurred Indebtedness *plus*, subject to compliance with Section 10.5, any cash and Cash Equivalents contributed to such Unrestricted Escrow Subsidiary as deposit of interest expenses and fees, additional cash collateral or for other purposes, which Unrestricted Escrow Subsidiary will then merge with and into the Borrower or any of the Restricted Subsidiaries with the Borrower or such Restricted Subsidiary surviving the

merger and assuming all obligations of the Unrestricted Escrow Subsidiary. So long as such Indebtedness would have been permitted to be incurred directly by the Borrower or any Restricted Subsidiary upon the incurrence of such Indebtedness by the Unrestricted Escrow Subsidiary, or, with respect to any Indebtedness incurred in connection with a Limited Condition Transaction, at the option of the Borrower, at the time the LCT Election is made, the creation, designation and re-designation of the Unrestricted Escrow Subsidiary and the merger of the Unrestricted Escrow Subsidiary into the Borrower or any Restricted Subsidiary shall not be subject to any additional condition, including any condition that no Default or Event of Default shall have occurred and be continuing at such time.

1.11 Limited Condition Transactions

In connection with any action being taken in connection with a Limited Condition Transaction, for purposes of (i) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test or (ii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Consolidated EBITDA or Consolidated Total Assets), in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"; *provided* that such election may be revoked by the Borrower at any time prior to the consummation or abandonment of the Limited Condition Transaction in question), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreement for such Limited Condition Transaction is entered into (the "**LCT Test Date**"), and if, after giving Pro Forma Effect to the Limited Condition Transaction, the Borrower or any of its Restricted Subsidiaries would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCT Election and, following the LCT Test Date, any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would have failed to have been satisfied as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA, Consolidated Interest Expense or Consolidated Total Assets following the LCT Test Date but at or prior to the consummation of the relevant Limited Condition Transaction, such baskets, tests or ratios will not be deemed to have failed to have been satisfied as a result of such fluctuations. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any event or transaction occurring after the relevant LCT Test Date and prior to the earliest of the date on which (i) such Limited Condition Transaction is consummated, (ii) the LCT Election is revoked by the Borrower and (iii) the date that the definitive agreement or date for redemption, repurchase, defeasance, satisfaction and discharge or repayment specified in an irrevocable notice for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction (a "**Subsequent Transaction**") in connection with which a ratio, test or basket availability calculation must be made on a Pro Forma Basis or giving Pro Forma Effect to such Subsequent Transaction, for purposes of determining whether such ratio, test or basket availability has been complied with under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis

assuming such Limited Condition Transaction and other transactions in connection therewith have been consummated.

SECTION 2 Amount and Terms of Credit

2.1 Initial Term Loan Borrowing

Subject to the terms and conditions set forth herein, each Lender agrees, severally and not jointly, to make (or in the case of any Rollover Lender (as defined in the First Amendment) on the First Amendment Effective Date, be deemed to make) Term Loans in Dollars to the Borrower (i) in the case of Initial Term Loans made in respect of Initial Term Commitments described in clause (a) of the definition of Initial Term Commitments, on the Closing Date, and (ii) in the case of Initial Term Loans made in respect of Initial Term Commitments described in clause (b) of the definition of Initial Term Commitments, on the First Amendment Effective Date, in each case in an aggregate principal amount up to its Initial Term Commitment. The Initial Term Loan prepaid or repaid may not be re-borrowed.

2.2 Minimum Amount of Each Borrowing; Maximum Number of Borrowings

The aggregate principal amount of each Borrowing of Term Loans shall be in a minimum amount of at least the Minimum Borrowing Amount for such Type of Term Loans and in a multiple of $1,000,000 in excess thereof. After giving effect to all Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent.

2.3 Notice of Borrowing; Determination of Class of Term Loans

(a) Each Borrowing, each conversion of Term Loans from one Type to the other, and each continuation of LIBOR Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent (i) not later than 2:00 p.m. one Business Day (or with respect to the second Borrowing, three Business Days) prior to the requested date of any Borrowing or continuation of LIBOR Loans or any conversion of ABR Loans to LIBOR Loans and (ii) not later than 1:00 p.m. on the requested date of any Borrowing of ABR Loans; *provided* that the Borrower may deliver new notices if such condition fails to be satisfied on the proposed Borrowing date. Each telephonic notice by the Borrower pursuant to this Section 2.3(a) must be confirmed promptly by delivery to the Administrative Agent of a written Notice of Borrowing, appropriately completed and signed by an Authorized Officer of the Borrower. Each Borrowing of, conversion to or continuation of LIBOR Loans shall be in a principal amount of $1,000,000 or a whole multiple of the amount of $500,000 in excess thereof. Except as otherwise provided hereunder, each Borrowing of or conversion to ABR Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Notice of Borrowing (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Term Loans from one Type to the other, or a continuation of LIBOR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall

be a Business Day), (iii) the principal amount of Term Loans to be borrowed, converted or continued, (iv) the Type of Term Loans to be borrowed or which existing Term Loans are to be converted and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Term Loan in a Notice of Borrowing, then the applicable Term Loans shall be made as ABR Loans. If the Borrower fails to deliver a Notice of Borrowing to continue any LIBOR Loans, then the LIBOR Loans shall be deemed to have chosen to convert such Term Loan to an ABR Loan. If the Borrower requests a Borrowing of, conversion to, or continuation of LIBOR 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 (1) month.

(b) Following receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify each Lender of the amount of its *pro rata* share of the Term Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to ABR Loans. In the case of each Borrowing, each Lender shall make the amount of its Term Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office in Dollars not later than 1:00 p.m. on the Business Day specified in the applicable Notice of Borrowing. Upon satisfaction of the applicable conditions set forth in Section 6, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBOR Loans upon determination of such interest rate. The determination of the LIBOR Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that ABR Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the ABR promptly following the public announcement of such change.

(d) Without in any way limiting the obligation of the Borrower to confirm in writing any notice it may give hereunder by telephone, the Administrative Agent may act prior to receipt of written confirmation without liability upon the basis of such telephonic notice believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower.

2.4 Disbursement of Funds

(a) No later than 2:00 p.m. on the date specified in each Notice of Borrowing, each Lender will make available its *pro rata* portion, if any, of each Borrowing requested to be made on such date in the manner provided below; *provided* that on the Closing Date, such funds may be made available at such earlier time as may be agreed among the Borrower, the Administrative Agent and the Lenders for the purpose of consummating the Transactions.

(b) Each Lender shall make available all amounts required under any Borrowing for its applicable Commitments in immediately available funds to the Administrative Agent at the Administrative Agent's Office in Dollars, and the Administrative Agent will make available to the Borrower, by depositing to an account designated by the Borrower to the Administrative Agent the aggregate of the amounts so made available in Dollars. Unless the Administrative Agent shall have been notified by any Lender prior to the date of any such Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing or Borrowings to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing, and the Administrative Agent, in reliance upon such assumption, may (in its sole discretion and without any obligation to do so) make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made available such amount to the Borrower, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor the Administrative Agent shall promptly notify the Borrower in writing and the Borrower shall immediately pay such corresponding amount to the Administrative Agent in Dollars. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate *per annum* equal to (i) if paid by such Lender, the Overnight Rate or (ii) if paid by the Borrower, the then-applicable rate of interest or fees, calculated in accordance with Section 2.8, for the Term Loans of the applicable Class.

(c) Nothing in this Section 2.4 shall be deemed to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to fulfill its commitments hereunder).

2.5 Repayment of Term Loans; Evidence of Debt

(a) The Borrower shall repay to the Administrative Agent, for the benefit of the Lenders holding ~~Initial~~(i) Tranche B Term Loans, on the ~~Initial~~Tranche B Term Loan Maturity Date, the then outstanding ~~Initial Term~~Tranche B Term Loans and (ii) Tranche B-1 Term Loans, on the Tranche B-1 Term Loan Maturity Date, the then outstanding Tranche B-1 Term Loans. The Borrower shall repay to the Administrative Agent, for the benefit of the applicable Lenders, on the other applicable Maturity Dates, the then outstanding other Term Loans.

(b) The Borrower shall repay to the Administrative Agent, in Dollars, for the benefit of the Lenders of the Initial Term Loans, on the last Business Day of each March, June, September and December commencing on June 30, 2018~~,~~ (each such Business Day, an "**Initial Term Loan Repayment Date**"), an aggregate principal amount equal to 0.25% of the aggregate

principal amount of all Initial Term Loans outstanding on the Closing Date (each such repayment amount, an "**Initial Term Loan Repayment Amount**"), which payments shall be reduced as a result of voluntary prepayments or repurchase of the Initial Term Loans in accordance with this Agreement, including Sections 5.1 and 13.6(g) and further reduced by any prepayments pursuant to Section 5.2 and any other reductions in principal of the Initial Term Loans, including pursuant to Section 2.15, 2.16 or 13.7(a). (and each of the Lenders of the Initial Term Loans acknowledges that, as of the Second Amendment Effective Date, the Initial Term Loan Repayment Amount for each Initial Term Loan Repayment Date scheduled to occur from the Second Amendment Effective Date through the Latest Maturity Date with respect to the Initial Term Loans has been reduced to $0 as a result of prepayments, repayments and repurchases of Initial Term Loans that have occurred on or prior to the Second Amendment Effective Date).

(c) In the event any Incremental Term Loans are made, such Incremental Term Loans shall be repaid in amounts (each, an "**Incremental Term Loan Repayment Amount**") and on dates as agreed between the Borrower and the relevant Lenders of such Incremental Term Loans, subject to the requirements set forth in Section 2.14. In the event that any Extended Term Loans, such Extended Term Loans, subject to Section 2.15(a), be repaid by the Borrower in the amounts (each, an "**Extended Term Loan Repayment Amount**") and on the dates set forth in the applicable Extension Amendment. In the event that any Refinancing Term Loans are established, such Refinancing Term Loans shall, subject to Section 2.15(b), be repaid by the Borrower in the amounts (each, a "**Refinancing Term Loan Repayment Amount**") and on the dates set forth in the applicable Refinancing Amendment.

(d) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the appropriate lending office of such Lender resulting from each Term Loan made by such lending office of such Lender from time to time, including the amounts of principal and interest payable and paid to such lending office of such Lender from time to time under this Agreement.

(e) The Administrative Agent shall maintain the Register pursuant to Section 13.6(b), and a subaccount for each Lender, in which Register and subaccounts (taken together) shall be recorded (i) the amount of each Term Loan made hereunder and, if applicable, the relevant tranche thereof and the Type of each Term Loan made and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof, and (iv) any cancellation or retirement of Term Loans as contemplated by Section 13.6(g).

(f) The entries made in the Register and accounts and subaccounts maintained pursuant to clauses (d) and (e) of this Section 2.5 shall, to the extent permitted by Applicable Law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; *provided*, *however*, that the failure of any Lender or the Administrative Agent to maintain such account, such Register or such subaccount, as applicable, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest)

the Term Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(g) The Borrower hereby agrees that, upon request of any Lender at any time and from time to time after the Borrower has made an initial Borrowing hereunder, the Borrower shall provide to such Lender, at the Borrower's expense a promissory note substantially in the form of Exhibit B, evidencing the Term Loans owing to such Lender.

(h) For the avoidance of doubt, the ~~Tranche B~~ Term Loans made on the First Amendment Effective Date (x) shall constitute the Initial Term Loans for all purposes of this Agreement~~,~~ and (y) shall mature and ~~shall~~ become due and payable on the ~~Initial~~Tranche B Term Loan Maturity Date ~~and (z) shall be repaid in quarterly installments in accordance with Section 2.5(b)~~. The Tranche B-1 Term Loans shall mature and become due and payable on the Tranche B-1 Term Loan Maturity Date.

2.6 Conversions and Continuations

(a) Subject to the penultimate sentence of this clause (a), (x) the Borrower shall have the option on any Business Day to convert all or a portion equal to at least the Minimum Borrowing Amount of the outstanding principal amount of any Term Loans of one Type into a Borrowing or Borrowings of another Type and (y) the Borrower shall have the option on any Business Day to continue the outstanding principal amount of any LIBOR Loans as LIBOR Loans for an additional Interest Period; *provided* that (i) no partial conversion of LIBOR Loans shall reduce the outstanding principal amount of LIBOR Loans made pursuant to a single Borrowing to less than the Minimum Borrowing Amount, (ii) ABR Loans may not be converted into LIBOR Loans if an Event of Default is in existence on the date of the conversion and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion not to permit such conversion, (iii) LIBOR Loans may not be continued as LIBOR Loans for an additional Interest Period if an Event of Default is in existence on the date of the proposed continuation and the Required Lenders have determined in their sole discretion not to permit such continuation, and (iv) Borrowings resulting from conversions pursuant to this Section 2.6 shall be limited in number as provided in Section 2.2. Each such conversion or continuation shall be effected by the Borrower by giving the Administrative Agent at the Administrative Agent's Office prior to 1:00 p.m. at least (i) three Business Days', in the case of a continuation of, or conversion to, LIBOR Loans or (ii) one Business Day's in the case of a conversion into ABR Loans, prior written notice (or telephonic notice promptly confirmed in writing), in each case substantially in the form of Exhibit A (each, a "**Notice of Conversion or Continuation**") specifying the Term Loans to be so converted or continued, the Type of Term Loans to be converted into or continued and, if such Term Loans are to be converted into, or continued as, LIBOR Loans, the Interest Period to be initially applicable thereto (if no Interest Period is selected, the Borrower shall be deemed to have selected an Interest Period of one month's duration). The Administrative Agent shall give each applicable Lender notice as promptly as practicable of any such proposed conversion or continuation affecting any of its Term Loans.

(b) If any Event of Default is in existence at the time of any proposed continuation of any LIBOR Loans and the Required Lenders have determined in their sole discretion not to permit such continuation, such LIBOR Loans shall be automatically converted on the last day of the current Interest Period into ABR Loans. If upon the expiration of any Interest Period in respect of LIBOR Loans, the Borrower has failed to elect a new Interest Period to be applicable thereto as provided in clause (a) above, the Borrower shall be deemed to have elected to convert such Borrowing of LIBOR Loans into a Borrowing of ABR Loans, effective as of the expiration date of such current Interest Period.

(c) Notwithstanding anything to the contrary herein, the Borrower may deliver a Notice of Conversion or Continuation pursuant to which the Borrower elects to irrevocably continue the outstanding principal amount of any Term Loans subject to an interest rate Hedging Agreement as LIBOR Loans for each Interest Period until the expiration of the term of such applicable Hedging Agreement.

2.7 [Reserved]

2.8 Interest

(a) The unpaid principal amount of each ABR Loan shall bear interest from the date of the Borrowing thereof until maturity (whether by acceleration or otherwise) at a rate *per annum* that shall at all times be the Applicable ABR Margin *plus* the ABR, in each case, in effect from time to time.

(b) The unpaid principal amount of each LIBOR Loan shall bear interest from the date of the Borrowing thereof until maturity thereof (whether by acceleration or otherwise) at a rate *per annum* that shall at all times be the Applicable LIBOR Margin *plus* the relevant LIBOR Rate, in each case in effect from time to time.

(c) [Reserved]

(d) If all or a portion of (i) the principal amount of any Term Loan or (ii) any interest payable thereon or any other amount hereunder shall not be paid when due (whether at the Stated Maturity, by acceleration or otherwise), and a Specified Default shall have occurred and be continuing, then, upon the giving of written notice by the Administrative Agent to the Borrower (except in the case of an Event of Default under Section 11.5, for which no notice is required), such overdue amount (other than any such amount owed to a Defaulting Lender) shall bear interest at a rate *per annum* (the "**Default Rate**") that is (x) in the case of overdue principal, the rate that would otherwise be applicable thereto *plus* 2% or (y) in the case of any overdue interest or other amounts due hereunder, to the extent permitted by Applicable Law, the rate described in Section 2.8(a) *plus* 2% from the date of written notice to the date on which such amount is paid in full (after as well as before judgment) (or if an Event of Default under Section 11.5 shall have occurred and be continuing, the date of the occurrence of such Event of Default).

(e) Interest on each Term Loan shall accrue from and including the date of any Borrowing to but excluding the date of any repayment thereof and shall be payable in

Dollars; *provided* that any Term Loan that is repaid on the same date on which it is made shall bear interest for one day. Except as provided below, interest shall be payable (i) in respect of each ABR Loan, quarterly in arrears on the last Business Day of each March, June, September and December, (ii) in respect of each LIBOR Loan, on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of three months, on each date occurring at three-month intervals after the first day of such Interest Period, and (iii) in respect of each Term Loan, (A) on any prepayment; *provided* that interest on ABR Loans shall only become due pursuant to this clause (A) if the aggregate principal amount of the ABR Loans then-outstanding is repaid in full, (B) at maturity (whether by acceleration or otherwise) and (C) after such maturity, on demand.

(f) All computations of interest hereunder shall be made in accordance with Section 5.5.

2.9 Interest Periods

At the time the Borrower gives a Notice of Borrowing or Notice of Conversion or Continuation in respect of the making of, or conversion into or continuation as, a Borrowing of LIBOR Loans in accordance with Section 2.6(a), the Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of the Interest Period applicable to such Borrowing, which Interest Period shall, at the option of the Borrower, be a one, two, three or six or (if available to all relevant Lenders participating in the relevant Credit Facility) a twelve month period or a period of less than one month.

Notwithstanding anything to the contrary contained above:

(a) the initial Interest Period for any Borrowing of LIBOR Loans shall commence on the date of such Borrowing (including the date of any conversion from a Borrowing of ABR Loans) and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires;

(b) if any Interest Period relating to a Borrowing of LIBOR Loans begins on the last Business Day of a calendar month or begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) 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 in respect of a LIBOR 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 next preceding Business Day; and

(d) the Borrower shall not be entitled to elect any Interest Period in respect of any LIBOR Loan if such Interest Period would extend beyond the applicable Maturity Date of such Term Loan.

2.10 Increased Costs, Illegality, LIBOR Discontinuation, Etc.

(a) In the event that (x) in the case of clause (i) below, the Administrative Agent or (y) in the case of clauses (ii) and (iii) below, the Required Lenders shall have reasonably determined (which determination shall, absent clearly demonstrable error, be final and conclusive and binding upon all parties hereto):

(i) on any date for determining the LIBOR Rate for any Interest Period that (x) deposits in the principal amounts and currencies of the Term Loans comprising such LIBOR Borrowing are not generally available in the relevant market or (y) by reason of any changes arising on or after the Closing Date affecting the interbank LIBOR market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of LIBOR Rate; or

(ii) at any time, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any LIBOR Loans (other than any increase or reduction attributable to (i) Indemnified Taxes and Taxes indemnifiable under Section 5.4, (ii) net income Taxes and franchise and excise Taxes (imposed in lieu of net income Taxes) imposed on any Agent or Lender or (iii) Taxes included under clauses (c) through (e) of the definition of "Excluded Taxes") because of (x) any change since the Closing Date in any Applicable Law (or in the interpretation or administration thereof and including the introduction of any new Applicable Law), such as, for example, without limitation, a change in official reserve requirements, and/or (y) other circumstances affecting the interbank LIBOR market or the position of such Lender in such market; or

(iii) at any time, that the making or continuance of any LIBOR Loan has become unlawful as a result of compliance by such Lender in good faith with any Applicable Law (or would conflict with any such Applicable Law not having the force of law even though the failure to comply therewith would not be unlawful), or has become impracticable as a result of a contingency occurring after the Closing Date that materially and adversely affects the interbank LIBOR market;

then, and in any such event, such Lender (or the Administrative Agent, in the case of clause (i) above) shall within a reasonable time thereafter give notice (if by telephone, confirmed in writing) to the Borrower and to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders). Thereafter (x) in the case of clause (i) above, LIBOR Loans shall no longer be available until such time as the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice by the Administrative Agent no longer exist (which notice the Administrative Agent agrees to give at such time when such circumstances no longer exist), and any Notice of Borrowing or Notice of Conversion or Continuation given by the Borrower with respect to LIBOR Loans that have not yet been incurred shall be deemed rescinded by the Borrower, as applicable, (y) in the case of clause (ii) above, the Borrower shall pay to such Lender, promptly after receipt of written demand therefor such additional amounts (in the form of an increased rate of or a different method of calculating, interest or otherwise, as such Lender in its reasonable

discretion shall determine) as shall be required to compensate such Lender for such increased costs or reductions in amounts receivable hereunder (it being agreed that a written notice as to the additional amounts owed to such Lender, showing in reasonable detail the basis for the calculation thereof, submitted to the Borrower by such Lender shall, absent clearly demonstrable error, be final and conclusive and binding upon all parties hereto) and (z) in the case of clause (iii) above, the Borrower shall take one of the actions specified in Section 2.10(b) as promptly as possible and, in any event, within the time period required by Applicable Law.

(b) At any time that any LIBOR Loan is affected by the circumstances described in Section 2.10(a)(ii) or (iii), the Borrower may (and in the case of a LIBOR Loan, affected pursuant to Section 2.10(a)(iii) shall) either (x) if the affected LIBOR Loan is then being made pursuant to a Borrowing, cancel such Borrowing by giving the Administrative Agent telephonic notice (confirmed promptly in writing) thereof on the same date that the Borrower was notified by a Lender pursuant to Section 2.10(a)(ii) or (iii) or (y) if the affected LIBOR Loan is then-outstanding, upon at least three Business Days' notice to the Administrative Agent require the affected Lender to convert each such LIBOR Loan into an ABR Loan; *provided* that if more than one Lender is affected at any time, then all affected Lenders must be treated in the same manner pursuant to this Section 2.10(b).

(c) If, after the Closing Date, any Change in Law relating to capital adequacy or liquidity of any Lender or compliance by any Lender or its parent with any Change in Law relating to capital adequacy or liquidity occurring after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or its parent's or its Affiliates' capital or assets as a consequence of such Lender's commitments or obligations hereunder to a level below that which such Lender or its parent or any Affiliate thereof could have achieved but for such Change in Law (taking into consideration such Lender's or parent's policies with respect to capital adequacy or liquidity), then from time to time, promptly after written demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or its parent for such reduction, it being understood and agreed, however, that a Lender shall not be entitled to such compensation as a result of such Lender's compliance with, or pursuant to any request or directive to comply with, any Applicable Law as in effect on the Closing Date. Each Lender, upon determining in good faith that any additional amounts will be payable pursuant to this Section 2.10(c), will give prompt written notice thereof to the Borrower, which notice shall set forth in reasonable detail the basis of the calculation of such additional amounts, although the failure to give any such notice shall not, subject to Section 2.13, release or diminish the Borrower's obligations to pay additional amounts pursuant to this Section 2.10(c) upon receipt of such notice.

(d) Notwithstanding the foregoing, no Lender shall demand compensation pursuant to this Section 2.10 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities.

(e) Notwithstanding anything contained herein to the contrary, and without limiting the provisions of Section 2.6, in the event that the Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties

hereto absent manifest error) that there exists, at such time, a broadly accepted market convention for determining a rate of interest for syndicated loans in the United States in lieu of the LIBOR Rate, and the Administrative Agent shall have given written notice of such determination to the Borrower and each Lender (it being understood that the Administrative Agent shall have no obligation to make such determination and/or to give such notice), then the Administrative Agent and the Borrower may enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement, in each case, as may be agreed by the Administrative Agent and the Borrower (including clause (c) of the definition of ABR). Notwithstanding anything to the contrary in Section 13.1, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the distribution of such amendment to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment. In addition, the Borrower and the Required Lenders may at any time upon not less than 15 Business Days' prior written notice to the Administrative Agent select a different broadly accepted market convention for determining a rate of interest for syndicated loans in the United States in lieu of the LIBOR Rate as long as it is reasonably practicable for the Administrative Agent to administer such different rate (such practicability being determined by the Administrative Agent in its sole discretion).

2.11 Compensation

If (i) any payment of principal of any LIBOR Loan is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such LIBOR Loan as a result of a payment or conversion pursuant to Section 2.5, 2.6, 2.10, 5.1, 5.2 or 13.7, as a result of acceleration of the maturity of the Term Loans pursuant to Section 11 or for any other reason, (ii) any Borrowing of LIBOR Loans is not made as a result of a withdrawn Notice of Borrowing, (iii) any ABR Loan is not converted into a LIBOR Loan as a result of a withdrawn Notice of Conversion or Continuation, (iv) any LIBOR Loan is not continued as a LIBOR Loan, as the case may be, as a result of a withdrawn Notice of Conversion or Continuation or (v) any prepayment of principal of any LIBOR Loan is not made as a result of a withdrawn notice of prepayment pursuant to Section 5.1 or 5.2, the Borrower shall, after receipt of a written request by such Lender (which request shall set forth in reasonable detail the basis for requesting such amount), pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that such Lender may reasonably incur as a result of such payment, failure to convert, failure to continue or failure to prepay, including any loss, cost or expense (excluding loss of anticipated profits) actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such LIBOR Loan. Notwithstanding the foregoing, no Lender shall demand compensation pursuant to this Section 2.11 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities.

2.12 Change of Lending Office

Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.10(a)(ii), 2.10(a)(iii), 2.10(b) or 5.4 with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Term Loans affected by such event; *provided* that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of any such Section. Nothing in this Section 2.12 shall affect or postpone any of the obligations of the Borrower or the right of any Lender provided in Section 2.10 or 5.4. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with such designation.

2.13 Notice of Certain Costs

Notwithstanding anything in this Agreement to the contrary, to the extent any notice required by Section 2.10, 2.11 or 5.4 is given by any Lender more than 180 days after such Lender has knowledge (or should have had knowledge) of the occurrence of the event giving rise to the additional cost, reduction in amounts, loss, tax or other additional amounts described in such Sections, such Lender shall not be entitled to compensation under Section 2.10, 2.11 or 5.4, as the case may be, for any such amounts incurred or accruing prior to the 181st day prior to the giving of such notice to the Borrower.

2.14 Incremental Facilities

(a) The Borrower may, at any time and from time to time, elect to request the establishment of (x) one or more additional tranches of term loans, which may be of the same Class as any then-existing Term Loans (a "**Term Loan Increase**") or a separate Class of Term Loans (the commitments for additional term loans of the same Class or a separate Class, collectively, the "**Incremental Term Commitments**") or (y) one or more tranches of revolving credit facilities (the "**Incremental Revolving Commitments**", together with the Incremental Term Commitments, the "**Incremental Commitments**"; and the loans thereunder, "**Incremental Loans**"), in an aggregate principal amount not in excess of the then-available Maximum Incremental Facilities Amount at the time of incurrence thereof and not less than $10,000,000 individually (or such lesser amount as (x) may be approved by the Administrative Agent in its reasonable discretion or (y) shall constitute the then-available Maximum Incremental Facilities Amount at such time). The Borrower may approach any existing Lender or any Additional Lender to provide all or a portion of the Incremental Commitments; *provided* that any Lender offered or approached to provide all or a portion of the Incremental Commitments may elect or decline, in its sole discretion, to provide an Incremental Commitment, and the Borrower shall have no obligation to approach any existing Lender to provide any Incremental Commitment; *provided*, *further*, that the Administrative Agent shall have consented to such Additional Lender's providing of the Incremental Commitments to the extent such consent, if any, would be required under Section 13.6(b) in connection with an assignment of Term Loans or Commitments to such Additional Lender. In each case, such Incremental Commitments shall

become effective as of the date determined by the Borrower (the "**Increased Amount Date**"); *provided* that, (i) (x) other than as described in the immediately succeeding clause (y), no Event of Default shall exist on such Increased Amount Date immediately before or immediately after giving effect to such Incremental Commitments and the borrowing of any Incremental Loans thereunder or (y) if such Incremental Commitment is being provided in connection with a Permitted Acquisition or similar Investment, or in connection with refinancing of any Indebtedness that requires an irrevocable prepayment or redemption notice, then no Specified Default shall exist on such Increased Amount Date, (ii) in connection with any incurrence of Incremental Loans or establishment of Incremental Commitments, there shall be no requirement for the Borrower to bring down the representations and warranties under the Credit Documents unless requested by the lenders providing such Incremental Loans or Incremental Commitments (subject to waiver by such lenders of any such requirement) and (iii) the establishment of Incremental Commitments or the incurrence of Incremental Loans shall be effected pursuant to one or more amendments (each, an "**Incremental Amendment**") to this Agreement executed and delivered by the Borrower and the Administrative Agent, and each of which shall be recorded in the Register and shall be subject to the requirements set forth in Section 5.4(e). For all purposes of this Agreement, any Incremental Term Loans made on an Increased Amount Date shall be designated (x) a separate series of Term Loans or (y) in the case of a Term Loan Increase, a part of the series of existing Term Loans subject to such increase (such new or existing series of Term Loans, each, a "**Series**").

(b) The terms and conditions of the Incremental Revolving Commitments shall be reasonably satisfactory to the Administrative Agent; *provided* that (i) such Incremental Revolving Commitments may have a maturity that is shorter than the Maturity Dates of the Term Loans but such maturity shall be longer than the maturity date of the Initial ABL Facility, (ii) the pricing, interest rate margins, discounts, premiums, interest rate floors and fees of such Incremental Revolving Commitments shall be determined by the Borrower and the lender(s) thereunder and shall not be subject to any "most-favored nation" provisions (including under Section 2.14(d)(iv) below), (iii) such Incremental Revolving Commitments may have sub-facilities for letters of credit and swingline loans, (iv) lenders providing such Incremental Revolving Commitments shall be included in the definition of "Required Lenders", (v) if such Incremental Revolving Commitments benefit from a financial covenant, the Term Loans shall not be required to enjoy the same benefit of such financial covenant and they shall cross accelerate (instead of cross default) to a breach of such financial covenant, (vi) customary amendments to the definition of "Maximum Incremental Facilities Amount" may be made to permit any repayment of loans under Incremental Revolving Commitments accompanied with permanent terminations of such Incremental Revolving Commitments to be added to clause (2) of such definition, (vii) no Subsidiary (other than a Guarantor) is an obligor of such Incremental Revolving Commitments and (viii) if secured, such Incremental Revolving Commitments are not secured by any assets other than all or any portion of the Collateral or any Liens other than Liens that are pari passu with or junior to the Liens securing the Obligations.

(c) On any Increased Amount Date on which any Incremental Term Commitments of any Series are effective, subject to the satisfaction (or waiver) of the foregoing applicable terms and conditions, (i) each Lender with an Incremental Term Commitment of any

Series shall make a term loan to the Borrower (an "**Incremental Term Loan**") in an amount equal to its Incremental Term Commitment of such Series, and (ii) each Lender of any Series shall become a Lender hereunder with respect to the Incremental Term Commitment of such Series and the Incremental Term Loans of such Series made pursuant thereto. The Borrower shall use the proceeds, if any, of the Incremental Term Loans for any purpose not prohibited by this Agreement and as agreed by the Borrower and the lender(s) providing such Incremental Term Loans.

(d) The terms and provisions of any Incremental Term Commitments and the respective related Incremental Term Loans, in each case effected pursuant to a Term Loan Increase shall be substantially identical to the terms and provisions applicable to the Class of Term Loans subject to such increase; *provided* that underwriting, arrangement, structuring, ticking, commitment, original issue discount, upfront or similar fees, and other fees payable in connection therewith that are not generally shared with all relevant lenders providing such Incremental Term Commitments and the respective related Incremental Term Loans, that may be agreed to among the Borrower and the lender(s) providing and/or arranging such Incremental Term Commitments may be paid in connection with such Incremental Term Commitments. The terms and provisions of any Incremental Term Commitments and the respective related Incremental Term Loans of any Series not effected pursuant to a Term Loan Increase shall be on terms and documentation set forth in the applicable Incremental Amendment as determined by the Borrower; *provided* that:

(i) the applicable Incremental Term Loan Maturity Date of each Series shall be no earlier than the ~~Initial Term Loan~~Latest Maturity Date with respect to the Initial Term Loans, *provided* that the requirements of the foregoing clause (i) shall not apply to any customary bridge facility so long as the Indebtedness into which such customary bridge facility is to be converted complies with such requirements;

(ii) the Weighted Average Life to Maturity of the applicable Incremental Term Loans of each Series shall be no shorter than the Weighted Average Life to Maturity of the Initial Term Loans;

(iii) the Incremental Term Loans (x) may participate on a *pro rata* basis, greater than *pro rata* basis or less than *pro rata* basis in any voluntary prepayment of any Class of Term Loans hereunder and may participate on a *pro rata* basis or less than *pro rata* basis (but not on a greater than *pro rata* basis) in any mandatory prepayments of any Class of Term Loans hereunder; *provided* that if such Incremental Term Loans are unsecured or rank junior in right of payment or as to security with the Obligations, such Incremental Term Loans shall participate on a junior basis with respect to mandatory repayments of Term Loans hereunder (except in connection with any refinancing, extension, renewal, replacement, repurchase or retirement thereof permitted by this Agreement), (y) shall not be guaranteed by any Subsidiary other than a Guarantor hereunder and (z) shall be unsecured or rank *pari passu* or junior in right of security with any Obligations outstanding under this Agreement and, if secured, shall not be secured by assets of the Credit Parties other than Collateral (and, unless secured on a

pari passu basis with the Obligations, shall be subject to a subordination agreement (if payment subordinated) and/or the Applicable Intercreditor Agreement);

(iv) the pricing, interest rate margins, discounts, premiums, interest rate floors, fees, and amortization schedule (subject to clauses (i) and (ii) above) applicable to any Incremental Term Loans shall be determined by the Borrower and the lender(s) thereunder; *provided*, *however*, that, if the Yield, in respect of any Incremental Term Loans that (w) rank *pari passu* in right of payment and security with the Initial Term Loans, (x) are incurred on or prior to the date that is 12 months after the Closing Date and (y) have a maturity date that is less than two years after the Initial Term Loan Maturity Date as of the date of funding thereof, exceeds the Yield in respect of any Initial Term Loans by more than 0.50%, then the Applicable ABR Margin or the Applicable LIBOR Margin, as applicable, in respect of such Initial Term Loans shall be adjusted so that the Yield in respect of such Initial Term Loans is equal to the Yield in respect of such Incremental Term Loans *minus* 0.50%; *provided*, *further*, to the extent any change in the Yield of the Initial Term Loans is necessitated by this clause (iv) on the basis of an effective interest rate floor in respect of the Incremental Term Loans, the increased Yield in the Initial Term Loans shall (unless otherwise agreed in writing by the Borrower) have such increase in the Yield effected solely by increases in the interest rate floor(s) applicable to the Initial Term Loans; and

(v) all other terms of any Incremental Term Loans (other than as described in clauses (i), (ii), (iii) and (iv) above) may differ from the terms of the Initial Term Loans if agreed by the Borrower and the lender(s) providing such Incremental Term Loans.

(e) The Administrative Agent and the Lenders hereby consent to the consummation of the transactions contemplated by this Section 2.14 and hereby waive the requirements of any provision of this Agreement (including, without limitation, any *pro rata* payment or amendment section) or any other Credit Document that may otherwise prohibit or restrict any such extension or any other transaction contemplated by this Section 2.14. Each Incremental Amendment may, without the consent of any other Lenders, (x) effect technical and corresponding amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14 and (y) with respect to the Incremental Revolving Commitments, add provisions solely applicable to such Incremental Revolving Commitments (including provisions relating to extensions and refinancings of Incremental Revolving Commitments).

2.15 Extensions of Term Loans; Refinancing Facilities

(a) Extensions

(i) The Borrower may at any time and from time to time request that all or a portion of the Term Loans of any Class (an "**Existing Term Loan Class**") be converted to extend the scheduled maturity date(s) of any payment of

principal with respect to all or a portion of any principal amount of such Term Loans (any such Term Loans which have been so converted, "**Extended Term Loans**") and to provide for other terms consistent with this Section 2.15. In order to establish any Extended Term Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Term Loan Class which such request shall be offered equally to all such Lenders) (a "**Term Loan Extension Request**") setting forth the proposed terms of the Extended Term Loans to be established, which shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined in good faith by the Borrower) or (B) if not consistent with the terms of the applicable Existing Term Loan Class, shall not be materially more restrictive to the Credit Parties (as determined in good faith by the Borrower), when taken as a whole, than the terms of the Term Loans of the Existing Term Loan Class unless (x) the Lenders of the Term Loans of such applicable Existing Term Loan Class receive the benefit of such more restrictive terms or (y) any such provisions apply after the Latest Maturity Date as determined at the time of incurrence or issuance; *provided*, *however*, that (1) the scheduled final maturity date shall be extended and all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization of principal of the Term Loans of such Existing Term Loan Class (with any such delay resulting in a corresponding adjustment to the scheduled amortization payments reflected in Section 2.5 or in the Extension Amendment, as the case may be, with respect to the Existing Term Loan Class from which such Extended Term Loans were converted, in each case as more particularly set forth in Section 2.15(a)(iii)), (2)(A) pricing, fees, optional prepayment or redemption terms shall be determined in good faith by the Borrower and the interest rates, interest margins, upfront fees, funding discounts, original issue discounts and premiums (including through fixed rate interest) with respect to the Extended Term Loans may be higher or lower than the interest margins and floors for the Term Loans of such Existing Term Loan Class and/or (B) additional fees, premiums or AHYDO Catch-Up Payments may be payable to the Lenders providing such Extended Term Loans in addition to or in lieu of any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (3) the Extended Term Loans may participate on a *pro rata* basis, greater than *pro rata* basis or less than *pro rata* basis in any voluntary prepayment of any Class of Term Loans hereunder and may participate on a *pro rata* basis or less than *pro rata* basis (but not on a greater than *pro rata* basis) in any mandatory prepayments of any Class of Term Loans hereunder; *provided* that if such Extended Term Loans are unsecured or rank junior in right of payment or as to security with the Obligations, such Extended Term Loans shall participate on a junior basis with respect to mandatory repayments of Term Loans hereunder (except in connection with any refinancing, extension, renewal, replacement, repurchase or retirement thereof permitted by this Agreement) and (4) Extended Term Loans may have call protection and prepayment premiums and, subject to clause (3) above, other redemption terms as may be agreed by the Borrower and the Lenders thereof, *provided* that the principal amount of the Extended Term Loans shall not exceed the principal amount of the Term Loans being extended except as otherwise permitted herein. No Lender shall have any obligation to

agree to have any of its Term Loans of any Existing Term Loan Class converted into Extended Term Loans pursuant to any Term Loan Extension Request.

(ii) Any Lender (an "**Extending Lender**") wishing to have all or a portion of its Term Loans of the Existing Term Loan Class or Existing Term Loan Classes subject to such Term Loan Extension Request converted into Extended Term Loans shall notify the Administrative Agent (an "**Extension Election**") on or prior to the date specified in such Term Loan Extension Request of the amount of its Term Loans of the Existing Term Loan Class or Existing Term Loan Classes subject to such Term Loan Extension Request that it has elected to convert into Extended Term Loans. In the event that the aggregate principal amount of Term Loans of the Existing Term Loan Class or Existing Term Loan Classes subject to Extension Elections exceeds the amount of Extended Term Loans requested pursuant to the Term Loan Extension Request, Term Loans of the Existing Term Loan Class or Existing Term Loan Classes subject to Extension Elections shall be converted to Extended Term Loans on a *pro rata* basis based on the amount of Term Loans included in each such Extension Election.

(iii) Extended Term Loans shall be established pursuant to an amendment (an "**Extension Amendment**") to this Agreement (which, except to the extent expressly contemplated by the last sentence of this Section 2.15(a)(iii) and notwithstanding anything to the contrary set forth in Section 13.1, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Term Loans established thereby) executed by the Credit Parties, the Administrative Agent and the Extending Lenders. No Extension Amendment shall provide for any Class of Extended Term Loans in an aggregate principal amount that is less than $10,000,000 and the Borrower may condition the effectiveness of any Extension Amendment on an Extension Minimum Condition, which may be waived by the Borrower in its sole discretion. In addition to any terms and changes required or permitted by Section 2.15(a), each Extension Amendment shall amend the scheduled amortization payments pursuant to Section 2.5 or the applicable Extension Amendment with respect to the Existing Term Loan Class from which the Extended Term Loans were converted to reduce each scheduled Repayment Amount for the Existing Term Loan Class in the same proportion as the amount of Term Loans of the Existing Term Loan Class is to be converted pursuant to such Extension Amendment (it being understood that the amount of any Repayment Amount payable with respect to any individual Term Loan of such Existing Term Loan Class that is not an Extended Term Loan shall not be reduced as a result thereof). Notwithstanding anything to the contrary in this Section 2.15, and without limiting the generality or applicability of Section 13.1 to any Section 2.15(a) Additional Amendments, any Extension Amendment may provide for additional terms and/or additional amendments other than those referred to or contemplated above (any such additional amendment, a "**Section 2.15(a) Additional Amendment**") to this Agreement and the other Credit Documents; *provided* that such Section 2.15(a) Additional Amendments comply with the requirements of Section 2.15(a) and do not become effective prior to the time that such Section 2.15(a) Additional Amendments have been consented to (including, without limitation, pursuant to (1) consents applicable to holders

of Incremental Term Loans provided for in any Incremental Amendment and (2) consents applicable to holders of any Extended Term Loans provided for in any Extension Amendment) by such of the Lenders, Credit Parties and other parties (if any) as may be required in order for such Section 2.15(a) Additional Amendments to become effective in accordance with Section 13.1.

(iv) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Term Loan Class is converted to extend the related scheduled maturity date(s) in accordance with paragraph (a) above, in the case of the existing Term Loans of each Extending Lender, the aggregate principal amount of such existing Term Loans shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Term Loans so converted by such Lender on such date. Any Extended Term Loans shall constitute a separate Class of Term Loans from the Existing Term Loan Class from which they were converted; *provided* that any Extended Term Loans converted from an Existing Term Loan Class may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any then outstanding Class of Term Loans other than the Existing Term Loan Class from which such Extended Term Loans were converted (in which case scheduled amortization with respect thereto shall be proportionally increased).

(v) The Administrative Agent and the Lenders hereby consent to the consummation of the transactions contemplated by this Section 2.15(a) (including, for the avoidance of doubt, payment of any interest, fees, or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Amendment) and hereby waive the requirements of any provision of this Agreement (including, without limitation, any *pro rata* payment or amendment section) or any other Credit Document that may otherwise prohibit or restrict any such extension or any other transaction contemplated by this Section 2.15(a).

(vi) In the event that the Administrative Agent determines, and the Borrower agrees (acting reasonably), that the allocation of Extended Term Loans of a given Extension Series to a given Lender was incorrectly determined as a result of manifest administrative error in the receipt and processing of an Extension Election timely submitted by such Lender in accordance with the procedures set forth in the applicable Extension Amendment, then the Administrative Agent, the Borrower and such affected Lender may (and hereby are authorized to), in their sole discretion and without the consent of any other Lender, enter into an amendment to this Agreement and the other Credit Documents (each, a "**Corrective Extension Amendment**") within 15 days following the effective date of such Extension Amendment, as the case may be, which Corrective Extension Amendment shall (A) provide for the conversion and extension of the applicable Term Loans in such amount as is required to cause such Lender to hold Extended Term Loans of the applicable Extension Series into which such other Term Loans were initially converted, as the case may be, in the amount such Lender would have held had such administrative error not occurred and had such Lender received the minimum allocation of the applicable Term Loans or Commitments to which it was

entitled under the terms of such Extension Amendment, in the absence of such error, (B) be subject to the satisfaction of such conditions as the Administrative Agent, the Borrower and such Lender may agree (including conditions of the type required to be satisfied for the effectiveness of an Extension Amendment described in Section 2.15(a)), and (C) effect such other amendments of the type (with appropriate reference and nomenclature changes) described in Section 2.15(a) to the extent reasonably necessary to effectuate the purposes of this Section 2.15(a)(vi).

(vii) No conversion of Term Loans or Commitments pursuant to any Extension Amendment in accordance with this Section 2.15(a) shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(b) Refinancing Facilities.

(i) The Borrower may, at any time or from time to time after the Closing Date, by notice to the Administrative Agent (a "**Refinancing Term Loan Request**"), request the establishment of (x) one or more new Classes of term loans under this Agreement (any such new Class, "**New Refinancing Commitments**") or (y) increases to one or more existing Classes of Term Loans under this Agreement (any such increase to an existing Class, collectively with New Refinancing Commitments, "**Refinancing Commitments**"), in each case, established in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, as selected by the Borrower, any one or more then existing Class or Classes of Term Loans or Commitments (with respect to a particular Refinancing Commitment or Refinancing Term Loan, such existing Term Loans or Commitments, "**Refinanced Debt**"), whereupon the Administrative Agent shall promptly deliver a copy of each such notice to each of the Lenders.

(ii) Any Refinancing Term Loans made pursuant to New Refinancing Commitments shall be designated a separate Class of Term Loans, for all purposes of this Agreement unless designated as a part of an existing Class of Term Loans in accordance with this Section 2.15(b). On any Refinancing Facility Closing Date on which any Refinancing Commitments of any Class are effected, subject to the satisfaction or waiver of the terms and conditions in this Section 2.15(b), (x) each Refinancing Term Lender of such Class shall make a term loan to the Borrower (each, a "**Refinancing Term Loan**") in an amount equal to its Refinancing Commitment of such Class and (y) each Refinancing Term Lender of such Class shall become a Lender hereunder with respect to the Refinancing Commitment of such Class and the Refinancing Term Loans of such Class made pursuant thereto.

(iii) Each Refinancing Term Loan Request from the Borrower pursuant to this Section 2.15(b) shall set forth the requested amount and proposed terms of the relevant Refinancing Term Loans and identify the Refinanced Debt with respect thereto. Refinancing Term Loans may be made by any existing Lender (but no existing Lender will have an obligation to make any Refinancing Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any

Refinancing Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Term Loan, a "**Refinancing Term Lender**"); *provided* that the Administrative Agent shall have consented to such Additional Lender's providing of the Refinancing Commitments to the extent such consent, if any, would be required under Section 13.6(b) in connection with an assignment of Term Loans or Commitments to such Additional Lender.

(iv) The effectiveness of any Refinancing Amendment, and the Refinancing Commitments thereunder, shall be subject to the satisfaction (or waiver) on the date thereof (each, a "**Refinancing Facility Closing Date**") of each of the following conditions, together with any other conditions set forth in the Refinancing Amendment:

(A) each Refinancing Commitment shall be in an aggregate principal amount that is not less than $10,000,000 (*provided* that such amount may be less than $10,000,000 if such amount is equal to the entire outstanding principal amount of Refinanced Debt), and,

(B) the Refinancing Term Loans made pursuant to any increase in any existing Class of Term Loans shall be added to (and form part of) each Borrowing of outstanding Term Loans under the respective Class so incurred on a *pro rata* basis (based on the principal amount of each Borrowing) so that each Lender under such Class will participate proportionately in each then outstanding Borrowing of Term Loans under such Class.

(v) [Reserved].

(vi) The terms, provisions and documentation of the Refinancing Term Loans and Refinancing Commitments of any Class shall be as agreed between the Borrower and the applicable Refinancing Term Lenders providing such Refinancing Commitments, and except as otherwise set forth herein, to the extent not identical to (or constituting a part of) any Class of Term Loans existing on the Refinancing Facility Closing Date, shall be consistent with the provisions below, and the other terms and conditions shall either, at the option of the Borrower, (x) reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined by the Borrower) or (y), not be materially more restrictive to the Borrower (as determined by the Borrower), when taken as a whole, than the terms of the Initial Term Loans (except (1) covenants or other provisions applicable only to periods after the Latest Maturity Date (as of the applicable Refinancing Facility Closing Date) and (2) pricing, fees, rate floors, premiums, optional prepayment or redemption terms (which shall be determined by the Borrower) and it being understood there shall be no "MFN" protection unless the Lenders under the Term Loans existing on the Refinancing Facility Closing Date, receive the benefit of such more restrictive terms). In any event, the Refinancing Term Loans:

(1) (I) shall rank *pari passu* or junior in right of payment with any Obligations outstanding under this Agreement and (II) shall be

unsecured or rank *pari passu* or junior in right of security with any Obligations outstanding under this Agreement and, if secured, shall not be secured by assets of the Credit Parties other than the Collateral (and, unless secured on a *pari passu* basis with the Obligations, shall be subject to a subordination agreement (if payment subordinated) and the Applicable Intercreditor Agreements);

(2) as of the Refinancing Facility Closing Date, shall not have a Maturity Date earlier than the Maturity Date of the Refinanced Debt;

(3) as of the Refinancing Facility Closing Date, such Refinancing Term Loans shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Refinanced Debt on the date of incurrence of such Refinancing Term Loans;

(4) may provide for the ability to participate on a *pro rata* basis or less than or greater than a *pro rata* basis in any voluntary repayments or prepayments of principal of Term Loans hereunder and on a *pro rata* basis or less than a *pro rata* basis (but not on a greater than *pro rata* basis) in any mandatory repayments or prepayments of principal of Term Loans hereunder; *provided* that if such Refinancing Term Loans are unsecured or rank junior in right of payment or as to security with the Obligations, such Refinancing Term Loans shall participate on a junior basis with respect to mandatory repayments of Term Loans hereunder (except in connection with any refinancing, extension, renewal, replacement, repurchase or retirement thereof permitted by this Agreement);

(5) unless otherwise permitted hereby, shall not have a greater principal amount than the principal amount of the Refinanced Debt (*plus* the amount of any unused commitments thereunder), *plus* accrued interest, fees, defeasance costs and premium (including call and tender premiums), if any, under the Refinanced Debt, *plus* underwriting discounts, fees, commissions and expenses (including original issue discount, upfront fees and similar items) in connection with the refinancing of such Refinanced Debt and the incurrence or issuance of such Refinancing Term Loans; and

(6) shall not be guaranteed by any Subsidiary other than a Guarantor hereunder;

(vii) Commitments in respect of Refinancing Term Loans shall become additional Commitments under this Agreement pursuant to an amendment (a "**Refinancing Amendment**") to this Agreement and, as appropriate, the other Credit Documents, executed by the Borrower, each Refinancing Term Lender providing such Commitments and the Administrative Agent. The Refinancing Amendment may, without the consent of any other Credit Party, Agent or Lender, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15(b). The Borrower will use the proceeds, if any, of the Refinancing

Term Loans in exchange for, or to extend, renew, replace, repurchase, retire or refinance, and shall permanently terminate applicable commitments under, substantially concurrently, the applicable Refinanced Debt.

(viii) The Administrative Agent and the Lenders hereby consent to the consummation of the transactions contemplated by this Section 2.15(b) (including, for the avoidance of doubt, payment of any interest, fees, or premium in respect of any Refinanced Debt on such terms as may be set forth in the relevant Refinancing Amendment) and hereby waive the requirements of any provision of this Agreement (including, without limitation, any *pro rata* payment or amendment section) or any other Credit Document that may otherwise prohibit or restrict any such refinancing or any other transaction contemplated by this Section 2.15.

2.16 Defaulting Lenders

Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then no Defaulting Lender shall be entitled to receive any fee payable under Section 4 or any interest at the Default Rate payable under Section 2.8(d) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee or interest that otherwise would have been required to have been paid to that Defaulting Lender).

2.17 Permitted Debt Exchanges

(a) Notwithstanding anything to the contrary contained in this Agreement, pursuant to one or more offers (each, a "**Permitted Debt Exchange Offer**") made from time to time by the Borrower to all Lenders (other than any Lender that, in connection with an issuance of Permitted Debt Exchange Instrument that constitutes Permitted Other Note, if requested by the Borrower, is unable to certify that it is either a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) or an institutional "accredited investor" (as defined in Rule 501 under the Securities Act)) with outstanding Term Loans under one or more Classes of Term Loans (as determined by the Borrower in its sole discretion) on the same terms, the Borrower may from time to time consummate one or more exchanges of Term Loans for Permitted Other Debt (such notes or loans, "**Permitted Debt Exchange Instruments**" and each such exchange, a "**Permitted Debt Exchange**"), so long as the following conditions are satisfied or waived: (i) no Event of Default shall have occurred and be continuing at the time the offering document in respect of a Permitted Debt Exchange Offer is delivered to the relevant Lenders, (ii) the aggregate principal amount (calculated on the face amount thereof) of Permitted Debt Exchange Instruments issued in exchange for Term Loans shall not exceed the principal amount (calculated on the face amount thereof) of the Term Loans being exchanged *plus* any accrued interest, fees and premium (if any) under the Term Loans exchanged and underwriting discounts, fees, commissions and expenses (including original issue discount, upfront fees and similar items) in connection with the exchange of such Term Loans and the issuance of such Permitted Debt Exchange Instruments, (iii) the aggregate principal amount (calculated on the face amount thereof) of all Term Loans exchanged under each applicable Class by the Borrower pursuant to any Permitted Debt Exchange shall automatically be cancelled and retired by the Borrower on

the date of the settlement thereof (and, if requested by the Administrative Agent, any applicable exchanging Lender shall execute and deliver to the Administrative Agent an Assignment and Assumption pursuant to which the respective Lender assigns its interest in the Term Loans being exchanged pursuant to the Permitted Debt Exchange to the Borrower for immediate cancellation), (iv) if the aggregate principal amount of all Term Loans (calculated on the face amount thereof) of a given Class tendered by Lenders in respect of the relevant Permitted Debt Exchange Offer (with no Lender being permitted to tender a principal amount of Term Loans which exceeds the principal amount thereof of the applicable Class actually held by it) shall exceed the maximum aggregate principal amount of Term Loans of such Class offered to be exchanged by the Borrower pursuant to such Permitted Debt Exchange Offer, then the Borrower shall exchange Term Loans under the relevant Class tendered by such Lenders ratably up to such maximum based on the respective principal amounts so tendered, or if such Permitted Debt Exchange Offer shall have been made with respect to multiple Classes without specifying a maximum aggregate principal amount offered to be exchanged for each Class, and the aggregate principal amount of all Term Loans (calculated on the face amount thereof) of all Classes tendered by Lenders in respect of the relevant Permitted Debt Exchange Offer (with no Lender being permitted to tender a principal amount of Term Loans which exceeds the principal amount thereof actually held by it) shall exceed the maximum aggregate principal amount of Term Loans of all relevant Classes offered to be exchanged by the Borrower pursuant to such Permitted Debt Exchange Offer, then the Borrower shall exchange Term Loans across all Classes subject to such Permitted Debt Exchange Offer tendered by such Lenders ratably up to such maximum amount based on the respective principal amounts so tendered, (v) all documentation in respect of such Permitted Debt Exchange shall be consistent with the foregoing, and all written communications generally directed to the Lenders in connection therewith shall be in form and substance consistent with the foregoing and made in consultation with the Borrower and the Auction Agent, and (vi) any applicable Minimum Tender Condition or Maximum Tender Condition, as the case may be, shall be satisfied or waived by the Borrower.

(b) With respect to all Permitted Debt Exchanges effected by the Borrower pursuant to this Section 2.17, (i) such Permitted Debt Exchanges (and the cancellation of the exchanged Term Loans in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 5.1 or 5.2, and (ii) such Permitted Debt Exchange Offer shall be made for not less than $10,000,000 in aggregate principal amount of Term Loans, *provided* that subject to the foregoing clause (ii) the Borrower may at its election specify (A) as a condition (a "**Minimum Tender Condition**") to consummating any such Permitted Debt Exchange that a minimum amount (to be determined and specified in the relevant Permitted Debt Exchange Offer in the Borrower's sole discretion) of Term Loans of any or all applicable Classes be tendered and/or (B) as a condition (a "**Maximum Tender Condition**") to consummating any such Permitted Debt Exchange that no more than a maximum amount (to be determined and specified in the relevant Permitted Debt Exchange Offer in the Borrower's sole discretion) of Term Loans of any or all applicable Classes will be accepted for exchange.

(c) In connection with each Permitted Debt Exchange, the Borrower and the Auction Agent shall mutually agree to such procedures as may be necessary or advisable to accomplish the purposes of this Section 2.17 and without conflict with Section 2.17(c); *provided*

that the terms of any Permitted Debt Exchange Offer shall provide that the date by which the relevant Lenders are required to indicate their election to participate in such Permitted Debt Exchange shall be not less than a reasonable period (in the discretion of the Borrower and the Auction Agent) of time following the date on which the Permitted Debt Exchange Offer is made.

(d) The Borrower shall be responsible for compliance with, and hereby agrees to comply with, all applicable securities and other laws in connection with each Permitted Debt Exchange, it being understood and agreed that (x) none of the Auction Agent, the Administrative Agent nor any Lender assumes any responsibility in connection with the Borrower's compliance with such laws in connection with any Permitted Debt Exchange and (y) each Lender shall be solely responsible for its compliance with any applicable "insider trading" laws and regulations to which such Lender may be subject under the Securities Exchange Act of 1934, as amended.

SECTION 3 [Reserved]

SECTION 4 Fees; Commitments

4.1 Fees

(a) In the event that, prior to the six month anniversary of the ~~First~~Second Amendment Effective Date, the Borrower (x) makes any prepayment or repayment of ~~Initial~~Tranche B-1 Term Loans in connection with any Repricing Transaction or (y) effects any amendment of this Agreement resulting in a Repricing Transaction, the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Lenders holding ~~Initial~~Tranche B-1 Term Loans, (I) a prepayment premium of 1.00% of the principal amount of the ~~Initial~~Tranche B-1 Term Loans being prepaid in connection with such Repricing Transaction and (II) in the case of clause (y), an amount equal to 1.00% of the aggregate principal amount of the applicable ~~Initial~~Tranche B-1 Term Loans of non-consenting Lenders outstanding immediately prior to such amendment that are subject to an effective pricing reduction pursuant to such amendment.

(b) The Borrower agrees to pay directly to the Administrative Agent for its own account the administrative agent fees as set forth in the Fee Letter.

(c) Notwithstanding the foregoing, the Borrower shall not be obligated to pay any amounts to any Defaulting Lender pursuant to this Section 4.1 (subject to Section 2.16).

4.2 Mandatory Termination or Reduction of Commitments

The Initial Term Commitments described in clause (a) of the definition thereof shall terminate upon the occurrence of the Closing Date and the Initial Term Commitments described in clause (b) of the definition thereof shall terminate upon the occurrence of the First Amendment Effective Date.

SECTION 5 Payments

5.1 Voluntary Prepayments

The Borrower shall have the right to prepay Term Loans, without premium or penalty (other than as provided in Section 4.1(a) with respect to the Initial Term Loans or as otherwise provided with respect to Term Loans incurred after the Closing Date and amounts, if any, required to be paid pursuant to Section 2.11 with respect to prepayments of LIBOR Loans made on any date other than the last day of the applicable Interest Period), in whole or in part, from time to time on the following terms and conditions: (a) the Borrower shall give the Administrative Agent at the Administrative Agent's Office revocable written notice (or telephonic notice promptly confirmed in writing) of its intent to make such prepayment, the amount of such prepayment and, in the case of LIBOR Loans, the specific Borrowing(s) pursuant to which made, which notice shall be given by the Borrower no later than 1:00 p.m. (x) one Business Day prior to (in the case of ABR Loans) or (y) three Business Days prior to (in the case of LIBOR Loans) such prepayment and shall be promptly transmitted by the Administrative Agent to each Lender, (b) each partial prepayment of (i) any LIBOR Loans shall be in a minimum amount of $5,000,000 and in multiples of $1,000,000 in excess thereof and (ii) any ABR Loans shall be in a minimum amount of $1,000,000 and in multiples of $100,000 in excess thereof; *provided* that no partial prepayment of LIBOR Loans made pursuant to a single Borrowing shall reduce the outstanding LIBOR Loans made pursuant to such Borrowing to an amount less than the Minimum Borrowing Amount for LIBOR Loans and (c) any prepayment of LIBOR Loans pursuant to this Section 5.1 on any day prior to the last day of an Interest Period applicable thereto shall be subject to compliance by the Borrower with the applicable provisions of Section 2.11. Each prepayment in respect of any Term Loans pursuant to this Section 5.1 shall be (a) applied to the Class or Classes of Term Loans in such manner as the Borrower may determine, (b) applied to reduce Repayment Amounts in such order as the Borrower may determine and (c) applied to reduce the Type of Term Loans in the applicable Class as the Borrower may determine. In the event that the Borrower does not specify the order in which to apply prepayments of Term Loans to reduce Repayment Amounts or prepayments of Term Loans as between Classes of Term Loans, the Borrower shall be deemed to have elected that such prepayment be applied to reduce the Repayment Amounts in direct order of maturity on a *pro rata* basis with the applicable Class or Classes, if a Class or Classes were specified, or among all Classes of Term Loans then outstanding, if no Class was specified. If the Borrower does not specify the Type of Term Loans in the applicable Class, the Administrative Agent may make such designation in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.11. At the Borrower's election in connection with any prepayment pursuant to this Section 5.1, such prepayment shall not be applied to any Term Loan of a Defaulting Lender.

5.2 Mandatory Prepayments

(a) Prepayment Events. (i) On each occasion that an Asset Sale Prepayment Event or a Recovery Prepayment Event occurs, the Borrower shall, within ten Business Days

after the receipt of Net Cash Proceeds of such Prepayment Event (or, in the case of Deferred Net Cash Proceeds, within three Business Days after the Deferred Net Cash Proceeds Payment Date), prepay (or cause to be prepaid) (subject to Section 11.11 when applicable), in accordance with clauses (c) and (d) below, Term Loans with a principal amount equal to 100% of the Net Cash Proceeds from such Prepayment Event; *provided* that the percentage in this Section 5.2(a)(i) shall be reduced to (A) 50% if the Consolidated First Lien Net Leverage Ratio on the date of such prepayment is less than or equal to 2.80 to 1.00 but greater than 2.30 to 1.00 and (B) 0% if the Consolidated First Lien Net Leverage Ratio on the date of such prepayment is less than or equal to 2.30 to 1.00; *provided*, *further*, that the Borrower may use a portion of such Net Cash Proceeds to prepay or repurchase any Indebtedness (and with such prepaid or repurchased Indebtedness permanently extinguished) to the extent such Indebtedness is secured with a Lien on the Collateral ranking *pari passu* with the Lien securing the Initial Term Loans to the extent such Indebtedness requires the issuer to prepay or make an offer to purchase or prepay such Indebtedness with the proceeds of such Prepayment Event, in each case in an amount not to exceed the product of (x) the amount of such Net Cash Proceeds multiplied by (y) a fraction, the numerator of which is the outstanding principal amount of such Indebtedness and with respect to which such a requirement to prepay or make an offer to purchase or prepay exists and the denominator of which is the sum of the outstanding principal amount of such Indebtedness and the outstanding principal amount of the Term Loans (it being understood that to the extent the holders of such Indebtedness decline to have such Indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof); *provided*, *further*, that (i) no prepayment shall be required pursuant to this Section 5.2(a)(i) in the case of any Asset Sale Prepayment Event or Recovery Prepayment Event yielding Net Cash Proceeds of less than $5,000,000 in the aggregate and (ii) unless and until the amount at any time of Net Cash Proceeds from such Prepayment Events required to be applied at or prior to such time pursuant to this Section 5.2(a)(i) and not yet applied at or prior to such time to prepay Term Loans pursuant to this Section exceeds (x) $25,000,000 for a single Prepayment Event or (y) $100,000,000 in the aggregate for all Prepayment Events (other than those that are either under the threshold specified in clause (i) or over the threshold specified in clause (ii)(x)) in any one Fiscal Year, at which time all such Net Cash Proceeds referred to in this clause (ii) with respect to such Fiscal Year shall be applied as a prepayment in accordance with this Section 5.2(a)(i) (and only amounts in excess of the threshold amount in clause (x) or (y) above shall be applied as a prepayment in accordance with this Section 5.2(a)(i)).

(ii) On each occasion that a Debt Incurrence Prepayment Event occurs, the Borrower shall, within ten Business Days after the receipt of the Net Cash Proceeds from the occurrence of such Debt Incurrence Prepayment Event, prepay Term Loans in accordance with clauses (c) and (d) below.

(iii) On each occasion that a New Debt Incurrence Prepayment Event occurs, the Borrower shall, within five Business Days after the receipt of the Net Cash Proceeds from the occurrence of such New Debt Incurrence Prepayment Event, (A) with respect to a New Debt Incurrence Prepayment Event resulting from the incurrence of Indebtedness pursuant to Section 10.1(v)(i), at the Borrower’s election as to the allocation

of such Net Cash Proceeds as among any and all of the Classes of Term Loans as selected by Borrower and (B) with respect to each other New Debt Incurrence Prepayment Event, prepay the applicable Class or Classes of Term Loans that are the subject of the Refinanced Debt, in each case in a principal amount equal to 100% of the Net Cash Proceeds from such New Debt Incurrence Prepayment Event.

(b) Excess Cash Flow. Not later than ten Business Days after the date on which financial statements are delivered pursuant to Section 9.1(a) (in any case no later than the end of any cure period under Section 11.3(b) applicable to the delivery of such financial statements) for any Fiscal Year (commencing with the first full Fiscal Year completed after the Closing Date), prepay Term Loans in accordance with clauses (c) and (d) below in a principal amount equal to, as applicable, (i) (A) if the Consolidated First Lien Net Leverage Ratio as of the end of such Fiscal Year is greater than 2.80:1.00, 50% of the Excess Cash Flow for such Fiscal Year, (B) if the Consolidated First Lien Net Leverage Ratio as of the end of such Fiscal Year is equal to or less than 2.80:1.00 and greater than 2.30:1.00, 25% of the Excess Cash Flow for such Fiscal Year or (C) otherwise, 0% of the Excess Cash Flow for such Fiscal Year; *minus* (ii) to the extent any Indebtedness secured with a Lien on the Collateral ranking *pari passu* with the Lien securing the Initial Term Loans also requires the issuer of such Indebtedness to prepay or make an offer to purchase or prepay such Indebtedness with the amount of Excess Cash Flow, the Borrower may reduce the amount calculated pursuant to the provisions above by an amount not to exceed the product of (x) such amount *multiplied* by (y) a fraction, the numerator of which is the outstanding principal amount of such Indebtedness and with respect to which such a requirement to prepay or make an offer to purchase or prepay exists and the denominator of which is the sum of the outstanding principal amount of such Indebtedness and the outstanding principal amount of the Term Loans (it being understood that to the extent the holders of such Indebtedness decline to have such Indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof); *minus* (iii) any voluntary prepayments or repurchases of Term Loans or any other Indebtedness secured on a *pari passu* basis with the Initial Term Loans (unless such prepayment or repurchase is funded with other long-term Indebtedness) made during such Fiscal Year or, at the Borrower's option and without duplication, after the end of such Fiscal Year and prior to the time such Excess Cash Flow payment is due on a dollar-for-dollar basis (with the Consolidated First Lien Net Leverage Ratio to be recalculated to give effect to any such after-Fiscal Year end payments); *provided* that (I) if for any Fiscal Year, the amounts calculated pursuant to the provisions above is a negative amount, any such negative amount shall, at the option of the Borrower, be carried forward in future Fiscal Years to reduce the required payments pursuant to this Section 5.2(b) and (II) notwithstanding anything set forth above, any prepayment under this Section 5.2(b) shall be required only if the required prepayment amount calculated pursuant to the provisions above (including giving effect to any credit applied pursuant to clause (I) of this proviso) exceeds $20,000,000, and only the amount in excess thereof shall be applied to make prepayments of the Term Loans.

(c) Application to Repayment Amounts. Each prepayment of Term Loans required by Section 5.2(a) (except as provided in Section 5.2(a)(iii)) or Section 5.2(b) shall be

allocated to the Term Loans then outstanding (ratably to each Class of Term Loans (or on a less than ratable basis, if agreed to by the Lenders providing such Class of Term Loans) based on then remaining principal amounts of the respective Classes of Term Loans then outstanding) until paid in full. In addition, each such prepayment shall be applied within each Class of Term Loans (i) ratably among the Lenders holding the Term Loans of such Class (unless otherwise agreed by an applicable affected Lender) and (ii) to scheduled amortization payments in respect of such Term Loans in direct forward order of scheduled maturity thereof or as otherwise directed by the Borrower.

(d) Application to Term Loans. With respect to each prepayment of Term Loans required pursuant to Section 5.2(a) (other than Section 5.2(a)(iii)) or Section 5.2(b), subject to Section 11.11 in the case of Section 5.2(a)(ii) (when applicable), the Borrower may designate the Types of Term Loans that are to be prepaid and the specific Borrowing(s) pursuant to which made; *provided* that the Borrower pays any amounts, if any, required to be paid pursuant to Section 2.11 with respect to prepayments of LIBOR Loans made on any date other than the last day of the applicable Interest Period. In the absence of a Rejection Notice or a designation by the Borrower as described in the preceding sentence, the Administrative Agent may, subject to the above, make such designation in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.11.

(e) [Reserved]

(f) Rejection Right. The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to Section 5.2(a)(i) or Section 5.2(b), in each case at least three Business Days prior to the date such prepayment is required to be made (or such shorter period of time as agreed to by the Administrative Agent in its reasonable discretion). Each such notice shall be revocable and specify the anticipated date of such prepayment and provide a reasonably detailed estimated calculation of the amount of such prepayment. The Administrative Agent will promptly notify each Lender holding Term Loans to be prepaid in accordance with such prepayment notice of the contents of the Borrower's prepayment notice and of such Lender's *pro rata* share of the prepayment. Each Lender may reject all or a portion of its *pro rata* share of any such prepayment of Term Loans required to be made pursuant to Section 5.2(a)(i) or Section 5.2(b) (such declined amounts, the "**Declined Proceeds**") by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m. one Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice shall specify the principal amount of the mandatory prepayment of Term Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such prepayment of Term Loans. Any Declined Proceeds remaining thereafter shall be retained by the Borrower ("**Retained Declined Proceeds**").

(g) Foreign Net Cash Proceeds or Excess Cash Flow. Notwithstanding any other provisions of this Section 5.2, (i) to the extent that the repatriation of any or all of the Net Cash Proceeds from a Recovery Prepayment Event (a "Foreign Recovery Event") of, or any Disposition by, a Restricted Foreign Subsidiary giving rise to an Asset Sale Prepayment Event (a "**Foreign Asset Sale**") or (ii) the repatriation of any Excess Cash Flow attributable to a Restricted Foreign Subsidiary ("**Foreign Excess Cash Flow**"), are prohibited or delayed by applicable local law (including financial assistance, corporate benefit, restrictions on upstreaming of cash intra-group and fiduciary and statutory duties of the directors of the relevant subsidiaries) or material agreement (so long as not created in contemplation of such prepayment) or organizational document from being repatriated to the United States or, if the Borrower has determined in good faith that repatriation of any of or all the Net Cash Proceeds of any Foreign Recovery Event or any Foreign Asset Sale or any Foreign Excess Cash Flow would have an material adverse tax consequence to the Borrower and its Restricted Subsidiaries (or any direct or indirect parent company of the Borrower), such portion of the Net Cash Proceeds or the Foreign Excess Cash Flow so affected will not be required to be applied to repay Term Loans, at the times provided in this Section 5.2 but may be retained by the applicable Restricted Foreign Subsidiary for working capital purposes so long, but only so long, (i) as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to promptly take commercially reasonable actions reasonably required by the applicable local law or material agreement to permit such repatriation) or (ii) as the Borrower determines in good faith such material adverse tax consequence to the Borrower and its Restricted Subsidiaries (or any direct or indirect parent company of the Borrower) would be incurred, and once such repatriation is permitted under the applicable local law or such material adverse tax consequence would no longer be incurred as determined by the Borrower in good faith (and in any event not later than ten (10) Business Days after such repatriation is permitted to occur or the Borrower determines in good faith that such material adverse tax consequence would no longer be incurred) applied (net of additional taxes payable or reserved against as a result thereof) apply an amount equal thereto to the repayment of the Term Loans as required pursuant to this Section 5.2.

5.3 Method and Place of Payment

(a) Except as otherwise specifically provided herein, all payments under this Agreement shall be made by the Borrower without set-off, counterclaim or deduction of any kind, to the Administrative Agent for the ratable account of the Lenders entitled thereto, as the case may be, not later than 2:00 p.m., in each case, on the date when due and shall be made in immediately available funds at the Administrative Agent's Office or at such other office as the Administrative Agent shall specify for such purpose by written notice to the Borrower, it being understood that written or facsimile notice by the Borrower to the Administrative Agent to make a payment from the funds in the Borrower's account at the Administrative Agent's Office shall constitute the making of such payment to the extent of such funds held in such account. All repayments or prepayments of any Term Loans (whether of principal, interest or otherwise) hereunder and all other payments under each Credit Document shall be made in Dollars. The Administrative Agent will thereafter cause to be distributed on the same day (if payment was actually received by the Administrative Agent prior to 2:00 p.m. or, otherwise, on the next

Business Day) like funds relating to the payment of principal or interest or fees ratably to the Lenders entitled thereto.

(b) Any payments under this Agreement that are made later than 2:00 p.m. shall be deemed to have been made on the next succeeding Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable during such extension at the applicable rate in effect immediately prior to such extension.

5.4 Net Payments

(a) Any and all payments made by or on behalf of the Borrower or any Guarantor under this Agreement or any other Credit Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes; provided that if the Borrower or any Guarantor or the Administrative Agent shall be required by Applicable Law (as determined in the good faith discretion of an applicable withholding agent) to deduct or withhold any Taxes from such payments, then (i) the Borrower or such Guarantor or the Administrative Agent shall make such deductions or withholdings and (ii) the Borrower or such Guarantor or the Administrative Agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority within the time allowed and in accordance with Applicable Law. If such a Tax is an Indemnified Tax, the sum payable by the Borrower or any Guarantor shall be increased as necessary so that after making all such required deductions and withholdings (including such deductions or withholdings applicable to additional sums payable under this Section 5.4), the Administrative Agent, the Collateral Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made. Whenever any Indemnified Taxes are payable by the Borrower or such Guarantor, as promptly as practicable thereafter, the Borrower or Guarantor shall send to the Administrative Agent for its own account or for the account of such Lender, as the case may be, a certified copy of an original official receipt (or other evidence acceptable to such Lender, acting reasonably) received by the Borrower or such Guarantor showing payment thereof..

(b) The Borrower shall timely pay to the relevant Governmental Authority Other Taxes in accordance with Applicable Law, or at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes that are paid by the Administrative Agent to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Borrower shall indemnify and hold harmless the Administrative Agent, the Collateral Agent and each Lender within fifteen Business Days after written demand therefor, for the full amount of any Indemnified Taxes imposed on the Administrative Agent, the Collateral Agent or such Lender as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Credit Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.4) payable or paid by such Agent or Lender or required to be withheld or deducted from a payment to such Agent or Lender and any reasonable out-of-pocket 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 setting forth reasonable detail as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), the Administrative Agent or the Collateral Agent (as applicable) on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.6 relating to the maintenance of a 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 this Agreement or any Credit Document, and any reasonable expenses arising therefrom or with respect thereof, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Any Non-U.S. Lender claiming a basis for an exemption from or reduction of withholding Tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or under any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Credit Document shall, to the extent it is legally able to do so, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding or as will permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made. In addition, any Lender, if 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 this Section 5.4(d), the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.4(f), 5.4(i) and 5.4(j) 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.

(f) Without limiting the generality of Section 5.4(e), each Non-U.S. Lender with respect to any amounts payable hereunder or under any other Credit Document shall, to the extent it is legally entitled to do so*:*

(i) deliver to the Borrower and the Administrative Agent, on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed copies of (x) in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding Tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", United States Internal Revenue Service Form W-8BEN or W-8BEN-E (together with a certificate substantially in the form of Exhibit J-1 representing that such Non-U.S. Lender is not a bank within the meaning of Section 881(c)(3)(A) of the Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Borrower, any interest payment received by such Non-U.S. Lender under this Agreement or any other Credit Document is not effectively connected with the conduct of a trade or business in the United States and is not a controlled foreign corporation related to the Borrower (within the meaning of Section 864(d)(4) of the Code)), (y) Internal Revenue Service Form W-8BEN, Form W-8-BEN-E or Form W-8ECI, in each case properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or reduced rate of, U.S. Federal withholding Tax on payments under any Credit Document or (z) to the extent a Non-U.S. Lender is not the beneficial owner with respect to any portion of any sums paid or payable to such Lender under any of the Credit Documents (for example, in the case of a typical participation or where Non-U.S. Lender is a pass through entity) Internal Revenue Service Form W-8IMY and all necessary attachments (including the forms described in clauses (x) and (y) above and in Section 5.4(i), Exhibit J-2, Exhibit J-3 and or other certification documents from each beneficial owner, as applicable); *provided* that if the Non-U.S. Lender is a partnership it may provide Exhibit J-4 on behalf of one or more of its direct or indirect partners that are claiming the portfolio interest exemption; and

(ii) deliver to the Borrower and the Administrative Agent two further copies of any such form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate in any respect and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower or the Administrative Agent.

If in any such case any Change in Law has occurred prior to the date on which any such delivery would otherwise be required that renders any such form inapplicable or would prevent such Non-U.S. Lender from duly completing and delivering any such form with respect to it, such Non-U.S. Lender shall promptly so advise the Borrower and the Administrative Agent.

(g) If any Lender, the Administrative Agent or the Collateral Agent, as applicable, determines, in its sole discretion exercised in good faith, that it had received and retained a refund of an Indemnified Tax or additional sums payable under this Section 5.4 (including an Other Tax) for which a payment has been made by the Borrower pursuant to this Agreement, which refund in the good faith judgment of such Lender, the Administrative Agent or the Collateral Agent, as the case may be, is attributable to such payment made by the Borrower, then the Lender, the Administrative Agent or the Collateral Agent, as the case may be, shall reimburse the Borrower for such amount (net of all out-of-pocket expenses of such Lender,

the Administrative Agent or the Collateral Agent, as the case may be, and without interest other than any interest received thereon from the relevant Governmental Authority with respect to such refund) as the Lender, the Administrative Agent or the Collateral Agent, as the case may be, determines in its sole discretion exercised in good faith to be the proportion of the refund as will leave it, after such reimbursement, in no better or worse position (taking into account expenses or any Taxes imposed on the refund) than it would have been in if the payment had not been required; *provided* that the Borrower, upon the request of the Lender, the Administrative Agent or the Collateral Agent, agrees to repay the amount paid over to the Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender, the Administrative Agent or the Collateral Agent in the event the Lender, the Administrative Agent or the Collateral Agent is required to repay such refund to such Governmental Authority. A Lender, the Administrative Agent or the Collateral Agent shall claim any refund that it determines is available to it, unless it concludes in its sole discretion that it would be adversely affected by making such a claim. None of any Lender, the Administrative Agent or the Collateral Agent shall be obliged to disclose any information regarding its tax affairs that it deems confidential to any Credit Party in connection with this clause (g).

(h) If the Borrower determines that a reasonable basis exists for contesting a Tax, each Lender or Agent, as the case may be, shall use reasonable efforts to cooperate with the Borrower as the Borrower may reasonably request in challenging such Tax. Subject to the provisions of Section 2.12, each Lender and Agent agrees to use reasonable efforts to cooperate with the Borrower as the Borrower may reasonably request to minimize any amount payable by the Borrower or any Guarantor pursuant to this Section 5.4. The Borrower shall indemnify and hold each Lender and Agent harmless against any out-of-pocket expenses incurred by such Person in connection with any request made by the Borrower pursuant to this Section 5.4(h). Nothing in this Section 5.4(h) shall obligate any Lender or Agent to take any action that such Person, in its sole judgment, determines may result in a material detriment to such Person.

(i) Without limiting the generality of Section 5.4(d), with respect to any amounts payable hereunder or under any other Credit Document, each Lender or Agent that is a United States person under Section 7701(a)(30) of the Code (each, a "**U.S. Lender**") shall deliver to the Borrower and the Administrative Agent two United States Internal Revenue Service Forms W-9 (or substitute or successor form), properly completed and duly executed, certifying that such Lender or Agent is exempt from United States backup withholding (i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), (ii) on or before the date that such form expires or becomes obsolete or inaccurate in any respect, (iii) after the occurrence of a change in such Agent's or Lender's circumstances requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent and (iv) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent.

(j) If a payment made to any Agent or Lender would be subject to U.S. federal withholding Tax imposed under FATCA if such Agent or Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Agent or 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 Agent, such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such other documentation reasonably requested by the Administrative Agent and the Borrower as may be necessary for the Administrative Agent and the Borrower to comply with their obligations under FATCA, to determine whether such Agent or Lender has or has not complied with such Agent's or Lender's FATCA obligations and to determine the amount, if any, to deduct and withhold from such payment and deliver to the Borrower and the Administrative Agent two further copies of any such documentation on or before the date that any such documentation expires or becomes obsolete or inaccurate in any respect and after the occurrence of any event requiring a change in the documentation previously delivered by it to the Borrower or the Administrative Agent. Solely for purposes of this subsection (j), "FATCA" shall include any amendments made to FATCA after the date of this Agreement and any current or future intergovernmental agreements and any Applicable Law implementing such agreement entered into in connection therewith.

(k) The agreements in this Section 5.4 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 this Agreement and the payment of the Term Loans and all other amounts payable hereunder and under any other Credit Document.

5.5 Computations of Interest and Fees

Except as provided in the next succeeding sentence, interest on LIBOR Loans and ABR Loans shall be calculated on the basis of a 360-day year for the actual days elapsed. Interest on ABR Loans in respect of which the rate of interest is calculated on the basis of the rate of interest in effect for such day as publicly announced from time to time by the Wall Street Journal as the "U.S. prime rate" and interest on overdue interest shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed.

5.6 Limit on Rate of Interest

(a) No Payment Shall Exceed Lawful Rate. Notwithstanding any other term of this Agreement, the Borrower shall not be obligated to pay any interest or other amounts under or in connection with this Agreement or otherwise in respect of the Obligations in excess of the amount or rate permitted under or consistent with any Applicable Law.

(b) Payment at Highest Lawful Rate. If the Borrower is not obliged to make a payment that it would otherwise be required to make, as a result of Section 5.6(a), the Borrower shall make such payment to the maximum extent permitted by or consistent with Applicable Laws.

(c) Adjustment if Any Payment Exceeds Lawful Rate. If any provision of this Agreement or any of the other Credit Documents would obligate the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate that would be prohibited by any Applicable Law, then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum

amount or rate of interest, as the case may be, as would not be so prohibited by Applicable Law, such adjustment to be effected, to the extent necessary, by reducing the amount or rate of interest required to be paid by the Borrower to the affected Lender under Section 2.8.

(d) Spreading. In determining whether the interest hereunder is in excess of the amount or rate permitted under or consistent with any Applicable Law, the total amount of interest shall be spread throughout the entire term of this Agreement until its payment in full.

(e) Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if any Lender shall have received from the Borrower an amount in excess of the maximum permitted by any Applicable Law, then the Borrower shall be entitled, by notice in writing to the Administrative Agent to obtain reimbursement from that Lender in an amount equal to such excess, and pending such reimbursement, such amount shall be deemed to be an amount payable by that Lender to the Borrower.

SECTION 6 Conditions Precedent to the Closing Date

The initial Borrowing under this Agreement is subject to the satisfaction in all material respects of the conditions set forth below, except as otherwise agreed between the Borrower and the Commitment Parties (as defined in the Commitment Letter).

6.1 Credit Documents

The Administrative Agent shall have received (a) this Agreement, executed and delivered by an Authorized Officer of Holdings and the Borrower, (b) the Guarantee, executed and delivered by an Authorized Officer of each Guarantor as of the Closing Date, (c) the Security Agreement, executed and delivered by an Authorized Officer of each grantor party thereto as of the Closing Date and (d) a duly executed Notice of Borrowing delivered pursuant to Section 2.3(a).

6.2 Collateral

(a) All outstanding Stock of the Borrower and all Stock of each Subsidiary of the Borrower directly owned by the Borrower or any Subsidiary Guarantor, in each case, as of the Closing Date, shall have been pledged pursuant to the Security Agreement (except that such Credit Parties shall not be required to pledge any Excluded Stock and Stock Equivalents) and the Collateral Agent shall have received all certificates, if any, representing such securities pledged under the Security Agreement, accompanied by instruments of transfer and undated stock powers endorsed in blank.

(b) All Indebtedness of the Borrower and each Subsidiary of the Borrower that is owing to the Borrower or a Subsidiary Guarantor shall, to the extent exceeding $10,000,000 in aggregate principal amount, be evidenced by one or more global promissory notes and shall have been pledged pursuant to the Security Agreement, and the Collateral Agent shall have received all such promissory notes, together with instruments of transfer with respect thereto endorsed in blank.

(c) All documents and instruments, including Uniform Commercial Code or other applicable personal property financing statements, reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by any Security Document to be executed on the Closing Date and to perfect such Liens to the extent required by, and with the priority required by, such Security Document shall have been delivered to the Collateral Agent in proper form for filing, registration or recording and none of the Collateral shall be subject to any other pledges, security interests or mortgages, except for Liens permitted hereunder.

(d) The Borrower shall deliver to the Collateral Agent a completed Perfection Certificate, executed and delivered by an Authorized Officer of the Borrower, together with all attachments contemplated thereby.

Notwithstanding anything set forth above, to the extent any security interest (other than to the extent that a lien on the Collateral may be perfected by the filing of a financing statement under the Uniform Commercial Code or by the delivery of stock or other equity certificates of the Borrower or a Material Subsidiary of the Borrower constituting a Wholly Owned Domestic Subsidiary that is part of the Collateral and such stock or other equity certificates have been received from the Borrower) is not or cannot be provided or perfected on the Closing Date after the Borrower's use of commercially reasonable efforts to do so, or without undue burden or expense, the creation or perfection of such security interest shall not constitute a condition precedent to the availability of the Initial Term Loans on the Closing Date but shall instead be required to be delivered or provided within 90 days after the Closing Date (or such later date as may be reasonably agreed by the Borrower and the Administrative Agent (with respect to Term Priority Collateral) or the ABL Administrative Agent (with respect to ABL Priority Collateral)) pursuant to arrangements to be mutually agreed by the Borrower and the Administrative Agent or the ABL Administrative Agent.

6.3 Legal Opinions

The Administrative Agent shall have received the executed customary legal opinions of Kirkland & Ellis LLP, special New York counsel to the Credit Parties. Holdings, the Borrower, the other Credit Parties and the Administrative Agent hereby instruct such counsel to deliver such legal opinions.

6.4 Closing Certificates

The Administrative Agent shall have received a certificate of the Credit Parties, dated the Closing Date, in respect of the conditions set forth in Sections 6.7, 6.8, 6.11, 6.12 and 6.13.

6.5 Authorization of Proceedings of Each Credit Party

The Administrative Agent shall have received (a) a copy of the resolutions of the board of directors, other managers or general partner of each Credit Party (or a duly authorized committee thereof) authorizing (i) the execution, delivery and performance of the Credit

Documents referred to in Section 6.1 (and any agreements relating thereto) to which it is a party and (ii) in the case of the Borrower, the extensions of credit contemplated hereunder, (b) true and complete copies of the Organizational Documents of each Credit Party as of the Closing Date, and (c) good standing certificates (to the extent such concept exists in the relevant jurisdiction of organization) of the Borrower and the Guarantors.

6.6 Fees

All fees required to be paid on the Closing Date pursuant to the Fee Letter and reasonable and documented out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Closing Date, shall have been paid, or shall be paid substantially concurrently with, the initial Borrowings hereunder.

6.7 Representations and Warranties

All Specified Representations shall be true and correct in all material respects on the Closing Date (except to the extent any such representation or warranty is stated to relate solely to an earlier date, it shall be true and correct in all material respects as of such earlier date).

6.8 Company Material Adverse Change

No Company Material Adverse Change shall have occurred since October 23, 2017.

6.9 Solvency Certificate

On the Closing Date, the Administrative Agent shall have received a certificate from the chief financial officer of Holdings substantially in the form of Annex I to Exhibit D of the Commitment Letter.

6.10 Financial Statements

(a) The Joint Lead Arrangers shall have received copies of (i) the audited consolidated balance sheet and the related audited consolidated statements of income, cash flows and shareholders' equity of the Borrower and its Subsidiaries as of and for the fiscal years ended September 30, 2015 and September 30, 2016 and (ii) the unaudited consolidated balance sheet and the related consolidated statements of income and cash flows of the Borrower and its Subsidiaries as of and for each subsequent fiscal quarter (other than the fourth fiscal quarter of the Borrower's Fiscal Year) ended at least 45 days before the Closing Date.

(b) The Joint Lead Arrangers shall have received an unaudited pro forma consolidated balance sheet and related unaudited pro forma consolidated statement of income of the Borrower and its Subsidiaries as of and for the twelve-month period ending on June 30, 2017, prepared after giving effect to the Transactions as if the Transactions had occurred on such date (in the case of such pro forma balance sheet) or on the first day of such period (in the case of

such pro forma statement of income), as applicable (which need not be prepared in compliance with Regulations S-X of the Securities Act of 1933, as amended, or include adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standards Codification 805, Business Combinations (formerly SFAS 141R)).

6.11 Plan Consummation

The Plan shall not have been amended, modified or supplemented after October 23, 2017 in any manner or any condition to the effectiveness thereof shall not have been waived that, individually or in the aggregate, would reasonably be expected to adversely affect the interests of the Joint Lead Arrangers and the Lenders (taken as a whole and in their capacities as such) in any material respect. The Confirmation Order shall be in form and substance materially consistent with the Plan and the Commitment Letter and otherwise reasonably satisfactory to the Joint Lead Arrangers and shall have been entered confirming the Plan. Each of the Approval Order and the Confirmation Order shall be in full force and effect and not have been stayed, reversed, or vacated, amended, supplemented, or modified except that such applicable order may be further amended, supplemented or otherwise modified in any manner that would not reasonably be expected to adversely affect the interests of the Joint Lead Arrangers and the Lenders (taken as a whole and in their capacities as such) in any material respect and shall not be subject to any pending appeals, except for any of the following, which shall be permissible appeals the pendency of which shall not prevent the occurrence of the Closing Date: (i) any appeal brought (A) by or on behalf of any member of the Ad Hoc Crossover Group (as defined in the Disclosure Statement (as defined the Plan)), whether individually or as a group, asserting objections described in [Docket No. 955] in the Case, (B) by or on behalf of the Second Lien Notes Trustee (as defined in the Plan) asserting objections described in [Docket No. 957] or [Docket No. 954] in the Case, (C) by or on behalf of Ms. Marlene Clark asserting objections with respect to the subject matter addressed by the Bankruptcy Court's opinion at [Docket No. 1182] in the Case, (D) by or on behalf of SAE Power Inc. and/or SAE Power Co. asserting the claims described in [Docket No. 925] in the Case, or (E) asserting objections of the type described in [Docket No. 1195] and similar objections, (ii) any appeal with respect to or relating to the distributions (or the allocation of such distributions) between and among creditors under the Plan, or (iii) any other appeal, the result of which would not have a materially adverse effect on the rights and interests of the Joint Lead Arrangers and the Lenders (taken as a whole and in their capacities as such). The Confirmation Order shall authorize the Avaya Debtors and the Credit Parties to execute, deliver and perform all of their obligations under all Credit Documents and shall contain no term or provision that contradicts such authorization. The Avaya Debtors shall be and shall have been in compliance with the Confirmation Order in all material respects. The Plan shall have become effective in accordance with its terms and all conditions to the effectiveness of the Plan shall have been satisfied or waived without giving effect to any waiver that would reasonably be expected to adversely affect the interests of the Joint Lead Arrangers and the Lenders in any material respect unless consented to by the Joint Lead Arrangers (such consent not to be unreasonably withheld, conditioned or delayed), and all transactions contemplated therein or in the Confirmation Order to occur on the effective date of the Plan shall

have been (or concurrently with the Closing Date, shall be) substantially consummated in accordance with the terms thereof and in compliance with Applicable Laws.

6.12 Refinancing

The Closing Refinancing shall have been made or consummated prior to, or shall be made or consummated substantially concurrently with, the initial borrowing of the Initial Term Loans. The principal amount of all third party indebtedness for borrowed money (which, for the avoidance of doubt, does not include intercompany loans or comfort letters reinstated pursuant through the Plan) of the Avaya Debtors on the Closing Date that is incurred, issued, or reinstated or otherwise not discharged in connection with consummation of the Plan (giving effect to any amendments thereto), excluding all such amounts that are (i) not impaired under the Plan (without giving effect to any amendments thereto) and (ii) not required to be paid in full upon the consummation of the Plan (without giving effect to any amendments thereto) (such exclusion to include, without limitation, all Capital Leases in existence on the Closing Date), shall not exceed in the aggregate (x) $2,925 million *plus* all additional amounts incurred to fund OID and/or upfront fees as contemplated hereunder and (y) the Initial ABL Facility.

6.13 PBGC Settlement

The PBGC Settlement Order (as defined in the Plan) shall have been entered and be in effect and the PBGC Settlement (as defined in the Plan) shall have been entered into and consummated, in each case, without giving effect to any amendment, modification or supplement that would, individually or in the aggregate, reasonably be expected to adversely affect the interests of the Joint Lead Arrangers or the Lenders in any material respect.

6.14 Patriot Act

The Administrative Agent shall have received (at least 3 Business Days prior to the Closing Date) all documentation and other information about the Borrower and each Guarantor as has been reasonably requested in writing at least 10 Business Days prior to the Closing Date by the Administrative Agent or the Lenders that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the Patriot Act.

For purposes of determining compliance with the conditions specified in Section 6 on the Closing Date, each Lender that has signed or authorized the signing of this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6 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 7 [Reserved]

SECTION 8 Representations and Warranties.

In order to induce the Lenders to enter into this Agreement and to make the Term Loans, each of Holdings and the Borrower makes the following representations and warranties to the Lenders, all of which shall survive the execution and delivery of this Agreement and the making of the Term Loans:

8.1 Corporate Status; Compliance with Laws

Each of Holdings, the Borrower and each Material Subsidiary of the Borrower that is a Restricted Subsidiary (a) is a duly organized and validly existing corporation or other entity in good standing (as applicable) under the laws of the jurisdiction of its organization and has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is engaged, except as would not reasonably be expected to result in a Material Adverse Effect, (b) has duly qualified and is authorized to do business and is in good standing (if applicable) in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect and (c) is in compliance with all Applicable Laws, except to the extent that the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect.

8.2 Corporate Power and Authority

Each Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is a party. Each Credit Party has duly executed and delivered each Credit Document to which it is a party and each such Credit Document constitutes the legal, valid and binding obligation of such Credit Party enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law) (*provided* that, with respect to the creation and perfection of security interests with respect to Indebtedness, Stock and Stock Equivalents of Foreign Subsidiaries, only to the extent the creation and perfection of such obligation is governed by the UCC).

8.3 No Violation

Neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party nor the compliance with the terms and provisions thereof nor the consummation of the financing transactions contemplated hereby and thereby will (a) contravene any applicable provision of any material Applicable Law (including material Environmental Laws) other than any contravention which would not reasonably be expected to result in a Material Adverse Effect, (b) result in any breach of any of the terms, covenants,

conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien upon any of the property or assets of Holdings, the Borrower or any Restricted Subsidiary (other than Liens permitted hereunder) pursuant to the terms of any material indenture, loan agreement, lease agreement, mortgage, deed of trust or other material debt agreement or instrument to which Holdings, the Borrower or any Restricted Subsidiary is a party or by which it or any of its property or assets is bound (any such term, covenant, condition or provision, a "**Contractual Requirement**") other than any such breach, default or Lien that would not reasonably be expected to result in a Material Adverse Effect, or (c) violate any provision of the Organizational Documents of any Credit Party.

8.4 Litigation

Except as set forth on Schedule 8.4, there are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened in writing with respect to Holdings, the Borrower or any of the Restricted Subsidiaries that have a reasonable likelihood of adverse determination and such determination would reasonably be expected to result in a Material Adverse Effect.

8.5 Margin Regulations

Neither the making of any Term Loan hereunder nor the use of the proceeds thereof will violate the provisions of Regulation T, U or X of the Board.

8.6 Governmental Approvals

The execution, delivery and performance of the Credit Documents does not require any consent or approval of, registration or filing with, or other action by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect, (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents and (iii) such licenses, authorizations, consents, approvals, registrations, filings or other actions the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

8.7 Investment Company Act

None of the Credit Parties is an "investment company" within the meaning of, and subject to registration under, the Investment Company Act of 1940, as amended.

8.8 True and Complete Disclosure

(a) None of the written factual information and written data (taken as a whole) heretofore or contemporaneously furnished by or on behalf of Holdings, the Borrower, any of the Subsidiaries of the Borrower or any of their respective authorized representatives to the Administrative Agent, any Joint Lead Arranger and/or any Lender on or before the Closing Date (including all such information and data contained in the Credit Documents) regarding Holdings, the Borrower and its Restricted Subsidiaries in connection with the Transactions for purposes of

or in connection with this Agreement or any transaction contemplated herein contained any untrue statement of any material fact or omitted to state any material fact necessary to make such information and data (taken as a whole) not materially misleading at such time in light of the circumstances under which such information or data was furnished, it being understood and agreed that for purposes of this Section 8.8(a), such factual information and data shall not include projections or estimates (including financial estimates, forecasts and other forward-looking information) and information of a general economic or general industry nature.

(b) The projections posted to the Lenders on November 2, 2017 are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized by the Agents, Joint Lead Arrangers and the Lenders that such projections, forward-looking statements, estimates and pro forma financial information are not to be viewed as facts or a guarantee of performance, and are subject to material contingencies and assumptions, many of which are beyond the control of the Credit Parties, and that actual results during the period or periods covered by any such projections, forward-looking statements, estimates and pro forma financial information may differ materially from the projected results.

8.9 Financial Condition; Financial Statements

The financial statements described in Section 6.10 present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries, in each case, as of the dates thereof and for such period covered thereby in accordance with GAAP, consistently applied throughout the periods covered thereby, except as otherwise noted therein, and subject, in the case of any unaudited financial statements, to changes resulting from normal year-end adjustments and the absence of footnotes. There has been no Material Adverse Effect since the Closing Date.

8.10 Tax Matters

Except where the failure of which would not be reasonably expected to have a Material Adverse Effect, (a) each of Holdings, the Borrower and each of the Restricted Subsidiaries has filed all federal income Tax returns and all other Tax returns, domestic and foreign, required to be filed by it (after giving effect to all applicable extensions) and has paid all material Taxes payable by it that have become due (whether or not shown on such Tax return), other than those (i) not yet delinquent or (ii) contested in good faith as to which adequate reserves have been provided to the extent required by law and in accordance with GAAP, (b) each of Holdings, the Borrower and each of the Restricted Subsidiaries has provided adequate reserves in accordance with GAAP for the payment of, all federal, state, provincial and foreign Taxes not yet due and payable, and (c) each of Holdings, the Borrower and each of the Restricted Subsidiaries has satisfied all of its Tax withholding obligations.

8.11 Compliance with ERISA

(a) No ERISA Event has occurred or is reasonably expected to occur; and no Lien imposed under the Code or ERISA on the assets of the Borrower or any ERISA Affiliate exists (or is reasonably likely to exist) nor has the Borrower or any ERISA Affiliate been notified

in writing that such a Lien will be imposed on the assets of Holdings, the Borrower or any ERISA Affiliate on account of any Pension Plan, except to the extent that a breach of any of the representations, warranties or agreements in this Section 8.11(a) would not result, individually or in the aggregate, in an amount of liability that would be reasonably likely to have a Material Adverse Effect. No Pension Plan has an Unfunded Current Liability that would, individually or when taken together with any other liabilities referenced in this Section 8.11(a), be reasonably likely to have a Material Adverse Effect.

(b) All Foreign Plans are in compliance with, and have been established, administered and operated in accordance with, the terms of such Foreign Plans and Applicable Law, except for any failure to so comply, establish, administer or operate the Foreign Plans as would not reasonably be expected to have a Material Adverse Effect. All contributions or other payments which are due with respect to each Foreign Plan have been made in full and there are no funding deficiencies thereunder, except to the extent any such events would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

8.12 Subsidiaries

Schedule 8.12 lists each Subsidiary of Holdings (and the direct and indirect ownership interest of Holdings therein), in each case existing on the Closing Date (after giving effect to the Transactions).

8.13 Intellectual Property

Each of Holdings, the Borrower and the Restricted Subsidiaries has good and marketable title to, or a valid license or right to use, all patents, trademarks, servicemarks, trade names, copyrights and all applications therefor and licenses thereof, and all other intellectual property rights, free and clear of all Liens (other than Liens permitted hereunder), that are necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such title, license or rights would not reasonably be expected to have a Material Adverse Effect.

8.14 Environmental Laws

Except as would not reasonably be expected to have a Material Adverse Effect: (a) Holdings, the Borrower and the Restricted Subsidiaries and all Real Estate are in compliance with all Environmental Laws; (b) Holdings, the Borrower and the Restricted Subsidiaries have, and have timely applied for renewal of, all permits under Environmental Law to construct and operate their facilities as currently constructed; (c) except as set forth on Schedule 8.14, neither Holdings, the Borrower nor any Restricted Subsidiary is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim or any other liability under any Environmental Law, including any such Environmental Claim, or, to the knowledge of the Borrower, any other liability under Environmental Law related to, or resulting from the business or operations of any predecessor in interest of any of them; (d) none of Holdings, the Borrower or any Restricted Subsidiary is conducting or financing or, to the knowledge of the Borrower, is required to conduct or finance, any investigation, removal, remedial or other corrective action

pursuant to any Environmental Law at any location; (e) to the knowledge of the Borrower, no Hazardous Materials have been released into the environment at, on or under any Real Estate currently owned or leased by Holdings, the Borrower or any Restricted Subsidiary, and (f) neither Holdings, the Borrower nor any Restricted Subsidiary has treated, stored, transported, released, disposed or arranged for disposal or transport for disposal of Hazardous Materials at, on, under or from any currently or, to the knowledge of the Borrower, formerly owned or leased Real Estate or facility. Except as provided in this Section 8.14, Holdings, the Borrower and the Restricted Subsidiaries make no other representations or warranties regarding Environmental Laws.

8.15 Properties

Except as set forth on Schedule 8.15, Holdings, the Borrower and the Restricted Subsidiaries have good title to or valid leasehold or easement interests or other license or use rights in all properties that are necessary for the operation of their respective businesses as currently conducted, free and clear of all Liens (other than any Liens permitted under this Agreement) and except where the failure to have such good title, leasehold or easement interests or other license or use rights would not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, the Borrowers and the Restricted Subsidiaries do not own in fee any Real Estate with a fair market value of $10,000,000 or more.

8.16 Solvency

On the Closing Date, after giving effect to the Transactions, immediately following the making of the Term Loans on such date and after giving effect to the application of the proceeds of such Term Loans, Holdings on a consolidated basis with its Subsidiaries will be Solvent.

8.17 Security Interests

Subject to the qualifications set forth in Section 6.2 and the terms and conditions of any Applicable Intercreditor Agreement then in effect, with respect to each Credit Party, the Security Documents, taken as a whole, are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first priority security interest (subject to Liens permitted hereunder) in the Collateral described therein, in each case, to the extent required under the Security Documents, the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. In the case of (i) the Stock described in the Security Agreement that is in the form of securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the New York UCC ("**Certificated Securities**"), when certificates representing such Stock are delivered to the Collateral Agent along with instruments of transfer in blank or endorsed to the Collateral Agent, and (ii) all other Collateral constituting personal property described in the Security Agreement, when financing statements, intellectual property security agreements and other required filings, recordings, agreements and actions in appropriate form are executed and delivered, performed,

recorded or filed in the appropriate offices, as the case may be, the Collateral Agent, for the benefit of the applicable Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Credit Parties in all Collateral that may be perfected by filing, recording or registering a financing statement, an intellectual property security agreement or analogous document (to the extent such Liens may be perfected by possession of the Certificated Securities by the Collateral Agent or such filings, agreements or other actions or perfection is otherwise required by the terms of any Credit Document), in each case, to the extent required under the Security Documents, as security for the Obligations, in each case prior and superior in right to any other Lien (except, in the case of Liens permitted hereunder).

8.18 Labor Matters

Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against Holdings, the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened in writing; and (b) hours worked by and payment made for such work to employees of Holdings, the Borrower and each Restricted Subsidiary have not been in violation of the Fair Labor Standards Act or any other Applicable Law dealing with such matters.

8.19 Sanctioned Persons; Anti-Corruption Laws; Patriot Act

None of Holdings, the Borrower or any of its Subsidiaries or any of their respective directors or officers is subject to any economic embargoes or similar sanctions administered or enforced by the U.S. Department of State or the U.S. Department of the Treasury (including the Office of Foreign Assets Control) or any other applicable sanctions authority (collectively, "**Sanctions**", and the associated laws, rules, regulations and orders, collectively, "**Sanctions Laws**"). Each of Holdings, the Borrower and its Subsidiaries and their respective officers and directors is in compliance, in all material respects, with (i) all Sanctions Laws, (ii) the United States Foreign Corrupt Practices Act of 1977, as amended, and any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders (collectively, "**Anti-Corruption Laws**") and (iii) the Patriot Act and any other applicable anti-terrorism and anti-money laundering laws, rules, regulations and orders. No part of the proceeds of the Term Loans will be used, directly or indirectly, in violation of the Patriot Act, the Anti-Corruption Laws, Sanctions Laws and/or any other anti-terrorism or anti-money laundering laws in any material respect.

8.20 Use of Proceeds

The Borrower will use the proceeds of the Term Loans in accordance with Section 9.13 of this Agreement.

SECTION 9 Affirmative Covenants

The Borrower hereby covenants and agrees that on the Closing Date (immediately after giving effect to the Transactions) and thereafter, until all Commitments have terminated and the Term Loans, together with interest, fees and all other Obligations (other than Hedging

Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreements or Contingent Obligations), are paid in full:

9.1 Information Covenants

The Borrower will furnish 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 available and in any event on or before the date that is 90 days after the end of each Fiscal Year (or, in the case of the Fiscal Years ended September 30, 2017 and September 30, 2018, the date that is 120 days after the end of such Fiscal Year), the consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of operations and cash flows for such Fiscal Year, setting forth comparative consolidated figures for the preceding Fiscal Year (commencing with the Fiscal Year ended September 30, 2019), all in reasonable detail and prepared in accordance with GAAP in all material respects and, in each case, except with respect to any such reconciliation, certified by independent certified public accountants of recognized national standing whose opinion shall not be qualified as to the scope of audit or as to the status of the Borrower and its consolidated Subsidiaries as a going concern (other than any exception or qualification that is a result of (x) a current maturity date of any Indebtedness or (y) any actual or prospective default of a financial maintenance covenant (including the ABL Financial Covenant)), all of which shall be (i) certified by an Authorized Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its consolidated Subsidiaries(or Holdings or an indirect parent of the Borrower and its consolidated Subsidiaries, as the case may be) in accordance with GAAP in all material respects and (ii) accompanied by a Narrative Report with respect thereto.

(b) Quarterly Financial Statements. As soon as available and in any event on or before the date that is 45 days after the end of each of the first three fiscal quarters of any Fiscal Year (or, in the case of financial statements for the fiscal quarters ending December 31, 2017, March 31, 2018 and June 30, 2018, on or before the date that is 60 days after the end of such fiscal quarter), the consolidated balance sheets of the Borrower and its consolidated Subsidiaries, in each case, as at the end of such quarterly period and the related consolidated statements of operations for such quarterly accounting period and for the elapsed portion of the Fiscal Year ended with the last day of such quarterly period, and the related consolidated statement of cash flows for such quarterly accounting period and for the elapsed portion of the Fiscal Year ended with the last day of such quarterly period, and, commencing with the fiscal quarter ended on March 31, 2019, setting forth comparative consolidated figures for the related periods in the prior Fiscal Year or, in the case of such consolidated balance sheet, for the last day of the prior Fiscal Year, all of which shall be (i) certified by an Authorized Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its consolidated Subsidiaries (or Holdings or an indirect parent of the Borrower and its consolidated Subsidiaries, as the case may be) in accordance with GAAP in all material respects, subject to changes resulting from audit, normal year-end audit

adjustments and absence of footnotes and (ii) accompanied by a Narrative Report with respect thereto.

(c) Officer's Certificates. Within five Business Days of the delivery of the financial statements provided for in Sections 9.1(a) and (b), a certificate of an Authorized Officer of the Borrower to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof, which certificate shall set forth (x) with specification of any change in the identity of the Restricted Subsidiaries and Unrestricted Subsidiaries as at the end of such Fiscal Year or period, as the case may be, from the Restricted Subsidiaries and Unrestricted Subsidiaries, respectively, provided to the Lenders on the Closing Date or the most recent Fiscal Year or period, as the case may be and (y) commencing with the Fiscal Year ended on September 30, 2019, in the case of the financial statements provided for in Section 9.1(a), with customary details, the calculation of the Excess Cash Flow for the most recent Fiscal Year. Within five Business Days of the delivery of the financial statements provided for in Section 9.1(a), a certificate of an Authorized Officer of the Borrower setting forth (A) in reasonable detail the Available Amount and the Available Equity Amount as at the end of the Fiscal Year to which such financial statements relate and (B) the information required pursuant to Sections I and II of the Perfection Certificate or confirming that there has been no change in such information since the Closing Date or the date of the most recent certificate delivered pursuant to this clause (c)(B), as the case may be.

(d) Notice of Default; Litigation; ERISA Event. Promptly after an Authorized Officer of the Borrower or any Restricted Subsidiary obtains knowledge thereof, notice of (i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto, (ii) any litigation, regulatory or governmental proceeding pending against the Borrower or any Restricted Subsidiary that has a reasonable likelihood of adverse determination and such determination would reasonably be expected to be determined adversely and, if so determined, to result in a Material Adverse Effect and (iii) the occurrence of any ERISA Event or any ERISA Event that is reasonably expected to occur, that would reasonably be expected to result in a Material Adverse Effect.

(e) Other Information. Promptly upon filing thereof, copies of any filings (including on Form 10-K, 10-Q or 8-K) or registration statements (other than drafts of pre-effective versions of registration statements) with, and reports to, the SEC or any analogous Governmental Authority in any relevant jurisdiction by Holdings, the Borrower or any Restricted Subsidiary (other than amendments to any registration statement (to the extent such registration statement, in the form it becomes effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statements on Form S-8) and copies of all financial statements, proxy statements, notices and reports that Holdings, the Borrower or any Restricted Subsidiary shall send to the ABL Administrative Agent or lenders under the ABL Credit Agreement or the holders of any publicly issued debt with a principal amount in excess of $300,000,000 of Holdings, the Borrower and/or any Restricted Subsidiary in their capacity as such holders (in each case to the extent not theretofore delivered to the Administrative Agent pursuant to this Agreement).

(f) Requested Information. With reasonable promptness, following the reasonable request of the Administrative Agent, such other information (financial or otherwise) as the Administrative Agent on its own behalf or on behalf of any Lender (acting through the Administrative Agent) may reasonably request in writing from time to time; *provided* that, notwithstanding anything to the contrary in this Section 9.1(f), none of Holdings, the Borrower or any of its Restricted Subsidiaries will be required to provide any such other information pursuant to this Section 9.1(f) to the extent that (i) the provision thereof would violate any attorney client privilege (as reasonably determined by counsel (internal or external) to the Credit Parties), law, rule or regulation, or any contractual obligation of confidentiality binding on the Credit Parties or their respective Affiliates (so long as not entered into in contemplation hereof) or (ii) such information constitutes attorney work product (as reasonably determined by counsel (internal or external) to the Credit Parties).

(g) Projections. Within 90 days (or 120 days for the Fiscal Year ended on September 30, 2018) after the end of each Fiscal Year of the Borrower ended after the Closing Date, a reasonably detailed consolidated budget for the following Fiscal Year as customarily prepared by management of the Borrower for its internal use (including a projected consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of the end of such Fiscal Year, the related consolidated statements of projected cash flow and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of an Authorized Officer of the Borrower stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were based on good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time of preparation of such Projections, it being understood that such Projections and assumptions as to future events are not to be viewed as facts or a guarantee of performance, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and its Subsidiaries, and that actual results may vary from such Projections and such differences may be material.

(h) Reconciliations. Simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 9.1(a) and (b) above, reconciliations for such consolidated financial statements or other consolidating information reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements; *provided* that the Borrower shall be under no obligation to deliver the reconciliations or other information described in this clause (h) if the Consolidated Total Assets and the Consolidated EBITDA of the Borrower and its consolidated Subsidiaries (which Consolidated Total Assets and Consolidated EBITDA shall be calculated in accordance with the definitions of such terms, but determined based on the financial information of the Borrower and its consolidated Subsidiaries, and not the financial information of the Borrower and its Restricted Subsidiaries) do not differ from the Consolidated Total Assets and the Consolidated EBITDA, respectively, of the Borrower and its Restricted Subsidiaries by more than 2.5%.

Notwithstanding the foregoing, the obligations in clauses (a), (b), (e) and (g) of this Section 9.1 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of Holdings or any direct or indirect parent of Holdings or (B) the Borrower's (or Holdings' or any direct or indirect parent thereof), as applicable, Form 8-K, 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to each of clauses (A) and (B) of this paragraph, to the extent such information relates to Holdings or a direct or indirect parent of Holdings, such information is accompanied by consolidating or other information that explains in reasonable detail the differences between the information relating to Holdings or such parent, on the one hand, and the information relating to the Borrower and its consolidated Restricted Subsidiaries on a standalone basis, on the other hand (*provided*, *however*, that the Borrower shall be under no obligation to deliver such consolidating or other explanatory information if the Consolidated Total Assets and the Consolidated EBITDA of the Borrower and its consolidated Restricted Subsidiaries do not differ from the Consolidated Total Assets and the Consolidated EBITDA, respectively, of Holdings or any direct or indirect parent of Borrower and its consolidated Subsidiaries by more than 2.5%). Documents required to be delivered pursuant to clauses (a), (b) and (e) of this Section 9.1 (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 as notified to the Administrative Agent; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, or filed with the SEC, and available in EDGAR (or any successor) to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

9.2 Books, Records and Inspections

(a) The Borrower will, and will cause each Restricted Subsidiary to, permit officers and designated representatives of the Administrative Agent or the Required Lenders (as accompanied by the Administrative Agent) to visit and inspect any of the properties or assets of the Borrower or such Restricted Subsidiary in whomsoever's possession to the extent that it is within such party's control to permit such inspection (and shall use commercially reasonable efforts to cause such inspection to be permitted to the extent that it is not within such party's control to permit such inspection), and to examine the books and records of the Borrower and any such Restricted Subsidiary and discuss the affairs, finances and accounts of the Borrower and of any such Restricted Subsidiary with, and be advised as to the same by, its and their officers and independent accountants, all at such reasonable times and intervals and to such reasonable extent as the Administrative Agent or Required Lenders may desire (and subject, in the case of any such meetings or advice from such independent accountants, to such accountants' customary policies and procedures); *provided* that, excluding any such visits and inspections during the continuation of an Event of Default (i) only the Administrative Agent, whether on its own or in conjunction with the Required Lenders, may exercise rights of the Administrative Agent and the Lenders under this Section 9.2, (ii) the Administrative Agent shall not exercise such rights more than one time in any calendar year and (iii) only one such visit shall be at the Borrower's expense; *provided*, *further*, that when an Event of Default exists, the Administrative

Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Required Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 9.2, neither the Borrower nor any Restricted Subsidiary will be required under this Section 9.2 to disclose or permit the inspection or discussion of any document, information or other matter to the extent that such action would violate any attorney-client privilege (as reasonably determined by counsel (internal or external) to the Credit Parties), law, rule or regulation, or any contractual obligation of confidentiality (not created in contemplation thereof) binding on the Credit Parties or their respective Affiliates or constituting attorney work product (as reasonably determined by counsel (internal or external) to the Credit Parties).

(b) The Borrower will, and will cause each Restricted Subsidiary to, maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity, in all material respects, with GAAP shall be made of all material financial transactions and matters involving the assets of the business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that any Restricted Subsidiary may maintain its individual books and records in conformity with local standards or customs and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

9.3 Maintenance of Insurance

The Borrower will, and will cause each Material Subsidiary that is a Restricted Subsidiary to, at all times maintain in full force and effect, pursuant to self-insurance arrangements or with insurance companies that the Borrower believes (in the good faith judgment of the management of the Borrower, as applicable) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower, as applicable) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as the Borrower believes (in the good faith judgment of management of the Borrower, as applicable) is reasonable and prudent in light of the size and nature of its business and the availability of insurance on a cost-effective basis; and will furnish to the Administrative Agent, upon written reasonable request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried, *provided*, *however*, that for so long as no Event of Default has occurred and is continuing, the Administrative Agent shall be entitled to make such request only once in any calendar year. With respect to each Mortgaged Property, obtain flood insurance in such total amount as the Administrative Agent may from time to time require, if at any time the area in which any improvements located on any Mortgaged Property is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.

9.4 Payment of Taxes

The Borrower will pay and discharge, and will cause each of the Restricted Subsidiaries to pay and discharge, all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims in respect of any Taxes imposed, assessed or levied that, if unpaid, could reasonably be expected to become a material Lien upon any properties of the Borrower or any Restricted Subsidiary; *provided* that neither the Borrower nor any such Restricted Subsidiary shall be required to pay any such tax, assessment, charge, levy or claim (i) that is being contested in good faith and by proper proceedings if it has maintained adequate reserves (in the good faith judgment of management of the Borrower) with respect thereto in accordance with GAAP or (ii) with respect to which the failure to pay would not reasonably be expected to result in a Material Adverse Effect.

9.5 Consolidated Corporate Franchises

The Borrower will do, and will cause each Material Subsidiary that is a Restricted Subsidiary to do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence, corporate rights and authority, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect; *provided*, *however*, that the Borrower and the Restricted Subsidiaries may consummate any transaction otherwise permitted hereby, including under Section 10.2, 10.3, 10.4 or 10.5.

9.6 Compliance with Statutes, Regulations, Etc

The Borrower will, and will cause each Restricted Subsidiary to, comply with all Applicable Laws applicable to it or its property, including all governmental approvals or authorizations required to conduct its business, and to maintain all such governmental approvals or authorizations in full force and effect, in each case except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

9.7 Lender Calls

At the reasonable request of the Administrative Agent, the Borrower shall conduct a conference call that Lenders may attend to discuss the financial condition and results of operations of the Borrower and its Restricted Subsidiaries for the most recently ended measurement period for which financial statements have been delivered pursuant to Section 9.1(a) or (b) (beginning with the fiscal period of the Borrower ended March 31, 2018), at a date and time to be determined by the Borrower with reasonable advance notice to the Administrative Agent, limited to one conference call per fiscal quarter.

9.8 Maintenance of Properties

The Borrower will, and will cause the Restricted Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition

(ordinary wear and tear, casualty and condemnation excepted), except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

9.9 Transactions with Affiliates

The Borrower will conduct, and will cause the Restricted Subsidiaries to conduct, all transactions with any of its or their respective Affiliates (other than (x) any transaction or series of related transactions with an aggregate value that is equal to or less than $25,000,000 or (y) transactions between or among (i) the Borrower and the Restricted Subsidiaries or any Person that becomes a Restricted Subsidiary as a result of such transactions and (ii) the Borrower, the Restricted Subsidiaries and to the extent in the ordinary course or consistent with past practice, Holdings) on terms that are, taken as a whole, not materially less favorable to the Borrower or such Restricted Subsidiary as it would obtain in a comparable arm's-length transaction with a Person that is not an Affiliate (as determined in good faith by the Borrower); *provided* that the foregoing restrictions shall not apply to:

(a) transactions permitted by Section 10 (other than Section 10.6(m) and any provision of Section 10 permitting transactions by reference to Section 9.9),

(b) the Transactions and the payment of the Transaction Expenses,

(c) the issuance of Stock or Stock Equivalents of the Borrower (or any direct or indirect parent thereof) to the management of the Borrower (or any direct or indirect parent thereof) or any Subsidiary of the Borrower in connection with the Transactions or pursuant to arrangements described in clause (e) of this Section 9.9,

(d) loans, advances and other transactions between or among the Borrower, any Subsidiary of the Borrower or any joint venture (regardless of the form of legal entity) in which the Borrower or any Subsidiary of the Borrower has invested (and which Subsidiary or joint venture would not be an Affiliate of the Borrower but for the Borrower's or such Subsidiary's Subsidiary ownership of Stock or Stock Equivalents in such joint venture or Subsidiary) to the extent permitted under Section 10,

(e) (i) employment, consulting and severance arrangements between the Borrower and the Restricted Subsidiaries (or any direct or indirect parent of the Borrower) and their respective officers, employees, directors or consultants in the ordinary course of business (including payments, loans and advances in connection therewith) and (ii) issuances of securities, or other payments, awards or grants in cash, securities or otherwise and other transactions pursuant to any equityholder, employee or director equity plan or stock or other equity option plan or any other management or employee benefit plan or agreement, other compensatory arrangement or any stock or other equity subscription, co-invest or equityholder agreement,

(f) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, consultants, officers and employees of the Borrower (or, to the extent attributable to the ownership of the Borrower and its Restricted Subsidiaries, any direct or indirect parent thereof) and the Subsidiaries of the Borrower,

(g) the issuance of Stock or Stock Equivalents (other than Disqualified Stock) of the Borrower (or any direct or indirect parent thereof) to Holdings or to any director, officer, employee or consultant,

(h) any customary transactions with a Receivables Entity effected as part of a Permitted Receivables Financing and any customary transactions with a Securitization Subsidiary effected as part of a Qualified Securitization Financing,

(i) transactions pursuant to permitted agreements in existence on the Closing Date and, to the extent each such transaction is valued in excess of $25,000,000, set forth on Schedule 9.9 or any amendment, modification, supplement, replacement, extension, renewal or restructuring thereto to the extent such an amendment, modification, supplement, replacement, extension renewal or restructuring (together with any other amendment or supplemental agreements) is not materially adverse, taken as a whole, to the Lenders (in the good faith determination of the Borrower),

(j) transactions in which Holdings (or any indirect parent of the Borrower), the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 9.9,

(k) the existence and performance of agreements and transactions with any Unrestricted Subsidiary that were entered into prior to the designation of a Restricted Subsidiary as such Unrestricted Subsidiary to the extent that the transaction was permitted at the time that it was entered into with such Restricted Subsidiary and transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that such transaction was not entered into in contemplation of such designation or redesignation, as applicable,

(l) Affiliate repurchases of the Term Loans or Commitments to the extent permitted hereunder and the payments and other transactions reasonably related thereto, ~~and~~

(m) transactions constituting any part of a Permitted Reorganization~~.~~, and

(n) transactions related to a Permitted Change of Control, the payment of Permitted Change of Control Costs and the issuance of Stock and Stock Equivalents to the management of Avaya Holdings, the Borrower or any of its Restricted Subsidiaries in connection with a Permitted Change of Control.

9.10 End of Fiscal Years

The Borrower will, for financial reporting purposes, cause its Fiscal Year to end on September 30 of each year (each a "**Fiscal Year**") and cause its Restricted Subsidiaries to maintain their fiscal years as in effect on the Closing Date; *provided*, *however*, that the Borrower may, upon written notice to the Administrative Agent change the Fiscal Year or the fiscal years

of its Restricted Subsidiaries with the prior written consent of the Administrative Agent (not to be unreasonably withheld, conditioned, delayed or denied), in which case the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

9.11 Additional Guarantors and Grantors

Subject to any applicable limitations set forth in the Guarantee, the Security Documents, or any Applicable Intercreditor Agreement and this Agreement (including Section 9.12), the Borrower will cause each direct or indirect Wholly Owned Domestic Subsidiary of the Borrower (excluding any Excluded Subsidiary) formed or otherwise purchased or acquired after the Closing Date and each other Domestic Subsidiary of the Borrower that ceases to constitute an Excluded Subsidiary to, within 60 days from the date of such formation, acquisition or cessation (which in the case of any Subsidiary ceasing to constitute an Excluded Subsidiary pursuant to clause (a) thereof, commencing on the date of delivery of the applicable compliance certificate pursuant to Section 9.1(c)), as applicable (or such longer period as the Administrative Agent may agree in its reasonable discretion), execute (A) a supplement to each of the Guarantee and the Security Agreement in order to become a Guarantor under such Guarantee and a grantor/pledgor under the Security Agreement and (B) a joinder to the Intercompany Subordinated Note.

9.12 Further Assurances

(a) Subject to the applicable limitations set forth in this Agreement (including Section 9.11) and the Security Documents and any Applicable Intercreditor Agreement, the Borrower will, and will cause each other Credit Party to, 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, fixture filings, mortgages, deeds of trust and other documents) that may be required under any Applicable Law, or that the Collateral Agent may reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the applicable Security Documents, all at the expense of the Borrower and the Restricted Subsidiaries.

(b) Subject to any applicable limitations set forth in the Security Documents (including in any Mortgage), if any assets that are of the nature secured by any Security Documents (including any owned Real Estate or improvements thereto constituting Collateral with a fair market value in excess of $10,000,000) are acquired by the Borrower or any Subsidiary Guarantor after the Closing Date or are held by any Subsidiary on or after the time it becomes a Guarantor pursuant to Section 9.11 (other than assets constituting Collateral under the Security Documents that become subject to the Lien of any Security Document upon acquisition thereof or assets subject to a Lien granted pursuant to Section 10.2(d) or 10.2(g)), the Borrower will promptly notify the Collateral Agent thereof and, if requested by the Collateral Agent, will cause such assets to be subjected to a Lien securing the Obligations and will take, and cause the other Credit Parties to take, such actions as shall be necessary or reasonably requested by the Collateral Agent, as soon as commercially reasonable but in no event later than 120 days, unless extended by the Collateral Agent in its reasonable discretion, to grant and perfect such Liens

consistent with the applicable requirements of the Security Documents, including actions described in paragraph (a) of this Section, all at the expense of the Credit Parties.

(c) Any Mortgage delivered to the Collateral Agent in accordance with the preceding clause (b) shall be accompanied by those items set forth in clause (d) that are customary for the type of assets covered by such Mortgage. Any items that are customary for the type of assets covered by such Mortgage may be delivered within a commercially reasonable period of time after the delivery of a Mortgage if they are not reasonably available at the time the Mortgage is delivered.

(d) With respect to any Mortgaged Property, within 120 days, unless extended by the Collateral Agent in its reasonable discretion, the Borrower will deliver, or cause to be delivered, to the Collateral Agent (i) a Mortgage with respect to each Mortgaged Property, executed by an Authorized Officer of each obligor party thereto, (ii) a policy or policies of title insurance insuring the Lien of each such Mortgage as a valid Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Encumbrances or consented to in writing (including via email) by the Collateral Agent, together with such endorsements and reinsurance as the Collateral Agent may reasonably request, together with evidence reasonably acceptable to the Collateral Agent of payment of all title insurance premiums, search and examination charges, escrow charges and related charges, fees, costs and expenses required for the issuance of the title insurance policies referred to above, (iii) a Survey, to the extent reasonably necessary to satisfy the requirements of clause (ii) above, (iv) all other documents and instruments, including Uniform Commercial Code or other applicable fixture security financing statements, reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by any such Mortgage and perfect such Liens to the extent required by, and with the priority required by, such Mortgage shall have been delivered to the Collateral Agent in proper form for filing, registration or recording and (v) written opinions of legal counsel in the states in which each such Mortgaged Property is located in customary form and substance. If any building or other improvement included in any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or as hereafter in effect or successor act thereto), then the Borrower shall, prior to delivery of the Mortgages, deliver or cause to be delivered, (i) a completed Federal Emergency Management Agency Standard Flood Determination with respect to each Mortgaged Property, in each case in form and substance reasonably satisfactory to the Collateral Agent and (ii) evidence of flood insurance with respect to each Mortgaged Property, to the extent and in amounts required by Applicable Laws, in each case in form and substance reasonably satisfactory to the Collateral Agent.

(e) Notwithstanding anything herein to the contrary, if the Borrower and the Collateral Agent mutually agree in their reasonable judgment (confirmed in writing to the Borrower and the Administrative Agent) that the cost or other consequences (including adverse tax and accounting consequences) of creating or perfecting any Lien on any property is excessive in relation to the benefits afforded to the Secured Parties thereby, then such property may be excluded from the Collateral for all purposes of the Credit Documents.

(f) Notwithstanding anything herein or in any other Credit Document to the contrary, the Borrower and the Guarantors shall not be required, nor shall the Collateral Agent be authorized, (i) to perfect the above-described pledges, security interests and mortgages by any means other than by (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of the relevant State(s), (B) filings in United States government offices with respect to intellectual property as expressly required herein and under the other Credit Documents, (C) delivery to the Collateral Agent, for its possession, of all Collateral consisting of material intercompany notes, stock certificates of the Borrower and its Restricted Subsidiaries or (D) Mortgages required to be delivered pursuant to this Section 9.12, (ii) to enter into any control agreement with respect to any deposit account, securities account or commodities account or contract (other than for which control agreements are required to be obtained or for which the ABL Collateral Agent has obtained control, in each case, to the extent required by the ABL Credit Documents; *provided* that in such case, the ABL Collateral Agent will act as the agent for perfection on behalf of the Secured Parties without causing the Collateral Agent or the Administrative Agent to become a party to such control agreements), (iii) to take any action in any non-U.S. jurisdiction or pursuant to the requirements of the laws of any non-U.S. jurisdiction in order to create any security interests or to perfect any security interests, including with respect to any intellectual property registered outside of the United States (it being understood that there shall be no security agreements or pledge agreements governed by the laws of any non-U.S. jurisdiction), (iv) except as expressly set forth above, to take any other action with respect to any Collateral to perfect through control agreements or to otherwise perfect by "control" or (v) to provide any notice to obtain the consent of governmental authorities under the Federal Assignment of Claims Act (or any state equivalent thereof).

9.13 Use of Proceeds

The Borrower will use (i) the proceeds of the Initial Term Loans (other than the Tranche B Term Loans made on the First Amendment Effective Date) to fund, together with cash on hand at the Borrower and its Subsidiaries (a) to pay the Transaction Expenses, (b) to fund the Closing Refinancing, (c) to fund distributions in connection with the consummation of, or as required by, the Plan, (d) for working capital and general corporate purposes, (e) to pay fees, expenses and costs relating to the consummation of the Plan and funding the transactions contemplated by the Plan and (f) to cash collateralize any letters of credit and/or cash management obligations existing on the Closing Date and (ii) the proceeds of the Tranche B Term Loans made on the First Amendment Effective Date to (a) prepay in full all Initial Term Loans outstanding hereunder as of the First Amendment Effective Date (immediately prior to giving effect to the First Amendment), and pay all accrued and unpaid interest thereon and all other Obligations in respect thereof and (b) for working capital and general corporate purposes. The Borrower will use the proceeds of other Term Loans or Commitments for purposes as agreed with the Lenders thereof.

9.14 Maintenance of Ratings

The Borrower will use commercially reasonable efforts to obtain and maintain (but not maintain any specific rating) a public corporate family and/or corporate credit rating, as

applicable, and public ratings in respect of the Initial Term Loans provided pursuant to this Agreement, in each case, from each of S&P and Moody's.

9.15 Changes in Business

The Borrower and the Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by the Borrower and the Restricted Subsidiaries, taken as a whole, on the Closing Date and other business activities which are extensions thereof or otherwise similar, incidental, complementary, synergistic, reasonably related or ancillary to any of the foregoing (and non-core incidental businesses acquired in connection with any Permitted Acquisition or permitted Investment), in each case as determined by the Borrower in good faith.

SECTION 10 Negative Covenants

The Borrower hereby covenants and agrees that on the Closing Date (immediately after giving effect to the Transactions) and thereafter, until all Commitments and all Term Loans, together with interest, fees and all other Obligations (other than Hedging Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreement or Contingent Obligations), are paid in full:

10.1 Limitation on Indebtedness

The Borrower will not, and will not permit the Restricted Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness. Notwithstanding the foregoing, the limitations set forth in the immediately preceding sentence shall not apply to any of the following:

(a) Indebtedness arising under the Credit Documents (including any Indebtedness incurred as permitted by Sections 2.14, 2.15 and 13.1);

(b) Indebtedness under the ABL Credit Documents and any Refinancing Indebtedness thereof, in an aggregate principal amount not to exceed the sum of (i) $300,000,000 *plus* (ii) the principal amount of "Incremental Facilities" (as defined in the ABL Credit Agreement) measured at the time of incurrence pursuant to the ABL Credit Agreement as in effect on the Closing Date *plus* (iii) solely in the case of any such Refinancing Indebtedness, the Refinancing Increased Amount with respect thereto;

(c) [reserved];

(d) subject to compliance with Section 10.5, Indebtedness of the Borrower or any Restricted Subsidiary owed to the Borrower or any Restricted Subsidiary; *provided* that all such Indebtedness of any Credit Party owed to any Person that is not a Credit Party shall be (x) evidenced by the Intercompany Subordinated Note (*provided* that any Person becoming a Restricted Subsidiary after the Closing Date may enter into the Intercompany Subordinated Note within the time period set forth in Section 9.11) or (y) otherwise be subject to subordination

terms substantially identical to the subordination terms set forth in the Intercompany Subordinated Note or otherwise reasonably acceptable to the Administrative Agent;

(e) subject to compliance with Section 10.5, Guarantee Obligations incurred by (i) Restricted Subsidiaries in respect of Indebtedness of the Borrower or any other Restricted Subsidiary that is permitted to be incurred under this Agreement and (ii) the Borrower in respect of Indebtedness of Restricted Subsidiaries that is permitted to be incurred under this Agreement; *provided* that (x) if the Indebtedness being guaranteed under this Section 10.1(e) is subordinated to the Obligations, such Guarantee Obligations shall be subordinated to the Guarantee of the Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the subordination of such Indebtedness and (y) a Restricted Subsidiary that is not a Credit Party may not, by virtue of this Section 10.1(e), guarantee Indebtedness that such Restricted Subsidiary could not otherwise incur under this Section 10.1;

(f) Indebtedness in respect of any bankers' acceptance, bank guarantees, letter of credit, warehouse receipt or similar facilities entered into in the ordinary course of business (including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims and similar obligations);

(g) Guarantee Obligations (i) incurred in the ordinary course of business in respect of obligations of (or to) suppliers, customers, franchisees, lessors and licensees, (ii) otherwise constituting Investments permitted by Section 10.5 (other than Investments permitted by Section 10.5(l) by reference to Section 10.1 and Section 10.5(q)); *provided* that this clause (ii) shall not be construed to limit the requirements of Section 10.1(d) and (e), or (iii) contemplated by the Plan;

(h) Indebtedness (including Indebtedness arising under Capital Leases) incurred to finance the purchase price, cost of design, acquisition, construction, repair, restoration, replacement, expansion, installation or improvement of fixed or capital assets or otherwise in respect of Capital Expenditures, so long as such Indebtedness is incurred concurrently with or within 270 days of the acquisition, construction, repair, restoration, replacement, expansion, installation or improvement of such fixed or capital assets or incurrence of such Capital Expenditure, and any Refinancing Indebtedness thereof, in an aggregate principal amount not to exceed (i) the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance *plus* the principal amount of Capital Leases outstanding on the Closing Date, in each case at any time outstanding *plus* (ii) solely in the case of any such Refinancing Indebtedness, the Refinancing Increased Amount with respect thereto;

(i) Indebtedness permitted to remain outstanding under the Plan, and to the extent such Indebtedness exceeds $5,000,000, set forth on Schedule 10.1 and any Refinancing Indebtedness thereof; *provided* that in the case of any Refinancing Indebtedness of any such Indebtedness, each obligor of such Refinancing Indebtedness is an obligor of such Indebtedness;

(j) Indebtedness in respect of Hedging Agreements; *provided* that such Hedging Agreements are not entered into for speculative purposes (as determined by the Borrower in good faith);

(k) (i) Permitted Other Debt assumed or incurred for any purpose, including to finance a Permitted Acquisition, other permitted Investments or Capital Expenditures; *provided* that (A) if such Indebtedness is incurred or assumed by a Restricted Subsidiary that is not a Credit Party, such Indebtedness is not guaranteed in any respect by the Borrower or any other Guarantor except as permitted under Section 10.5, (B) the aggregate principal amount of Indebtedness incurred or assumed under this Section 10.1(k)(i) shall not exceed (1) the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance *plus* (2) additional amounts if, on a Pro Forma Basis after giving effect to the incurrence or assumption of such Indebtedness and the application of proceeds thereof and, if applicable, the Permitted Acquisition, permitted Investment or Capital Expenditure, the Consolidated Total Net Leverage Ratio is not greater than 3.30 to 1.00 or, to the extent incurred or assumed in connection with a Permitted Acquisition or similar Investment, the Consolidated Total Net Leverage Ratio (on a Pro Forma Basis for such transaction and the incurrence or assumption of such Indebtedness) is not greater than (I) 3.30 to 1.00 or (II) the Consolidated Total Net Leverage Ratio immediately prior to such Permitted Acquisition or similar Investment and (C) if such Permitted Other Debt incurred (and for the avoidance of doubt, not "assumed") pursuant to this clause (k)(i) constitutes a Permitted Other Loan that ranks *pari passu* with the Initial Term Loans as to right of payment and security with respect to the Collateral, the Initial Term Loans shall be subject to the adjustment (if applicable) set forth in the proviso to Section 2.14(d)(iv) as if such Permitted Other Loan were an Incremental Term Loan incurred hereunder and (ii) any Refinancing Indebtedness in respect of the Indebtedness under clause (i) above; *provided* that Indebtedness incurred or assumed by Restricted Subsidiaries that are not Subsidiary Guarantors under this Section 10.1(k), when combined with the total amount of Indebtedness incurred by Restricted Subsidiaries that are not Subsidiary Guarantors pursuant to Section 10.1(ee), shall not exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance, in each case at any time outstanding;

(l) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations not in connection with money borrowed, in each case provided in the ordinary course of business or consistent with past practice, including those incurred to secure health, safety and environmental obligations in the ordinary course of business (including in respect of construction or restoration activities) or consistent with past practice;

(m) additional Indebtedness; *provided* that the aggregate amount of Indebtedness incurred or issued pursuant to this Section 10.1(m) shall not exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance, in each case at any time outstanding;

(n) Cash Management Obligations and other Indebtedness in respect of overdraft facilities, employee credit card programs, netting services, automatic clearinghouse arrangements and other cash management and similar arrangements in the ordinary course of business;

(o) (i) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (ii) Indebtedness in respect of intercompany obligations of the Borrower or any Restricted Subsidiary with the Borrower or any Restricted Subsidiary in respect of accounts payable incurred in connection with goods sold or services rendered in the ordinary course of business and not in connection with the borrowing of money;

(p) Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations (including earn-outs), in each case entered into in connection with a Permitted Change of Control, Permitted Acquisitions, other Investments and the Disposition of any business, assets or Stock or Stock Equivalents permitted hereunder;

(q) Indebtedness of the Borrower or any Restricted Subsidiary consisting of (i) financing of insurance premiums or (ii) take or pay obligations contained in supply agreements, in each case arising in the ordinary course of business;

(r) Indebtedness representing deferred compensation, or similar arrangement, to employees, consultants or independent contractors of the Borrower and the Restricted Subsidiaries incurred in the ordinary course of business;

(s) Indebtedness consisting of promissory notes issued by the Borrower or any Restricted Subsidiary to present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) to finance the purchase or redemption of Stock or Stock Equivalents of the Borrower (or any direct or indirect parent thereof) permitted by Section 10.6(b);

(t) Indebtedness consisting of obligations of the Borrower and the Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions and Permitted Acquisitions ~~or~~, any other Investment permitted hereunder and any Permitted Change of Control;

(u) Indebtedness in respect of (i) Permitted Receivables Financings owed by a Receivables Entity or Qualified Securitization Financings owed by a Securitization Subsidiary and (ii) accounts receivable factoring facilities in the ordinary course of business; *provided* that the aggregate amount of Receivables Indebtedness pursuant to this clause (u) shall not exceed $160,000,000 at any time outstanding;

(v) Indebtedness in respect of (i) Permitted Other Debt issued or incurred to the extent that the Net Cash Proceeds therefrom are applied to the prepayment of the Term Loans in the manner set forth in Section 5.2(a)(iii)(A); (ii) other Permitted Other Debt (such Indebtedness incurred pursuant to this clause (ii), "**Incremental Equivalent Debt**") in an aggregate principal amount not to exceed the then-available Maximum Incremental Facilities Amount; *provided* that (x) if such Permitted Other Debt incurred pursuant to this clause (ii) is a Permitted Other Loan that ranks *pari passu* with the Initial Term Loans as to right of payment and security, the Initial Term Loans shall be subject to the adjustment (if applicable) set forth in the proviso to Section 2.14(d)(iv) as if such Permitted Other Loan were an Incremental Term Loan incurred hereunder and (y) if such Permitted Other Debt incurred pursuant to this clause (ii) is unsecured or secured on a junior basis to the Obligations, such Permitted Other Debt shall not have a maturity date earlier than 91 days after the Initial Term Loan Maturity Date; and (iii) any Refinancing Indebtedness in respect of Indebtedness incurred pursuant to clauses (i) and (ii) above;

(w) (i) Indebtedness in respect of Permitted Debt Exchange Instruments incurred pursuant to a Permitted Debt Exchange in accordance with Section 2.17 and (ii) any Refinancing Indebtedness thereof;

(x) Indebtedness in an amount not to exceed the Available Equity Amount;

(y) Indebtedness of any Minority Investments or Indebtedness incurred on behalf thereof or representing guarantees of such Indebtedness of any Minority Investment, in an amount not to exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance, in each case at any time outstanding;

(z) intercompany Indebtedness among the Borrower and its Subsidiaries constituting any part of any Permitted Reorganization;

(aa) to the extent constituting Indebtedness, customer deposits and advance payments (including progress payments) received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;

(bb) (i) Indebtedness of the Borrower or any Restricted Subsidiary supported by a letter of credit, in a principal amount not in excess of the stated amount of such letter of credit so long as such letter of credit is otherwise permitted to be incurred pursuant to this Section 10.1 or (ii) obligations in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of the Borrower or any Subsidiary of the Borrower in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than the United States;

(cc) Indebtedness owing to the seller of any business or assets permitted to be acquired by the Borrower or any Restricted Subsidiary under this Agreement; *provided* that the aggregate amount of Indebtedness permitted under this clause (cc) shall not exceed the greater of

$160,000,000 and 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) outstanding at any time;

(dd) obligations in respect of Disqualified Stock in an amount not to exceed the greater of $25,000,000 and 3% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) outstanding at any time;

(ee) Indebtedness incurred by Restricted Subsidiaries that are not Subsidiary Guarantors under this clause (ee), when combined with the total amount of Indebtedness incurred by Restricted Subsidiaries that are not Subsidiary Guarantors pursuant to Section 10.1(k), shall not exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance, in each case at any time outstanding; and

(ff) all premiums (if any), interest (including post-petition interest), fees, expenses, charges, and additional or contingent interest on obligations described in clauses (a) through (ee) above.

For the avoidance of doubt, any Indebtedness permitted to be incurred under any clause of this Section 10.1 may be used to modify, refinance, refund, renew, replace, exchange or extend any outstanding Indebtedness, including any such Indebtedness incurred under any other clause of this Section 10.1 and any such Indebtedness with respect to which the incurrence of Refinancing Indebtedness is expressly permitted under this Section 10.1, in each case, subject to the restrictions set forth in Section 10.7.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness or Disqualified Stock will not be deemed to be an incurrence or issuance of Indebtedness or Disqualified Stock for purposes of this covenant.

This Agreement will not treat (1) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (2) senior Indebtedness as subordinated or junior to any other senior Indebtedness merely because it has a junior lien priority with respect to the same collateral.

10.2 Limitation on Liens

The Borrower will not, and will not permit the Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any property or assets of any kind (real or personal, tangible or intangible) of the Borrower or such Restricted Subsidiary, whether now owned or hereafter acquired, except:

(a) Liens arising under the Security Documents;

(b) Liens securing Indebtedness permitted to be incurred pursuant to Section 10.1(b), and Hedging Obligations and Cash Management Obligations permitted to be secured on

a *pari passu* basis with the ABL Loans under the ABL Credit Documents; *provided* that such Lien over the Collateral shall be subject to the Applicable Intercreditor Agreements reflecting its *pari passu* status as compared with the Liens securing the ABL Loans;

(c) [reserved];

(d) Liens securing Indebtedness permitted pursuant to Section 10.1(h); *provided* that except as otherwise permitted hereby, such Liens attach at all times only to the assets so financed except (1) for accessions to the property financed with the proceeds of such Indebtedness and the proceeds and the products thereof and (2) that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(e) Liens permitted to remain outstanding under the Plan; *provided* that any Lien securing Indebtedness or other obligations in excess of $5,000,000 shall only be permitted to the extent such Lien is listed on Schedule 10.2;

(f) (i) Liens securing Indebtedness permitted to be incurred under clause (B)(2) of the proviso to Section 10.1(k)(i), Section 10.1(v)(i), Section 10.1(v)(ii) or Section 10.1(w)(i); *provided* that (A) the representative of such Indebtedness shall have entered into the Applicable Intercreditor Agreements to the extent secured by the Collateral reflecting its *pari passu* or junior (but not senior) priority status as compared with the Liens securing the Obligations and (B) (I) with respect to Indebtedness incurred in reliance on clause (B)(2) of the proviso to Section 10.1(k)(i) that is secured by Liens on a *pari passu* basis with any Liens securing the Initial Term Loans (without regard to control of remedies), immediately after the incurrence thereof, on a Pro Forma Basis, the Consolidated First Lien Net Leverage Ratio is no greater than 3.30 to 1.00 and (II) with respect to Indebtedness incurred in reliance on clause (B)(2) of the proviso to Section 10.1(k)(i) that is secured by Liens that are junior in right of security to the Liens securing the Initial Term Loans, immediately after the incurrence thereof, on a Pro Forma Basis, the Consolidated Secured Net Leverage Ratio is no greater than 3.30 to 1.00 and (ii) Liens securing Refinancing Indebtedness permitted to be incurred under Section 10.1(k)(ii), Section 10.1(v)(iii) and Section 10.1(w)(ii);

(g) Liens existing on the assets of any Person that becomes a Restricted Subsidiary (or is a Restricted Subsidiary that survives a merger with such Person or any of its Subsidiaries) pursuant to a Permitted Acquisition or other permitted Investment or the designation of an Unrestricted Subsidiary as a Restricted Subsidiary or existing on assets acquired after the Closing Date, to the extent the Liens on such assets secure Indebtedness permitted by Section 10.1; *provided* that such Liens (i) are not created or incurred in connection with, or in contemplation of, such Person becoming such a Restricted Subsidiary or such assets being acquired and (ii) attach at all times only to the same assets to which such Liens attached and after-acquired property, property that is affixed or incorporated into the property covered by such Lien and accessions thereto and products and proceeds thereof, after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, and the proceeds and the products thereof

and customary security deposits in respect thereof and in the case of multiple financings of equipment (or assets affixed or appurtenant thereto and additions and accessions) provided by any lender, other equipment financed by such lender, it being understood that such requirement to pledge such after-acquired property shall not be permitted to apply to any such after-acquired property to which such requirement would not have applied but for such acquisition except as otherwise permitted hereunder, and any Refinancing Indebtedness thereof permitted by Section 10.1;

(h) additional Liens on assets of any Restricted Subsidiary that is not a Credit Party securing Indebtedness of such Restricted Subsidiary permitted pursuant to Section 10.1 (or other obligations of such Restricted Subsidiary not constituting Indebtedness);

(i) additional Liens on assets that do not constitute Collateral prior to the creation of such Liens, so long as the Credit Facilities hereunder are equally and ratably secured thereby and the aggregate amount of Indebtedness secured thereby at any time outstanding does not exceed $160,000,000; *provided* that such Liens are subject to intercreditor arrangements reasonably satisfactory to the Borrower and the Collateral Agent, it being understood and agreed that intercreditor arrangements in substantially the form of the Applicable Intercreditor Agreements are satisfactory;

(j) additional *pari passu* or junior Liens securing Indebtedness, so long as (i)(x) with respect to Indebtedness that is secured by Liens on a *pari passu* basis with any Liens securing the Initial Term Loans (without regard to control of remedies), immediately after the incurrence thereof, on a Pro Forma Basis, the Consolidated First Lien Net Leverage Ratio is no greater than 3.30 to 1.00 and (y) with respect to Indebtedness that is secured by Liens that are junior in right of security to the Liens securing any Initial Term Loans, immediately after the incurrence thereof, on a Pro Forma Basis, the Consolidated Secured Net Leverage Ratio is no greater than 3.30 to 1.00 and (ii) the holder(s) of such Liens (or a representative thereof) shall have entered into the Applicable Intercreditor Agreements;

(k) additional Liens, so long as the aggregate amount of obligations secured thereby at any time outstanding does not exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance;

(l) (i) Liens on accounts receivable, other Receivables Facility Assets, or accounts into which collections or proceeds of Receivables Facility Assets are deposited, in each case arising in connection with a Permitted Receivables Financing permitted under Section 10.1(u) and (ii) Liens on Securitization Assets and related assets arising in connection with a Qualified Securitization Financing permitted under Section 10.1(u);

(m) Permitted Encumbrances; and

(n) the supplement, amendment, amendment and restatement, modification, replacement, refinancing, refunding, restructuring, extension or renewal of any Lien permitted by clause (e), clause (g) and clause (i) of this Section 10.2 upon or in the same assets theretofore

subject to such Lien (or upon or in after-acquired property that is affixed or incorporated into the property covered by such Lien and accessions thereto or any proceeds or products thereof) or the Refinancing Indebtedness (without a change in any obligor, except to the extent otherwise permitted hereunder) of the Indebtedness or other obligations secured thereby (including any unused commitments), to the extent such Refinancing Indebtedness is permitted by Section 10.1; *provided* that in the case of any such supplement, amendment, amendment and restatement, modification, replacement, refinancing, refunding, restructuring, extension or renewal of any Lien permitted by clause (g) and clause (i) of this Section 10.2, the requirements set forth in the proviso to clause (g) or clause (i), as applicable, shall have been satisfied.

10.3 Limitation on Fundamental Changes

The Borrower will not, and will not permit the Restricted Subsidiaries to, consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease, assign, transfer or otherwise consummate the Disposition of, all or substantially all its business units, assets or other properties, except that:

(a) so long as both before and after giving effect to such transaction, no Event of Default has occurred and is continuing or would result therefrom, any Subsidiary of the Borrower or any other Person may be merged, amalgamated or consolidated with or into the Borrower; *provided* that (A) the Borrower shall be the continuing or surviving company or (B) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower (such other Person, the "**Successor Borrower**"), (1) the Successor Borrower (if other than the Borrower) shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof, (2) the Successor Borrower (if other than the Borrower) shall expressly assume all the obligations of the Borrower under this Agreement and the other Credit Documents pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (3) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Guarantee confirmed that its guarantee thereunder shall apply to any Successor Borrower's obligations under this Agreement, (4) each grantor and each pledgor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement, affirmed that its obligations thereunder shall apply to its Guarantee as reaffirmed pursuant to clause (3), (5) each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have affirmed that its obligations under the applicable Mortgage shall apply to its Guarantee as reaffirmed pursuant to clause (3) and (6) the Successor Borrower shall have delivered to the Administrative Agent an officer's certificate stating that such merger or consolidation and such supplements preserve the enforceability of this Agreement and the Guarantee and the perfection and priority of the Liens under the applicable Security Documents;

(b) so long as no Event of Default has occurred and is continuing, or would result therefrom, any Subsidiary of the Borrower or any other Person (in each case, other than the Borrower) may be merged, amalgamated or consolidated with or into any one or more Subsidiaries of the Borrower; provided that (i) in the case of any merger, amalgamation or

consolidation involving one or more Restricted Subsidiaries, (A) a Restricted Subsidiary shall be the continuing or surviving Person or (B) the Borrower shall cause the Person formed by or surviving any such merger, amalgamation or consolidation (if other than a Restricted Subsidiary) to become a Restricted Subsidiary, (ii) in the case of any merger, amalgamation or consolidation involving one or more Guarantors, a Guarantor shall be the continuing or surviving Person or the Person formed by or surviving any such merger, amalgamation or consolidation (if other than a Guarantor) shall execute a supplement to the Guarantee and the relevant Security Documents each in form and substance reasonably satisfactory to the Administrative Agent in order to become a Guarantor and pledgor, mortgagor and grantor, as applicable, thereunder for the benefit of the Secured Parties and to acknowledge and agree to the terms of the Intercompany Subordinated Note, and (iii) Borrower shall have delivered to the Administrative Agent an officers' certificate stating that such merger, amalgamation or consolidation and any such supplements to the Guarantee and any Security Document preserve the enforceability of the Guarantee and the perfection and priority of the Liens under the applicable Security Documents to the extent otherwise required;

(c) any Permitted Reorganization may be consummated;

(d) any Restricted Subsidiary that is not a Credit Party may sell, lease, transfer or otherwise Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any other Restricted Subsidiary;

(e) the Borrower or any Subsidiary of the Borrower may sell, lease, transfer or otherwise Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any Credit Party; *provided* that the consideration for any such Disposition by any Person other than a Guarantor shall not exceed the fair value of such assets;

(f) any Restricted Subsidiary may liquidate or dissolve if (i) the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (ii) to the extent such Restricted Subsidiary is a Credit Party, any assets or business of such Restricted Subsidiary not otherwise disposed of or transferred in accordance with Section 10.4 or 10.5, or in the case of any such business, discontinued, shall be transferred to, or otherwise owned or conducted by, a Credit Party after giving effect to such liquidation or dissolution;

(g) the Borrower or any Restricted Subsidiary may change its legal form, so long as (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) the Liens granted pursuant to any Security Documents to which such Person is a party remain perfected and in full force and effect, to the extent otherwise required hereby;

(h) any merger, consolidation or amalgamation the purpose and only substantive effect of which is to reincorporate or reorganize the Borrower or any Restricted Subsidiary in a jurisdiction in the United States, any state thereof or the District of Columbia, so long as the Liens granted pursuant to the Security Documents to which the Borrower is a party remain perfected and in full force and effect, to the extent otherwise required hereby;

(i) the Transactions and any transactions as contemplated by the Plan may be consummated; ~~and~~

(j) the Borrower and the Restricted Subsidiaries may consummate a merger, amalgamation dissolution, liquidation, windup, consolidation or Disposition, constituting, or otherwise resulting in, a transaction permitted by Section 10.4 (other than pursuant to (x) Section 10.4(d) and (y) the Disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, to any Person other than the Borrower or any Guarantor), an Investment permitted pursuant to Section 10.5 (other than Section 10.5(l)), and any Restricted Payments permitted pursuant to Section 10.6 (other than Section 10.6(f)~~.~~; and

(k) any Permitted Change of Control may be consummated.

10.4 Limitation on Disposition

The Borrower will not, and will not permit the Restricted Subsidiaries to make any Disposition, except that:

(a) the Borrower and the Restricted Subsidiaries may sell, transfer or otherwise Dispose of (i) obsolete, negligible, immaterial, worn-out, uneconomical, scrap, used, or surplus or mothballed assets (including any such equipment that has been refurbished in contemplation of such Disposition) or assets no longer used or useful in the business or no longer commercially desirable to maintain, (ii) inventory or goods (or other assets) held for sale in the ordinary course of business, (iii) cash and Cash Equivalents, (iv) immaterial assets (including allowing any registrations or any applications for registration of any intellectual property rights to lapse or go abandoned in the ordinary course of business), and (v) assets for the purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Borrower and the Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(b) the Borrower and the Restricted Subsidiaries may make Dispositions of assets; *provided* that (i) to the extent required, the Net Cash Proceeds thereof received by the Borrower and the Restricted Subsidiaries are promptly applied to the prepayment of Term Loans as provided for in Section 5.2(a)(i), (ii) as of the date of signing of the definitive agreement for such Disposition, no Event of Default shall have occurred and be continuing, (iii) with respect to any Disposition pursuant to this clause (b) for a purchase price in excess of $50,000,000, the Person making such Disposition shall receive fair market value and not less than 75% of such consideration in the form of cash or Cash Equivalents; *provided* that for the purposes of this clause (iii) the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto, or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower's or such Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the payment in cash of the Obligations (other than intercompany liabilities owing to a Restricted

Subsidiary being Disposed of) and that are (1) assumed by the transferee (or a third party in connection with such transfer) with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing or indemnified from such liabilities or (2) otherwise cancelled or terminated in connection therewith, (B) any securities, notes or other obligations received by the Person making such Disposition from the purchaser that are converted by such Person into cash or Cash Equivalents or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, (C) consideration consisting of Indebtedness of any Credit Party (other than subordinated Indebtedness) received after the Closing Date from Persons who are not Restricted Subsidiaries (so long as such Indebtedness is not cancelled or forgiven) and (D) any Designated Non-Cash Consideration received by the Person making such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this Section 10.4(b) that is at that time outstanding, not in excess of the greater of $160,000,000 and 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value and (iv) any non-cash proceeds received in the form of Real Estate, Indebtedness or Stock and Stock Equivalents are pledged to the Collateral Agent to the extent required under Section 9.11, 9.12 or the Security Agreement;

(c) (i) the Borrower and the Restricted Subsidiaries may make Dispositions to the Borrower or any other Credit Party, (ii) any Restricted Subsidiary that is not a Credit Party may make Dispositions to the Borrower or any other Subsidiary of the Borrower; *provided* that with respect to any such Disposition to an Unrestricted Subsidiary, such Disposition shall be for fair value and (iii) any Credit Party may make Dispositions to a non-Credit Party to the extent constituting an Investment permitted under Section 10.5 (other than Section 10.5(l));

(d) the Borrower and any Restricted Subsidiary may effect any transaction permitted by Sections 10.2, 10.3 (other than Section 10.3(j)), 10.5 (other than Section 10.5(l)) or 10.6 (other than Section 10.6(f));

(e) the Borrower and any Restricted Subsidiary may lease, sublease, license (only on a non-exclusive basis, with respect to any intellectual property) or sublicense (only on a non-exclusive basis, with respect to any intellectual property) real, personal or intellectual property in the ordinary course of business;

(f) Dispositions of property (including like-kind exchanges) to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property (excluding any boot thereon) or (ii) the proceeds of such Disposition are applied to the purchase price of such replacement property, in each case under Section 1031 of the Code or otherwise;

(g) the Borrower and any other Credit Party may transfer or otherwise Dispose of any intellectual property for fair market value to any Restricted Subsidiary of the

Borrower that is not a Credit Party; *provided* that (i) the transferee shall be (A) a direct or indirect Wholly Owned Restricted Subsidiary and (B) a special purpose entity that does not incur any third-party Indebtedness for borrowed money (for the avoidance of doubt, such entity may have employees managing its intellectual property assets and conducting internal research and development activities) and (ii) the consideration received by the Credit Party from such Disposition shall be in the form of (A) cash and Cash Equivalents, (B) intercompany notes owed to the Credit Party transferor/licensor by the non-Credit Party transferee/licensee, which intercompany notes are pledged to secure the Obligations and/or (C) Stock and Stock Equivalent of the transferee/licensee (or a parent entity of such transferee/licensee so long as such parent entity and any intermediate holding entity otherwise satisfies the requirements set forth in clause (i) above) and the Stock and Stock Equivalents of such transferee/licensee (or the parent entity) are pledged to secure the Obligations (subject to the limitation set forth in the Security Agreement on the pledge of Voting Stock of any CFC or CFC Holding Company); *provided* that in the case of this clause (ii)(C), the aggregate fair market value of any and all intellectual property so Disposed of shall not exceed $100,000,000;

(h) Dispositions of (i) Investments in joint ventures (regardless of the form of legal entity) to the extent required by, or made pursuant to, customary buy/sell arrangements or put/call arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements or (ii) to joint ventures in connection with the dissolution or termination of a joint venture to the extent required pursuant to joint venture and similar arrangements;

(i) (i) Dispositions of Receivables Facility Assets in connection with any Permitted Receivables Financing, and any Disposition of Securitization Assets in connection with any Qualified Securitization Financing and (ii) Dispositions in connection with accounts receivable factoring facilities in the ordinary course of business, *provided* that the Indebtedness arising in connection therewith shall not exceed the amount of Indebtedness permitted by Section 10.1(u);

(j) Dispositions listed on Schedule 10.4 or to consummate the Transactions, including transactions contemplated by the Plan;

(k) transfers of property subject to a Recovery Event or in connection with any condemnation proceeding upon receipt of the Net Cash Proceeds of such Recovery Event or condemnation proceeding;

(l) Dispositions or discounts of accounts receivable or notes receivable in connection with the collection or compromise thereof or the conversion of accounts receivable to notes receivable;

(m) Dispositions of any assets not constituting Collateral in an aggregate amount not to exceed $160,000,000;

(n) the execution of (or amendment to), settlement of or unwinding of any Hedging Agreement;

(o) any issuance or sale of Stock or Stock Equivalent in, or Indebtedness or other securities of, any Unrestricted Subsidiary;

(p) the surrender or waiver of contractual rights and settlement or waiver of contractual or litigation claims;

(q) Dispositions of any assets (including Stock and Stock Equivalents) acquired in connection with any Permitted Acquisition or other Investment not prohibited hereunder, which assets are not used or useful to the core or principal business of the Borrower and its Restricted Subsidiaries (as determined by the Borrower in good faith); and

(r) other Dispositions (including those of the type otherwise described herein) made for fair market value in an aggregate amount not to exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(s) the Borrower and any Restricted Subsidiary may (i) terminate or otherwise collapse its cost sharing agreements with the Borrower or any Subsidiary and settle any crossing payments in connection therewith, (ii) convert any intercompany Indebtedness to Stock or any Stock to intercompany Indebtedness, (iii) settle, discount, write off, forgive or cancel any intercompany Indebtedness or other obligation owing by the Borrower or any Restricted Subsidiary or (iv) settle, discount, write off, forgive or cancel any Indebtedness owing by any present or former consultants, managers, directors, officers or employees of Holdings, the Borrower, any direct or indirect parent thereof, or any Subsidiary thereof or any of their successors or assigns;

(t) any Disposition of property to the extent that (1) such property is exchanged for credit against the purchase price of similar replacement property that is purchased within 270 days thereof or (2) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually purchased within 270 days thereof);

(u) any Disposition in connection with a Permitted Reorganization;

(v) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater fair market value or usefulness to the business of the Borrower and the Restricted Subsidiaries, taken as a whole, as determined in good faith by the Borrower; and

(w) Dispositions of any asset between or among the Borrower and/or any Restricted Subsidiary as a substantially concurrent interim Disposition in connection with a Disposition otherwise permitted pursuant to clauses (a) through (v) above; *provided* that after giving effect to any such Disposition, to the extent the assets subject to such Dispositions constituted Collateral, such assets shall remain subject to, or be rejoined to, the Lien of the Security Documents.

Notwithstanding the foregoing, no transfer or other Disposition of any intellectual property by a Credit Party to a Subsidiary that is not a Credit Party may be made except pursuant to Section 10.4(c)(iii) (solely in respect of Investments permitted by the proviso to Section 10.5(w)), (e) or (g).

10.5 Limitation on Investments

The Borrower will not, and will not permit the Restricted Subsidiaries, to make any Investment except:

(a) extensions of trade credit, asset purchases (including purchases of inventory, supplies, materials and equipment) and the licensing or contribution of intellectual property pursuant to joint marketing arrangements, original equipment manufacturer arrangements or development agreements with other Persons, in each case in the ordinary course of business;

(b) Investments in cash or Cash Equivalents when such Investments were made;

(c) loans and advances to officers, managers, directors, employees, consultants and independent contractors of the Borrower (or any direct or indirect parent thereof) or any Subsidiary of the Borrower (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes (including employee payroll advances), (ii) in connection with such Person's purchase of Stock or Stock Equivalents of Holdings (or any direct or indirect parent thereof; *provided* that, to the extent such loans and advances are made in cash, the amount of such loans and advances used to acquire such Stock or Stock Equivalents shall be contributed to the Borrower in cash) and (iii) for purposes not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount outstanding pursuant to clause (iii) shall not exceed $25,000,000 at any one time outstanding;

(d) Investments (i) contemplated by the Plan or to consummate the Transactions and (ii) existing on, or made pursuant to legally binding written commitments in existence on, the Closing Date and, to the extent such Investments exceed $5,000,000, set forth on Schedule 10.5 and any supplement, amendment, amendment and restatement, modification, replacement, refinancing, refunding, restructuring, renewal or extension thereof, only to the extent that the amount of any Investment made pursuant to this clause (d)(ii) does not at any time exceed the amount of such Investment set forth on Schedule 10.5 (except by an amount equal to the unpaid accrued interest and premium thereon *plus* any unused commitments *plus* amounts paid in respect of fees, premiums, costs and expenses incurred in connection with such supplement, amendment, amendment and restatement, modification, replacement, refinancing, refunding, restructuring, renewal or extension or as otherwise permitted hereunder);

(e) any Investment acquired by the Borrower or any Restricted Subsidiary (i) in exchange for any other Investment or accounts receivable held by the Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization, or recapitalization of, or settlement of delinquent accounts or disputes with or judgments against,

the issuer, obligor or borrower of such original Investment or accounts receivable, (ii) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default or (iii) as a result of the settlement, compromise or resolution of litigation, arbitration or other disputes with Persons who are not Affiliates or in satisfaction or judgments against other Persons;

(f) Investments to the extent that payment for such Investments is made with (i) Stock or Stock Equivalents (other than Disqualified Stock) of the Borrower (or any direct or indirect parent thereof) or (ii) the proceeds from the issuance of Stock or Stock Equivalents (other than Disqualified Stock, any sale or issuance to any Subsidiary and any issuance applied pursuant to Section 10.6(a) or Section 10.6(b)(i)) of the Borrower (or any direct or indirect parent thereof); *provided* that such Stock or Stock Equivalents or proceeds of such Stock or Stock Equivalents will not increase the Available Equity Amount;

(g) Investments (other than in the form of direct or indirect transfers or Dispositions of intellectual property from a Credit Party to a non-Credit Party) by the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary or any Person that will, upon such Investment become a Restricted Subsidiary;

(h) Investments constituting Permitted Acquisitions;

(i) Investments constituting (i) Minority Investments and Investments in Unrestricted Subsidiaries and (ii) Investments in joint ventures (regardless of the form of legal entity) or similar Persons that do not constitute Restricted Subsidiaries, in each case valued at the fair market value (determined by the Borrower acting in good faith) of such Investment at the time each such Investment is made, in an aggregate amount at any one time outstanding pursuant to this clause (i) that, at the time each such Investment is made, would not exceed an amount equal to the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(j) Investments constituting non-cash proceeds received from Dispositions of assets pursuant to Section 10.4;

(k) Investments made to repurchase or retire Stock or Stock Equivalents of the Borrower or any direct or indirect parent thereof owned by any employee or any stock ownership plan or key employee stock ownership plan of the Borrower (or any direct or indirect parent thereof) in an aggregate amount, when combined with distributions made pursuant to Section 10.6(b), not to exceed the limitations set forth in such Section;

(l) Investments consisting of or resulting from Indebtedness, Liens, Restricted Payments, fundamental changes and Dispositions permitted by Section 10.1 (other than Sections 10.1(d), 10.1(e) and 10.1(g)(ii)), 10.2, 10.3 (other than Section 10.3(j)), 10.4 (other than Section 10.4(d)), 10.6 (other than Section 10.6(f)), 10.7 or 10.8, as applicable;

(m) loans and advances to any direct or indirect parent of the Borrower in lieu of, and not in excess of the amount of, Restricted Payments to the extent permitted to be made to

such parent in accordance with Section 10.6; *provided* that the aggregate amount of such loans and advances shall reduce the ability of the Borrower and the Restricted Subsidiaries to make Restricted Payments under the applicable clauses of Section 10.6 by such amount;

(n) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(o) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(p) advances of payroll payments to employees, consultants or independent contractors or other advances of salaries or compensation to employees, consultants or independent contractors, in each case in the ordinary course of business;

(q) Guarantee Obligations of the Borrower or any Restricted Subsidiary of leases (other than Capital Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(r) Investments held by a Person acquired (including by way of merger, amalgamation or consolidation) after the Closing Date otherwise in accordance with this Section 10.5 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(s) Investments in Hedging Agreements permitted by Section 10.1;

(t) Investments in or by a Receivables Entity or a Securitization Subsidiary arising out of, or in connection with, any Permitted Receivables Financing or Qualified Securitization Financing, as applicable; *provided* that any such Investment in a Receivables Entity or a Securitization Subsidiary is in the form of a contribution of additional Receivables Facility Assets or Securitization Assets, as applicable, or as equity;

(u) Investments consisting of deposits of cash and Cash Equivalents as collateral support permitted under Section 10.2;

(v) other Investments not to exceed an amount equal to (x) the Available Equity Amount at the time such Investments are made *plus* (y) the Available Amount at the time such Investments are made, *provided* that in respect of any Investments made in reliance of clause (ii) of the definition of "Available Amount", no Event of Default shall have occurred and be continuing or would result therefrom;

(w) other Investments in an amount at any one time outstanding not to exceed an amount equal to the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the

most recently ended Test Period (calculated on a Pro Forma Basis); *provided* that up to an amount equal to the greater of (i) $80,000,000 and (ii) 10% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) may be made in the form of Disposition of intellectual property by a Credit Party to a Restricted Subsidiary that is not a Credit Party;

(x) Investments consisting of purchases and acquisitions of assets and services in the ordinary course of business;

(y) Investments in the ordinary course of business consisting of Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practice;

(z) Investments made as a part of, or in connection with or to otherwise fund the Transactions;

(aa) contributions in connection with compensation arrangements to a "rabbi" trust for the benefit of employees, directors, partners, members, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower or any of its Restricted Subsidiaries;

(bb) Investments relating to pension trusts;

(cc) Investments in Similar Business in an amount at any one time outstanding not to exceed an amount equal to the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(dd) Investments in connection with Permitted Reorganizations;

(ee) Investments in deposit accounts, commodities and securities accounts opened in the ordinary course of business;

(ff) Investments solely to the extent such Investments reflect an increase in the value of Investments otherwise permitted under this Agreement;

(gg) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;

(hh) Term Loans repurchased by the Borrower or a Restricted Subsidiary pursuant to and in accordance with Section 13.6(g); ~~and~~

(ii) other Investments in an unlimited amount, *provided* that the Borrower shall be in compliance on a Pro Forma Basis with a Consolidated Total Net Leverage Ratio not greater than 2.8 to 1.0~~.~~; and

(jj) Investments made in connection with a Permitted Change of Control.

Notwithstanding the foregoing, no Investment consisting of or resulting from any transfer or other Disposition of any intellectual property by a Credit Party to a Subsidiary that is not a Credit Party may be made except pursuant to (i) Section 10.5(l) (solely in respect of Dispositions permitted by Section 10.4(e) or (g)) or (ii) the proviso to Section 10.5(w).

10.6 Limitation on Restricted Payments

The Borrower will not, and will not permit the Restricted Subsidiaries to, declare or pay any Restricted Payments except that:

(a) the Borrower may (or may make Restricted Payments to permit any direct or indirect parent thereof to) redeem in whole or in part any of its Stock or Stock Equivalents for another class of its (or such parent's) Stock or Stock Equivalents or with proceeds from substantially concurrent equity contributions or issuances of new Stock or Stock Equivalents (other than any Disqualified Stock, any sale or issuance to any Subsidiary and any contribution or issuance applied pursuant to Section 10.5(f)(ii) or Section 10.6(b)(i)); *provided* that (i) such new Stock or Stock Equivalents contain terms and provisions (taken as a whole) at least as advantageous to the Lenders, taken as a whole, in all respects material to their interests as those contained in the Stock or Stock Equivalents redeemed thereby and (ii) the cash proceeds from any such contribution or issuance shall not increase the Available Equity Amount;

(b) the Borrower may (or may make Restricted Payments to permit any direct or indirect parent thereof to) redeem, acquire, retire or repurchase shares of its (or such parent's) Stock or Stock Equivalents held by any present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) of the Borrower (or any direct or indirect parent thereof) and any Subsidiaries, so long as such repurchase is pursuant to, and in accordance with the terms of, any stock option or stock appreciation rights plan, any management, director and/or employee benefit, stock ownership or option plan, stock subscription plan or agreement, employment termination agreement or any employment agreements or stockholders' or shareholders' agreement; *provided*, *however* , that the aggregate amount of payments made under this Section 10.6(b), when combined with Investments made pursuant to Section 10.5(k), do not exceed in any Fiscal Year $20,000,000 (with unused amounts in any Fiscal Year being carried over to succeeding Fiscal Years subject to a maximum (without giving effect to the following proviso) of $30,000,000 in any Fiscal Year); *provided*, *further*, that such amount in any Fiscal Year may be increased by an amount not to exceed:

(i) the cash proceeds from the sale of Stock (other than Disqualified Stock, any sale or issuance to any Subsidiary and any contribution or issuance applied pursuant to Section 10.5(f)(ii) or Section 10.6(a)) of the Borrower and, to the extent contributed to the Borrower, Stock of any of the Borrower's direct or indirect parent companies, in each case to present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) of the Borrower (or any of its direct or indirect parent

companies) or any Subsidiary of the Borrower that occurs after the Closing Date; *provided* that such Stock or proceeds of such Stock will not increase the Available Equity Amount; *plus*

(ii) the cash proceeds of key man life insurance policies received by the Borrower or any Restricted Subsidiary after the Closing Date; less

(iii) the amount of any Restricted Payment previously made with the cash proceeds described in clauses (i) and (ii) above;

and *provided*, *further*, that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) of the Borrower (or any of its direct or indirect parent companies), or any Subsidiary of the Borrower in connection with a repurchase of Stock or Stock Equivalents of the Borrower or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(c) so long as no Specified Default shall have occurred and be continuing or would result therefrom, the Borrower make Restricted Payments; *provided* that the amount of all such Restricted Payments paid from the Closing Date pursuant to this clause (c) shall not exceed an amount equal to (x) the Available Equity Amount at the time such Restricted Payments are paid *plus* (y) the Available Amount at the time such Restricted Payments are paid, *provided* that in respect of any Restricted Payments made in reliance of clause (ii) of the definition of Available Amount, no Event of Default shall have occurred and be continuing or would result therefrom;

(d) the Borrower may make Restricted Payments to any direct or indirect parent company of the Borrower in amount required for any such direct or indirect parent to pay, in each case without duplication:

(i) foreign, federal, state and local income Taxes for any taxable period in respect of which a consolidated, combined, unitary or affiliated return is filed by such direct or indirect parent that includes the Borrower and/or any of its Subsidiaries; *provided* that for purposes of this Section 10.6(d)(i), such Taxes shall be deemed to equal the amount that the Borrower and its Subsidiaries would be required to pay in respect of foreign, federal, state and local income Taxes if the Borrower were the parent of a standalone consolidated, combined, affiliated, unitary or similar tax group including its Subsidiaries (any such Restricted Payments, "**Tax Distributions**");

(ii) (A) such parents' general operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties) to the extent such costs and expenses are attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries and (to the extent of cash actually paid by Unrestricted Subsidiaries to the Borrower or its Restricted Subsidiaries

for such purposes) Unrestricted Subsidiaries, (B) any indemnification claims made by directors or officers of the Borrower (or any parent thereof) to the extent such claims are attributable to the ownership or operation of the Borrower or any Restricted Subsidiary and (to the extent of cash actually paid by Unrestricted Subsidiaries to the Borrower or its Restricted Subsidiaries for such purposes) Unrestricted Subsidiaries ~~or~~ , (C) fees and expenses otherwise due and payable by the Borrower (or any parent thereof) or any Restricted Subsidiary and not prohibited to be paid by the Borrower and its Restricted Subsidiaries hereunder or (D) any Permitted Change of Control Costs;

(iii) franchise and excise Taxes and other fees, Taxes and expenses required to maintain the corporate existence of any direct or indirect parent of the Borrower;

(iv) to any direct or indirect parent of the Borrower to finance any Investment permitted to be made by the Borrower or any Restricted Subsidiary pursuant to Section 10.5; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment, (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets, Stock or Stock Equivalents) to be contributed to the Borrower or such Restricted Subsidiary or (2) the merger, amalgamation or consolidation (to the extent permitted in Section 10.5) of the Person formed or acquired into the Borrower or any Restricted Subsidiary, (C) the Borrower or such Restricted Subsidiary shall comply with Section 9.11, Section 9.12 and the Security Agreement to the extent applicable, (D) the aggregate amount of such Restricted Payments shall reduce the ability of the Borrower and the Restricted Subsidiary to make Investments under the applicable clauses of Section 10.5 by such amount and (E) any property received by the Borrower or the Restricted Subsidiaries in connection with such transaction shall only increase the Available Equity Amount to the extent the fair market value of such property as determined in good faith by the Board of Directors of the Borrower exceeds the aggregate amount of Restricted Payments made pursuant to this clause (iv);

(v) customary costs, fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering or acquisition or Disposition payable by the Borrower or the Restricted Subsidiaries;

(vi) customary salary, bonus, severance and other benefits payable to officers, employees or consultants of any direct or indirect parent company of the Borrower to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower, its Restricted Subsidiaries and (to the extent of cash actually paid by Unrestricted Subsidiaries to the Borrower or its Restricted Subsidiaries for such purposes) Unrestricted Subsidiaries;

(vii) AHYDO Catch-Up Payments with respect to Indebtedness of any direct or indirect parent of the Borrower; *provided* that the Net Cash Proceeds of such Indebtedness have been contributed to the Borrower as a capital contribution; and

(viii) expenses incurred by any direct or indirect parent of the Borrower in connection with any public offering or other sale of Stock or Stock Equivalents (including in respect of the listing of Avaya Holdings on the Closing Date) or Indebtedness (i) other than in connection with the listing of Avaya Holdings on the Closing Date, where the Net Cash Proceeds of such offering or sale are intended to be received by or contributed to the Borrower or a Restricted Subsidiary, (ii) in a pro-rated amount of such expenses in proportion to the amount of such Net Cash Proceeds intended to be so received or contributed or (iii) otherwise on an interim basis prior to completion of such offering so long as any direct or indirect parent of the Borrower shall cause the amount of such expenses to be repaid to the Borrower or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if completed;

(e) Restricted Payments made to dissenting equityholders in connection with their exercise of appraisal rights or the settlement of any claim or actions with respect thereto in connection with any Permitted Acquisition or similar Investment permitted under Section 10.5 (other than Section 10.5(l));

(f) Restricted Payments consisting of or resulting from Liens, fundamental changes, Dispositions, Investments or other payments permitted by 10.2, 10.3 (other than Section 10.3(j)), 10.4 (other than Section 10.4(d)), 10.5 (other than Section 10.5(l)), 10.7 or 10.8, as applicable;

(g) the Borrower may repurchase Stock or Stock Equivalents of the Borrower (or any direct or indirect parent thereof) deemed to occur upon exercise of stock options or warrants if such Stock or Stock Equivalents represents a portion of the exercise price of such options or warrants, and the Borrower may pay Restricted Payments to any direct or indirect parent thereof as and when necessary to enable such parent to effect such repurchases;

(h) the Borrower may (i) pay cash in lieu of fractional shares in connection with any Restricted Payment, distribution, split, reverse share split, merger, consolidation, amalgamation or other combination thereof or any Permitted Acquisition, and any Restricted Payment to the Borrower's direct or indirect parent in order to effect the same and (ii) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(i) the Borrower may make any Restricted Payment within 60 days after the date of declaration thereof or giving irrevocable notice thereof, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;

(j) so long as no Event of Default shall have occurred and is continuing or would result therefrom, the Borrower may make Restricted Payments, so long as the aggregate amount of all such Restricted Payments in any Fiscal Year does not exceed 6% of the market capitalization of the Public Reporting Entity calculated on a trailing twelve month average basis;

(k) the Borrower may make Restricted Payments in an amount equal to withholding or similar Taxes payable or expected to be payable by present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) and any repurchases of Stock or Stock Equivalents in consideration of such payments including deemed repurchases in connection with the exercise of stock options;

(l) so long as no Event of Default shall have occurred and is continuing or would result therefrom, the Borrower may (or may make Restricted Payments to permit any direct or indirect parent thereof to) make Restricted Payments in an aggregate amount not to exceed $5 million per fiscal quarter;

(m) the Borrower may make payments described in Section 9.9 (other than Section 9.9(a) and Section 9.9(d) (to the extent expressly permitted by reference to Section 10.6));

(n) the Borrower may make Restricted Payments in connection with the Transactions or contemplated by the Plan;

(o) so long as no Event of Default shall have occurred and is continuing or would result therefrom, the Borrower may make Restricted Payments in amounts up to the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(p) so long as no Event of Default shall have occurred and is continuing or would result therefrom, the Borrower may make Restricted Payments in an unlimited amount, *provided* that the Borrower shall be in compliance on a Pro Forma Basis with a Consolidated Total Net Leverage Ratio not greater than 2.3 to 1.0;

(q) Restricted Payments in respect of working capital adjustments or purchase price adjustments pursuant to any Permitted Acquisition or other Investment permitted hereunder and to satisfy indemnity and other similar obligations in connection with any Permitted Acquisition or other Investment permitted hereunder;

(r) the distribution, by dividend or otherwise, of shares of Stock or Stock Equivalents of, or Indebtedness owed to the Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries or the proceeds thereof;

(s) [reserved]; ~~and~~

(t) each Restricted Subsidiary may make Restricted Payments to the Borrower and other Restricted Subsidiaries of the Borrower (and, in the case of a Restricted Payment by a non-Wholly Owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary, as compared to the other owners of Stock in such Restricted Subsidiary,

on a pro rata or more than pro rata basis based on their ownership interests of the relevant class of Stock)~~.~~; and

(u) any Restricted Payment made in connection with a Permitted Change of Control.

Notwithstanding the foregoing, no Restricted Payment consisting of or resulting from any transfer or other Disposition of any intellectual property by a Credit Party to a Subsidiary that is not a Credit Party may be made except pursuant to Section 10.6(f) solely in respect of Dispositions permitted by Section 10.4(c)(iii) (solely in respect of Investments permitted by the proviso to Section 10.5(w)), (e) or (g).

10.7 Limitations on Debt Prepayments and Amendments

(a) The Borrower will not, and will not permit the Restricted Subsidiaries to, voluntarily prepay, repurchase or redeem or otherwise defease prior to the schedule maturity thereof any Indebtedness (other than the ABL Obligations) that is subordinated in right of payment or lien to the Obligations with a principal amount in excess of $50,000,000 (the "**Junior Indebtedness**"), except that the Borrower and its Restricted Subsidiaries may (i) make payments of regularly scheduled principal and interest, (ii) make AHYDO Catch-Up Payments; (iii) prepay, repurchase or redeem or otherwise defease Junior Indebtedness in an aggregate principal amount from the Closing Date not in excess of the sum of (1) so long as no Event of Default shall have occurred and be continuing or would result therefrom, (I) the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) and (II) additional unlimited amounts so long as the Borrower shall be in compliance on a Pro Forma Basis with a Consolidated Total Net Leverage Ratio not greater than 2.3 to 1.0 *plus* (2) the Available Equity Amount at the time of such prepayment, repurchase, redemption or other defeasance *plus* (3) the Available Amount at the time of such prepayment, repurchase, redemption or other defeasance; *provided* that in respect of any prepayments, repurchases or redemptions or defeasances made in reliance of clause (ii) of the definition of Available Amount, no Event of Default shall have occurred and be continuing or would result therefrom; (iv) refinance Junior Indebtedness with any Refinancing Indebtedness, to the extent not required to prepay any Term Loans pursuant to Section 5.2(a); (v) convert, exchange, redeem, repay or prepay such Junior Indebtedness into, for or with, as applicable, Stock or Stock Equivalents of any direct or indirect parent of the Borrower (other than Disqualified Stock except as permitted hereunder); (vi) prepay, repurchase, redeem or otherwise defease Junior Indebtedness within 60 days of the applicable Redemption Notice if, at the date of any payment, redemption, repurchase, retirement, termination or cancellation notice in respect thereof (each, a "**Redemption Notice**"), such payment, redemption, repurchase, retirement, termination or cancellation would have complied with another provision of this Section 10.7(a); *provided* that such payment, redemption, repurchase, retirement, termination or cancellation shall reduce capacity under such other provision; (vii) repay or prepay intercompany subordinated Indebtedness (including under the Intercompany Subordinated Note) owed among the Borrower and/or the Restricted Subsidiaries, in either case unless a Specified Default has occurred and is continuing and the Borrower has received a written notice from the Collateral Agent instructing

it not to make or permit any such repayment or prepayment; and (viii) transfer credit positions in connection with intercompany debt restructurings so long as such Indebtedness is permitted by Section 10.1 after giving effect to such transfer.

(b) The Borrower will not, and will not permit the Restricted Subsidiaries to waive, amend, or modify the definitive documentation in respect of any Junior Indebtedness with a principal amount in excess of $50,000,000, to the extent that any such waiver, amendment or modification, taken as a whole, would be adverse to the Lenders in any material respect; *provided* that this Section 10.7(b) would not prohibit a refinancing or replacement of such Indebtedness with Refinancing Indebtedness so long as (1) such Refinancing Indebtedness is permitted to be incurred under Section 10.1 and (2) the prepayment of such Junior Indebtedness is permitted under Section 10.7(a) above.

10.8 Limitation on Subsidiary Distributions

The Borrower will not, and will not permit any Restricted Subsidiary that is not a Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to (x) (i) pay dividends or make any other distributions to the Borrower or any Restricted Subsidiary that is a Guarantor on its Stock or Stock Equivalents or with respect to any other interest or participation in, or measured by, its profits or (ii) pay any Indebtedness owed to the Borrower or any Restricted Subsidiary that is a Guarantor, (y) make loans or advances to the Borrower or any Restricted Subsidiary that is Guarantor or (z) sell, lease or transfer any of its properties or assets to the Borrower or any Restricted Subsidiary that is a Guarantor, except (in each case) for such encumbrances or restrictions (A) which the Borrower has reasonably determined in good faith will not materially impair the Borrower's ability to make payments under this Agreement when due or (B) existing under or by reason of:

(a) contractual encumbrances or restrictions in effect on the Closing Date, including pursuant to this Agreement, the ABL Credit Documents and the related documentation and related Hedging Obligations and Cash Management Obligations;

(b) purchase money obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (x), (y) or (z) above on the property so acquired, any replacements of such property or assets and additions and accessions thereto, after-acquired property subject to such arrangement, the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment (or assets affixed or appurtenant thereto and additions and accessions) provided by any lender, other equipment (or assets affixed or appurtenant thereto and additions and accessions) financed by such lender (it being understood that such restriction shall not be permitted to apply to any property to which such restriction would not have applied but for such acquisition);

(c) Applicable Laws or any applicable rule, regulation or order, or any request of any Governmental Authority having regulatory authority over the Borrower or any of its Subsidiaries;

(d) any agreement or other instrument of a Person acquired by or merged or consolidated with or into the Borrower or any Restricted Subsidiary, or of an Unrestricted Subsidiary that is designated a Restricted Subsidiary, or that is assumed in connection with the acquisition of assets from such Person, in each case that is in existence at the time of such transaction (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired or designated, any replacements of such property or assets and additions and accessions thereto, after-acquired property subject to such agreement or instrument, the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment (or assets affixed or appurtenant thereto and additions and accessions) provided by any lender, other equipment (or assets affixed or appurtenant thereto and additions and accessions) financed by such lender (it being understood that such encumbrance or restriction shall not be permitted to apply to any property to which such encumbrance or restriction would not have applied but for such acquisition);

(e) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or Disposition of all or substantially all of the Stock or Stock Equivalents or assets of such Subsidiary and restrictions on transfer of assets subject to Liens permitted hereunder;

(f) (x) secured Indebtedness otherwise permitted to be incurred pursuant to Sections 10.1 and 10.2 that limit the right of the debtor to Dispose of the assets securing such Indebtedness and (y) restrictions or encumbrances on transfers of assets subject to Liens permitted hereunder (but, with respect to any such Lien, only to the extent that such transfer restrictions apply solely to the assets that are the subject of such Lien);

(g) restrictions or encumbrances on cash or other deposits or net worth imposed by customers under, or made necessary or advisable by, contracts entered into in the ordinary course of business;

(h) restrictions or encumbrances imposed by other Indebtedness or Disqualified Stock of Restricted Subsidiaries permitted to be incurred subsequent to the Closing Date pursuant to the provisions of Section 10.1;

(i) customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to such joint venture (including its assets and Subsidiaries) and the Stock or Stock Equivalents issued thereby;

(j) customary provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, in each case, entered into in the ordinary course of business;

(k) restrictions created in connection with any Permitted Receivables Financing or any Qualified Securitization Financing that, in the good faith determination of the Borrower, are necessary or advisable to effect such Permitted Receivables Financing or Qualified Securitization Financing, as the case may be;

(l) customary restrictions on leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to property interest, rights or the assets subject thereto;

(m) customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business;

(n) restrictions contemplated by the Plan or created in connection with the consummation of the Transaction, including restrictions imposed by the PBGC Stipulation of Settlement; or

(o) any encumbrances or restrictions of the type referred to in clauses (x), (y) and (z) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, extensions, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (n) above; *provided* that such amendments, modifications, restatements, renewals, increases, extensions, supplements, refundings, extensions, replacements, restructurings or refinancings (x) are, in the good faith judgment of the Borrower, not materially more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, extension, restructuring, supplement, refunding, replacement or refinancing or (y) do not materially impair the Borrower's ability to pay its obligations under the Credit Documents as and when due (as determined in good faith by the Borrower);

provided that (x) the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the Borrower or any Restricted Subsidiary that is a Guarantor to other Indebtedness incurred by the Borrower or any Restricted Subsidiary that is a Guarantor shall not be deemed to constitute such an encumbrance or restriction.

10.9 Amendment of Organizational Documents

The Borrower will not, nor will the Borrower permit any Credit Party to, amend or otherwise modify any of its Organizational Documents in a manner that is materially adverse to the Lenders, except as required by Applicable Laws.

10.10 Permitted Activities

Holdings will not engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the Stock of the Borrower, including receipt and payment of dividends and payments in respect of Indebtedness and other amounts in respect of Stock, (ii) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes relating to such maintenance), (iii) the performance of its obligations with respect to the Transactions, the Credit Documents and any other documents governing Indebtedness permitted hereby, (iv) any public offering of its or its direct or indirect parent

entity's common equity or any other issuance or sale of its or its direct or indirect parent entity's Stock, (v) financing activities, including the issuance of securities, incurrence of debt, receipt and payment of dividends and distributions, making contributions to the capital of the Borrower and guaranteeing the obligations of the Borrower and the Subsidiaries, (vi) if applicable, participating in tax, accounting and other administrative matters as a member of the consolidated group and the provision of administrative and advisory services (including treasury and insurance services) to its Subsidiaries of a type customarily provided by a holding company to its Subsidiaries, (vii) holding any cash or other property (but not operate any property), (viii) making and receiving of any dividends, payments in respect of Indebtedness or Investments permitted hereunder, (ix) providing indemnification to officers and directors, (x) activities relating to any Permitted Reorganization, (xi) activities related to the Plan and the consummation of the Transactions and activities contemplated thereby, (xii) merging, amalgamating or consolidating with or into any direct or indirect parent of Holdings (in compliance with the definition of "Holdings" in this Agreement), (xiii) repurchases of Indebtedness through open market purchases and Dutch auctions, (xiv) activities incidental to Permitted Acquisitions or similar Investments consummated by the Borrower and the Restricted Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or Investments incidental to such Permitted Acquisitions or similar Investments, (xv) any transaction with the Borrower or any Restricted Subsidiary to the extent expressly permitted under this Section 10, (xvi) making any AHYDO Catch-Up Payments, (xvii) paying any Taxes it is obligated to pay ~~and~~, (xviii) consummation of any Permitted Change of Control and activities incidental to the consummation of such Permitted Change of Control, including the formation of acquisition vehicle entities and intercompany loans and/or investments incidental to such Permitted Change of Control and (xix) any activities incidental or reasonably related to the foregoing.

SECTION 11 Events of Default

Upon the occurrence of any of the following specified events (each an "**Event of Default**"):

11.1 Payments

The Borrower shall (a) default in the payment when due of any principal of the Term Loans, (b) default, and such default shall continue for more than five Business Days, in the payment when due of any interest on the Term Loans or (c) default, and such default shall continue for more than ten Business Days, in the payment when due of any Fees or any other amounts owing hereunder or under any other Credit Document; or

11.2 Representations, Etc.

Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or any certificate delivered or required to be delivered pursuant hereto or thereto shall prove to be materially untrue on the date as of which made or deemed made, and, to the extent capable of being cured, such incorrect representation and warranty shall remain incorrect in any material respect for a period of thirty days after written notice thereof from the Administrative Agent to the Borrower; or

11.3 Covenants

Any Credit Party shall:

(a) default in the due performance or observance by it of any term, covenant or agreement contained in Section 9.1(d)(i) (*provided* that notice of such default at any time shall timely cure the failure to provide such notice), Section 9.5 (solely with respect to the Borrower) or Section 10; or

(b) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in Section 11.1 or 11.2 or clause (a) of this Section 11.3) contained in this Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 calendar days after receipt of written notice by the Borrower from the Administrative Agent; or

11.4 Default Under Other Agreements

(a) The Borrower or any Restricted Subsidiary shall (i) default in any payment with respect to any Indebtedness (other than any Indebtedness described in Section 11.1, Hedging Obligations or Indebtedness under any Permitted Receivables Financing) in excess of $100,000,000 in the aggregate for the Borrower and such Restricted Subsidiaries beyond the period of grace or cure and following all required notices, if any, provided in the instrument or agreement under which such Indebtedness was created or (ii) default in the observance or performance of any agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist (other than any agreement or condition relating to, or provided in any instrument or agreement, under which such Hedging Obligations or such Permitted Receivables Financing was created) beyond the period of grace or cure and following all required notices, if any, provided in the instrument or agreement under which such Indebtedness was created, if 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, any such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its Stated Maturity; or (b) without limiting the provisions of clause (a) above, any such Indebtedness shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment (other than any Hedging Obligations or Indebtedness under any Permitted Receivables Financing) or as a mandatory prepayment, prior to the Stated Maturity thereof; *provided* that clauses (a) and (b) above shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; *provided*, *further*, that this Section 11.4 shall not apply to (i) any Indebtedness if the sole remedy of the holder thereof following such event or condition is to elect to convert such Indebtedness into Stock or Stock Equivalents (other than Disqualified Stock) and cash in lieu of fractional shares, (ii) any such default that is remedied by or waived (including in the form of amendment) by the requisite holders of the applicable item of Indebtedness or contested in good faith by the

Borrower or the applicable Restricted Subsidiary in either case, prior to acceleration of all the Term Loans pursuant to this Section 11 or (ii) any failure to perform or observe the ABL Financial Covenant unless and until the lenders under the ABL Credit Agreement have affirmatively declared all obligations thereunder to be immediately due and payable and terminated the ABL Obligations and such declaration has not been rescinded; or

11.5 Bankruptcy

Except as otherwise permitted under Section 10.3, (i) the Borrower or any Material Subsidiary shall commence a voluntary case, proceeding or action concerning itself under (a) Title 11 of the United States Code entitled "Bankruptcy," or (b) in the case of any Foreign Subsidiary that is a Material Subsidiary, any domestic or foreign law relating to bankruptcy, judicial management, insolvency, reorganization, administration or relief of debtors in effect in its jurisdiction of incorporation, in each case as now or hereafter in effect, or any successor thereto (collectively, the "**Bankruptcy Code**"); (ii) an involuntary case, proceeding or action is commenced against the Borrower or any Material Subsidiary and the petition is not controverted within 60 days after commencement of the case, proceeding or action; (iii) an involuntary case, proceeding or action is commenced against the Borrower or any Material Subsidiary and the petition is not dismissed or stayed within 60 consecutive days after commencement of the case, proceeding or action; (iv) a custodian (as defined in the Bankruptcy Code), judicial manager, receiver, receiver manager, trustee, administrator or similar person is appointed for, or takes charge of, all or substantially all of the property of the Borrower or any Material Subsidiary; (v) the Borrower or any Material Subsidiary commences any other voluntary proceeding or action under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, administration or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Borrower or any Material Subsidiary; (vi) there is commenced against the Borrower or any Material Subsidiary any such proceeding or action that remains undismissed or unstayed for a period of 60 consecutive days; (vii) the Borrower or any Material Subsidiary is adjudicated insolvent or bankrupt; (viii) any order of relief or other order approving any such case or proceeding or action is entered; (ix) the Borrower or any Material Subsidiary suffers any appointment of any custodian, receiver, receiver manager, trustee, administrator or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 consecutive days; (x) the Borrower or any Material Subsidiary makes a general assignment for the benefit of creditors; or (xi) any corporate action is taken by the Borrower or any Material Subsidiary for the purpose of authorizing any of the foregoing; or

11.6 ERISA

(a) The occurrence of any ERISA Event; (b) there could result from any event or events set forth in clause (a) of this Section 11.6 the imposition of a Lien, the granting of a security interest, or a liability, or the reasonable likelihood of incurring a Lien, security interest or liability; and (c) such ERISA Event, Lien, security interest or liability will or would be reasonably likely to have a Material Adverse Effect; or

11.7 Guarantee

Any Guarantee provided by Holdings, the Borrower or any Material Subsidiary or any material provision thereof shall cease to be in full force or effect (other than pursuant to the terms hereof or thereof) or any such Guarantor thereunder or any other Credit Party shall deny or disaffirm in writing any such Guarantor's obligations under the Guarantee; or

11.8 Security Agreement

The Security Agreement or any other material Security Document pursuant to which the assets of any Credit Party are pledged as Collateral or any material provision thereof shall cease to be in full force or effect in respect of a material portion of the Collateral (other than pursuant to the terms hereof or thereof or any defect arising as a result of acts or omissions of the Collateral Agent or any Lender which do not result from a material breach by a Credit Party of its obligations under the Credit Documents) or any grantor thereunder or any other Credit Party shall deny or disaffirm in writing such grantor's obligations under the Security Agreement or any other such Security Document; or

11.9 Judgments

One or more final judgments or decrees shall be entered against the Borrower or any Restricted Subsidiary involving a liability requiring the payment of $100,000,000 or more in the aggregate for all such final judgments and decrees for the Borrower and the Restricted Subsidiaries (to the extent not paid or covered by indemnity or insurance provided by a carrier that has not denied coverage) and any such final judgments or decrees shall not have been satisfied, vacated, discharged or stayed or bonded pending appeal within 60 consecutive days after the entry thereof; or

11.10 Change of Control

A Change of Control shall occur:

(a) then, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent shall, at the written request of the Required Lenders, by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent or any Lender to enforce its claims against the Borrower, except as otherwise specifically provided for in this Agreement (*provided* that, if an Event of Default specified in Section 11.5 shall occur with respect to the Borrower, the result that would occur upon the giving of written notice by the Administrative Agent as specified below shall occur automatically without the giving of any such notice): (i) declare the principal of and any accrued interest and Fees in respect of any or all Term Loans and any or all Obligations owing hereunder and under any other Credit Document to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; (ii) direct the Collateral Agent to enforce any and all Liens and security interests created pursuant to the Security Documents and (iii) enforce any and all of the Administrative Agent's rights under the Guarantee.

(b) Notwithstanding anything to the contrary contained herein, any Event of Default under this Agreement or similarly defined term under any other Credit Document, other than any Event of Default which cannot be waived without the written consent of each Lender directly and adversely affected thereby, shall be deemed not to be "continuing" if the events, act or condition that gave rise to such Event of Default have been remedied or cured (including by payment, notice, taking of any action or omitting to take any action) or have ceased to exist and the Borrower is in compliance with this Agreement and/or such other Credit Document.

11.11 Application of Proceeds

Any amount received by the Administrative Agent or the Collateral Agent from any Credit Party (or from proceeds of any Collateral) following any acceleration of the Obligations under this Agreement or any Event of Default under Section 11.5 shall be applied in accordance with any Applicable Intercreditor Agreement. In the event that either (x) any Applicable Intercreditor Agreement directs the application with respect to such amount be made with reference to this Agreement or the other Credit Documents or (y) no Applicable Intercreditor Agreement is then in effect that is applicable to such amount, any amount received by the Administrative Agent or the Collateral Agent from any Credit Party (or from proceeds of any Collateral), in each case, following any acceleration of the Obligations under this Agreement or any Event of Default under Section 11.5 shall be applied:

(i) First, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization, including compensation to the Administrative Agent, Collateral Agent and their agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent and Collateral Agent in connection therewith and all amounts for which the Administrative Agent and Collateral Agent is entitled to indemnification pursuant to the provisions of any Credit Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(ii) Second, to the payment of all other reasonable costs and expenses of such sale, collection or other realization including all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(iii) Third, without duplication of amounts applied pursuant to clauses (i) and (ii) above, to the indefeasible payment in full in cash, *pro rata*, of interest and other amounts constituting Obligations hereunder (other than principal or premium) and any fees, premiums and scheduled periodic payments due under Secured Hedging Agreement and Secured Cash Management Agreements to the extent constituting Obligations and any interest accrued thereon (excluding any breakage, termination or other payments thereunder), in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(iv) Fourth, to the payment in full in cash, *pro rata*, of principal amount of the Obligations hereunder and any premium thereon and any breakage, termination or other payments under Secured Hedging Agreement or Secured Cash Management Agreements to the extent constituting Obligations; and

(v) Fifth, the balance, if any, to the person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns) or as a court of competent jurisdiction may direct.

SECTION 12 The Agents

12.1 Appointment

(a) Each Secured Party (other than the Administrative Agent) hereby irrevocably designates and appoints the Administrative Agent as the agent of such Secured Party under this Agreement and the other Credit Documents and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Section 12 (other than this Section 12.1 and Sections 12.2, 12.9, 12.12 and 12.13, in each case, with respect to the Borrower) are solely for the benefit of the Agents and the other Secured Parties, and the Borrower shall not have any rights as a third party beneficiary of such provision. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein or in any other Credit Document, any fiduciary relationship with any other Secured Party or any agency or trust obligations with respect to any Credit Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Credit Document or otherwise exist against such Agent.

(b) The Secured Parties hereby irrevocably designate and appoint the Collateral Agent as the agent with respect to the Collateral, and each of the Secured Parties hereby irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Collateral Agent shall have no duties or responsibilities except those expressly set forth herein or in any other Credit Document, any fiduciary relationship with any of the other Secured Parties or any agency or trust obligations with respect to any Credit Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Credit Document or otherwise exist against the Collateral Agent.

(c) Each of the Joint Lead Arrangers and Co-Managers, each in its capacity as such, shall not have any obligations, duties or responsibilities under this Agreement but shall be entitled to all benefits of this Section 12.

12.2 Delegation of Duties

The Administrative Agent and the Collateral Agent may each execute any of its duties under this Agreement and the other Credit Documents by or through agents, sub-agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Neither the Administrative Agent nor the Collateral Agent shall be responsible for the negligence or misconduct of any agents, sub-agents or attorneys-in-fact selected by it in the absence of gross negligence or willful misconduct by such agents, sub-agents or attorneys-in-fact (as determined in the final judgment of a court of competent jurisdiction).

12.3 Exculpatory Provisions

(a) No Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by any of them under or in connection with this Agreement or any other Credit Document (except for its or such Person's own gross negligence or willful misconduct, as determined in the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein) or (b) responsible in any manner to any of the Lenders or any participant for any recitals, statements, representations or warranties made by any of Holdings, the Borrower, any other Guarantor, any other Credit Party or any officer thereof contained in this Agreement or any other Credit Document or in any certificate, report, statement or other document referred to or provided for in, or received by such Agent under or in connection with, this Agreement or any other Credit Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Credit Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Security Documents, or for any failure of Holdings, the Borrower, any other Guarantor or any other Credit Party to perform its obligations hereunder or thereunder. No Agent shall be under any obligation to any other Secured Party to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Credit Document, or to inspect the properties, books or records of any Credit Party or any Affiliate thereof.

(b) Each Lender confirms to the Administrative Agent, the Collateral Agent, each other Lender and each of their respective Related Parties that it (i) possesses (individually or through its Related Parties) such knowledge and experience in financial and business matters that it is capable, without reliance on the Administrative Agent, the Collateral Agent, any other Lender or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, credit, accounting and other financial matters) of (x) entering into this Agreement, (y) making Term Loans and other extensions of credit hereunder and under the other Credit Documents and (z) in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risks and (iii) has determined that entering into this Agreement and making Term Loans and other extensions of credit hereunder and under the other Credit Documents is suitable and appropriate for it.

(c) Each Lender acknowledges that (i) it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Credit Documents, (ii) that it has, independently and without reliance

upon the Administrative Agent, the Collateral Agent, any other Lender or any of their respective Related Parties, made its own appraisal and investigation of all risks associated with, and its own credit analysis and decision to enter into, this Agreement based on such documents and information, as it has deemed appropriate and (iii) it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, any other Lender or any of their respective Related Parties, continue to be solely responsible for making its own appraisal and investigation of all risks arising under or in connection with, and its own credit analysis and decision to take or not take action under, this Agreement and the other Credit Documents based on such documents and information as it shall from time to time deem appropriate, which may include, in each case:

(i) the financial condition, status and capitalization of the Borrower and each other Credit Party;

(ii) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Credit Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Credit Document;

(iii) determining compliance or non-compliance with any condition hereunder to the making of a Term Loan and the form and substance of all evidence delivered in connection with establishing the satisfaction of each such condition; and

(iv) the adequacy, accuracy and/or completeness of any information delivered by the Administrative Agent, the Collateral Agent, any other Lender or by any of their respective Related Parties under or in connection with this Agreement or any other Credit Document, the transactions contemplated hereby and thereby or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Credit Document.

12.4 Reliance by Agents

The Administrative Agent and the Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex, electronic mail, or teletype message, statement, order or other document or instruction believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to Holdings and/or the Borrower), independent accountants and other experts selected by the Administrative Agent or the Collateral Agent. The Administrative Agent may deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent and the Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Credit Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by

reason of taking or continuing to take any such action. The Administrative Agent and the Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Credit Documents in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Term Loans; *provided* that none of the Administrative Agent or the Collateral Agent shall be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Credit Document or Applicable Law.

12.5 Notice of Default

Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent or the Collateral Agent, as applicable, has received written notice from a Lender, Holdings or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent or the Collateral Agent receives such a notice, it shall give notice thereof to the Lenders, the Administrative Agent or the Collateral Agent, as applicable. The Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; *provided* that unless and until the Administrative Agent or the Collateral Agent, as applicable, shall have received such directions, the Administrative Agent or the Collateral Agent, as applicable, may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as is within its authority to take under this Agreement and otherwise as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement requires that such action be taken only with the approval of the Required Lenders or each of the Lenders, as applicable.

12.6 Non-Reliance on Administrative Agent, Collateral Agent and Other Lenders

Each Lender expressly acknowledges that none of the Administrative Agent, the Collateral Agent or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent or the Collateral Agent hereinafter taken, including any review of the affairs of Holdings, the Borrower, any other Guarantor or any other Credit Party, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Collateral Agent to any Lender. Each Lender represents to Administrative Agent and the Collateral Agent that it has, independently and without reliance upon the Administrative Agent, Collateral Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of Holdings, the Borrower, each other Guarantor and each other Credit Party and made its own decision to make its Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, Collateral Agent or any other Lender, and

based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Credit Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of Holdings, the Borrower, each other Guarantor and each other Credit Party. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, none of the Administrative Agent or the Collateral Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, assets, operations, properties, financial condition, prospects or creditworthiness of Holdings, the Borrower, any other Guarantor or any other Credit Party that may come into the possession of the Administrative Agent, the Collateral Agent or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

12.7 Indemnification

The Lenders agree to indemnify each Agent, each in its capacity as such (to the extent not reimbursed by the Credit Parties and without limiting the obligation of the Credit Parties to do so), ratably according to their respective portions of the Term Loans in effect on the date on which indemnification is sought (or, if indemnification is sought after the date upon which the Term Loans shall have been paid in full, ratably in accordance with their respective portions of the Term Loans in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur (including at any time following the payment of the Term Loans) be imposed on, incurred by or asserted against such Agent, including all fees, disbursements and other charges of counsel to the extent required to be reimbursed by the Credit Parties pursuant to Section 13.5, in any way relating to or arising out of the making of the Term Loans, this Agreement, any of the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing (**SUBJECT TO THE PROVISOS BELOW, WHETHER OR NOT CAUSED BY OR ARISING IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE ORDINARY NEGLIGENCE OF THE INDEMNIFIED PERSON**); *provided* that no Lender shall be liable to any Agent for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction; *provided*, *further*, that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Credit Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 12.7. In the case of any investigation, litigation or proceeding giving rise to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur, be imposed upon, incurred by or asserted against the Administrative Agent or the Collateral Agent in any way relating to or arising out of the making of the Term Loans, this Agreement, any of the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or

thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing (including at any time following the payment of the Term Loans), this Section 12.7 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse such Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorneys' fees) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice rendered in respect of rights or responsibilities under, this Agreement, any other Credit Document, or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of the Borrower; *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; *provided* that in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's *pro rata* portion thereof; and *provided*, *further*, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement resulting from such Agent's gross negligence or willful misconduct (as determined by a final judgment of court of competent jurisdiction). The agreements in this Section 12.7 shall survive the payment of the Term Loans and all other amounts payable hereunder.

12.8 Agents in their Individual Capacities

Each Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with Holdings, the Borrower, any other Guarantor, and any other Credit Party as though such Agent were not an Agent hereunder and under the other Credit Documents. With respect to the Term Loans made by it, each Agent shall have the same rights and powers under this Agreement and the other Credit Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

12.9 Successor Agents

Each of the Administrative Agent and Collateral Agent may resign at any time by notifying the other Agent, the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the consent of the Borrower (not to be unreasonably withheld or delayed) so long as no Specified Default has occurred and is continuing, 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 Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above (including

receipt of the Borrower's consent); *provided* that if such Agent shall notify the Borrower and the Lenders that no qualifying Person (including as a result of the absence of consent of the Borrower) has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (x) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Secured Parties under any of the Credit Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (y) all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders with (except after the occurrence and during the continuation of a Specified Default) the consent of the Borrower (not to be unreasonably withheld) appoint successor Agents as provided for above in this paragraph. Upon the acceptance of a successor's appointment as the Administrative Agent or Collateral Agent, as the case may be, hereunder, and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Security Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower (following the effectiveness of such appointment) to such Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Credit Documents, the provisions of this Section 12 (including Section 12.7) and Section 13.5 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as an Agent.

12.10 Withholding Tax

To the extent required by any Applicable Law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent or of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower (solely to the extent required by this Agreement) and without limiting the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

12.11 Administrative Agent May File Proofs of Claim

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

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent hereunder) 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 Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 4.1 and 13.5.

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

12.12 Intercreditor Agreements

Each of the Collateral Agent and the Administrative Agent is hereby authorized to enter into any Applicable Intercreditor Agreement contemplated hereby, and the parties hereto acknowledge that any such Applicable Intercreditor Agreement to which the Collateral Agent and/or the Administrative Agent is a party are each binding upon them. Each Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of any such Applicable Intercreditor Agreement and (b) hereby authorizes and instructs the Collateral Agent and the Administrative Agent to enter into any such Applicable Intercreditor Agreement and to subject the Liens on the Collateral securing the Obligations to the provisions thereof. In addition, each Secured Party hereby authorizes the Collateral Agent and the Administrative Agent to enter into any other intercreditor arrangements to the extent required to give effect to

the establishment of intercreditor rights and privileges as contemplated and required by Section 10.2 of this Agreement.

12.13 Security Documents and Guarantee; Agents under Security Documents and Guarantee

(a) Each Secured Party hereby further authorizes the Administrative Agent or the Collateral Agent, as applicable, on behalf of and for the benefit of the Secured Parties, to be the agent for and representative of the Secured Parties with respect to the Guarantee, the Collateral and the Security Documents, as applicable. Subject to Section 13.1, without further written consent or authorization from any Secured Party, the Administrative Agent or the Collateral Agent, as applicable, may (or otherwise instruct the Collateral Representative to) execute any documents or instruments necessary to (x) subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Credit Document to the holder of any Lien permitted under clauses (d), (g) and (l) of Section 10.2 or (y) enter into subordination or intercreditor agreements with respect to Indebtedness to the extent the Administrative Agent or the Collateral Agent is otherwise contemplated herein as being a party to such intercreditor or subordination agreement (including the Applicable Intercreditor Agreements). The Secured Parties hereby irrevocably agree that the Liens granted to the Collateral Agent by the Credit Parties on any Collateral shall be automatically released (i) upon the termination of this Agreement and the payment of all Obligations hereunder (except for Hedging Obligations in respect of any Secured Hedging Agreement, Cash Management Obligations in respect of Secured Cash Management Agreements and Contingent Obligations) and the termination of all Commitments, (ii) upon the sale or other Disposition of such Collateral (including as part of or in connection with any other sale or other Disposition permitted hereunder) to any Person other than another Credit Party, to the extent such sale or other Disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Credit Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Credit Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with this Section 13.1), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guarantee, (vi) as required to effect any sale or other Disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Security Documents and (vii) if such assets constitute Excluded Collateral. Any such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Credit Parties in respect of) all interests retained by the Credit Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Credit Documents. Additionally, the Secured Parties hereby irrevocably agree that the Subsidiary Guarantors shall be automatically released from the Guarantee upon consummation of any transaction resulting in such Subsidiary ceasing to constitute a Restricted Subsidiary or upon becoming an Excluded Subsidiary. The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as

applicable, and the Administrative Agent and the Collateral Agent agree to execute and deliver any instruments, documents, and agreements necessary or desirable or reasonably requested by the Borrower to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender.

(b) *Right to Realize on Collateral and Enforce Guarantee*. Anything contained in any of the Credit Documents to the contrary notwithstanding, Holdings, the Borrower, the Agents and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee, it being understood and agreed that all powers, rights and remedies hereunder and under the Guarantee may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Collateral Agent on behalf of the Secured Parties, and (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other Disposition, the Collateral Agent or any Secured Party may be the purchaser or licensor of any or all of such Collateral at any such sale or other Disposition and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other Disposition. No holder of Hedging Obligations under Secured Hedging Agreements or Cash Management Obligations under Secured Cash Management Agreements shall have any rights in connection with the management or release of any Collateral or of the obligations of any Credit Party under this Agreement. No holder of Hedging Obligations under Secured Hedging Agreements or Cash Management Obligations under Secured Cash Management Agreements that obtains the benefits of any Guarantee or any Collateral by virtue of the provisions hereof or of any other Credit Document shall have any right to notice of any action or to consent to or vote on, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender or Agent and, in such case, only to the extent expressly provided in the Credit Documents. Notwithstanding any other provision of this Agreement to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Hedging Agreements and Secured Cash Management Agreements, unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

SECTION 13 Miscellaneous

13.1 Amendments, Waivers and Releases

Except as otherwise expressly set forth in the Credit Documents (including Section 2.10(e)), neither this Agreement nor any other Credit Document, nor any terms hereof or thereof, may be amended, supplemented or modified except in accordance with the provisions of this Section 13.1. The Required Lenders may, or, with the written consent of the Required Lenders, the Administrative Agent and/or the Collateral Agent may, from time to time, (a) enter into with the relevant Credit Party or Credit Parties written amendments, supplements or modifications hereto and to the other Credit Documents for the purpose of adding any provisions to this Agreement or the other Credit Documents or changing in any manner the rights of the Lenders or of the Credit Parties hereunder or thereunder or (b) waive in writing, on such terms and conditions as the Required Lenders or the Administrative Agent and/or Collateral Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Credit Documents or any Default or Event of Default and its consequences; *provided*, *however*, that each such waiver and each such amendment, supplement or modification shall be effective only in the specific instance and for the specific purpose for which given; and *provided*, *further*, that no such waiver and no such amendment, supplement or modification shall:

(i) forgive or reduce any portion of any Term Loan or extend the final scheduled maturity date of any Term Loan or reduce the stated rate, or forgive any portion thereof, or extend the date for the payment of any principal, any interest or Fee payable hereunder (other than as a result of waiving the applicability of any post-default increase in interest rates), or extend the final expiration date of any Lender's Commitment, or increase the aggregate amount of the Commitments of any Lender, in each case without the written consent of each Lender directly and adversely affected thereby; *provided* that, in each case for purposes of this clause (i), a waiver of any condition precedent in Section 6 of this Agreement, the waiver of any Default, Event of Default, default interest, mandatory prepayment or reductions, any modification, waiver or amendment to the financial definitions or financial ratios or any component thereof or the waiver of any other covenant shall not constitute an increase of any Commitment of a Lender, a reduction or forgiveness of any portion of any Term Loan or in the interest rates or the fees or premiums or a postponement of any date scheduled for the payment of principal or interest or an extension of the final maturity of any Term Loan, or the scheduled termination date of any Commitment; or

(ii) (x) reduce the percentages specified in the definition of the term "Required Lenders" without the consent of each Lender, or (y) consent to the assignment or transfer by Holdings or the Borrower of their respective rights and obligations under any Credit Document to which it is a party (except as permitted pursuant to Section 10.3 or as contemplated by the definition of "Holdings"), alter the

order of application set forth in Section 5.2(c) during the continuance of an Event of Default or Section 11.11 or change Section 13.8 or any other provision requiring pro rata sharing among the Lenders, in each case of this clause (y) without the written consent of each Lender directly and adversely affected thereby, or

(iii) amend, modify or waive any provision of Section 12 without the written consent of the then-current Administrative Agent and Collateral Agent or any other former or current Agent to whom Section 12 then applies in a manner that directly and adversely affects such Person, or

(iv) release all or substantially all of the value of the Guarantors under the Guarantee (except as expressly permitted by the Guarantee or this Agreement) or release all or substantially all of the Collateral under the Security Documents (except as expressly permitted by the Security Documents or this Agreement), in either case without the prior written consent of each Lender.

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the affected Lenders and shall be binding upon Holdings, the Borrower, the applicable Credit Parties, such Lenders, the Administrative Agent and all future holders of the affected Term Loans. In the case of any waiver, Holdings, the Borrower, the applicable Credit Parties, the Lenders, the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing, it being understood that no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. In connection with the foregoing provisions, the Administrative Agent may, but shall have no obligations to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, modification, supplement, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender (it being understood that any Commitments or Term Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders, except as expressly provided for by this Agreement).

Notwithstanding the foregoing, in addition to any credit extensions and related Incremental Amendment(s) effectuated without the consent of Lenders in accordance with Section 2.14, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Credit Documents with the Term Loans and Commitments and the accrued interest and Fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and other definitions related to such new Term Loans and Commitments.

Notwithstanding the foregoing, except as otherwise set forth in clauses (i) through (iv) above, this Agreement may be amended, modified or supplemented with respect to any matter that only affects the Lenders under a particular Class of Term Loans and/or Commitments but not any other Class of Term Loans or Commitments upon the consent of Lenders holding more than 50% of the aggregate amount of Term Loans and Commitments of Term Loans in such Class.

Notwithstanding anything herein to the contrary, the Credit Documents may be amended to (i) add syndication or documentation agents and make customary changes and references related thereto and (ii) if applicable, add or modify "parallel debt" language in any jurisdiction in favor of the Collateral Agent or add sub-agents, in each case under clauses (i) and (ii), with the consent of only the Borrower and the Administrative Agent, and in the case of clause (ii), the Collateral Agent.

Notwithstanding anything in this Agreement (including, without limitation, this Section 13.1) or any other Credit Document to the contrary, (i) this Agreement and the other Credit Documents may be amended to effect an Incremental Facility, Refinancing Facility or establish any Extension Series pursuant to Section 2.14 or Section 2.15 (and the Administrative Agent and the Borrower may effect such amendments to this Agreement and the other Credit Documents without the consent of any other party as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the terms of any such incremental facility, refinancing facility or extension facility); (ii) no Lender's consent is required to effect any amendment or supplement to any Applicable Intercreditor Agreement permitted under this Agreement that is for the purpose of adding the holders of any Indebtedness as expressly contemplated by the terms of such Applicable Intercreditor Agreement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to such Applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent and the Borrower, are required to effectuate the foregoing; *provided* that no such agreement shall amend, modify or otherwise directly and adversely affect the rights or duties of the Administrative Agent hereunder or under any other Credit Document without the prior written consent of the Administrative Agent; (iii) any provision of this Agreement or any other Credit Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Credit Document) may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent (A) to cure any ambiguity, omission, mistake, defect or inconsistency (as reasonably determined by the Administrative Agent and the Borrower), (B) to effect administrative changes of a technical or immaterial nature (as reasonably determined by the Administrative Agent and the Borrower), (C) to correct incorrect cross-references or similar inaccuracies, (D) to add benefit to all or any Class of Term Loans if adding such benefit is a condition to the incurrence of any Indebtedness permitted to be incurred under the Credit Documents ~~or~~, (E) for the purpose of causing any Incremental Term Loans to be fungible with any other existing Class of Term Loans and (F) to effect technical changes to this Agreement and the other Loan Documents that are required in connection with the consummation of a Permitted Change of Control; *provided* that in the case of clauses (A), (B) and (E) above, the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders

stating that the Required Lenders object to such amendment; (iv) guarantees, collateral documents and related documents executed by the Credit Parties in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with any other Credit Document, entered into, amended, supplemented or waived, without the consent of any other Person, by the applicable Credit Party or Credit Parties and the Administrative Agent or the Collateral Agent in its or their respective sole discretion if applicable, (A) to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, (B) as required by local law or advice of counsel to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with the Applicable Law or (C) to cure ambiguities, omissions, mistakes or defects (as reasonably determined by the Administrative Agent and the Borrower) or to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Credit Documents; and (v) the Credit Parties and the Collateral Agent, without the consent of any other Secured Party, shall be permitted to enter into amendments and/or supplements to any Security Documents in order to include customary provisions permitting the Collateral Agent to appoint sub-collateral agents or representatives to act with respect to Collateral matters thereunder in its stead.

Notwithstanding anything in this Agreement or any Security Document to the contrary, the Administrative Agent may, in its sole discretion, grant extensions of time (and direct the Collateral Agent to grant such extensions) for the satisfaction of any of the requirements under Sections 9.11, Section 9.12 or any Security Documents in respect of any particular Collateral or any particular Subsidiary if it determines that the satisfaction thereof with respect to such Collateral or such Subsidiary cannot be accomplished without undue expense or unreasonable effort or due to factors beyond the control of Holdings, the Borrower and the Restricted Subsidiaries by the time or times at which it would otherwise be required to be satisfied under this Agreement or any Security Document.

13.2 Notices

Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Credit Document shall be in writing (including by facsimile or other electronic transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or e-mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the Borrower, the Administrative Agent, the Collateral Agent, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 13.2 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(b) if to any other Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire or to such other address,

facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to Holdings, the Borrower, the Administrative Agent, the Collateral Agent.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, three Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by e-mail, when delivered; *provided* that notices and other communications to the Administrative Agent or the Lenders pursuant to Sections 2.3, 2.6, 2.9, 4.2 and 5.1 shall not be effective until received.

13.3 No Waiver; Cumulative Remedies

No failure to exercise and no delay in exercising, on the part of the Administrative Agent, the Collateral Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Credit Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

13.4 Survival of Representations and Warranties

All representations and warranties made hereunder, in the other Credit Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Term Loans hereunder.

13.5 Payment of Expenses; Indemnification

The Borrower agrees, within thirty (30) days after written demand therefor (including documentation reasonably supporting such request), or, in the case of expenses of the type described in clause (a) below incurred prior to the Closing Date, on the Closing Date, (a) if the Closing Date occurs, to pay or reimburse the Agents and the Joint Lead Arrangers for all their reasonable and documented out-of-pocket costs and expenses incurred (i) in connection with the syndication, preparation, execution, delivery, negotiation and administration of this Agreement and the other Credit Documents and any other documents prepared in connection herewith or therewith (including any amendment or waiver with respect thereto), and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable and documented fees, disbursements and other charges of Davis Polk & Wardwell LLP and to the extent reasonably necessary, one local counsel in each relevant material jurisdiction, excluding in each case allocated costs of in-house counsel and fees and solely to the extent the Borrower has consented to the retention of such other Person, expenses with respect to any other advisor or consultant, and (ii) upon the occurrence and during the continuation of an Event of Default, in connection with the enforcement or preservation of any rights under this Agreement, the other Credit Documents and any such other documents, including the reasonable

and documented out-of-pocket fees, disbursements and other charges of Advisors (limited, in the case of Advisors, as set forth in the definition thereof), (b) to pay, indemnify, and hold harmless each Lender and each Agent from, any and all recording and filing fees and (c) to pay, indemnify, and hold harmless each Lender and each Agent and their respective Affiliates, and the directors, officers, partners, employees and agents of any of the foregoing, from and against any and all other liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable and documented out-of-pocket fees, disbursements and other charges of Advisors related to the Transactions or, with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Credit Documents and any such other documents, including, any of the foregoing relating to the violation of, noncompliance with or liability under, any Environmental Law (other than by such indemnified person or any of its Related Parties (other than trustees and advisors)) or to any actual or alleged presence, release or threatened release into the environment of Hazardous Materials attributable to the operations of Holdings, the Borrower, any of the Borrower's Subsidiaries or any of the Real Estate (all the foregoing in this clause (c), collectively, the "**indemnified liabilities**") (**SUBJECT TO THE PROVISO BELOW, WHETHER OR NOT CAUSED BY OR ARISING IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE ORDINARY NEGLIGENCE OF THE INDEMNIFIED PERSON**); *provided* that neither the Borrower nor any other Credit Party shall have any obligation hereunder to any Agent or any Lender or any of their respective Related Parties with respect to indemnified liabilities to the extent they result from (A) the gross negligence, bad faith or willful misconduct of such indemnified Person or any of its Related Parties as determined by a final non-appealable judgment of a court of competent jurisdiction, (B) a material breach of the obligations of such indemnified Person or any of its Related Parties under the Credit Documents as determined by a final non-appealable judgment of a court of competent jurisdiction, (C) disputes not involving an act or omission of Holdings, the Borrower or any other Credit Party and that is brought by an indemnified Person against any other indemnified Person, other than any claims against any indemnified Person in its capacity or in fulfilling its role as an Agent or any similar role under the Credit Facilities or (D) any settlement effected without the Borrower's prior written consent, but if settled with the Borrower's prior written consent (not to be unreasonably withheld, delayed, conditioned or denied) or if there is a final non-appealable judgment in any such proceeding, the Borrower will indemnify and hold harmless such indemnified Person from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with this Section 13.5. All amounts payable under this Section 13.5 shall be paid within 30 days of receipt by the Borrower of an invoice relating thereto setting forth such expense in reasonable detail. The agreements in this Section 13.5 shall survive repayment of the Term Loans and all other amounts payable hereunder.

No Credit Party nor any indemnified Person shall have any liability for any special, punitive, indirect or consequential damages resulting from this Agreement or any other Credit Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (except, in the case of the Borrower's obligation hereunder to indemnify and hold harmless the indemnified Person, to the extent of any losses, claims, damages, liabilities and expenses incurred or paid by such indemnified Person to a third party

unaffiliated with such indemnified Person). No indemnified Persons shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby, except to the extent that such damages have resulted from the willful misconduct, bad faith or gross negligence of any indemnified Person or any of its Related Parties (as determined by a final non-appealable judgment of a court of competent jurisdiction). This Section 13.5 shall not apply to Taxes.

Each indemnified Person, by its acceptance of the benefits of this Section 13.5, agrees to refund and return any and all amounts paid by the Borrower (or on its behalf) to it if, pursuant to limitations on indemnification set forth in this Section 13.5, such indemnified Person was not entitled to receipt of such amounts.

13.6 Successors and Assigns; Participations and Assignments

(a) 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 (i) except as expressly permitted by Section 10.3, neither Holdings nor the Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by Holdings or the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 13.6. 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 clause (c) of this Section 13.6), to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Collateral Agent and the Lenders and each other Person entitled to indemnification under Section 13.5) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in clause (b)(ii) and (h) below, 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 Commitments and the Term Loans at the time owing to it) with the prior written consent (in each case, such consent not to be unreasonably withheld, delayed, conditioned or denied) of:

(A) the Borrower; *provided* that no consent of the Borrower shall be required for an assignment of Term Loans (1) to a Lender, an Affiliate of a Lender or an Approved Fund or (2) if a Specified Default has occurred and is continuing, to any other assignee; *provided*, *further*, that consent of the Borrower shall be deemed obtained if the Borrower has not denied its consent to the requesting party within 10 Business Days after receipt of written request thereof; and

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for any assignment of any Term Loan to (x) a Lender, an Affiliate of a Lender, an Approved Fund or (y) Holdings, the Borrower, a

Restricted Subsidiary thereof or an Affiliated Parent Company otherwise in accordance with clause (g) below.

Notwithstanding the foregoing, no such assignment shall be made to (x) a natural person, (y) any investment vehicle established primarily for the benefit of a natural person or (z) a Disqualified Institution (*provided* that the prohibition in clause (z) shall not apply retroactively to disqualify any entity that has previously acquired an assignment or participation interest in the Term Loans to the extent such entity was not a Disqualified Institution at the time of the applicable assignment or participation, as the case may be), and any attempted assignment in violation of clauses (x) - (z) shall be null and void. For the avoidance of doubt, (i) the Administrative Agent shall have no obligation with respect to, and shall bear no responsibility or liability for, the ascertaining, monitoring, inquiring or enforcing of the list of Persons who are Disqualified Institutions (or any provisions relating thereto) at any time, and shall have, and shall have no liability with respect to or arising out of any assignment or participation of any Term Loans to any Disqualified Institution and (ii) the Administrative Agent may share a list of Persons who are Disqualified Institutions with any Lender upon request.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Term Loans of any Class, the amount of the Commitment or Term 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 $1,000,000, unless each of the Borrower and the Administrative Agent otherwise consents (which consents shall not be unreasonably withheld, delayed, conditioned or denied); *provided* that no such consent of the Borrower shall be required if a Specified Default has occurred and is continuing; *provided*, *further*, that contemporaneous assignments to a single assignee made by Affiliates of Lenders and related Approved Funds shall be aggregated for purposes of meeting the minimum assignment amount requirements stated above;

(B) 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; *provided* that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Term Loans;

(C) The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and the applicable tax forms as required under Section 5.4.

(iii) Subject to acceptance and recording thereof pursuant to clause (b)(v) of this Section 13.6, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.10, 2.11, 5.4 and 13.5). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 13.6 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 clause (c) of this Section 13.6 (other than attempted assignments or transfers in violation of the last paragraph of Section 13.6(b)(i) above, which shall be null and void as provided above).

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Further, each Register shall contain the name and address of the Administrative Agent and the lending office through which each such Person acts under this Agreement. The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent, the Collateral 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, notwithstanding notice to the contrary. The Register shall be available for inspection by Holdings, the Borrower, the Collateral Agent and any Lender (solely with respect to its own outstanding Term Loans and Commitments), at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b) of this Section 13.6 (unless waived) and any written consent to such assignment required by clause (b) of this Section 13.6, the Administrative Agent shall promptly accept such Assignment and Assumption and record the information contained therein in the Register.

(c) (i) Any Lender may, without the consent of Holdings, the Borrower, the Administrative Agent, sell participations to one or more banks or other entities that are not (x) a natural person, (y) any investment vehicle established primarily for the benefit of a natural person or (z) a Disqualified Institution (*provided* that the prohibition in clause (z) shall not apply retroactively to disqualify any entity that has previously acquired an assignment or participation interest in the Term Loans to the extent such entity was not a Disqualified Institution at the time of the applicable assignment or participation, as the case may be) (each, a "**Participant**") (and any such attempted sales to the Persons identified in clauses (x) - (z) above shall be null and void) (*provided* that the last sentence of Section 13.6(b)(i) shall apply) in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Term Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) Holdings, the Borrower, the Administrative Agent 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, the Administrative Agent shall have no obligation with respect to, and shall bear no responsibility or liability for, the monitoring or enforcing of the list of Disqualified Institutions with respect to the sales of participations at any time. 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 or any other Credit Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any consent, amendment, modification, supplement or waiver described in clause (i) or (iv) of the second proviso of the first paragraph of Section 13.1 that directly and adversely affects such Participant. Subject to clause (c)(ii) of this Section 13.6, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.10, 2.11 and 5.4 to the same extent as if it were a Lender, and *provided* that such Participant agrees to be subject to the requirements and limitations of those Sections and Sections 2.12 and 13.7(a) as though it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 13.6. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 13.8(b) as though it were a Lender; *provided* that such Participant agrees to be subject to Section 13.8(a) as though it were a Lender. 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 13.7 with respect to any Participant.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.10, 2.11 or 5.4 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loans (or other rights or obligations) held by it (the "**Participant Register**"). 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. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(d) Any Lender may, without the consent of Holdings, the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 13.6 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Subject to Section 13.16, the Borrower authorizes each Lender to disclose (other than to any Disqualified Institutions) to any Participant, secured creditor of such Lender or assignee (each, a "**Transferee**"), any prospective Transferee and any prospective direct or indirect contractual counterparties to any swap or derivative transactions to be entered into in connection with or relating to Term Loans made hereunder any and all financial information in such Lender's possession concerning the Borrower and its Affiliates that has been delivered to such Lender by or on behalf of the Borrower and its Affiliates pursuant to this Agreement or that has been delivered to such Lender by or on behalf of the Borrower and its Affiliates in connection with such Lender's credit evaluation of the Borrower and its Affiliates prior to becoming a party to this Agreement.

(f) SPV Lender. Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPV**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Term Loan that such Granting Lender would otherwise be obligated to make the Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Term Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Term Loan, the Granting Lender shall be obligated to make such Term Loan pursuant to the terms hereof. The making of a Term Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Term Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, it shall not institute against, or join any other

Person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 13.6, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Term Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) other than a Disqualified Institution providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Term Loans and (ii) disclose on a confidential basis any non-public information relating to its Term Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV. This Section 13.6(f) may not be amended without the written consent of the SPV. Notwithstanding anything to the contrary in this Agreement, (x) no SPV shall be entitled to any greater rights under Sections 2.10, 2.11 and 5.4 than its Granting Lender would have been entitled to absent the use of such SPV and (y) each SPV agrees to be subject to the requirements of Sections 2.10, 2.11, and 5.4 as though it were a Lender and has acquired its interest by assignment pursuant to clause (b) of this Section 13.6.

(g) Notwithstanding anything to the contrary contained herein, (x) any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to any Affiliated Parent Company, Holdings, the Borrower or any Subsidiary thereof and (y) any Affiliated Parent Company, Holdings, the Borrower and any Subsidiary may, from time to time, purchase or prepay Term Loans, in each case, on a non *pro rata* basis through (1) Dutch auction procedures open to all applicable Lenders on a *pro rata* basis in accordance with customary procedures to be mutually agreed between the Borrower and the Auction Agent and as set forth in Exhibit K or (2) open market purchases; *provided* that:

(i) any Term Loans or Commitments acquired by Holdings, the Borrower or any Restricted Subsidiary shall be retired and cancelled immediately upon acquisition thereof;

(ii) no assignment of Term Loans to Holdings, the Borrower or any Restricted Subsidiary (x) may be purchased with the proceeds of any ABL Loans or (y) may occur while an Event of Default has occurred and is continuing hereunder;

(iii) in connection with each assignment pursuant to this Section 13.6(g), none of any Affiliated Parent Company, Holdings, the Borrower or any Subsidiary purchasing any Lender's Term Loans shall be required to make a representation that it is not in possession of MNPI with respect to any Public Reporting Entity, Holdings, Borrower and its Subsidiaries or their respective securities, and all parties to such transaction may render customary "big boy" letters to each other (or to the Auction Agent, if applicable);

(iv) (A) the aggregate outstanding principal amount of the Term Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of such Term Loans acquired by, or contributed to, any Affiliated Parent Company, Holdings, the Borrower or such Subsidiary and (B) any

scheduled principal repayment installments with respect to the Term Loans of such Class occurring pursuant to Sections 2.5(b) and (c), as applicable, prior to the final maturity date for Term Loans of such Class, shall be reduced *pro rata* by the par value of the aggregate principal amount of Term Loans so purchased or contributed (and subsequently cancelled and retired), with such reduction being applied solely to the remaining Term Loans of the Lenders which sold or contributed such Term Loans;

(v) no Affiliated Lender shall have any right to (x) attend or participate in (including, in each case, by telephone) any meeting (including "Lender only" meetings) or discussions (or portion thereof) among the Administrative Agent or any Lender to which representatives of the Borrower are not then present or invited thereto, (y) receive any information or material prepared by the Administrative Agent or any Lender or any communication by or among the Administrative Agent and one or more Lenders or any other material which is "Lender only", except to the extent such information or materials have been made available to the Borrower or its representatives (and in any case, other than the right to receive notices of prepayments and other administrative notices in respect of its Term Loans required to be delivered to Lenders pursuant to Section 2) or receive any advice of counsel to the Administrative Agent or (z) make any challenge to the Administrative Agent's or any other Lender's attorney-client privilege on the basis of its status as a Lender;

(vi) except with respect to any amendment, modification, waiver, consent or other action (a) that pursuant to Section 13.1 requires the consent of all Lenders, all Lenders directly and adversely affected or specifically such Lender, (b) that alters the applicable Affiliated Lender's *pro rata* share of any payments given to all Lenders, or (c) affects the applicable Affiliated Lender (in its capacity as a Lender) in a manner that is disproportionate to the effect on any Lender in the same Class, the Term Loans held by the applicable Affiliated Lender shall be disregarded in both the numerator and denominator in the calculation of any Lender vote (and, in the case of a plan of reorganization that does not affect the applicable Affiliated Lender in a manner that is adverse to such Affiliated Lender relative to other Lenders, such Affiliated Lender shall be deemed to have voted its interest in the Term Loans in the same proportion as the other Lenders in the same Class) (and shall be deemed to have been voted in the same percentage as all other applicable Lenders voted if necessary to give legal effect to this paragraph) (but, in any event, in connection with any amendment, modification, waiver, consent or other action, shall be entitled to any consent fee, calculated as if all of the applicable Affiliated Lender's Term Loans had voted in favor of any matter for which a consent fee or similar payment is offered); and

(vii) no such acquisition by an Affiliated Lender shall be permitted if, after giving effect to such acquisition, the aggregate principal amount of Term Loans of any Class held by Affiliated Lenders would exceed 25% of the aggregate principal amount of all Term Loans, of such Class outstanding at the time of such purchase; *provided* that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of the applicable Term Loans held by Affiliated

Lenders exceeding such 25% threshold at the time of such purchase, the purchase of such excess amount will be void *ab initio*.

Each Lender that sells its Term Loans pursuant to this Section 13.6 acknowledges and agrees that (i) Holdings and its Subsidiaries may come into possession of additional information regarding the Term Loans or the Credit Parties at any time after a repurchase has been consummated pursuant to an auction or open market purchase hereunder that was not known to such Lender at the time such repurchase was consummated and may be information that would have been material to such Lender's decision to enter into an assignment of such Term Loans hereunder ("**Excluded Information**"), (ii) such Lender will independently make its own analysis and determination to enter into an assignment of its Term Loans and to consummate the transactions contemplated by an auction notwithstanding such Lender's lack of knowledge of Excluded Information and (iii) none of the direct or indirect equityholders of Holdings or any of its respective Affiliates, or any other Person, shall have any liability to such Lender with respect to the nondisclosure of the Excluded Information.

This Section 13.6 shall be construed so that all Term Loans are at all times maintained in "registered form" within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations.

13.7 Replacements of Lenders under Certain Circumstances

(a) The Borrower shall be permitted (x) to replace any Lender with a replacement bank or institution or (y) terminate the Commitment of such Lender, as the case may be, and repay all Obligations of the Borrower due and owing to such Lender relating to the Term Loans and participations held by such Lender as of such termination date that (a) requests reimbursement for amounts owing pursuant to Section 2.10 or Section 5.4 (or the Borrower is required to pay any Indemnified Taxes or additional amounts to any Agent or Lender or to any Governmental Authority on account of any Agent or Lender pursuant to Section 5.4), (b) is affected in the manner described in Section 2.10(a)(iii) and as a result thereof any of the actions described in such Section is required to be taken, (c) becomes a Defaulting Lender or (d) refuses to make an Extension Election pursuant to Section 2.15; *provided* that, solely in the case of the foregoing clause (x), (i) no Specified Default shall have occurred and be continuing at the time of such replacement, (ii) the Borrower shall repay (or the replacement bank or institution shall purchase, at par) all Term Loans and other amounts (other than any disputed amounts), pursuant to Section 2.10, 2.11 or 5.4, as the case may be, owing to such replaced Lender prior to the date of replacement, (iii) the replacement bank or institution, if not already a Lender, an Affiliate of a Lender or an Approved Fund, and the terms and conditions of such replacement, shall be reasonably satisfactory to the Administrative Agent (solely to the extent such consent would be required under Section 13.6), (iv) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 13.6 (*provided* that the Borrower shall be obligated to pay the registration and processing fee referred to therein unless otherwise agreed) and (v) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

(b) If any Lender (such Lender, a "**Non-Consenting Lender**") has failed to consent to a proposed amendment, modification, supplement, waiver, discharge or termination that pursuant to the terms of Section 13.1 requires the consent of either (i) all of the Lenders of the applicable Class or Classes directly and adversely affected or (ii) all of the Lenders of the applicable Class or Classes, and, in each case, with respect to which the Required Lenders (or Lenders holding the majority of outstanding loans or commitments in respect of the applicable Class or Classes, as applicable) or a majority (in principal amount) of the directly and adversely affected Lenders shall, in each such case, have granted their consent, then so long as no Event of Default then exists, the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) to (x) replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign its Term Loans and its Commitments hereunder (in respect of any applicable Class only, at the election of the Borrower) to one or more assignees reasonably acceptable to the Administrative Agent (to the extent such consent would be required under Section 13.6) or (y) terminate the Commitment of such Lender (in respect of any applicable Class only, at the election of the Borrower), and in the case of a Lender, repay all Obligations of the Borrower due and owing to such Lender relating to the Term Loans and participations held by such Lender as of such termination date; *provided* that: (a) all Obligations of the Borrower hereunder owing to such Non-Consenting Lender being replaced (in respect of any applicable Class only, at the election of the Borrower) shall be paid in full to such Non-Consenting Lender concurrently with such assignment, and (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof *plus* accrued and unpaid interest thereon. In connection with any such assignment, the Borrower, Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 13.6.

(c) Nothing in this Section 13.7 shall be deemed to prejudice any right or remedy that Holdings or the Borrower may otherwise have at law or at equity.

13.8 Adjustments; Set-off

(a) Except as contemplated in Section 13.6 or elsewhere herein or in any other Credit Document, if any Lender (a "**Benefited Lender**") shall at any time receive any payment of all or part of its Term Loans, or interest thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 11.5, or otherwise), in a greater proportion than any such payment to or Collateral received by any other Lender, if any, in respect of such other Lender's Term Loans, or interest thereon, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Term Loan, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the Lenders; *provided*, *however*, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) After the occurrence and during the continuance of an Event of Default, in addition to any rights and remedies of the Lenders provided by Applicable Law, each Lender shall have the right, without prior notice to Holdings, the Borrower, any such notice being expressly waived by Holdings, the Borrower to the extent permitted by Applicable Law but with the prior written consent of the Administrative Agent, upon any amount becoming due and payable by the Borrower hereunder (whether at the Stated Maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final) (other than payroll, trust, tax, fiduciary, employee health and benefits, pension, 401(k) and petty cash accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set-off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such set-off and application.

13.9 Counterparts; Electronic Execution

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or any other Credit Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature 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.

13.10 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13.11 INTEGRATION

THIS WRITTEN AGREEMENT AND THE OTHER CREDIT DOCUMENTS REPRESENT THE FINAL AGREEMENT OF HOLDINGS, THE BORROWER, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT AND THE LENDERS WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND (1) THERE ARE NO PROMISES, UNDERTAKINGS, REPRESENTATIONS OR WARRANTIES BY HOLDINGS, THE

BORROWER, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT OR ANY LENDER RELATIVE TO SUBJECT MATTER HEREOF NOT EXPRESSLY SET FORTH OR REFERRED TO HEREIN OR IN THE OTHER CREDIT DOCUMENTS, (2) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES AND (3) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES; PROVIDED THAT THE SYNDICATION PROVISIONS AND THE BORROWER'S AND HOLDINGS' CONFIDENTIALITY OBLIGATIONS IN THE COMMITMENT LETTER SHALL REMAIN IN FULL FORCE AND EFFECT PURSUANT TO THE TERMS THEREOF.

13.12 GOVERNING LAW

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

13.13 Submission to Jurisdiction; Waivers

Each party hereto irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Credit Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, in each case sitting in New York City in the Borough of Manhattan, and appellate courts from any thereof;

(b) consents that any such action or proceeding shall be brought in such courts and waives (to the extent permitted by Applicable Law) any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Person at its address set forth on Schedule 13.2 or at such other address of which the Administrative Agent shall have been notified pursuant to Section 13.2;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or, in the case of the Administrative Agent, the Collateral Agent and the Lenders, shall limit the right to sue in any other jurisdiction;

(e) subject to the last paragraph of Section 13.5, waives, to the maximum extent not prohibited by Applicable Law, any right it may have to claim or recover in any legal

action or proceeding referred to in this Section 13.13 any special, exemplary, punitive or consequential damages; and

(f) agrees that a final judgment in any action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

13.14 Acknowledgments

Each of Holdings and the Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Credit Documents;

(b) (i) the credit 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 Credit Document) are an arm's-length commercial transaction between Holdings and the Borrower, on the one hand, and the Administrative Agent, the Lenders and the other Agents on the other hand, and Holdings, the Borrower and the other Credit Parties are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Credit 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 and the other Agents, is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary for any of Holdings, the Borrower, any other Credit Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) neither the Administrative Agent nor any other Agent has assumed or will assume an advisory, agency or fiduciary responsibility in favor of Holdings, the Borrower or any other Credit Party 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 Credit Document (irrespective of whether the Administrative Agent or any other Agent has advised or is currently advising Holdings, the Borrower, the other Credit Parties or their respective Affiliates on other matters) and neither the Administrative Agent or other Agent has any obligation to Holdings, the Borrower, the other Credit Parties or their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; (iv) the Administrative Agent, each other Agent and each Affiliate of the foregoing may be engaged in a broad range of transactions that involve interests that differ from those of Holdings, the Borrower and their respective Affiliates, and neither the Administrative Agent nor any other Agent has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) neither the Administrative Agent nor any other Agent has provided and none will 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 Credit Document) and Holdings and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Holdings and the Borrower agree not to claim that the Administrative Agent or any other Agent has rendered advisory services of any nature or respect, or owes a fiduciary or

similar duty to Holdings, the Borrower or any other Affiliates, in connection with the transactions contemplated hereby or the process leading hereto.

(c) no joint venture is created hereby or by the other Credit Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among Holdings and the Borrower, on the one hand, and any Lender, on the other hand.

13.15 WAIVERS OF JURY TRIAL

HOLDINGS, THE BORROWER, EACH AGENT AND EACH LENDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE (TO THE EXTENT PERMITTED BY APPLICABLE LAW) TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

13.16 Confidentiality

The Administrative Agent, each other Agent and each Lender shall hold all non-public information furnished by or on behalf of Holdings, the Borrower or any Subsidiary of the Borrower in connection with such Person's evaluation of whether to become an Agent or Lender hereunder or obtained by such Lender, the Administrative Agent, or such other Agent pursuant to the requirements of this Agreement or in connection with any amendment, supplement, modification or waiver or proposed amendment, supplement, modification or waiver hereto (including any Incremental Amendment, Refinancing Amendment or Extension Amendment) or the other Credit Documents ("**Confidential Information**"), confidential; *provided* that the Administrative Agent, each other Agent and each Lender may make disclosure (a) as required by the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by Applicable Law, regulation or compulsory legal process (in which case such Lender, the Administrative Agent or such other Agent shall use commercially reasonable efforts to inform the Borrower promptly thereof to the extent lawfully permitted to do so (except with respect to any audit or examination conducted by bank accountants or any self-regulatory authority or governmental or regulatory authority exercising examination or regulatory authority)), (b) to such Lender's or the Administrative Agent's or such other Agent's attorneys, professional advisors, independent auditors, trustees or Affiliates involved in the Transactions on a "need to know" basis and who are made aware of and agree to comply with the provisions of this Section 13.16, in each case on a confidential basis (with such Lender, the Administrative Agent or such other Agent responsible for such persons' compliance with this Section 13.16), (c) on a confidential basis to any bona fide prospective Lender, prospective participant or swap counterparty (in each case, other than a Disqualified Institution or a Person who the Borrower has affirmatively denied assignment thereto in accordance with Section 13.6), (d) to the extent requested by any bank regulatory authority having jurisdiction over a Lender or its Affiliates (including in any audit or examination conducted by bank accountants or any self-regulatory authority or governmental or regulatory authority exercising examination or regulatory authority), (e) to the extent such information: (i) becomes publicly available other than as a result of a breach of this Section 13.16 or other confidential or fiduciary obligation owed by the Administrative Agent, such other Agent or such Lender to the Borrower

or its Affiliates or (ii) becomes available to the Administrative Agent, such other Agent or such Lender on a non-confidential basis from a source other than Holdings, the Borrower or any Subsidiary or on behalf of Holdings, the Borrower or any Subsidiary that, to the knowledge (after due inquiry) the Administrative Agent, such other Agent or such Lender, is not in violation of any confidentiality obligation owed to the Borrower or its Affiliates, (f) to the extent the Borrower shall have consented to such disclosure in writing (which may include through electronic means), (g) as is necessary in protecting and enforcing the rights of the Administrative Agent, such other Agent or such Lender with respect to this Agreement or any other Credit Document, (h) for purposes of establishing any defense available under Applicable Laws, including, without limitation, establishing a "due diligence" defense, (i) to the extent independently developed by the Administrative Agent, such other Agent or such Lender or any Affiliates thereof without reliance on confidential information, (j) on a confidential basis, to the rating agencies in consultation with the Borrower, (k) on a confidential basis, to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Term Loans or market data collectors, similar services providers to the lending industry and service providers to the Administrative Agent in connection with the administration and management of this Agreement and the Credit Documents and (l) to ClearPar® or any other pricing settlement provider. Each Lender, the Administrative Agent and each other Agent agrees that it will not provide to prospective Transferees or to any pledgee referred to in Section 13.6 or to prospective direct or indirect contractual counterparties to any swap or derivative transactions to be entered into in connection with or relating to Term Loans made hereunder any of the Confidential Information unless such Person is advised of and agrees to be bound by the provisions of this Section 13.16 or confidentiality provisions at least as restrictive as those set forth in this Section 13.16.

13.17 Direct Website Communications

(a) Holdings and the Borrower may, at their option, provide to the Administrative Agent any information, documents and other materials that they are obligated to furnish to the Administrative Agent pursuant to the Credit Documents, including, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication (*provided* that such communications described in clauses (A) - (D) will be delivered pursuant to Section 13.2, including by e-mail) that (A) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or Interest Period relating thereto), (B) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (C) provides notice of any Default or Event of Default under this Agreement, or (D) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing or other extension of credit thereunder (all such non-excluded communications being referred to herein collectively as "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent at an email address separately identified by the Administrative Agent; *provided* that: (i) upon written request by the Administrative Agent, Holdings or the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the

Administrative Agent and (ii) Holdings or the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. Nothing in this Section 13.17 shall prejudice the right of Holdings, the Borrower, the Administrative Agent, any other Agent or any Lender to give any notice or other communication pursuant to any Credit Document in any other manner specified in such Credit Document.

(b) The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Credit Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents. Each Lender agrees (A) to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and (B) that the foregoing notice may be sent to such e-mail address.

(c) Holdings and the Borrower further agree that the Agents may make the Communications available to the Lenders by posting the Communications on Intralinks or a substantially similar electronic transmission system (the "**Platform**"), so long as the access to such Platform is limited (i) to the Agents, the Lenders or any bona fide potential Transferee and (ii) remains subject the confidentiality requirements set forth in Section 13.16.

(d) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. In no event shall any Agent or their Related Parties (collectively, the "**Agent Parties**" and each an "**Agent Party**") have any liability to Holdings, the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Holdings', the Borrower's or any Agent's transmission of Communications through the internet, except to the extent the liability of any Agent Party resulted from such Agent Party's (or any of its Related Parties' (other than trustees or advisors)) gross negligence, bad faith or willful misconduct or material breach of the Credit Documents (as determined in a final non-appealable judgment of a court of competent jurisdiction).

(e) The Borrower and each Lender acknowledge that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive material non-public information with respect to Holdings, the Borrower, the Subsidiaries of the Borrower or their securities) and, if documents or notices required to be delivered pursuant to the Credit Documents or otherwise are being distributed through the Platform, any document or notice that Holdings or the Borrower has indicated contains only publicly available information with respect to Holdings, the Borrower and the Subsidiaries of the Borrower and their securities may be posted on that portion of the Platform designated for such public-side Lenders. If Holdings or the Borrower has not indicated whether a document or notice delivered contains only publicly available information, the Administrative Agent shall post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to Holdings, the Borrower, the Subsidiaries of the Borrower and their securities. Notwithstanding the foregoing, Holdings and the Borrower shall use commercially reasonable efforts to indicate whether any document or notice contains only publicly available information.

13.18 USA PATRIOT Act

Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies 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.

13.19 Payments Set Aside

To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

13.20 Judgment Currency

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Credit Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect

of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Credit Documents shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "**Agreement Currency**"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Applicable Law).

13.21 Cashless Rollovers

Notwithstanding anything to the contrary contained in this Agreement or in any other Credit Document, to the extent that any Lender extends the maturity date of, or replaces, renews or refinances, any of its then-existing Term Loans by way of an Incremental Amendment, an Extension Amendment, a Refinancing Amendment or any other amendment to this Agreement, in each case, to the extent such extension, replacement, renewal or refinancing is effected by means of a "cashless roll" by such Lender, such extension, replacement, renewal or refinancing shall be deemed to comply with any requirement hereunder or any other Credit Document that such payment be made "in Dollars", "in immediately available funds", "in cash" or any other similar requirement.

13.22 Acknowledgement and Consent to Bail-In of EEA Financial Institutions

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

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

[*Signature Page Follows*]

EXHIBIT 10.8

EXECUTION VERSION

AMENDMENT NO. 1

AMENDMENT NO. 1 dated as of September 25, 2020 (this "**Amendment**"), in respect of that certain ABL Credit Agreement, dated as of December 15, 2017 (as the same may be amended, restated, supplemented or otherwise modified, refinanced or replaced from time to time prior to the date hereof, the "**Credit Agreement**") among AVAYA INC., a Delaware corporation (the "**Parent Borrower**"), AVAYA HOLDINGS, CORP., a Delaware corporation ("**Holdings**"), AVAYA CANADA CORP., an unlimited liability company organized under the laws of the province of Nova Scotia, AVAYA UK, a company incorporated in England and Wales with company number 03049861, AVAYA INTERNATIONAL SALES LIMITED, a private company limited by shares incorporated under the laws of Ireland with registered number 342279, AVAYA DEUTSCHLAND GMBH, a limited liability company (*Gesellschaft mit beschränkter Haftung*) existing under the laws of Germany, AVAYA GMBH & CO. KG, a limited partnership (*GmbH & Co. KG*) existing under the laws of Germany, the lending institutions from time to time parties thereto (the "**Lenders**"), Citibank, N.A., as Administrative Agent and as Collateral Agent, and the other agents and entities from time to time party thereto.

WHEREAS, the Parent Borrower, the Swing Line Lender, the L/C Issuers and the Lenders party hereto (such Lenders constituting the Required Lenders under the Credit Agreement immediately prior to the Amendment Effective Date (as defined below)) desire to extend the Maturity Date applicable to the Revolving Credit Commitments and to make other changes to the Credit Agreement contained in the Credit Agreement Amendments (as defined below); and

WHEREAS, certain of the Credit Agreement Amendments require the consent of each Lender directly and adversely affected thereby, and the Credit Agreement provides that if the Required Lenders consent to such amendments, the Borrowers may cause each Non-Consenting Lender to have its Revolving Credit Commitment terminated, and in connection therewith the Borrowers shall repay all Obligations due and owing to such Non-Consenting Lenders relating to the Revolving Credit Loans and participations held by such Non-Consenting Lenders as of the Amendment Effective Date in accordance with Section 13.7(b) of the Credit Agreement.

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

SECTION 1. *Defined Terms; References.* Unless otherwise specifically defined herein, each term used herein which is defined in the Amended Credit Agreement (as defined below) has the meaning assigned to such term in the Amended Credit Agreement. The rules of construction and other interpretive provisions specified in Section 1 of the Amended Credit Agreement shall apply to this Amendment, including terms defined in the preamble and recitals hereto.

SECTION 2. *Amendments to Credit Agreement.*

(a) Each of the parties hereto agrees that, effective on the Amendment Effective Date, the Credit Agreement shall be amended as set forth in the pages of the Credit Agreement attached as Exhibit A hereto (with text in the Credit Agreement attached as Exhibit A hereto indicated as being (I) deleted or "stricken text" textually in the same manner as the following example: ~~stricken text~~; and (II) new or added textually in the same manner as the following example: double-underlined text) (such set forth in Exhibit A hereto, collectively, the "**Credit Agreement Amendments**").

(b) On and after the Amendment Effective Date, (i) Schedule 1.1(a) of the Credit Agreement shall be replaced in its entirety with Schedule 1.1(a) hereto and (ii) each Lender party hereto severally agrees to provide Revolving Credit Commitments to the Borrowers, subject to the terms and conditions set forth in the Amended Credit Agreement. Each Lender party hereto agrees to be bound by all obligations of a Lender under the Amended Credit Agreement.

SECTION 3. *Effect of Amendments; Reaffirmation; Reallocation of Revolving Credit Exposure.*

(a) Except as expressly set forth herein, this Amendment and the Credit Agreement Amendments effected hereby shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Agents under the Amended Credit Agreement or under any other Credit Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement as amended pursuant to this Amendment or any other provision of the Credit Agreement as amended pursuant to this Amendment or of any other Credit Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

(b) Each reference to "hereof", "hereunder", "herein" and "hereby" and each other similar reference and each reference to "this Agreement" and each other similar reference contained in the Credit Agreement shall, after the Amendment Effective Date, refer to the Credit Agreement as amended by the Credit Agreement Amendments (as the same may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms, the "**Amended Credit Agreement**"). From and after the Amendment Effective Date, each reference to the "Credit Agreement" in each Credit Document shall refer to the Amended Credit Agreement contemplated hereby.

(c) From and after the Amendment Effective Date, this Amendment shall be a Credit Document.

(d) Reallocation of Revolving Credit Exposure. Upon the Amendment Effective Date:

(i) each U.S. Revolving Credit Lender immediately prior to the Amendment Effective Date will automatically and without further act be deemed to have assigned to each Lender providing a new U.S. Revolving Credit Commitment, and each such Lender will automatically and without further act be deemed to have assumed, a portion of such U.S. Revolving Credit Lender's participations hereunder in outstanding U.S. Letters of Credit and U.S. Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in U.S. Letters of Credit and U.S. Swing Line Loans held by each U.S. Revolving Credit Lender will equal the percentage of the aggregate U.S. Revolving Credit Commitments of all U.S. Revolving Credit Lenders represented by such U.S. Revolving Credit Lender's U.S. Revolving Credit Commitments on the Amendment Effective Date after giving effect to the Amendment;

(ii) each Foreign Revolving Credit Lender immediately prior to the Amendment Effective Date will automatically and without further act be deemed to have assigned to each Lender providing a new Foreign Revolving Credit Commitment, and each such Lender will automatically and without further act be deemed to have assumed, a portion of such Foreign Revolving Credit Lender's participations hereunder in outstanding Foreign Letters of Credit and

Foreign Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in Foreign Letters of Credit and Foreign Swing Line Loans held by each Foreign Revolving Credit Lender will equal the percentage of the aggregate Foreign Revolving Credit Commitments of all Foreign Revolving Credit Lenders represented by such Foreign Revolving Credit Lender's Foreign Revolving Credit Commitments on the Amendment Effective Date after giving effect to the Amendment; and

(iii) if, on the Amendment Effective Date, there are any U.S. Revolving Credit Loans or Foreign Revolving Credit Loans outstanding, such applicable Revolving Credit Loans shall on or prior to the effectiveness of this Amendment be prepaid from the proceeds of Revolving Credit Loans made hereunder (immediately after giving effect to this Amendment), which prepayment shall be accompanied by accrued interest and fees on the Revolving Credit Loans being prepaid and any costs incurred by any Lender in accordance with Section 2.12 of the Amended Credit Agreement.

The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in the Amended Credit Agreement shall not apply to the transactions effected pursuant to this Section 3(d).

SECTION 4. *Confirmation.* Each Credit Party which is a party to a German Security Document hereby confirms in respect of each such German Security Document that the obligations under the Credit Agreement Amendments constitute obligations expressly secured by each German Security Document in an anticipatory manner in terms of "*future obligations*" as referred to in the definition of the term "*Secured Obligations*" under each German Security Document and therefore the liabilities under the Credit Agreement Amendments are secured by the security created thereunder.

SECTION 5. *Effectiveness.* This Amendment shall become effective on the first date (the "**Amendment Effective Date**") on which each of the following conditions shall have been satisfied (which date is September 25, 2020):

(a) Amendment. The Administrative Agent shall have received from each party hereto a counterpart of this Amendment signed on behalf of such Person (which may include telecopy or electronic transmission of a signed signature page of this Amendment).

(b) Legal Opinions. The Administrative Agent shall have received the executed customary legal opinions of Kirkland & Ellis LLP, special New York counsel to the Credit Parties, together with customary legal opinions of local counsel for each relevant jurisdiction in respect of matters relating to the applicable Credit Documents (other than the Dutch Pledge and the Irish Deed (as defined on Schedule 1 hereto) and the related transactions as the Administrative Agent may reasonably request on the Closing Date. Holdings, the Borrowers, the other Credit Parties and the Administrative Agent hereby instruct such counsel to deliver such legal opinion

(c) Closing Certificates. The Administrative Agent shall have received a certificate of the Parent Borrower, dated the Amendment Effective Date, in respect of the conditions set forth in Sections 5(f) and 5(g) hereof.

(d) Authorization of Proceedings of Each Credit Party. The Administrative Agent shall have received a copy of the resolutions of the board of directors and/or shareholders, or other managers, general partner or other applicable body of each Credit Party (or a duly authorized committee thereof) authorizing the execution, delivery and performance of this Amendment and the other Credit Documents (and any agreements relating thereto) to which it is a party and in the case of each Borrower, the extensions of credit contemplated hereunder, true and complete copies of the Organizational Documents of each Credit Party as of the Amendment Effective Date, and good standing certificates (to the extent such concept exists in the relevant jurisdiction of organization or incorporation) of the Borrowers and the Guarantors and, in the case of each U.K. Credit Party, a certificate from an Authorized Officer dated the Amendment Effective Date, certifying that the Organizational Documents of that U.K. Credit Party and the resolutions of the board of directors and the shareholders of that U.K. Credit Party are correct and complete and have not been amended or superseded prior to the Amendment Effective Date.

(e) Fees.

(I) Upfront Fees. The Parent Borrower shall have paid to the Administrative Agent, for the ratable benefit of the Lenders, an upfront fee equal to 0.375% of such Lender's Revolving Credit Commitment on the Amendment Effective Date (after giving effect to the Amendment).

(II) Administrative Agent Fees. All fees required to be paid on the Amendment Effective Date pursuant to that certain Fee Letter dated August 26, 2020 between the Parent Borrower and Citigroup Global Markets Inc. and reasonable and documented out-of-pocket expenses required to be paid on the Amendment Effective Date pursuant to the Engagement Letter dated August 26, 2020 between the Parent Borrower and Citigroup Global Markets Inc., in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Amendment Effective Date, shall have been paid.

(f) Representations and Warranties. All representations and warranties contained in Section 8 of the Amended Credit Agreement shall be true and correct in all material respects on the Amendment Effective Date (except (i) to the extent any such representation or warranty is stated to relate solely to an earlier date, it shall be true and correct in all material respects as of such earlier date and (ii) to the extent any such representation or warranty is qualified as to "materiality", "Material Adverse Effect" or similar language, it shall be true and correct after giving effect to any such qualifications therein);

(g) Company Material Adverse Change. No Company Material Adverse Change shall have occurred since September 30, 2019.

(h) Solvency Certificate. On the Amendment Effective Date, the Administrative Agent shall have received a certificate from the chief financial officer of Holdings substantially in the form of Exhibit B hereto.

(i) Patriot Act. The Administrative Agent shall have received (at least 3 Business Days prior to the Amendment Effective Date) all documentation and other information about each Borrower and each Guarantor as has been reasonably requested in writing at least 10 Business Days prior to the Amendment Effective Date by the Administrative Agent or the Lenders that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations,

including without limitation the Patriot Act, and a Beneficial Ownership Certification with respect to each Borrower to the extent required by the Beneficial Ownership Regulation.

(j) Non-Consenting Lenders. All Obligations of the Borrowers under the Credit Agreement owing to the Non-Consenting Lenders shall have been paid in full to such Non-Consenting Lenders concurrently with the effectiveness of this Amendment in compliance with Section 13.7(b) of the Credit Agreement.

(k) No Default or Event of Default. No Default or Event of Default shall exist after giving effect to this Amendment on the Amendment No. 1 Effective Date.

(m) Post-Closing Deliverables. Within thirty (30) days after the Amendment Effective Date, the applicable Credit Parties shall deliver, or cause to be delivered, the documents set forth on Schedule 1 hereto together with customary legal opinion in respect thereof.

SECTION 6. *Governing Law.* THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 7. *Miscellaneous; Counterparts.* The provisions of Sections 13.1, 13.2, 13.5, 13.9, 13.10, 13.11, 13.13 and 13.15 of the Amended Credit Agreement shall apply *mutatis mutandis* to this Amendment. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Amendment by facsimile or electronic transmission (e.g., a "pdf" or "tif" file) shall be as effective as delivery of a manually signed counterpart of this Amendment. The words "execution," "signed," "signature," and words of like import in this Amendment and any other Credit Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature 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.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

AVAYA HOLDINGS CORP., as Holdings

By: /s/ Kieran J. McGrath
Name: Kieran J. McGrath
Title: Executive Vice President and Chief Financial Officer

AVAYA INC, as Parent Borrower

By: /s/ Kieran J. McGrath
Name: Kieran J. McGrath
Title: Executive Vice President and Chief Financial Officer

AVAYA MANAGEMENT, L.P., as U.S. Guarantor

By: Avaya Inc.
Its: General Partner

By: /s/ Kieran J. McGrath
Name: Kieran J. McGrath
Title: Executive Vice President and Chief Financial Officer

AVAYA CALA INC.
AVAYA CLOUD INC.
AVAYA EMEA LTD.
Avaya Federal Solutions, Inc.
AVAYA HOLDINGS LLC
AVAYA INTEGRATED CABINET SOLUTIONS LLC
AVAYA MANAGEMENT SERVICES INC.
AVAYA WORLD SERVICES INC.
HYPERQUALITY, INC.
SIERRA ASIA PACIFIC INC.
UBIQUITY SOFTWARE CORPORATION
VPNET TECHNOLOGIES, INC.
HYPERQUALITY II, LLC
INTELLISIST, INC.
CAAS TECHNOLOGIES, LLC, each as U.S. Guarantor

By: /s/ Kieran J. McGrath
Name: Kieran J. McGrath
Title: Vice President

AVAYA CANADA CORP., as Canadian Borrower

By: /s/ John P. Sullivan
Name: John P. Sullivan
Title: Vice President and Treasurer

AVAYA UK, as U.K. Borrower

By: /s/ Ena Hunter
Name: Ena Hunter
Title: Director

AVAYA UK HOLDINGS LIMITED, as U.K. Guarantor

By: /s/ Ena Hunter
Name: Ena Hunter
Title: Director

AVAYA INTERNATIONAL SALES LIMITED, as Irish Borrower

By: /s/ Michael Murray
Name: Michael Murray
Title: Director/Secretary

AVAYA INTERNATIONAL ENTERPRISES LIMITED, as Irish Guarantor

By: /s/ Francois Brouxel
Name: Francois Brouxel
Title: Director

AVAYA DEUTSCHLAND GMBH, as a German Borrower

By: /s/ Wolfgang Zorn By: /s/Antonio Beltran Talavera

Name: Wolfgang Zorn Name: Antonio Beltran Talavera

Title: Managing Director (*Geschäftsführer*) Title: Managing Director (*Geschäftsführer*)

AVAYA GMBH & CO. KG, as a German Borrower

By: /s/ Wolfgang Zorn By: /s/Antonio Beltran Talavera

Name: Wolfgang Zorn Name: Antonio Beltran Talavera

Title: Managing Director (*Geschäftsführer*) Title: Managing Director (*Geschäftsführer*)

AVAYA GERMANY GMBH, as a German Guarantor

By: /s/ Wolfgang Zorn By: /s/ Michael Murray

Name: Wolfgang Zorn Name: Michael Murray

Title: Managing Director (*Geschäftsführer*) Title: Managing Director (*Geschäftsführer*)

AVAYA VERWALTUNGS GMBH, as a German Guarantor

By: /s/ Wolfgang Zorn By: /s/Antonio Beltran Talavera

Name: Wolfgang Zorn Name: Antonio Beltran Talavera

Title: Managing Director (*Geschäftsführer*) Title: Managing Director (*Geschäftsführer*)

TENOVIS TELECOM FRANKFURT GMBH & CO. KG, as a German Guarantor

By: /s/ Michael Murray By: /s/ Wolfgang Zorn

Name: Michael Murray Name: Wolfgang Zorn

Title: Managing Director of the General Partner Title: Managing Director of the General Partner

CITIBANK, N.A., as Administrative Agent, a Lender,
L/C Issuer and Swing Line Lender

By: /s/ Allister Chan
Name: Allister Chan
Title: Vice President

BANK OF AMERICA, N.A., CANADA BRANCH, AS LENDER

By: /s/ Sylwia Durkiewicz
Name: Sylwia Durkiewicz
Title: Vice President

BANK OF AMERICA, N.A., as Lender, L/C Issuer

By: /s/ Mia Bolin
Name: Mia Bolin
Title: Senior Vice President

JPMORGAN CHASE BANK, N.A., as Lender, L/C Issuer, Foreign L/C Issuer

By: /s/ Bruce S. Borden
Name: Bruce S. Borden
Title: Executive Director

GOLDMAN SACHS BANK USA, as Lender, L/C Issuer

By: /s/ Thomas Manning
Name: Thomas Manning
Title: Authorized Signatory

BARCLAYS BANK PLC, as a Lender

By: /s/ Martin Corrigan
Name: Martin Corrigan
Title: Vice President

DEUTSCHE BANK AG NEW YORK BRANCH, as Lender

By: /s/ Philip Tancorra
Name: Philip Tancorra
Title: Vice President

By: /s/ Michael Strobel
Name: Michael Strobel
Title: Vice President

Exhibit A

Credit Agreement Amendments

[see attached]

~~EXECUTION VERSION~~*Exhibit A*
As amended by Amendment No. 1 dated as of September 25, 2020

ABL CREDIT AGREEMENT

Dated as of December 15, 2017
among
AVAYA HOLDINGS CORP.,
as Holdings,
AVAYA INC.,
as the Parent Borrower,
The Several Borrowers Party Hereto,
CITIBANK, N.A.,
as Administrative Agent and Collateral Agent,
The Several Lenders
From Time to Time Parties Hereto,

and

CITIGROUP GLOBAL MARKETS INC.
GOLDMAN SACHS BANK USA
JPMORGAN CHASE BANK, N.A.
BARCLAYS BANK PLC
CREDIT SUISSE SECURITIES (USA) LLC
and
DEUTSCHE BANK SECURITIES INC.[1]
as Joint Lead Arrangers and Joint Bookrunners

Notice: Under the Credit Reporting Act 2013 of Ireland, lenders are required to provide personal and credit information for credit applications and credit agreements of €500 and above to the Central Credit Register. This information will be held on the Central Credit Register and may be used by other lenders when making decisions on your credit applications and credit agreements.

[1] With respect to Amendment No. 1 to this ABL Credit Agreement, the Joint Lead Arrangers and Joint Bookrunners are Citibank, N.A., Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A. and BofA Securities, Inc.

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SCHEDULES

EXHIBITS

ABL CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, the "**Agreement**"), dated as of December 15, 2017, among AVAYA HOLDINGS CORP., a Delaware corporation ("**Avaya Holdings**"), in its capacity as Holdings, AVAYA INC., a Delaware corporation (the "**Parent Borrower**"), AVAYA CANADA CORP., an unlimited liability company organized under the laws of the province of Nova Scotia (the "**Canadian Borrower**"), AVAYA UK, a company incorporated in England and Wales with company number 03049861 (the "**U.K. Borrower**"), AVAYA INTERNATIONAL SALES LIMITED, a private company limited by shares incorporated under the laws of Ireland with registered number 342279 (the "**Irish Borrower**"), AVAYA DEUTSCHLAND GMBH, a limited liability company (*Gesellschaft mit beschränkter Haftung*) existing under the laws of Germany ("**Avaya Deutschland**"), AVAYA GMBH & CO. KG, a limited partnership (*GmbH & Co. KG*) existing under the laws of Germany ("**Avaya KG**", and together with Avaya Deutschland, the "**German Borrowers**"), the Lenders from time to time parties hereto, the lending institutions named herein as L/C Issuers and Swing Line Lenders and CITIBANK, N.A., as Administrative Agent and Collateral Agent.

RECITALS:

WHEREAS, capitalized terms used and not defined in the preamble and these recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, on January 19, 2017, Avaya Holdings, the Parent Borrower and certain of the Parent Borrower's Domestic Subsidiaries (collectively, the "**Avaya Debtors**") filed voluntary petitions for relief under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York (such court, together with any other court having exclusive jurisdiction over the Case from time to time and any Federal appellate court thereof, the "**Bankruptcy Court**") and commenced cases, jointly administered under Case No. 17-10089 (collectively, the "**Case**"), and have continued in the possession and operation of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Avaya Debtors are parties to the certain Superpriority Secured Debtor-In-Possession Credit Agreement, dated as of January 24, 2017 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the **"Existing DIP Agreement**"), by and among the Avaya Debtors, Citibank N.A., as administrative agent and collateral agent and the lending institutions from time to time parties thereto;

WHEREAS, the Avaya Debtors filed the Second Amended Joint Chapter 11 Plan of Reorganization of Avaya Inc. and its Debtor Affiliates in the Bankruptcy Court on October 24, 2017 [Docket No. 1372] (together with all schedules, documents and exhibits contained therein, as amended, supplemented, modified or waived from time to time, the "**Plan**");

WHEREAS, on November 28, 2017, the Bankruptcy Court entered an order confirming the Plan with respect to the Avaya Debtors (the "**Confirmation Order**") [Docket No. 1579];

WHEREAS, the Lenders agree, (a) on the Closing Date, upon the satisfaction (or waiver) of certain conditions precedent set forth in ~~Section 6~~Section 6 and (b) after the Closing Date, upon the satisfaction (or waiver) of certain conditions precedent set forth in ~~Section 7~~Section 7, to extend credit to the Borrowers in the form of a revolving credit facility consisting of a U.S. tranche and a foreign tranche with Aggregate Revolving Credit Commitments in an initial aggregate principal amount of $300,000,000 (which shall be reduced to $200,000,000 on and after the Amendment No. 1 Effective Date), on the terms and subject to the conditions set forth herein;

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

SECTION 1 Definitions

1.1 Defined Terms

As used herein, the following terms shall have the meanings specified in this Section 1.1 unless the context otherwise requires:

"**2023 Notes**" shall mean the 2.25% convertible notes maturing on June 15, 2023 issued under the 2023 Notes Indenture.

"**2023 Notes Indenture**" shall mean that certain Indenture dated June 11, 2018 by and between Holdings and Bank of New York Mellon Trust Company N.A., as trustee.

"**2023 Notes Redemption Period**" shall have the meaning provided in the definition of Initial Maturity Date.

"**ABL Intercreditor Agreement**" shall mean the ABL Intercreditor Agreement substantially in the form of Exhibit F, among the Collateral Agent, the Term Loan Collateral Agent and the representatives for holders of one or more other classes of Indebtedness, the Parent Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

"**ABL Priority Collateral**" shall mean the "ABL Priority Collateral" under and as defined in the ABL Intercreditor Agreement.

"**ABR**" shall mean for any day a fluctuating rate per annum equal to the greatest of (a) the Federal Funds Effective Rate *plus* 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent

as its "prime rate" and (c) the LIBOR Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.00%; *provided* that, if at any time any rate described in clause (a) or (b) above is less than 0.00% then such rate in clause (a) or (b) shall be deemed to be 0.00%; *provided, further*, that, for the avoidance of doubt, for purposes of calculating the LIBOR Rate pursuant to clause (c), the LIBOR Rate for any day shall be based on the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on such day by reference to the ICE Benchmark Administration (or any successor organization) LIBOR Rate (the "**Relevant LIBOR Rate**") for deposits in Dollars (as published by Reuters or any other commonly available source providing quotations of the Relevant LIBOR Rate as designated by the Administrative Agent) for a period equal to one month. If the Administrative Agent is unable to ascertain the Federal Funds Effective Rate due to its inability to obtain sufficient quotations in accordance with the definition thereof, after notice is provided to the Parent Borrower, the ABR shall be determined without regard to clause (a) above until the circumstances giving rise to such inability no longer exist. Any change in the ABR due to a change in such rate announced by the Administrative Agent or in the Federal Funds Effective Rate shall take effect at the opening of business on the day specified in the public announcement of such change or on the effective date of such change in the Federal Funds Effective Rate or the Relevant LIBOR Rate, as applicable.

"**ABR Loan**" shall mean each Loan denominated in Dollars bearing interest based on the ABR.

"**Account**" shall mean (a) any right to payment of a monetary obligation arising from the provision of goods or services by any Person and (b) without duplication, any "Account" (as such term is defined in the UCC or PPSA, as applicable), any "Payment Intangibles" (as such term is defined in the UCC) and any accounts receivable, any rights to payment and/or reimbursement of every kind and description, in each case, whether or not earned by performance, in each case arising in the course of such Person's operations.

"**Account Debtor**" shall mean any Person obligated on an Account.

"**Acquired EBITDA**" shall mean, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary (any of the foregoing, a "**Pro Forma Entity**") for any period, the amount for such period of Consolidated EBITDA of such Pro Forma Entity (determined using such definitions as if references to the Parent Borrower and the Restricted Subsidiaries therein were to such Pro Forma Entity and its Restricted Subsidiaries), all as determined on a consolidated basis for such Pro Forma Entity in a manner not inconsistent with GAAP.

"**Acquired Entity or Business**" shall have the meaning provided in the definition of the term "Consolidated EBITDA".

"**Additional Lender**" shall mean any Person (other than (w) Holdings, the Parent Borrower or any of its Subsidiaries, (x) a natural person, (y) any investment vehicle established primarily for the benefit of a natural person or (z) a Disqualified Institution) that is not an existing Lender and that has agreed to provide Incremental Commitments pursuant to Section ~~2.14~~2.14.

"**Adjustment Date**" shall have the meaning provided in the definition of "Applicable Rate".

"**Administrative Agent**" shall mean Citibank, N.A., as the administrative agent for the Lenders under this Agreement and the other Credit Documents, or any successor administrative agent pursuant to Section 12.9, it being understood that Citibank, N.A. may designate any of its Affiliates as administrative agent for a particular Alternative Currency and that such Affiliate shall be considered an Administrative Agent for all purposes hereunder.

"**Administrative Agent's Office**" shall mean, with respect to any currency, the Administrative Agent's address and, as appropriate, account as set forth on Schedule 13.2 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify to the applicable Administrative Borrower and the Lenders.

"**Administrative Borrower**" shall mean (a) with respect to the Parent Borrower, the Parent Borrower and (b) with respect to any Foreign Borrower, the Parent Borrower or the Irish Borrower.

"**Administrative Questionnaire**" shall mean an administrative questionnaire in a form supplied by the Administrative Agent.

"**Advisors**" shall mean legal counsel, financial advisors and third-party appraisers and consultants advising the Agents, the L/C Issuers, the Lenders and their Related Parties in connection with this Agreement, the other Credit Documents and the consummation of the Transactions, limited in the case of legal counsel to one primary counsel for the Agents (as of the Closing Date, Davis Polk & Wardwell LLP) and, if necessary, one firm of local counsel in each appropriate jurisdiction (and, in the case of an actual or perceived conflict of interest where the Person affected by such conflict informs the Parent Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for all such affected Persons (taken as a whole)).

"**Affected Financial Institution**" shall mean (a) any EEA Financial Institution or (b) any U.K. Financial Institution.

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the

management and policies of such other Person, whether through the ownership of voting securities or by contract. The terms "controlling" and "controlled" shall have meanings correlative thereto.

"**Agent Parties**" shall have the meaning provided in Section 13.17(d).

"**Agents**" shall mean the Administrative Agent, the Collateral Agent and each Joint Lead Arranger.

"**Aggregate Borrowing Base**" shall mean, at any time of determination, the sum of the U.S. Borrowing Base and the Foreign Borrowing Base; *provided* that the Aggregate Borrowing Base shall be determined without giving effect to clause (f) of the definition of Foreign Borrowing Base.

"**Aggregate Excess Availability**" shall mean, at any time of determination, the difference of (a) the Aggregate Line Cap at such time *minus* (b) the Aggregate Revolving Credit Exposure.

"**Aggregate Line Cap**" shall mean the sum at any time of the lesser of (a) the Aggregate Borrowing Base at such time and (b) the Aggregate Revolving Credit Commitments.

"**Aggregate Revolving Credit Commitments**" shall mean the sum of the Revolving Credit Commitments of all Lenders.

"**Aggregate Revolving Credit Exposure**" shall mean the sum of (a) the aggregate U.S. Revolving Credit Exposure and (b) the aggregate Foreign Revolving Credit Exposure.

"**Agreement**" shall have the meaning provided in the introductory paragraph hereto.

"**Agreement Currency**" shall have the meaning provided in Section 13.20.

"**AHYDO Catch-Up Payment**" shall mean any payment or redemption of Indebtedness, including any Junior Indebtedness, to avoid the application of Code Section 163(e)(5) thereto or that are necessary to prevent any such Indebtedness from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code.

"**Alternative Currency**" shall mean (a) Canadian Dollars, Sterling, Euros and (b) each other currency (other than Dollars) that is approved in accordance with Section 1.8.

"**Amendment No. 1**" means that certain Amendment No. 1, dated as of September 25, 2020, by and among the Borrowers, Holdings and the other Credit Parties

thereto, the Administrative Agent, the L/C Issuers and the Swing Line Lenders and the other Lenders party thereto.

"**Amendment No. 1 Effective Date**" means September 25, 2020.

"**Anti-Corruption Laws**" shall have the meaning provided in Section 8.19.

"**Applicable Intercreditor Agreements**" shall mean (a) to the extent executed in connection with the incurrence of any Indebtedness secured by Liens on the U.S. Collateral that (i) are intended to rank junior in priority to the Liens on the ABL Priority Collateral securing the Obligations and (ii) are intended to rank senior in priority to the Liens on the Term Priority Collateral securing the Obligations, the ABL Intercreditor Agreement, (b) to the extent executed in connection with the incurrence of any Indebtedness secured by Liens on the Collateral that are intended to rank junior in priority to the Liens on the Collateral securing the Obligations, the Junior Lien Intercreditor Agreement and (c) any other intercreditor agreement entered into to implement the intercreditor arrangements set forth in Section 10.2 in form and substance reasonably acceptable to the Parent Borrower and the Collateral Agent.

"**Applicable Laws**" shall mean, as to any Person, any law (including common law), statute, regulation, ordinance, rule, order, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

"**Applicable Rate**" shall mean a percentage per annum equal to (a) from the Closing Date through the first full fiscal quarter ending after the Closing Date, (i) for LIBOR Loans, CDOR Loans, EURIBOR Loans and Overnight LIBOR Loans, 1.75%, (ii) for ABR Loans or Canadian Prime Rate Loans, 0.75% and (iii) for Letter of Credit Fees, the Applicable Rate for (x) with respect to Letters of Credit denominated in Dollars or any Alternative Currency other than Canadian Dollars or Euros, LIBOR Loans, (y) with respect to Letters of Credit denominated in Canadian Dollars, CDOR Loans and (z) with respect to Letters of Credit denominated in Euros, EURIBOR Loans, in each case then in effect, ~~and~~ (b) thereafter to the Amendment No. 1 Effective Date, the following percentages per annum, based upon the Average Aggregate Historical Excess Availability as set forth in the most recent Monthly Borrowing Base Certificate received by the Administrative Agent pursuant to Section 9.1(i):

Applicable Rate			
Pricing Level	Average Aggregate Historical Excess Availability (as a percentage of Aggregate Revolving Credit Commitments)	LIBOR Rate, CDOR Rate, EURIBOR Rate and Overnight LIBOR Loans and Letter of Credit Fees	Base Rate and Canadian Prime Rate for Loans
1	less than 33.3%	2.00%	1.00%
2	greater than or equal to 33.3% but less than 66.6%	1.75%	0.75%
3	greater than or equal to 66.6%	1.50%	0.50%

(c) from the Amendment No. 1 Effective Date through the first full fiscal quarter ending after the Amendment No. 1 Effective Date, (i) for LIBOR Loans, CDOR Loans, EURIBOR Loans and Overnight LIBOR Loans, 2.00%, (ii) for ABR Loans or Canadian Prime Rate Loans, 1.00% and (iii) for Letter of Credit Fees, the Applicable Rate for (x) with respect to Letters of Credit denominated in Dollars or any Alternative Currency other than Canadian Dollars or Euros, LIBOR Loans, (y) with respect to Letters of Credit denominated in Canadian Dollars, CDOR Loans and (z) with respect to Letters of Credit denominated in Euros, EURIBOR Loans, in each case then in effect, and (d) thereafter, the following percentages per annum, based upon the Average Aggregate Historical Excess Availability as set forth in the most recent Monthly Borrowing Base Certificate received by the Administrative Agent pursuant to Section 9.1(i):

Applicable Rate			
Pricing Level	Average Aggregate Historical Excess Availability (as a percentage of Aggregate Revolving Credit Commitments)	LIBOR Rate, CDOR Rate, EURIBOR Rate and Overnight LIBOR Loans and Letter of Credit Fees	Base Rate and Canadian Prime Rate for Loans
1	less than 33.3%	2.25%	1.25%
2	greater than or equal to 33.3% but less than 66.6%	2.00%	1.00%
3	greater than or equal to 66.6%	1.75%	0.75%

Any increase or decrease in the Applicable Rate resulting from a change in the Average Aggregate Historical Excess Availability shall become effective as of the

first Business Day immediately following the date a Monthly Borrowing Base Certificate is delivered pursuant to Section 9.1(i) (each, an "**Adjustment Date**"); *provided* that the highest pricing level shall apply as of the first Business Day of each calendar month after the date on which a Monthly Borrowing Base Certificate was required to have been delivered but was not delivered and shall continue to so apply to and including the date on which such Monthly Borrowing Base Certificate is so delivered (and thereafter the pricing level previously in effect until otherwise determined in accordance with this definition).

Notwithstanding anything to the contrary contained above in this definition or elsewhere in this Agreement, if it is subsequently determined before the 91st day after the date on which all Loans have been repaid and all Revolving Credit Commitments have been terminated that the Average Aggregate Historical Excess Availability set forth in any Monthly Borrowing Base Certificate delivered to the Administrative Agent is inaccurate for any reason and the result thereof is that the Lenders received interest or fees for any period based on an Applicable Rate that is less than that which would have been applicable had the Average Aggregate Historical Excess Availability been accurately determined, then, for all purposes of this Agreement, the "Applicable Rate" for any day occurring within the period covered by such Monthly Borrowing Base Certificate shall retroactively be deemed to be the relevant percentage as based upon the accurately determined Average Aggregate Historical Excess Availability for such period, and any shortfall in the interest or fees theretofore paid by the Borrowers for the relevant period as a result of the miscalculation of the Average Aggregate Historical Excess Availability shall be deemed to be (and shall be) due and payable upon the date that is five (5) Business Days after notice by the Administrative Agent to the Parent Borrower of such miscalculation. If the preceding sentence is complied with, the failure to previously pay such interest and fees shall not in and of itself constitute a Default and no amounts shall be payable at the Default Rate in respect of any such interest or fees.

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

"**Appropriate Lender**" shall mean, at any time, (a) with respect to U.S. Revolving Credit Loans, the U.S. Revolving Credit Lenders, (b) with respect to Foreign Revolving Credit Loans, the Foreign Revolving Credit Lenders, (c) with respect to any U.S. Letter of Credit, (i) the relevant L/C Issuer and (ii) the U.S. Revolving Credit Lenders, (d) with respect to any Foreign Letter of Credit, (i) the relevant L/C Issuer and (ii) the Foreign Revolving Credit Lenders, (e) with respect to any U.S. Swing Line Loan, the U.S. Swing Line Lender and if any U.S. Swing Line Loans are outstanding pursuant to Section 3.2(a), the U.S. Revolving Credit Lenders, (f) with respect to any Foreign

Swing Line Loan, (i) the applicable Swing Line Lender and (ii) if such Foreign Swing Line Loans are outstanding pursuant to Section 3.2(a), the Foreign Revolving Credit Lenders, (g) with respect to any U.S. Protective Advance, the Administrative Agent and the U.S. Revolving Credit Lenders and (h) with respect to any Foreign Protective Advance, the Administrative Agent and the Foreign Revolving Credit Lenders.

"**Approval Order**" shall mean the Order (I) Authorizing (A) Entry into the Exit Financing Letters and Related Exit ABL/Term Loan Fee Letter and (B) Payment of Associated Fees and Expenses and (II) Granting Related Relief entered by the Bankruptcy Court on November 1, 2017 [Docket No. 1430].

"**Approved Fund**" shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Assignment and Assumption**" shall mean an assignment and assumption substantially in the form of Exhibit I, or such other form as may be approved by the Administrative Agent and the Parent Borrower.

"**Authorized Officer**" shall mean the President, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the Treasurer, any Assistant Treasurer, any statutory director, authorized signatory, attorney, the Controller, any Senior Vice President, with respect to any Irish Credit Party, a director of that Irish Credit Party, with respect to certain companies or partnerships that do not have officers, any manager, managing director, managing member or general partner (or such general partner's representative) thereof and any other authorized person in accordance with the Organizational Documents of such Person, any other senior officer of Holdings, any Borrower or any other Credit Party designated as such in writing to the Administrative Agent by Holdings, such Borrower or such other Credit Party, as applicable from time to time, and, with respect to any document delivered on the Closing Date, the Secretary or any Assistant Secretary of any Credit Party. Any document delivered hereunder that is signed by an Authorized Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, unlimited liability company, partnership and/or other action on the part of Holdings, such Borrower or any other Credit Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Person. Notwithstanding the foregoing, the solvency certificate required to be delivered on the Closing Date shall be delivered by the Chief Financial Officer of Holdings.

"**Auto-Renewal Letter of Credit**" shall have the meaning provided in Section 3.1(b)(iii).

"**Availability Requirements**" shall mean, at any time, that (a) the U.S. Revolving Credit Exposure of each U.S. Revolving Credit Lender shall not exceed its U.S. Revolving Credit Commitments, (b) the Foreign Revolving Credit Exposure of each Foreign Revolving Credit Lender shall not exceed its Foreign Revolving Credit

Commitments, (c) the aggregate U.S. Revolving Credit Exposure shall not exceed the U.S. Line Cap, (d) the aggregate Foreign Revolving Credit Exposure shall not exceed the Foreign Line Cap and (e) the aggregate Foreign Adjusted Revolving Credit Exposure shall not exceed the Foreign Adjusted Line Cap. In addition, solely with respect to (i) any Credit Extension to, or (ii) the aggregate amount of Credit Extensions outstanding at any time to, (x) Avaya Deutschland, the aggregate Avaya Deutschland Revolving Credit Exposure shall not exceed the Avaya Deutschland Line Cap and (y) Avaya KG, the aggregate Avaya KG Revolving Credit Exposure shall not exceed the Avaya KG Line Cap at any time.

"**Availability Reserves**" shall mean, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves, subject to Section ~~2.17~~2.17, as the Administrative Agent, in its Permitted Discretion, determines as being appropriate to reflect any impediments to the realization upon the Collateral consisting of Eligible Accounts or Eligible Inventory included in the applicable Borrowing Base (including claims that the Administrative Agent determines will need to be satisfied in connection with the realization upon such Collateral).

"**Available Equity Amount**" shall mean, at any time (the "**Available Equity Amount Reference Time**"), an amount equal to, without duplication, (a) the amount of any capital contributions made in cash, marketable securities or other property to, or any proceeds of an equity issuance received by the Parent Borrower during the period from and including the Business Day immediately following the Closing Date through and including the Available Equity Amount Reference Time (in the case of any marketable securities or property, up to its fair market value as determined by the Parent Borrower in good faith), including proceeds from the issuance of Stock or Stock Equivalents of Holdings or any direct or indirect parent of Holdings (to the extent the proceeds of any such issuance are contributed to the Parent Borrower), but excluding all proceeds from the issuance of Disqualified Stock,

minus (b) the sum, without duplication, of:

(i) the aggregate amount of Investments made pursuant to Section 10.5(v)(x) following the Closing Date and prior to the Available Equity Amount Reference Time;

(ii) the aggregate amount of Restricted Payments pursuant to Section 10.6(c)(x) following the Closing Date and prior to the Available Equity Amount Reference Time;

(iii) the aggregate amount of prepayments, repurchases, redemptions and defeasances pursuant to Section 10.7(a)(iii)(2) following the Closing Date and prior to the Available Equity Amount Reference Time; and

(iv) the aggregate amount of Indebtedness incurred pursuant to Section 10.1(x) and outstanding at the Available Equity Amount Reference Time;

provided that issuances and contributions pursuant to Sections 10.5(f)(ii), 10.6(a) and 10.6(b)(i) shall not increase the Available Equity Amount.

"**Available Equity Amount Reference Time**" shall have the meaning provided in the definition of "Available Equity Amount".

"**Avaya Debtors**" shall have the meaning provided in the Recitals to this Agreement.

"**Avaya Deutschland**" shall have the meaning specified in the introductory paragraph to this Agreement.

"**Avaya Deutschland Borrowing Base**" shall mean, on any date, an amount equal to (a) the sum of (i) 85% *multiplied* by the book value of the Eligible Accounts, *plus* (ii) 90% *multiplied* by the book value of the Eligible Investment Grade Accounts *plus* (iii) 85% *multiplied* by the Net Orderly Liquidation Value of Eligible Inventory, in each case of clauses (i) - (iii), owned by Avaya Deutschland *minus* (b) any Reserves.

"**Avaya Deutschland Line Cap**" shall mean, at any time, the lesser of (a) the Avaya Deutschland Borrowing Base at such time and (b) the aggregate Foreign Revolving Credit Commitments at such time.

"**Avaya Deutschland Revolving Credit Exposure**" shall mean, as to each Foreign Revolving Credit Lender at any time, the sum of the Outstanding Amount of such Lender's Foreign Revolving Credit Loans made to Avaya Deutschland, its Pro Rata Share or other applicable share provided for under this Agreement of the Foreign L/C Obligations in respect of Foreign Letters of Credit, the Foreign Swing Line Loans and the Foreign Protective Advances, in each case issued for the account of or made to Avaya Deutschland.

"**Avaya Holdings**" shall have the meaning in the introductory paragraph hereto.

"**Avaya KG**" shall have the meaning specified in the introductory paragraph to this Agreement.

"**Avaya KG Borrowing Base**" shall mean, on any date, an amount equal to (a) the sum of (i) 85% *multiplied* by the book value of the Eligible Accounts, *plus* (ii) 90% *multiplied* by the book value of the Eligible Investment Grade Accounts *plus* (iii) 85% *multiplied* by the Net Orderly Liquidation Value of Eligible Inventory, in each case of clauses (i) - (iii), owned by Avaya KG *minus* (b) any Reserves.

"**Avaya KG Line Cap**" shall mean, at any time, the lesser of (a) the Avaya KG Borrowing Base at such time and (b) the aggregate Foreign Revolving Credit Commitments at such time.

"**Avaya KG Revolving Credit Exposure**" shall mean, as to each Foreign Revolving Credit Lender at any time, the sum of the Outstanding Amount of such Lender's Foreign Revolving Credit Loans made to Avaya KG, its Pro Rata Share or other applicable share provided for under this Agreement of the Foreign L/C Obligations in respect of Foreign Letters of Credit, the Foreign Swing Line Loans and the Foreign Protective Advances, in each case issued for the account of or made to Avaya KG.

"**Average Aggregate Historical Excess Availability**" shall mean, at any Adjustment Date, the average daily Aggregate Excess Availability for the three calendar month period immediately preceding such Adjustment Date (with the Aggregate Borrowing Base for any day used to determine "Aggregate Excess Availability" calculated by reference to the most recent Monthly Borrowing Base Certificate delivered to the Administrative Agent on or prior to such day pursuant to Section 9.1(i)).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable ~~EEA~~ Resolution Authority in respect of any liability of an ~~EEA~~Affected Financial Institution.

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

"**Bank Product Reserves**" shall mean such reserves as the Administrative Agent, from time to time during a Cash Dominion Period, determines in its Permitted Discretion to reflect the reasonably anticipated liabilities and obligations of the Credit Parties with respect to applicable Cash Management Obligations under Secured Cash Management Agreements then provided or outstanding, to the extent secured by the applicable Collateral included in the applicable Borrowing Base.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy".

"**Bankruptcy Court**" shall have the meaning provided in the preamble to this Agreement.

"**Benchmark Replacement**" shall mean the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent, Holdings and the Borrowers giving due consideration to (i) any selection or recommendation of a replacement 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 rate of interest as a replacement to the LIBOR Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than 0.50%, the Benchmark Replacement will be deemed to be 0.50% for the purposes of this Agreement.

"**Benchmark Replacement Adjustment**" shall mean, with respect to any replacement of the LIBOR Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, 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, Holdings and the Borrowers 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 the LIBOR Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body 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 the LIBOR Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar- denominated syndicated credit facilities at such time.

"**Benchmark Replacement Conforming Changes**" shall mean, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative 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 the 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).

"**Benchmark Replacement Date**" shall mean the earlier to occur of the following events with respect to the LIBOR Rate:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the LIBOR Rate permanently or indefinitely ceases to provide the LIBOR Rate; or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

"**Benchmark Transition Event**" shall mean the occurrence of one or more of the following events with respect to the LIBOR Rate:

(1) a public statement or publication of information by or on behalf of the administrator of the LIBOR Rate announcing that such administrator has ceased or will cease to provide the LIBOR Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Rate;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Rate for Dollars or such Alternative Currency, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBOR Rate for Dollars or such Alternative Currency, a resolution authority with jurisdiction over the administrator for the LIBOR Rate for Dollars or such Alternative Currency or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBOR Rate for Dollars or such Alternative Currency, which states that the administrator of LIBOR Rate has ceased or will cease to provide the LIBOR Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Rate for Dollars or such Alternative Currency; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Rate for Dollars or such Alternative Currency announcing that the LIBOR Rate is no longer representative.

"**Benchmark Transition Start Date**" shall mean (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

"**Benchmark Unavailability Period**" shall mean, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBOR Rate for Dollars or such Alternative Currency and solely to the extent that the LIBOR Rate for Dollars or such Alternative Currency has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the LIBOR Rate for Dollars or such Alternative Currency for all purposes hereunder in accordance with the Section 2.18 and (y) ending at the time that a

Benchmark Replacement has replaced the LIBOR Rate for Dollars or such Alternative Currency for all purposes hereunder pursuant to the Section 2.18.

"**Beneficial Ownership Certification**" shall mean a certification regarding individual beneficial ownership to the extent expressly required by 31 C.F.R. §1010.230.

"**Beneficial Ownership Regulation**" shall mean 31 C.F.R. §1010.230.

"**Benefited Lender**" shall have the meaning provided in Section 13.8(a).

"**Benefit Plan**" shall mean 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".

"~~**Benefited Lender**~~**BHC Act Affiliate**" shall have the meaning provided in Section ~~13.8(a)~~13.23(b).

"**Blocked Account Agreement**" shall have the meaning provided in Section 9.16(b).

"**Blocked Accounts**" shall have the meaning provided in Section 9.16(b).

"**Board**" shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

"**Borrowers**" shall mean, collectively, the Parent Borrower, the Canadian Borrower, the U.K. Borrower, the Irish Borrower and the German Borrowers.

"**Borrowing**" shall mean a Revolving Credit Borrowing, a Swing Line Borrowing or a Protective Advance, as the context may require.

"**Borrowing Base**" shall mean, without duplication, the Foreign Borrowing Base, the Foreign Adjusted Borrowing Base, the Canadian Borrowing Base, the U.K. Borrowing Base, the Irish Borrowing Base, the Avaya Deutschland Borrowing Base, the Avaya KG Borrowing Base, the U.S. Borrowing Base and/or the Aggregate Borrowing Base, as the context may require. Each Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 9.1(i), but shall in addition be adjusted (including for purposes of the Availability Requirements) to reflect the amount of the U.S. Borrowing Base Excess Amount at any applicable time of determination.

"**Borrowing Base Certificate**" shall mean a certificate, duly executed by an Authorized Officer of the Parent Borrower, appropriately completed and substantially

in the form of Exhibit K or another form that is reasonably acceptable to the Administrative Agent.

"**Broker-Dealer Subsidiary**" shall mean any Subsidiary that is registered as a broker-dealer under the Exchange Act or any other Applicable Law requiring similar registration.

"**Business Day**" shall mean any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Applicable Laws of, or are in fact closed in, New York City or in the jurisdiction where the Administrative Agent's Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a LIBOR Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such LIBOR Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such LIBOR Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;

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

(c) if such day relates to any interest rate settings as to a LIBOR Loan denominated in Sterling, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London interbank market for Sterling;

(d) if such day relates to any fundings, disbursements, settlements and payments in Sterling in respect of any such LIBOR Loan, or any other dealings in Sterling to be carried out pursuant to this Agreement in respect of any such LIBOR Loan (other than interest rate settings), means any such day on which banks are open for foreign exchange business in London;

(e) if such day relates to any Loan to the Canadian Borrower, any interest rate settings as to such Loan, any fundings, disbursements, settlements and payments in respect of such Loan, or any other dealings in Canadian Dollars to be carried out pursuant to this Agreement in respect of any Loan denominated in Canadian Dollars, means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Applicable Laws of, or are in fact closed in, Toronto, Canada; and

(f) if such day relates to any interest rate settings or fundings, disbursements, settlements and payments in any Alternative Currency approved by the Administrative Agent and the Lenders or the applicable L/C Issuer pursuant to Section

1.8, any such day treated as a business day based on the customs and practices of the handling of such Alternative Currency.

"**Canadian Borrower**" shall have the meaning specified in the introductory paragraph to this Agreement.

"**Canadian Borrowing Base**" shall mean, on any date, an amount equal to (a) the sum of (i) 85% *multiplied* by the book value of the Eligible Accounts, *plus* (ii) 90% *multiplied* by the book value of the Eligible Investment Grade Accounts *plus* (iii) 85% *multiplied* by the Net Orderly Liquidation Value of Eligible Inventory, in each case of clauses (i) - (iii), owned by the Canadian Borrower *minus* (b) any Reserves.

"**Canadian Credit Party**" shall mean any of the Canadian Borrower and each Canadian Guarantor.

"**Canadian Dollar**" and "**C$**" shall mean lawful money of Canada.

"**Canadian Guarantor**" shall mean (a) the Canadian Borrower (other than with its respect to its own Obligations) and (b) the direct parent company of the Canadian Borrower to the extent it is a Foreign Subsidiary of the Parent Borrower. On the Closing Date, the Canadian Borrower is the only Canadian Guarantor.

"**Canadian Prime Rate**" shall mean on any date, the higher of (a) a fluctuating rate of interest per annum equal to the rate of interest in effect for such day on Canadian Dollar denominated commercial loans made in Canada, as publicly announced from time to time by Citibank N.A., Canadian branch as its "Base Rate" (or its equivalent or analogous rate) and (b) the sum of 1.00% *plus* the CDOR Rate for a thirty (30) day Interest Period as determined on such day; *provided* that, if at any time any rate described in clause (a) or (b) above is less than 0.00% then such rate in clause (a) or (b) shall be deemed to be 0.00%. The "Base Rate" (or its equivalent or analogous rate) is a rate set by Citibank N.A., Canadian branch based upon various factors including Citibank N.A., Canadian branch's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans made in Canadian Dollars in Canada, which may be priced at, above, or below such announced rate. Any change in such rate shall take effect at the opening of business on the day of such change. In the event Citibank N.A., Canadian branch (including any successor or assignee) does not at any time announce a "Base Rate", clause (a) of Canadian Prime Rate shall mean the "Base Rate" (or its equivalent or analogous rate), being the rate for loans made in Canadian Dollars in Canada publicly announced by a Canadian Schedule 1 Chartered Bank selected by Administrative Agent.

"**Canadian Prime Rate Loan**" shall mean a Loan denominated in Canadian Dollars that bears interest based on the Canadian Prime Rate.

"**Canadian Security Agreement**" shall mean the Canadian ABL Security Agreement, dated as of the Closing Date by and among the Canadian Credit Parties and

the Collateral Agent (as the same may be amended, restated, amended and restated, supplemented or otherwise modified or replaced from time to time).

"**Canadian Security Documents**" shall mean, collectively, (a) the Canadian Security Agreement, (b) each intellectual property security agreement and each other security agreement or other instrument or document executed and delivered by a Canadian Credit Party pursuant to Section 9.13 or pursuant to any other such Canadian Security Document.

"**Canadian Swing Line Lender**" shall mean Citibank, N.A., Canadian Branch, in its capacity as provider of Canadian Swing Line Loans, or any successor swing line lender to the Canadian Borrower hereunder.

"**Canadian Swing Line Loan**" shall have the meaning specified in Section 3.2(a).

"**Capital Lease**" shall mean, as applied to the Parent Borrower and the Restricted Subsidiaries, any lease obligation of any property (whether real, personal or mixed) by the Parent Borrower or any Restricted Subsidiary as lessee that, in conformity with GAAP, is, or is required to be, accounted for as a capital lease on the balance sheet of the Parent Borrower; *provided*, *however*, that notwithstanding anything to the contrary in this Agreement or in any other Credit Document, any leases that were not capital leases when entered into but are recharacterized as capital leases due to a change in accounting rules that becomes effective after the Closing Date shall for all purposes of this agreement not be treated as Capital Leases.

"**Capitalized Lease Obligations**" shall mean, as applied to the Parent Borrower and the Restricted Subsidiaries at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at such time be required to be capitalized and reflected as a liability on the balance sheet (excluding the footnotes thereto) of the Parent Borrower or the Restricted Subsidiary in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such Capital Lease prior to the first date upon which such Capital Lease may be prepaid by the lessee without payment of a penalty; *provided*, *however*, that notwithstanding anything to the contrary in this Agreement or in any other Credit Document, any obligations that were not required to be included on the balance sheet of the Parent Borrower or the Restricted Subsidiary as capital lease obligations when incurred but are recharacterized as capital lease obligations due to a change in accounting rules that becomes effective after the Closing Date shall for all purposes of this Agreement not be treated as Capitalized Lease Obligations.

"**Capitalized Software Expenditures**" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Parent Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity

with GAAP are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Parent Borrower.

"**Captive Insurance Subsidiary**" shall mean a Subsidiary of the Parent Borrower established for the purpose of, and to be engaged solely in the business of, insuring the businesses or facilities owned or operated by the Parent Borrower or any of its Subsidiaries or joint ventures or to insure related or unrelated businesses.

"**Carrier Reserve**" shall mean, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, a reserve with respect to amounts unpaid to shippers and other common carriers in respect of Inventory located in Germany.

"**Case**" shall have the meaning provided in the preamble to this Agreement.

"**Cash Collateralize**" shall mean, in respect of an obligation, to provide and pledge cash collateral in Dollars or any Alternative Currency ("**Cash Collateral**"), at a location and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and (as applicable) the relevant L/C Issuer (and "**Cash Collateralization**" has a corresponding meaning), which documentation is hereby consented to by the Appropriate Lenders.

"**Cash Dominion Period**" shall mean, each period commencing on the delivery of written notice from the Administrative Agent to the Parent Borrower notifying the Parent Borrower that (a) the Specified Aggregate Excess Availability has been less than the greater of (x) $~~25~~16,000,000 and (y) 10% of the Aggregate Line Cap for five (5) consecutive Business Days and/or (b) a Specified Event of Default has occurred and is continuing (*provided* that solely with respect to clause (iv) of the definition of "Specified Event of Default", after expiration of the cure period unless the Cash Dominion Period otherwise commences or is ongoing) and ending on the first date that (a) the Specified Aggregate Excess Availability has been at least the greater of (x) $~~25~~16,000,000 and (y) 10% of the Aggregate Line Cap for twenty (20) consecutive calendar days and (b) no Specified Event of Default has occurred and is then continuing.

"**Cash Equivalent**" shall mean:

(a) Dollars and cash in such foreign currencies held by the Parent Borrower or any Restricted Subsidiary from time to time in the ordinary course of business;

(b) securities issued or unconditionally guaranteed by the United States government or any agency or instrumentality thereof, in each case having maturities and/or reset dates of not more than 24 months from the date of acquisition thereof;

(c) securities issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than 24 months from the date of acquisition thereof and, at the time of acquisition, having an investment grade rating generally obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from another nationally recognized rating service);

(d) commercial paper or variable or fixed rate notes maturing no more than 12 months after the date of creation thereof and, at the time of acquisition, having a rating of at least A-3 or P-3 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(e) time deposits with, or domestic and LIBOR certificates of deposit or bankers' acceptances maturing no more than two years after the date of acquisition thereof issued by, the Administrative Agent (or any Affiliate thereof), any Lender or any other bank having combined capital and surplus of not less than $500,000,000 in the case of domestic banks and $100,000,000 (or the dollar equivalent thereof) in the case of foreign banks;

(f) repurchase agreements with a term of not more than 90 days for underlying securities of the type described in clauses (b), (c) and (e) above entered into with any bank meeting the qualifications specified in clause (e) above or securities dealers of recognized national standing;

(g) marketable short-term money market and similar funds (x) either having assets in excess of $500,000,000 or (y) having a rating of at least A-3 or P-3 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(h) shares of investment companies that are registered under the Investment Company Act of 1940 and substantially all the investments of which are one or more of the types of securities described in clauses (a) through (g) above; and

(i) in the case of Investments by any Restricted Foreign Subsidiary or Investments made in a country outside the United States of America, other customarily utilized high-quality Investments in the country where such Restricted Foreign Subsidiary is located or in which such Investment is made.

"**Cash Income Taxes**" shall mean, with respect to any period, all taxes based on income paid in cash by the Parent Borrower and its Restricted Subsidiaries during such period.

"**Cash Management Agreement**" shall mean any agreement or arrangement to provide Cash Management Services.

"**Cash Management Bank**" shall mean any Person (other than Holdings, the Parent Borrower or any Subsidiary of the Parent Borrower) that enters into a Cash Management Agreement with the Parent Borrower or any Restricted Subsidiary in its capacity as a provider of Cash Management Services and, in each case, at the time it enters into such Cash Management Agreement or on the Closing Date, is a Joint Lead Arranger, a Lender, an Affiliate of a Lender or a Joint Lead Arranger.

"**Cash Management Obligations**" shall mean obligations owed by the Parent Borrower or any Restricted Subsidiary to any Cash Management Bank or any other provider of Cash Management Services in connection with, or in respect of, any Cash Management Services or under any Cash Management Agreement.

"**Cash Management Services**" shall mean treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer (including automated clearing house fund transfer services), merchant services (other than those constituting a line of credit) and other cash management services.

"**Cash Management Systems**" shall mean the cash management systems described in Section 9.16.

"**CDOR Loan**" shall mean any Loan bearing interest at a rate determined by reference to the CDOR Rate.

"**CDOR Rate**" shall mean with respect to each Interest Period for a CDOR Loan, the rate of interest per annum equal to the average rate applicable to Canadian Dollar Bankers' Acceptances having an identical or comparable term as the proposed CDOR Loan displayed and identified as such on the display referred to as the "Reuters Screen CDOR Page" (as defined in the International Swap Dealer Association, Inc.'s definitions, as may be amended, restated or modified) (or any display substituted therefor) of Reuters Monitor Money Rates Service as at approximately 10:~~00~~15 a.m. Toronto time on the first day of such Interest Period (or, if the first day of such Interest Period is not a Business Day, as of approximately 10:~~00~~15 a.m. Toronto time on the immediately preceding Business Day), *plus* five (5) basis points; *provided* that if such rate does not appear on the "CDOR Page" at such time on such date, the rate for such date will be the annual interest rate equivalent to the discount rate as of approximately 10:~~00~~15 a.m. Eastern time on such day at which one of the three largest Canadian chartered banks listed on Schedule I of the *Bank Act* (Canada) as selected by Administrative Agent is then offering to purchase Canadian Dollar denominated bankers' acceptances accepted by it having such specified term (or a term as closely as possible

comparable to such specified term), *plus* five (5) basis points; *provided further* that, in each case, if any such rate is below ~~zero~~0.50%, the CDOR Rate shall be deemed to be ~~zero~~0.50%.

"Certificated Securities" shall have the meaning provided in Section 8.17.

"**CFC**" shall mean a Subsidiary of the Parent Borrower that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"**CFC Holding Company**" shall mean a Subsidiary of the Parent Borrower that has no material assets other than (a) the equity interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) in (x) one or more Foreign Subsidiaries that are CFCs or (y) one or more other CFC Holding Companies and (b) cash and Cash Equivalents and other assets being held on a temporary basis incidental to the holding of assets described in clause (a) of this definition. It is understood and agreed that Sierra Communication International LLC, a Delaware limited liability company, constitutes a CFC Holding Company on the Closing Date.

"**Change in Law**" shall mean (a) the adoption of any Applicable Law after the Closing Date, (b) any change in any Applicable Law or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any party with any guideline, request, directive or order issued or made after the Closing Date by any central bank or other governmental or quasigovernmental authority (whether or not having the force of law); *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"**Change of Control**" shall mean and be deemed to have occurred if (a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), but excluding any employee benefit plan of such Person and its subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, shall have, directly or indirectly, acquired beneficial ownership of Voting Stock representing more than 35% of the aggregate voting power represented by the issued and outstanding Voting Stock of Avaya Holdings, (b) Holdings shall at any time cease to be (i) Avaya Holdings or (ii) a Wholly Owned Subsidiary of Avaya Holdings, (c) Holdings shall not own, directly or indirectly, beneficial ownership of 100% of the Stock and Stock Equivalents of any Borrower (with respect to any Foreign Borrower, for so long as such Person remains a Borrower

hereunder) or (d) there shall occur any "Change of Control" under the Term Loan Credit Agreement.

"**Claim**" shall have the meaning provided in the definition of "Environmental Claims".

"**Closing Date**" shall mean December 15, 2017, on which the conditions set forth in Section 6 are first satisfied.

"**Closing Date Existing Letters of Credit**" shall mean all letters of credit issued by an L/C Issuer to any Credit Party prior to the Closing Date and listed on Schedule 1.1(b).

"**Closing Refinancing**" shall mean the repayment in full of all outstanding indebtedness of the Avaya Debtors under the Existing DIP Agreement (other than contingent obligations not yet due) and the release of all Liens granted thereunder.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time. Section references to the Code are to the Code, as in effect on the Closing Date, and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefore.

"**Collateral**" shall mean the U.S. Collateral and the Foreign Collateral.

"**Collateral Access Agreement**" shall mean a landlord waiver, bailee letter, or acknowledgment agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of or having a Lien upon, Inventory or other Collateral (or books and records relating thereto), in each case, in form and substance reasonably satisfactory to Administrative Agent and the Parent Borrower.

"**Collateral Agent**" shall mean Citibank, N.A., in its capacity as collateral agent (or collateral trustee) for the Secured Parties under this Agreement and the Security Documents, or any successor collateral agent appointed pursuant hereto, it being understood that Citibank, N.A. may designate any of its Affiliates as the collateral agent (or collateral trustee) and that such Affiliate shall be considered a Collateral Agent for all purposes hereunder.

"**Commercial Letter of Credit**" shall mean any letter of credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a Person in the ordinary course of business of such Person.

"**Commitment Letter**" shall mean the amended and restated commitment letter, dated October 31, 2017, among Avaya Holdings, the Parent Borrower and the Joint Lead Arrangers (and their Affiliates), Blackstone Holdings Finance Co. L.L.C. and Benefit Street Partners LLC.

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

"**Communications**" shall have the meaning provided in Section 13.17(a).

"**Company Material Adverse Change**" shall mean any event, occurrence, fact, condition or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Parent Borrower and its Subsidiaries, taken as a whole or (b) the ability of the Parent Borrower to consummate the Transactions; *provided* that , clause (a) shall exclude events, occurrences, facts, conditions or changes arising out of, relating to or resulting from: (i) changes generally affecting the economy, financial, securities, or capital markets in the United States or globally; (ii) the announcement of the Transactions contemplated by the Commitment Letter (including, for the avoidance of doubt, the announcement of the Plan (as contemplated, described and defined in the Plan)) and the Parent Borrower's compliance with the terms and conditions of the Commitment Letter, the Plan and the Transactions contemplated thereby; (iii) the Parent Borrower's taking of any action contemplated by the Commitment Letter or in connection with confirmation and consummation of the Plan; (iv) any change in GAAP or Applicable Law; (v) national or international political or social conditions, including the engagement by any country, state, republic, union or sovereignty in hostilities, whether or not pursuant to the declaration of a national emergency or war (or any escalation or worsening of such hostilities), or the occurrence of any military or terrorist attack upon any country, state, republic, union or sovereignty, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of any country, state, republic, union or sovereignty; (vi) any conditions resulting from natural disasters; (vii) the failure, in and of itself, to meet internal or published projections, forecasts, budgets, or revenue, sales or earnings predictions for any period (but not the facts or circumstances underlying or contributing to any such failure); (viii) any threatened or pending claim, action, suit, litigation or proceeding relating to the Transactions or the Plan or that is otherwise released and discharged, as of the Closing Date, in connection with the Transactions or the Plan; or (ix) general conditions (or changes therein) in the Parent Borrower's industries; *provided*, *further*, that any event, occurrence, fact, condition or change referred to in clauses (i), (iv), (v), (vi) or (ix) immediately above shall be taken into account in determining whether a Company Material Adverse Change has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a materially disproportionate effect on the Parent Borrower and its Subsidiaries, taken as a whole, compared to other participants in the industries in which the Parent Borrower and its Subsidiaries conduct their businesses.

"**Company Model**" shall mean the model delivered to the Joint Lead Arrangers on July 31, 2017.

"**Concentration Account**" shall have the meaning provided in Section 9.16(c).

"**Confidential Information**" shall have the meaning provided in Section 13.16.

"**Confirmation Order**" shall have the meaning provided in the Recitals hereto.

"**Consolidated Depreciation and Amortization Expense**" shall mean, with respect to the Parent Borrower and the Restricted Subsidiaries for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees or costs, debt issuance costs, commissions, fees and expenses, capitalized expenditures, Capitalized Software Expenditures, amortization of expenditures relating to software, license and intellectual property payments, amortization of any lease related assets recorded in purchase accounting, customer acquisition costs, unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, amortization of original issue discount resulting from the issuance of Indebtedness at less than par and incentive payments, conversion costs, and contract acquisition costs of the Parent Borrower and the Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated EBITDA**" shall mean, for any period, Consolidated Net Income for such period, *plus*:

(a) without duplication and (except in the case of the add-backs set forth in clauses (vii) and (xi) below) to the extent deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for the Parent Borrower and the Restricted Subsidiaries for such period:

(i) Fixed Charges (including (x) net losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities in each case to the extent included in Consolidated Interest Expense, together with items excluded from Consolidated Interest Expense pursuant to clause (1)(o) - (z) of the definition thereof),

(ii) provision for taxes based on income or profits or capital gains, including federal, foreign, state, franchise, excise, value-added and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) paid or accrued during such period, including any penalties and interest related to such taxes or arising from any tax examination, to the extent the same were deducted (and not added back) in computing such Consolidated Net Income and the net tax expense associated with

any adjustments made pursuant to clauses (a) through (t) of the definition of "Consolidated Net Income",

(iii) Consolidated Depreciation and Amortization Expense for such period,

(iv) the amount of any restructuring cost, charge or reserve (including any costs incurred in connection with acquisitions after the Closing Date and costs related to the closure and/or consolidation of facilities) and any one time expense relating to enhanced accounting function or other transaction costs, public company costs, costs and expenses in connection with the implementation of fresh start accounting, and costs related to the implementation of operational and reporting systems and technology initiatives (*provided* that such costs related to the implementation of operation and reporting systems and technology initiatives shall not exceed $50,000,000 for any such period),

(v) any other non-cash charges, expenses or losses, including any non-cash asset retirement costs, non-cash increase in expenses resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments or due to purchase accounting, or any other acquisition, non-cash compensation charges, non-cash expense relating to the vesting of warrants, write-offs or write-downs for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period),

(vi) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary,

(vii) the amount of net cost savings projected by the Parent Borrower in good faith to be realizable as a result of specified actions, operational changes and operational initiatives (including, to the extent applicable, resulting from the Transactions) taken or to be taken prior to or during such period, including any "run-rate" synergies, operating expense reductions and improvements and cost savings that are reasonably identifiable and determined in good faith by the Parent Borrower in connection with the Transactions, acquisitions, Dispositions, other customary specified transactions or other cost saving initiatives and other initiatives to result from actions which have been taken or with respect to which substantial steps have been taken or are expected to be taken no later than 24 months following the consummation of the Transactions, any such specified actions, operational changes and operational initiatives (which "run-rate" synergies, operating expense reductions and improvements and cost savings shall be added to Consolidated EBITDA until fully realized, shall be subject to

certification by management of the Parent Borrower and shall be calculated on a Pro Forma Basis as though such "run-rate" synergies, operating expense reductions and improvements and cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that no "run-rate" synergies, operating expense reductions and improvements and cost savings shall be added pursuant to this clause (vii) to the extent duplicative of any expenses or charges relating to such cost savings that are included in clause (iv) above with respect to such period,

(viii) the amount of losses on Dispositions of receivables and related assets in connection with any Permitted Receivables Financing or Qualified Securitization Financing and any losses, costs, fees and expenses in connection with the early repayment, accelerated amortization, repayment, termination or other payoff (including as a result of the exercise of remedies) of any Permitted Receivables Financing or any Qualified Securitization Financing,

(ix) contract termination costs and any costs, charges or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement or other equity-based compensation, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Parent Borrower or Net Cash Proceeds of an issuance of Stock or Stock Equivalents (other than Disqualified Stock) of the Parent Borrower (or any direct or indirect parent thereof) solely to the extent that such Net Cash Proceeds are excluded from the calculation of the Available Equity Amount,

(x) [reserved],

(xi) the proceeds of any business interruption insurance,

(xii) extraordinary, unusual or non-recurring charges, expenses or losses (including unusual or non-recurring expenses), transaction fees and expenses and consulting and advisory fees, indemnities and expenses, severance, integration costs, costs of strategic initiatives, relocation costs, consolidation and closing costs, facility opening and pre-opening costs, business optimization expenses or costs, transition costs, restructuring costs, signing, retention, recruiting, relocation, signing, stay or completion bonuses and expenses (including payments made to employees who are subject to non-compete agreements),

(xiii) any impairment charge or asset write-off or write-down including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets and Investments in debt and equity securities, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP,

(xiv) cash receipts (or any netting arrangements resulting in increased cash receipts) not added in arriving at Consolidated EBITDA or Consolidated Net

Income in any period to the extent the non-cash gains relating to such receipts were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added,

(xv) adjustments identified in the Company Model, less

(b) without duplication and to the extent included in arriving at such Consolidated Net Income for the Parent Borrower and the Restricted Subsidiaries, the sum of the following amounts for such period:

(i) non-cash gains increasing Consolidated Net Income for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period),

(ii) extraordinary, unusual or non-recurring gains,

(iii) cash expenditures (or any netting arrangements resulting in increased cash expenditures) not deducted in arriving at Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash losses relating to such expenditures were added in the calculation of Consolidated EBITDA pursuant to paragraph (a) above for any previous period and not deducted, and

(iv) the amount of any minority interest income consisting of Subsidiary losses attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary,

in each case, as determined on a consolidated basis for the Parent Borrower and the Restricted Subsidiaries in accordance with GAAP; *provided* that

(i) there shall be included in determining Consolidated EBITDA for any period, without duplication, (A) the Acquired EBITDA of any Person or business, or attributable to any property, assets, division or line of business acquired by the Parent Borrower or any Restricted Subsidiary during such period (or any property, assets, division or line of business subject to a letter of intent or purchase agreement at such time) (but not the Acquired EBITDA of any related Person or business or any Acquired EBITDA attributable to any property, assets, division or line of business, in each case to the extent not so acquired) to the extent not subsequently sold, transferred, abandoned or otherwise disposed by the Parent Borrower or such Restricted Subsidiary (each such Person, property, assets, division or line of business acquired and not subsequently so disposed of, an "**Acquired Entity or Business**") and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a "**Converted Restricted Subsidiary**"), in each case based on the actual Acquired EBITDA of such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) and (B) an

adjustment in respect of each Pro Forma Entity equal to the amount of the Pro Forma Adjustment with respect to such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition), and

(ii) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset (other than an Unrestricted Subsidiary) sold, transferred, abandoned or otherwise disposed of, closed or classified as discontinued operations by the Parent Borrower or any Restricted Subsidiary during such period (each such Person, property, business or asset so sold, transferred, abandoned or otherwise disposed of, or closed or so classified, a "**Sold Entity or Business**"), and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a "**Converted Unrestricted Subsidiary**"), in each case based on the actual Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer or disposition, closure, classification or conversion).

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes the four fiscal quarters as set forth below, the Consolidated EBITDA for such fiscal quarters shall be deemed to be $226,000,000 for the fiscal quarter ended December 31, 2016, $187,000,000 for the fiscal quarter ended March 31, 2017, $192,000,000 for the fiscal quarter ended June 30, 2017 and $216,000,000 for the fiscal quarter ended September 30, 2017.

"**Consolidated First Lien Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) the sum, without duplication, of (i) the Consolidated Secured Debt constituting (w) the Obligations, (x) the Term Loan Obligations, (y) any Indebtedness that is secured by a Lien on the Term Priority Collateral that is *pari passu* with the Lien securing the Term Loan Obligations and (z) any Indebtedness that is secured by a Lien on the ABL Priority Collateral that is senior to or *pari passu* with the Lien securing the Term Loan Obligations and (ii) Consolidated Secured Debt of the type described in clause (ii) of the definition thereof, in each case as of the most recent four fiscal quarter period for which financial statements described in Section 9.1(a) or (b) are available to (b) Consolidated EBITDA for such four fiscal quarter period.

"**Consolidated Interest Expense**" shall mean, with respect to any period, without duplication, the sum of:

(1) consolidated interest expense of the Parent Borrower and the Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit, bankers' acceptances or

collateral posting facilities, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (o) annual agency fees paid to the administrative agents and collateral agents under this Agreement, the Term Loan Credit Agreement and the other credit facilities, (p) additional interest with respect to failure to comply with any registration rights agreement owing to holders of any securities, (q) costs associated with obtaining Hedging Obligations, (r) accretion of asset retirement obligations and accretion or accrual of discounted liabilities not constituting Indebtedness, (s) any expense resulting from the discounting of any Indebtedness in connection with the application of fresh start accounting or purchase accounting, (t) penalties and interest relating to taxes (u) amortization of reacquired Indebtedness, deferred financing fees, debt issuance costs, commissions, fees and expenses, (v) any expensing of bridge, commitment and other financing fees, (w) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Permitted Receivables Financing, (x) any prepayment premium or penalty, (y) any interest expense attributable to a parent entity resulting from push-down accounting and (z) any lease, rental or other expenses from operating leases); *plus*

(2) consolidated capitalized interest of the Parent Borrower and the Restricted Subsidiaries, in each case for such period, whether paid or accrued; *less*

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" shall mean, for any period, the net income (loss) of the Parent Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding, without duplication, the net after-tax effect of,

(a) any extraordinary, unusual or nonrecurring losses, gains, fees, costs, charges or expenses for such period,

(b) Transaction Expenses,

(c) the cumulative effect of a change in accounting principles and changes as a result of adoption or modification of accounting policies during such period,

(d) any income (or loss) from disposed, abandoned or discontinued operations and any gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations,

(e) any gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions or abandonments other than in the ordinary course of business, as determined in good faith by the Parent Borrower,

(f) any income (or loss) during such period of any Person that is an Unrestricted Subsidiary, and any income (or loss) during such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; *provided* that the Consolidated Net Income of the Parent Borrower and the Restricted Subsidiaries shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) by any Unrestricted Subsidiary or such other Person from its income to the Parent Borrower or any Restricted Subsidiary during such period,

(g) [reserved],

(h) all adjustments (including the effects of such adjustments pushed down to the Parent Borrower and the Restricted Subsidiaries) in the Parent Borrower's consolidated financial statements pursuant to GAAP, resulting from (i) the application of fresh start accounting principles as a result of the Avaya Debtors' emergence from bankruptcy or (ii) the application of purchase accounting in relation to the Transactions or any consummated acquisition, in each case, including the amortization, write-off or write-down of any assets, any deferred revenue and any other amounts and other similar adjustments and, whether consummated before or after the Closing Date,

(i) any income (or loss) for such period attributable to the early extinguishment of Indebtedness (other than Hedging Obligations, but including, for the avoidance of doubt, debt exchange transactions and the extinguishment of pre-petition indebtedness in connection with the Transactions),

(j) any unrealized income (or loss) for such period attributable to Hedging Obligations or other derivative instruments,

(k) any impairment charge or asset write-off or write-down including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets and investments in debt and equity securities or as a result of a Change in Law or regulation, in each case pursuant to GAAP,

(l) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights, and any cash charges associated with the rollover, acceleration or payout of Stock or Stock Equivalents by management of the Parent Borrower or any of its direct or indirect parent companies in connection with the Transactions,

(m) accruals and reserves established or adjusted within twelve months after the Closing Date that are so required to be established as a result of the Transactions in accordance with GAAP or changes as a result of adoption of or modification of accounting policies during such period,

(n) any accruals, payments, fees, expenses or charges (including rationalization, legal, tax, structuring, and other costs and expenses, but excluding depreciation or amortization expense) related to, or incurred in connection with, the Transactions (including letter of credit fees), the Plan, any offering of Stock or Stock Equivalents (including any equity offering), the listing of Avaya Holdings on the Closing Date, Investment, acquisition, Disposition, Restricted Payment, recapitalization or the issuance or incurrence of Indebtedness permitted to be incurred by the Parent Borrower and the Restricted Subsidiaries pursuant hereto (including any refinancing transaction or amendment, waiver, or other modification of any debt instrument), in each case whether or not consummated, including (A) such fees, expenses or charges related to the negotiation, execution and delivery and other transactions contemplated by this Agreement, the other Credit Documents and any Permitted Receivables Financing, (B) any amendment or other modification of this Agreement and the other Credit Documents, (C) any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed, (D) any charges or non-recurring merger costs as a result of any such transaction, and (E) earnout obligations paid or accrued during such period with respect to any acquisition or other Investment,

(o) the amount of management, monitoring, consulting and advisory fees and related indemnities and expenses paid in such period to the extent otherwise permitted pursuant to Section 9.9,

(p) restructuring-related or other similar charges, fees, costs, commissions and expenses or other charges incurred during such period in connection with this Agreement, the other Credit Documents, the Credit Facilities, the Case, any reorganization plan in connection with the Case, and any and all transactions contemplated by the foregoing, including the write-off of any receivables, the termination or settlement of executory contracts, professional and accounting costs fees and expenses, management

incentive, employee retention or similar plans (in each case to the extent such plan is approved by the Bankruptcy Court to the extent required), litigation costs and settlements, asset write-downs, income and gains recorded in connection with the corporate reorganization of the Avaya Debtors;

(q) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Parent Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days),

(r) to the extent covered by insurance and actually reimbursed, or, so long as the Parent Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption,

(s) any net unrealized gain or loss (after any offset) resulting from currency translation gains or losses relating to currency remeasurements of Indebtedness (including any gain or loss resulting from obligations under any Hedging Obligation for currency exchange risk) and any foreign currency translation gains or losses, and

(t) to the extent non-cash and deducted in calculating net income (or loss), any net pension, post-employment benefit or long-term disability costs, including interest cost, service cost, actuarial expected return on plan assets, amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of unrecognized net obligations (and loss or cost) existing at the date of initial application of FASB Standard 87, 106 and 112 (or their equivalents under the ASC), and any other items of a similar nature and any gain or loss attributable to mark-to-market adjustments in the valuation of pension liabilities, including actuarial gain or loss on pension and post-retirement plans, curtailments and settlements and prior service cost adjustment.

"**Consolidated Secured Debt**" shall mean, as of any date of determination, Consolidated Total Debt at such date which either (i) is secured by a Lien on the U.S. Collateral (and other assets of the Parent Borrower or any Restricted Subsidiary pledged to secure the Obligations pursuant to Section 10.2(i)) or (ii) constitutes Capitalized Lease Obligations or purchase money Indebtedness of the Parent Borrower or any Restricted Subsidiary.

"**Consolidated Secured Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) Consolidated Secured Debt as of the most recent four fiscal quarter period for which financial statements described in Section 9.1(a) or (b) are available to (b) Consolidated EBITDA for such four fiscal quarter period.

"**Consolidated Total Assets**" shall mean, as of any date of determination, the amount that would, in conformity with GAAP, be set forth opposite the caption "total assets" (or any like caption), after intercompany eliminations, on a consolidated balance sheet of the Parent Borrower and the Restricted Subsidiaries at such date (or, if such date of determination is a date prior to the first date on which such consolidated balance sheet has been (or is required to have been) delivered pursuant to Section 9.1, on the pro forma financial statements delivered pursuant to Section 6.10 (and, in the case of any determination relating to any Specified Transaction, on a Pro Forma Basis including any property or assets being acquired in connection therewith)).

"**Consolidated Total Debt**" shall mean, as of any date of determination, (a) (i) all Indebtedness of the types described in clauses (a) and (b) (solely to the extent such Indebtedness matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the sole option of the Parent Borrower or any Restricted Subsidiary, to a date more than one year from the date of its creation), clause (d) (but, in the case of clause (d), only to the extent of any unreimbursed drawings under any letter of credit which are not cash collateralized or backstopped) and clause (f) of the definition thereof, in each case actually owing by the Parent Borrower and the Restricted Subsidiaries on such date and to the extent appearing on the balance sheet of the Parent Borrower determined on a consolidated basis in accordance with GAAP (*provided* that the amount of any Capitalized Lease Obligations or any such Indebtedness issued at a discount to its face value shall be determined in accordance with GAAP; *provided*, *further*, that the effects of push-down accounting shall be excluded) and (ii) purchase money Indebtedness (and excluding, for the avoidance of doubt, Qualified Securitization Financing, Permitted Receivables Financing, Hedging Obligations and Cash Management Obligations) *minus* (b) the aggregate amount of all Unrestricted Cash.

"**Consolidated Total Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) Consolidated Total Debt as of the most recent four fiscal quarter period for which financial statements described in Section 9.1(a) or (b) are available to (b) Consolidated EBITDA for such four fiscal quarter period.

"**Contingent Obligation**" shall mean indemnification Obligations and other similar contingent Obligations for which no claim has been made in writing (but excluding, for the avoidance of doubt, amounts available to be drawn under Letters of Credit).

"**Contractual Requirement**" shall have the meaning provided in Section 8.3.

"**Converted Restricted Subsidiary**" shall have the meaning provided in the definition of the term "Consolidated EBITDA".

"**Converted Unrestricted Subsidiary**" shall have the meaning provided in the definition of the term "Consolidated EBITDA".

"**Cost**" shall mean the coast of purchases of Inventory determined according to the accounting policies used in the preparation of the Parent Borrower's financial statements.

"**Covenant Trigger Period**" shall mean any period (a) commencing on the date upon which Specified Aggregate Excess Availability is less than the greater of (i) 10% of the Aggregate Line Cap and (ii) $~~25~~16,000,000 and (b) ending on the date upon which the Specified Aggregate Excess Availability shall have been at least the greater of (i) 10% of the Aggregate Line Cap and (ii) $~~25~~16,000,000 for a period of at least twenty (20) consecutive calendar days.

"**Covered Entity**" shall have the meaning provided in Section 13.23(b).

"**Covered Party**" shall have the meaning provided in Section 13.23(a).

"**Credit Documents**" shall mean this Agreement, the Guarantees, the Security Documents, the Fee Letter, the Issuer Documents and any promissory notes issued by any Borrower hereunder, any Incremental Amendment, any Extension Amendment and any other document jointly identified by the Parent Borrower and the Administrative Agent as a "Credit Document", *provided* that, for the avoidance of doubt, Secured Cash Management Agreements and Secured Hedging Agreements shall not constitute Credit Documents.

"**Credit Extension**" shall mean each of the following (i) a Borrowing and (ii) an L/C Credit Extension.

"**Credit Facility**" shall mean any category of Revolving Credit Commitments and extensions of credit thereunder.

"**Credit Insurance**" shall mean credit insurance arrangements and related documentation (including security) in form and substance, and with a creditworthy insurer, satisfactory to the Administrative Agent in its Permitted Discretion.

"**Credit Party**" shall mean each of the U.S. Credit Parties and the Foreign Credit Parties.

"**DDAs**" shall mean the primary checking or other demand deposit accounts maintained by a Borrower or a U.S. Subsidiary Guarantor, and including any such account into which the proceeds of any sale of Inventory or collection of Accounts are deposited. All funds in such DDAs shall be conclusively presumed to be Collateral and proceeds of Collateral and the Administrative Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the DDAs, subject to the Security Documents.

"**Debtor Relief Laws**" shall mean the Bankruptcy Code, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada), the *Insolvency Act 1986* (UK), the German Insolvency Code (*Insolvenzordnung*) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, arrangement, rearrangement, readjustment, composition, liquidation, receivership, administration, insolvency, reorganization, examinership, or similar debtor relief or debt adjustment Laws of the United States, Canada, England and Wales, Ireland, Germany or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally, including (solely with respect to any corporation incorporated under the laws of Canada or any province or territory thereof) any corporate law of any jurisdiction permitting a debtor to compromise the claims of its creditors against it and including any rules and regulations pursuant thereto.

"**Default**" shall mean any event, act or condition that with notice or lapse of time hereunder, or both, would constitute an Event of Default.

"**Default Rate**" shall have the meaning provided in Section 2.8(b).

"**Default Right**" shall have the meaning provided in Section 13.23(b).

"**Defaulting Lender**" shall mean any Lender with respect to which a Lender Default is in effect.

"**Designated Non-Cash Consideration**" shall mean the fair market value of non-cash consideration received by the Parent Borrower or any Restricted Subsidiary in connection with a Disposition pursuant to Section 10.4(b) that is designated as Designated Non-Cash Consideration pursuant to a certificate of an Authorized Officer of the Parent Borrower, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash or Cash Equivalent within 180 days following the consummation of the applicable Disposition). A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise Disposed of in compliance with Section 10.4.

"**Dilution Percentage**" shall mean, at any time, with respect to (x) the U.S. Credit Parties, taken as a whole, or (y) the Foreign Credit Parties, taken individually, as applicable, an amount (expressed as a percentage) equal to (a) the sum (without duplication) of all deductions, credit memos, returns, adjustments, allowances, bad-debt write-offs and other non-cash credits which are recorded (or should have been recorded) in accordance with their standard policies, by them to reduce their respective accounts receivable, divided by (b) the sum of aggregate Eligible Accounts generated by the U.S. Credit Parties, taken as a whole, or the Foreign Credit Parties, taken individually, as applicable, in the case of each of clauses (a) and (b) for the 12 fiscal months of the Parent Borrower then most recently ended as shown in the Monthly Borrowing Base Certificate most recently delivered pursuant to Section 9.1(i).

"**Dilution Reserve**" shall mean, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, with respect to (x) the U.S. Credit Parties, taken as a whole, or (y) the Foreign Credit Parties, taken individually, as applicable, an amount equal to the product of (a) the positive result, if any, of the Dilution Percentage for such Persons, taken as a whole, at such time *minus* 5% multiplied by (b) the Eligible Accounts of such Persons, taken as a whole or individually as provided above, at such time; *provided*, that, the Dilution Reserve shall not exceed 1% per each full percentage point by which the result calculated in clause (a) is positive; *provided further* that Dilution Reserve may reflect fractional percentages in dilution.

"**Disposed EBITDA**" shall mean, with respect to any Sold Entity or Business or any Converted Unrestricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary (determined as if references to the Parent Borrower and the Restricted Subsidiaries in the definition of Consolidated EBITDA were references to such Sold Entity or Business or Converted Unrestricted Subsidiary, as applicable, and its respective Subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business or Converted Unrestricted Subsidiary, as the case may be.

"**Disposition**" or "**Dispose**" shall mean (i) the convey, sale, lease, assignment, transfer or other disposition of any of property, business or assets (including receivables and leasehold interests), whether owned on the Closing Date or hereafter acquired or (ii) the sale to any Person (other than to the Parent Borrower or a U.S. Subsidiary Guarantor) any shares owned by it of any Subsidiary's Stock and Stock Equivalents.

"**Disqualified Institutions**" shall mean (a) those banks, financial institutions or other Persons separately identified in writing by the Parent Borrower to the Administrative Agent on or prior to October 23, 2017, or to any Affiliates of such banks, financial institutions or other persons identified by the Parent Borrower in writing or that are readily identifiable as Affiliates on the basis of their name and (b) competitors identified in writing to the Administrative Agent from time to time (or Affiliates thereof identified by the Parent Borrower in writing or that are readily identifiable as Affiliates

on the basis of their name) of the Parent Borrower or any of its Subsidiaries (other than such Affiliate that is a bona fide debt fund or a fixed-income only investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of business and whose managers have fiduciary duties to the third-party investors in such fund or investment vehicle independent from their duties owed to such competitor); *provided* that no such identification after the date of a relevant assignment shall apply retroactively to disqualify any person that has previously acquired an assignment or participation of an interest in any of the Credit Facilities with respect to amounts previously acquired. The list of all Disqualified Institutions set forth in clauses (a) and (b) shall be made available to any Lender upon request.

"**Disqualified Stock**" shall mean, with respect to any Person, any Stock or Stock Equivalents of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Stock or Stock Equivalents that is not Disqualified Stock), other than as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of such change of control, asset sale or similar event shall be subject to the termination of the Aggregate Revolving Credit Commitments and all Letters of Credit (unless such Letters of Credit have been Cash Collateralized, backstopped or otherwise collateralized on terms and conditions reasonably satisfactory to the applicable L/C Issuer) and the repayment in full of the Loans, together with interest, fees and all other Obligations (other than Hedging Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreements or Contingent Obligations), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of such change of control, asset sale or similar event shall be subject to the termination of the Aggregate Revolving Credit Commitments and all Letters of Credit (unless such Letters of Credit have been Cash Collateralized, backstopped or otherwise collateralized on terms and conditions reasonably satisfactory to the applicable L/C Issuer) and the repayment in full of the Loans, together with interest, fees and all other Obligations (other than Hedging Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreements or Contingent Obligations), in whole or in part, in each case prior to the date that is ninety-one (91) days after the Maturity Date as determined at the time of the issuance; *provided* that if such Stock or Stock Equivalents are issued to any plan for the benefit of employees of the Parent Borrower or any of its Subsidiaries or by any such plan to such employees, such Stock or Stock Equivalents shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Parent Borrower (or any direct or indirect parent company thereof) or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations; *provided*, *further*, that any Stock or Stock Equivalents held by any present or former employee, officer, director, manager or consultant, of the Parent Borrower, any of its Subsidiaries or any of its direct or indirect parent companies or any other entity in which

the Parent Borrower or any Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors of the Parent Borrower, in each case pursuant to any stockholders' agreement, management equity plan or stock incentive plan or any other management or employee benefit plan or agreement or otherwise in order to satisfy applicable statutory or regulatory obligations or as a result of the termination, death or disability of such employee, officer, director, manager or consultant shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Parent Borrower or any of its Subsidiaries.

"**Dollar Amount**" shall mean, at any time:

(a) with respect to an amount denominated in Dollars, such amount; and

(b) with respect to an amount denominated in an Alternative Currency, an equivalent amount thereof in Dollars as determined by the Administrative Agent or the relevant L/C Issuer or Swing Line Lender, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"**Dollars**" and "**$**" shall mean dollars in lawful currency of the United States of America.

"**Domestic Subsidiary**" shall mean each Subsidiary of the Parent Borrower that is organized under the laws of the United States or any state thereof, or the District of Columbia.

"**Dutch Security Documents**" shall mean (a) the Dutch law governed pledge agreement set forth on Schedule 1.1(g) and (b) any other security agreement expressed to be governed by Dutch law among one or more of the Foreign Credit Parties (and such other Persons as may be party thereto) and, as applicable, the Foreign Secured Parties and/or the Collateral Agent for the benefit of the Foreign Secured Parties, including each pledge agreement, mortgage, security agreement, guarantee or other agreement that is entered into by any Foreign Credit Party or any Person who is the holder of equity interests in any Foreign Credit Party, in each case as the same may be amended, restated or otherwise modified from time to time.

"Early Opt-in Election" shall mean the occurrence of:

(1) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to Holdings and the Borrowers) that the Required Lenders have determined (x) with respect to Loans denominated in Dollars, that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.18 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace

the LIBOR Rate for loans in Dollars or (y) with respect to Loans denominated in an Alternative Currency, U.S. syndicated credit facilities providing for loans in such currency being executed at such time, or that include language similar to that contained in Section 2.18 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBOR Rate for loans denominated in such Alternative Currency, and

(2) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to Holdings, the Borrowers and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

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

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Accounts**" shall mean, with respect to any Person, as of any date of determination thereof, the aggregate amount of all Accounts due to any such Person (other than all Accounts constituting Eligible Investment Grade Accounts), except to the extent that (determined without duplication):

(a) except as provided in clause (v) of this definition, such Account does not arise from the sale of goods or the performance of services by such Person in the ordinary course of its business;

(b) (i) such Person's right to receive payment is contingent upon the fulfillment of any condition whatsoever (other than the preparation and delivery of an invoice) or (ii) as to which such Person is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) any defense, counterclaim, setoff or dispute exists as to such Account, but only to the extent of such defense, counterclaim, setoff or dispute;

(d) such Account is not a true and correct statement of bona fide indebtedness incurred in the amount of the Account for the sale of goods to or services rendered for the applicable Account Debtor;

(e) an invoice, in form and substance consistent with such Person's credit and collection policies, or otherwise reasonably acceptable to the Administrative Agent (it being understood that the forms used by the Borrowers on the Closing Date are satisfactory to the Administrative Agent), has not been sent to the applicable Account Debtor in respect of such Account on or before the date as of which such Account is first included in a Borrowing Base Certificate or otherwise reported to the Administrative Agent (including Accounts identified as inactive, warranty or otherwise not attributable to an Account Debtor);

(f) such Account (i) is not owned by such Person or (ii) is subject to any Lien other than Liens permitted under Section 10.2(a), 10.2(b), 10.2(f), 10.2(g), 10.2(j), 10.2(k) (solely with respect to any lien securing Indebtedness for borrowed money) or 10.2(m);

(g) such Account is the obligation of an Account Debtor that is (i) a director, officer, other employee or Affiliate of a Credit Party (other than Accounts arising from the sale of goods or provision of services delivered to such Account Debtor in the ordinary course of business), (ii) a natural person or (iii) only if such Account obligation has not been incurred in the ordinary course or on arms' length terms, to any entity that has any common officer or director with a Credit Party;

(h) Accounts subject to a partial payment plan;

(i) such Person is liable for goods sold or services rendered by the applicable Account Debtor to such Person but only to the extent of the potential offset;

(j) upon the occurrence of any of the following with respect to such Account:

(i) the Account is not paid within 90 days of the original due date or 120 days following the original invoice date (or 150 days following the original invoice date with respect to customers listed on Schedule 1.1(d)); *provided* that up to $10,000,000 of Accounts not paid within 120 days following the original invoice date (or 150 days following the original invoice date with respect to customers listed on Schedule 1.1(d)) shall not be deemed ineligible pursuant to this clause (j)(i) for such reason, unless any such Account is not paid within 180 days following the original invoice date; *provided further*, that in calculating

delinquent portions of Accounts under this clause, unapplied credit balances more than 90 days past their original due date or 120 days following the original invoice date (or 150 days following the original invoice date with respect to customers listed on Schedule 1.1(d)) will be excluded; *provided further*, that upon the written request of the Parent Borrower, the Administrative Agent may from time to time in its Permitted Discretion add additional customers to Schedule 1.1(d);

(ii) the Account Debtor obligated upon such Account suspends its business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due;

(iii) the Account Debtor obligated upon such Account is a debtor or a debtor in possession under any bankruptcy law or any other federal, state or foreign (including any provincial or territorial) receivership, insolvency relief or other law or laws for the relief of debtors or other Debtor Relief Law; or

(iv) with respect to which Account (or any other Account due from the applicable Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance, or other instrument for the payment of money has been received, presented for payment, and returned uncollected for any reason;

(k) such Account is the obligation of an Account Debtor from whom 50% or more of the Dollar Amount of all Accounts owing by that Account Debtor are ineligible under clause (j)(i) of this definition;

(l) such Account, together with all other Accounts owing by such Account Debtor and its Affiliates as of any date of determination, exceeds 20% (or, solely for Accounts owing by Westcon Group, a division of Datatec Limited, 35%) of all Eligible Accounts, but, in each case, only to the extent of such excess;

(m) such Account is one as to which the Administrative Agent's Lien thereon, on behalf of itself and the applicable Secured Parties, is not a first priority perfected Lien, subject in priority only to Permitted Encumbrances (other than Permitted Encumbrances of the type described in clauses (d), (e), (f), (g), (h), (j), (l), (m), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee) or (ff));

(n) any of the representations or warranties in the Credit Documents with respect to such Account are untrue in any material respect with respect to such Account (or, with respect to representations or warranties that are qualified by materiality, any of such representations and warranties are untrue);

(o) such Account is evidenced by a judgment, Instrument or Chattel Paper (each such term as defined in the Uniform Commercial Code) (other than Instruments or Chattel Paper that are held by a Borrower or that have been delivered to the Administrative Agent);

(p) such Account is payable in any currency other than Dollars, *provided* that Eligible Accounts of the Canadian Borrower may also be payable in Canadian Dollars, and Eligible Accounts of a European Borrower may also be payable in Sterling, Euro, Australian Dollars, Thai Baht, Croatian Kuna, United Arab Emirates Dirham, Chinese Yuan, Swedish Krona, and South African Rand (in each case so long as such currency is exchangeable for Dollars within two Business Days);

(q) such Account is an Account with respect to which the Account Debtor is a Person other than a Governmental Authority unless (i) the Account Debtor's billing address is in an Eligible Jurisdiction, (ii) the Account Debtor is organized or incorporated under the Applicable Laws of an Eligible Jurisdiction or any state, province, territory or subdivision of an Eligible Jurisdiction or (iii) such Account is supported by an irrevocable letter of credit satisfactory to the Administrative Agent, in its Permitted Discretion (as to form, substance, and issuer or confirming bank), that has been delivered to the Administrative Agent, or covered by Credit Insurance;

(r) such Account is the obligation of an Account Debtor that is the United States government or a political subdivision thereof, or department, agency or instrumentality thereof if and to the extent that such Account together with all other Accounts owing by such Account Debtors as of any date of determination (collectively with Accounts referred to in the corresponding provision of clause (s) below), exceeds 10% of all Eligible Accounts; *provided* that if all Accounts owing by such Account Debtors as of any date of determination (collectively with Accounts referred to in the corresponding provision of clause (s) below) equals or exceeds in the aggregate 10% of all Eligible Accounts, then the excess of such aggregate Accounts over 10% of all Eligible Accounts shall not be Eligible Accounts unless the Administrative Agent, in its Permitted Discretion, has agreed to the contrary in writing and the Parent Borrower, if necessary or desirable, has complied with respect to such obligation with the Federal Assignment of Claims Act of 1940, or any applicable state, county or municipal law restricting assignment thereof;

(s) such Accounts are Accounts with respect to which the Account Debtor is the government of any country or sovereign state other than the United States, or of any state, province, territory, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or

other instrumentality thereof (other than any such Account (i) is supported by an irrevocable letter of credit satisfactory to the Administrative Agent, in its Permitted Discretion (as to form, substance, and issuer or confirming bank), that has been delivered to the Administrative Agent, or (ii) is covered by Credit Insurance), if and to the extent that such Accounts together with all other Accounts owing by such Account Debtors as of any date of determination (collectively with Accounts referred to in the corresponding provision of clause (r) above), exceeds in the aggregate 10% of all Eligible Accounts; *provided* that if all Accounts owing by such Account Debtors as of any date of determination (collectively with Accounts referred to in the corresponding provision of clause (r) above) equals or exceeds in the aggregate 10% of all Eligible Accounts, then the excess of such aggregate Accounts over 10% of all Eligible Accounts shall not be Eligible Accounts;

(t) such Account has been redated, extended, compromised, settled, adjusted or otherwise modified or discounted, except discounts or modifications that are granted by such Person in the ordinary course of business and that are reflected in the calculation of the applicable Borrowing Base;

(u) such Account is of an Account Debtor that is located in a state of the United States of America requiring the filing of a notice of business activities report or similar report in order to permit a Borrower to seek judicial enforcement in such state of payment of such Account, unless such Person has qualified to do business in such state or has filed a notice of business activities report or equivalent report for the then-current year or if such failure to file and inability to seek judicial enforcement is capable of being remedied without any material delay or material cost;

(v) such Accounts were acquired or originated by a Person acquired in a Permitted Acquisition (until such time as the Administrative Agent has completed a customary due diligence investigation as to such Accounts and such Person, which investigation may, at the sole discretion of the Administrative Agent, include a field examination, and the Administrative Agent is reasonably satisfied with the results thereof);

(w) Credit Card Receivables (other than Eligible Credit Card Receivables);

(x) Accounts which are subject to adjustment for (i) coupons, rebates, “buy one, get one free”, bundled offers, stock balancing, manufacture discontinued, price protection, dead-on-arrival, special bids, or similar sales incentives and promotional programs or (ii) miscellaneous marketing allowances other than non-cash reductions, in each case to the extent of such adjustment;

(y) Accounts that represent a sale on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or other repurchase or return basis;

(z) Accounts that are the obligation of an Account Debtor that is, to the knowledge of the applicable Borrower or the Administrative Agent, a Sanctioned Person;

(aa) Accounts that are subject to a restriction on assignment that is enforceable against third parties and that impairs the Administrative Agent's Lien on such Account or the Administrative Agent's ability to enforce the Account, after giving effect to any anti-assignment provisions in the Uniform Commercial Code or similar provisions under other Applicable Laws;

(bb) Accounts with respect to which the agreement evidencing such Accounts is not governed by the Applicable Laws of the Netherlands, Ireland, Germany, Canada, England and Wales, the United States, France, Denmark, Switzerland, Sweden, Belgium or Australia, or any state, province, territory or subdivision of any of the foregoing, or the Applicable Laws of such other jurisdictions as are acceptable to the Administrative Agent in its Permitted Discretion; *provided*, *however*, that, unless otherwise consented to by the Administrative Agent in its Permitted Discretion, the aggregate amount of Eligible Accounts with respect to which the agreement evidencing such Accounts is governed by the Laws of France, Denmark, Switzerland, Sweden, Belgium or Australia, or any state, province, territory or subdivision of any of the foregoing, may not exceed $10,000,000; or

(cc) such Account is otherwise unacceptable to the Administrative Agent in its Permitted Discretion.

"**Eligible Borrowing Base Cash**" shall mean the amount of cash and Cash Equivalents of a U.S. Credit Party at such time (to the extent held in an identified segregated account of the Administrative Agent that is (x) in the name of the Administrative Agent or (y) subject to a Blocked Account Agreement).

"**Eligible Credit Card Receivables**" shall mean, as of any date of determination, Accounts due to any Person from major credit card and debit card processors (including, but not limited to, VISA, Mastercard, American Express, Diners Club, DiscoverCard, Interlink, NYCE, Star/Mac, Tyme, Pulse, Accel, AFF, Shazam, CU244, Alaska Option and Maestro) that arise in the ordinary course of business and that have been earned by performance ("**Credit Card Receivables**") and that are not excluded as ineligible by virtue of one or more of the criteria set forth below, except that none of the following (determined without duplication) shall be deemed to be Eligible Credit Card Receivables:

(a) Accounts that have been outstanding for more than five (5) Business Days from the date of sale, or for such longer period(s) as may be approved by the Administrative Agent in its Permitted Discretion;

(b) Accounts with respect to which a Person does not have good and valid title, free and clear of any Lien (other than Liens permitted hereunder pursuant to Section 10.2(a), 10.2(b), 10.2(f), 10.2(g), 10.2(j), 10.2(k) (solely with respect Lien securing Indebtedness for borrowed money) or 10.2(m));

(c) Accounts as to which the Administrative Agent's Lien attached thereon on behalf of the applicable Secured Parties, is not a first priority perfected Lien, subject to Liens permitted hereunder pursuant to Section 10.2(m);

(d) Accounts that are disputed, or with respect to which a claim, counterclaim, offset or chargeback (other than chargebacks in the ordinary course by the credit card processors) has been asserted, by the related credit card processor (but only to the extent of such dispute, claim, counterclaim, offset or chargeback);

(e) Except as otherwise approved by the Administrative Agent, Accounts as to which the credit card processor has the right under certain circumstances to require such Person to repurchase the Accounts from such credit card or debit card processor;

(f) Except as otherwise approved by the Administrative Agent, Accounts arising from any private label credit card program of such Person; and

(g) Accounts due from major credit card and debit card processors (other than JCB, Visa, Mastercard, American Express, Diners Club, DiscoverCard, Interlink, NYCE, Star/Mac, Tyme, Pulse, Accel, AFF, Shazam, CU244, Alaska Option and Maestro) that the Administrative Agent in its Permitted Discretion determines to be unlikely to be collected.

"**Eligible In-Transit Inventory**" shall mean, as of any date of determination, without duplication of other Eligible Inventory, Inventory (a) which has been shipped from any location for receipt by a Person within fourteen days of the date of determination but which has not yet been received by such Person, (b) for which the purchase order is in the name of such Person and title has passed to such Person, (c) for which the document of title, to the extent applicable, reflects such Person as consignee (along with delivery to such Person of the documents of title, to the extent applicable, with respect thereto), (d) as to which the Collateral Agent has control over the documents of title, to the extent applicable, which evidence ownership of the subject Inventory, and (e) which otherwise is not excluded from the definition of Eligible Inventory. Eligible In-Transit Inventory shall not include Inventory accounted for as "in transit" by a Person by virtue of such Inventory's being in transit between such Person's locations within the

same legal jurisdiction or in storage trailers at such Person's locations; rather such Inventory shall be treated as "Eligible Inventory" if it satisfies the conditions therefor.

"**Eligible Inventory**" shall mean, as of any date of determination thereof, the aggregate amount of all Inventory of a Person, except that none of the following (determined without duplication) shall be deemed to be Eligible Inventory:

(a) Inventory with respect to which such Person does not have good, and valid title, free and clear of any Lien (other than Liens permitted hereunder pursuant to Section 10.2(a), 10.2(b), 10.2(f), 10.2(g), 10.2(j), 10.2(k) (solely with respect to Lien securing Indebtedness for borrowed money) or 10.2(m));

(b) Inventory as to which the Administrative Agent's Lien attached thereon on behalf of the Secured Parties, is not a first priority perfected Lien, subject in priority only to Permitted Encumbrances (other than Permitted Encumbrances of the type described in clauses (d), (e), (f), (g), (h), (j), (l), (m), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee) or (ff));

(c) Inventory as to which any of the representations or warranties in the Credit Documents with respect to such Inventory are untrue in any material respect with respect to such Inventory (or, with respect to representations or warranties that are qualified by materiality, any of such representations and warranties are untrue);

(d) Inventory that is either not finished goods or which constitutes work-in-process, raw materials, packaging and shipping material, supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return (but not held for resale or undergoing maintenance) or repossessed, or which constitutes goods held on consignment or goods which are not of a type held for sale in the ordinary course of business;

(e) Inventory that is not located in the U.S., Canada, Germany, the United Kingdom or Ireland;

(f) Inventory that is located at any location leased by such Person, unless (i) (x) the lessor has delivered to the Administrative Agent a Collateral Access Agreement (or with respect to any location outside the U.S., such other documentation as the Administrative Agent may reasonably require as to such location) or (y) a Reserve equal to two months base rent *plus*, without duplication, all other rent, charges and other amounts due with respect to such location has been established by the Administrative Agent in its Permitted Discretion (measured as of the most recent practicable date); provided that, with respect to Inventory at a leased location located in Germany, such Reserve may, in the sole discretion of the

Administrative Agent, be up to the lesser of (1) twenty-four (24) months' rent payments and (2) the amount of rent due during the remaining period of the applicable lease; provided further that this clause (f)(i) shall apply only from and after the date that is 60 days after the Closing Date (as such date may be extended by the Administrative Agent in its reasonable discretion) and (ii) the aggregate Cost of the Inventory located at such leased facility is at least $2,000,000;

(g) Inventory that is located in any third party storage facility or is otherwise in the possession of a bailee (including any repairman) and is not evidenced by a Document, unless (i) (x) such warehouseman or other bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may reasonably require or (y) an appropriate Reserve (which shall be an amount equal to the lesser of (1) the aggregate of all amounts owed by the Borrowers to such warehouseman or other bailee (measured as of the last day of the calendar month most recently then ended) and (2) the Cost of the aggregate amount of all Inventory at such location; provided that if the Borrowers cannot calculate the amount in clause (1) with reasonable accuracy, then only clause (2) shall apply) has been established by the Administrative Agent in its Permitted Discretion; *provided further* that this clause (g)(i) shall apply only from and after the date that is 60 days after the Closing Date (as such date may be extended by the Administrative Agent in its reasonable discretion) and (ii) the aggregate Cost of the Inventory located at such third party storage facility or otherwise in possession of such bailee is at least $5,000,000;

(h) Inventory that is being processed offsite at an Avaya contract manufacturer (unless such Avaya contract manufacturer has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may reasonably require), or is in-transit to or from a customer location or Avaya contract manufacturer (other than (x) Eligible In-Transit Inventory and (y) Inventory with respect to which there is an outstanding Eligible Letter of Credit);

(i) Inventory acquired or originated by a Person acquired in a Permitted Acquisition (until such time as the Administrative Agent has completed a customary due diligence investigation as to such Inventory and such Person, which investigation may, at the sole discretion of the Administrative Agent, include an appraisal or field examination, and the Administrative Agent is reasonably satisfied with the results thereof subject to its Permitted Discretion);

(j) Inventory that is not reflected in the details of a current perpetual inventory report;

(k) (i) Inventory of any Borrower located in Germany and (ii) Inventory owned by the German Borrowers, in each case unless and until the Administrative Agent has received one or more security agreements in respect of movable assets and customary legal opinions and other ancillary documents in respect thereof that are in form and substance reasonably satisfactory to the Administrative Agent; or

(l) such Inventory is otherwise unacceptable to the Administrative Agent in its Permitted Discretion.

"**Eligible Investment Grade Accounts**" shall mean, as of any date of determination, the aggregate amount of all Accounts due to any Person that otherwise satisfy the criteria set forth in the definition of "Eligible Accounts" and, in addition, the Account Debtor receives an Investment Grade Rating.

"**Eligible Jurisdiction**" shall mean Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Spain, Sweden, Portugal, United Kingdom, Canada, Puerto Rico, United States, Switzerland, Norway, Australia, and New Zealand.

"**Eligible Letter of Credit**" shall mean, as of any date of determination thereof, with respect to the Inventory of a Person, a Commercial Letter of Credit which supports the purchase of such Inventory, (i) for which no documents of title have then been issued; (ii) which Inventory when completed would otherwise constitute Eligible Inventory, and (iii) which Commercial Letter of Credit provides that it may be drawn only after the Inventory is completed and after documents of title have been issued for such Inventory, if applicable, reflecting such Person or the Collateral Agent as consignee of such Inventory.

"Employee Benefit Plan" shall mean an employee benefit plan (as defined in Section 3(3) of ERISA), other than a Foreign Plan, that is maintained or contributed to by Holdings, the Parent Borrower or any Subsidiary (or, with respect to an employee benefit plan subject to Title IV of ERISA, any ERISA Affiliate).

"**EMU Legislation**" shall mean the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

"**Environmental Claims**" shall mean any and all actions, suits, proceedings, orders, decrees, demands, demand letters, claims, liens, notices of noncompliance, violation or potential responsibility or investigation (other than reports prepared by or on behalf of Holdings, the Parent Borrower or any other Subsidiary of Holdings (a) in the ordinary course of such Person's business or (b) as required in connection with a financing transaction or an acquisition or disposition of Real Estate) or proceedings in each case relating in any way to any applicable Environmental Law or any permit issued, or any approval given, under any applicable Environmental Law

(hereinafter, "**Claims**"), including (i) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief relating to the presence, release or threatened release into the environment of Hazardous Materials or arising from alleged injury or threat of injury to human health or safety (to the extent relating to human exposure to Hazardous Materials), or to the environment, including ambient air, indoor air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands.

"**Environmental Law**" shall mean any applicable Federal, state, foreign, provincial (statutory and common law), territorial, or local statute, law, rule, regulation, ordinance, code and rule of common law now or, with respect to any post-Closing Date requirements of the Credit Documents, hereafter in effect, and in each case as amended, and any legally binding judicial or administrative interpretation thereof, including any legally binding judicial or administrative order, consent decree or judgment, relating to the protection of the environment, including ambient air, indoor air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands, or to human health or safety (to the extent relating to human exposure to Hazardous Materials), or Hazardous Materials.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time. Section references to ERISA are to ERISA as in effect on the Closing Date and any subsequent provisions of ERISA amendatory thereof, supplemental thereto or substituted therefor.

"**ERISA Affiliate**" shall mean each person (as defined in Section 3(9) of ERISA) that together with the Parent Borrower or any Subsidiary of the Parent Borrower would be deemed to be a "single employer" within the meaning of Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"**ERISA Event**" shall mean (i) the failure of any Employee Benefit Plan to comply with any provisions of ERISA and/or the Code or with the terms of such Employee Benefit Plan; (ii) any Reportable Event; (iii) the existence with respect to any Employee Benefit Plan of a non-exempt Prohibited Transaction; (iv) any failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived; (v) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (vi) the occurrence of any event or condition which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or the incurrence by any Credit Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, including but not limited to the imposition

of any Lien in favor of the PBGC or any Pension Plan; (vii) the receipt by any Credit Party or any of its ERISA Affiliates from the PBGC or a plan administrator of any written notice to terminate any Pension Plan under Section 4042(a) of ERISA or to appoint a trustee to administer any Pension Plan under Section 4042(b)(1) of ERISA; (viii) the incurrence by any Credit Party or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Pension Plan (or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA) or Multiemployer Plan; (ix) the receipt by any Credit Party or any of its ERISA Affiliates of any notice concerning the imposition on it of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or terminated (within the meaning of Section 4041A of ERISA), (x) a determination that any Pension Plan is or is expected to be in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA); or (xi) any other event or condition with respect to a Pension Plan or Multiemployer Plan that could result in liability to the Parent Borrower or any Subsidiary.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**EURIBOR Loan**" shall mean any Loan bearing interest at a rate determined by reference to the EURIBOR Rate.

"**EURIBOR Rate**" shall mean, for any Interest Period with respect to any EURIBOR Loan, (i) the rate per annum equal to the Screen Rate for delivery on the first day of such Interest Period with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, (ii) if the rate referenced in the preceding clause (i) is not available at such time for such Interest Period, the rate per annum equal to the Interpolated Screen Rate for delivery on the first day of such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, or (iii) if the rates referenced in the preceding clauses (i) and (ii) are not available at such time for such Interest Period, the rate per annum equal to (x) the Screen Rate or (y) if the rate referenced in the preceding clause (x) is not available at such time for such Interest Period, the Interpolated Screen Rate, in each case with a term equivalent to such Interest Period quoted for delivery on the most recent Business Day preceding the first day of such Interest Period for which such rate is available (which Business Day shall be no more than seven (7) Business Days prior to the first day of such Interest Period), and in the case of clauses (i) through (iii), if any such rate is below ~~zero~~0.50%, the EURIBOR Rate shall be deemed to be ~~zero~~0.50%.

"**Euro**" and "**€**" shall mean the lawful single currency of the Participating Member States.

"**European Borrowers**" shall mean the U.K. Borrower, the Irish Borrower and the German Borrowers.

"**European Swing Line Lender**" shall mean Citibank, N.A., London Branch, in its capacity as provider of European Swing Line Loans, or any successor swing line lender to the European Borrowers hereunder.

"**European Swing Line Loan**" shall have the meaning specified in Section 3.2(a).

"Event of Default" shall have the meaning provided in Section 11.

"**Excess Contribution**" shall have the meaning provided in the PBGC Stipulation of Settlement.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and rules and regulations promulgated thereunder.

"**Excluded Accounts**" shall mean (i) petty cash and minimum daily working capital accounts funded in the ordinary course of business, the deposits in which shall not aggregate more than $15,000,000 (or such greater amounts to which the Administrative Agent may agree), (ii) payroll, trust, employees' wages and benefits and tax withholding accounts funded in the ordinary course of business, (iii) any account that is otherwise expressly agreed by the Administrative Agent to be excluded from the requirement to be subject to a Blocked Account Agreement under Section 9.16, including, for the avoidance of doubt, those accounts listed on Schedule 9.16(a) as of the Closing Date that are not identified as Blocked Accounts, (iv) zero balance disbursement accounts, (v) disbursement accounts (other than the Borrowers' primary operating or disbursement account) where solely proceeds of Indebtedness, including proceeds of the Revolving Credit Loans, are deposited, (vi) trust accounts, (vii) escrow accounts and (viii) accounts maintained solely for the benefit of third parties as cash collateral for obligations owing to such third parties.

"**Excluded Swap Obligation**" shall mean, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of any Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time any Guarantee of such Guarantor or the grant of such security interest would otherwise have become effective with respect to such Swap Obligation but for such Guarantor's failure to constitute an "eligible contract participant" at such time.

"**Excluded Taxes**" shall mean, any of the following Taxes imposed on or with respect to any Agent or any Lender or required to be deducted or withheld from a payment to any Agent or Lender, (a) net income Taxes and franchise and excise Taxes (imposed in lieu of net income Taxes) and any branch profits Taxes imposed on such Agent or Lender imposed as a result of such Agent or Lender being organized or incorporated 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), (b) any Taxes imposed on any Agent or any Lender as a result of any current or former connection between such Agent or Lender and the jurisdiction of the Governmental Authority imposing such Tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Agent or Lender having executed, delivered or performed its obligations or received a payment under, or having been a party to or having enforced, this Agreement or any other Credit Document), (c) any U.S. federal withholding Tax that is imposed on amounts payable to or for the account of any Agent or Lender under the law in effect at the time such Agent or Lender becomes a party to this Agreement (or designates a new Lending Office other than a new Lending Office designated at the request of the Parent Borrower pursuant to Section 13.7(a)); *provided* that this clause (c) shall not apply to the extent that the indemnity payments or additional amounts any Lender would be entitled to receive (without regard to this clause (c)) do not exceed the indemnity payment or additional amounts that the person making the assignment, participation or transfer to such Lender (or designation of a new Lending Office by such Lender) would have been entitled to receive pursuant to Section 5.4 immediately before such assignment, participation, transfer or change in Lending Office in the absence of such assignment, participation, transfer or change in Lending Office (it being understood and agreed, for the avoidance of doubt, that any withholding Tax imposed on a Lender as a result of a Change in Law occurring after the time such Lender became a party to this Agreement (or designates a new Lending Office) shall not be an Excluded Tax under this clause (c)), (d) any Tax to the extent attributable to such Agent's or Lender's failure to comply with Sections 5.4(e), (f) (in the case of any Non-U.S. Lender) or Section 5.4(i) (in the case of a U.S. Lender) or Section 5.4(j) and (e) any Taxes imposed by FATCA.

"**Existing DIP Agreement**" shall have the meaning provided in the Recitals to this Agreement.

"**Existing Revolving Credit Commitment**" shall have the meaning provided in Section 2.15(a).

"**Existing Revolving Credit Loans**" shall have the meaning provided in Section 2.15(a).

"**Extended Revolving Credit Commitments**" shall have the meaning provided in Section 2.15(a).

"**Extended Revolving Credit Loans**" shall have the meaning provided in Section 2.15(a).

"**Extending Lender**" shall have the meaning provided in Section 2.15(b).

"**Extension Amendment**" shall have the meaning provided in Section 2.15(c).

"**Extension Election**" shall have the meaning provided in Section 2.15(b).

"**FATCA**" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and intergovernmental agreement (together with any Applicable Law implementing such agreement) entered into in connection with any of the foregoing.

"**Federal Funds Effective Rate**" shall mean, for any day, the weighted average of the *per annum* rates on overnight federal funds transactions with members of the Federal Reserve System on such day, as published on the next succeeding Business Day by the Federal Reserve Bank of New York; *provided* that (a) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent, and (c) ~~if~~ at ~~any~~no time ~~any rate described in clause (a) or (b) above is~~shall the Federal Funds Effective Rate be less than 0.00%~~ then such rate in clause (a) or (b) shall be deemed to be 0.00%~~.

"Federal Reserve Bank of New York's Website" shall mean the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"**Fee Letter**" shall mean the amended and restated fee letter, dated October 31, 2017, among Avaya Holdings, the Parent Borrower, the Joint Lead Arrangers (and their Affiliates), Blackstone Holdings Finance Co. L.L.C. and Benefit Street Partners LLC.

"**FILO Tranche**" shall have the meaning provided in Section 2.14(h).

"**Financial Covenant**" shall mean the financial covenant set forth in Section 10.11.

"**Fiscal Year**" shall have the meaning provided in Section 9.10.

"**Fixed Charge Coverage Ratio**" shall mean, with respect to any Test Period, the ratio of (a) (i) Consolidated EBITDA of the Parent Borrower *minus* (ii) Unfinanced Capital Expenditures *minus* (iii) Cash Income Taxes, in each case for such Test Period, to (b) the sum of, without duplication, (i) consolidated cash interest expense (net of cash interest income to the extent excluded from Consolidated EBITDA), calculated for such period for the Parent Borrower and its Restricted Subsidiaries on a consolidated basis, for such Test Period *plus* (ii) any dividend or distribution (other than return of capital) paid in cash in respect of preferred stock or Disqualified Stock *plus* (iii) scheduled principal amortization paid in cash in respect of Indebtedness for borrowed money (other than any intercompany Indebtedness among the Parent Borrower and its Restricted Subsidiaries), in each case, for such Test Period.

"**Fixed Charges**" shall mean, the sum of, without duplication:

(1) Consolidated Interest Expense; *plus*

(2) all cash dividends or cash distributions (other than return of capital) paid (excluding items eliminated in consolidation) on any series of preferred stock during such period; *plus*

(3) all cash dividends or cash distributions (other than return of capital) paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

"**Flood Laws**" means the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and related laws, rules and regulations, including any amendments or successor provisions.

"**Foreign Adjusted Borrowing Base**" shall mean at any time of determination the sum of (a) the Canadian Borrowing Base, (b) the U.K. Borrowing Base, (c) the Irish Borrowing Base and (d) the U.S. Borrowing Base Excess Amount.

"**Foreign Adjusted Line Cap**" shall mean, at any time, the lesser of (a) the Foreign Adjusted Borrowing Base at such time and (b) the aggregate Foreign Revolving Credit Commitments at such time.

"**Foreign Adjusted Revolving Credit Exposure**" shall mean, as to each Foreign Revolving Credit Lender at any time, its Foreign Revolving Credit Exposure, *minus* its Avaya Deutschland Revolving Credit Exposure, *minus* its Avaya KG Revolving Credit Exposure.

"**Foreign Borrowers**" shall mean, collectively, the Canadian Borrower and the European Borrowers.

"**Foreign Borrowing Base**" shall mean the sum of (a) the Canadian Borrowing Base, (b) the U.K. Borrowing Base, (c) the Irish Borrowing Base, (d) the Avaya Deutschland Borrowing Base, (e) the Avaya KG Borrowing Base and (f) the U.S. Borrowing Base Excess Amount.

"**Foreign Cash Management Bank**" shall mean a Cash Management Bank party to a Secured Cash Management Agreement with a Foreign Credit Party or a Restricted Subsidiary of a Foreign Credit Party.

"**Foreign Collateral**" shall mean all property pledged, mortgaged, assigned, transferred or otherwise subject to security or purported to be pledged, mortgaged, assigned, transferred or otherwise subject to security pursuant to the Foreign Security Documents (excluding, for the avoidance of doubt, all Foreign Excluded Collateral).

"**Foreign Credit Parties**" shall mean the Canadian Credit Parties, the German Credit Parties, the Irish Credit Parties and the U.K. Credit Parties.

"**Foreign Excluded Collateral**" shall mean (a) any assets excluded from Foreign Collateral under the applicable Foreign Security Document and (b) all Real Estate, motor vehicles and intellectual property (other than pursuant to any floating charge created under the U.K. Security Documents or the Irish Security Documents.

"**Foreign Guarantees**" shall mean each of the guarantee agreements and other agreements listed on Schedule 1.1(f) and any guarantee provisions set forth in the Foreign Security Documents. For the avoidance of doubt, no Foreign Guarantee shall be in respect of Obligations of U.S. Credit Parties.

"**Foreign Guarantors**" shall mean the Canadian Guarantors, the German Guarantors, the Irish Guarantors and the U.K. Guarantors.

"**Foreign Hedge Bank**" shall mean a Hedge Bank party to a Secured Hedging Agreement with a Foreign Credit Party or a Restricted Subsidiary of a Foreign Credit Party.

"**Foreign L/C Issuer**" shall mean an L/C Issuer in its capacity as the issuer of a Foreign Letter of Credit.

"**Foreign L/C Obligations**" shall mean, at any time, the aggregate maximum amount then available to be drawn under all outstanding Foreign Letters of Credit (whether or not (i) such maximum amount is then in effect under any such Foreign Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Foreign Letter of Credit or (ii) the conditions to drawing can then be satisfied) *plus* the aggregate of all Unreimbursed Amounts in respect of Foreign Letters of Credit, including all L/C Borrowings in respect of Foreign Letters of Credit. For all purposes of this Agreement, if on any date of determination a Foreign Letter of Credit has expired by

its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be outstanding in the amount so remaining available to be drawn.

"**Foreign Legal Reservations**" shall mean, in the case of any Foreign Credit Party or any Foreign Security Document, as applicable, (i) the principle that certain remedies may be granted or refused at the discretion of the court, the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganization, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and secured creditors; (ii) the time barring of claims under applicable limitation laws and defenses of acquiescence, set off or counterclaim and the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void; (iii) the principle that in certain circumstances Collateral granted by way of fixed charge may be recharacterized as a floating charge or that Collateral purported to be constituted as an assignment may be recharacterized as a charge; (iv) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void; (v) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant; (vi) the principle that the creation or purported creation of Collateral over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Collateral has purportedly been created; (vii) similar principles, rights and defenses under the laws of any relevant jurisdiction; (viii) the making or the procuring of the appropriate registrations, filing, endorsements, notarization, stampings and/or notifications of the Security Documents and/or the Collateral created thereunder and (ix) any other matters which are set out as qualifications or reservations (however described) as to matters of law in any legal opinion delivered to the Administrative Agent pursuant to any Credit Document.

"**Foreign Letter of Credit**" shall have the meaning provided in Section 3.1(a).

"**Foreign Line Cap**" shall mean, at any time, the lesser of (a) the Foreign Borrowing Base at such time and (b) the aggregate Foreign Revolving Credit Commitments at such time.

"**Foreign Obligations**" shall mean all advances to, and debts, liabilities, obligations, covenants and duties of, the Foreign Borrowers and the other Foreign Credit Parties arising under any Credit Document or otherwise with respect to any Loan to any Foreign Borrower, any Foreign L/C Obligations or any Cash Management Obligations of the Foreign Credit Parties and any Restricted Subsidiaries of the Foreign Credit Parties under Secured Cash Management Agreements or Hedging Obligations of the Foreign Credit Parties and any Restricted Subsidiaries of the Foreign Credit Parties under Secured Hedging Agreements (and in each case including in respect of any Guarantee thereof made by a Foreign Credit Party), whether direct or indirect (including those acquired by

assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Foreign Credit Party of any proceeding under any bankruptcy or insolvency law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, in each case, other than Excluded Swap Obligations. Without limiting the generality of the foregoing, the Foreign Obligations of the Foreign Credit Parties under the Credit Documents (and any of their Restricted Subsidiaries to the extent they have obligations under the Credit Documents) (i) include the obligation (including Guarantee Obligations) to pay principal, interest, charges, expenses, fees, attorney costs, indemnities and other amounts payable by any Foreign Credit Party under any Credit Document~~,~~ and (ii) exclude for any Foreign Credit Party, notwithstanding any term or condition in this Agreement or any other Credit Documents, ~~any~~its Excluded Swap Obligations. For the avoidance of doubt, Foreign Obligation shall not include any obligation of Holdings, the Parent Borrower or any other U.S. Credit Party.

"**Foreign Perfection Requirements**" shall mean any registration, filing, endorsement, notarization, stamping, notification or other action or step to be made or procured in any jurisdiction in order to create, perfect or enforce the Lien created by a Foreign Security Document and/or to achieve the relevant priority for the Lien created thereunder.

"**Foreign Plan**" shall mean any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by the Parent Borrower or any of its Subsidiaries with respect to employees employed outside the United States.

"**Foreign Revolving Credit Commitments**" shall mean as to each Lender, its obligation to (a) make Foreign Revolving Credit Loans to the Foreign Borrower pursuant to Section 2.1(a), (b) purchase participations in Foreign L/C Obligations in respect of Foreign Letters of Credit, (c) purchase participations in Foreign Swing Line Loans and (d) purchase participations in Foreign Protective Advances, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth, and opposite such Lender's name on Schedule 1.1(a) under the caption "Foreign Revolving Credit Commitment" or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including with respect to Incremental Commitments). The aggregate Foreign Revolving Credit Commitments of all Lenders is $75,000,000 on the Closing Date (which shall be reduced to $50,000,000 on and after the Amendment No. 1 Effective Date), as such amount may be adjusted from time to time in accordance with the terms of this Agreement, including pursuant to Section 4.2, Section 4.3 or Section ~~2.14~~2.14.

"**Foreign Revolving Credit Exposure**" shall mean, as to each Foreign Revolving Credit Lender at any time, the sum of the Outstanding Amount of such Lender's Foreign Revolving Credit Loans and its Pro Rata Share or other applicable share

provided for under this Agreement of the Foreign L/C Obligations, the Foreign Swing Line Loans and the Foreign Protective Advances at such time.

"**Foreign Revolving Credit Lender**" shall mean, at any time, any Lender that has a Foreign Revolving Credit Commitment at such time, or if the Foreign Revolving Credit Commitments have been terminated, any Foreign Revolving Credit Exposure.

"**Foreign Secured Parties**" shall mean the Administrative Agent, the Collateral Agent, each Foreign L/C Issuer, each Foreign Swing Line Lender, each Foreign Revolving Credit Lender, each Foreign Hedge Bank, each Foreign Cash Management Bank, any Receiver or Delegate, and each sub-agent pursuant to Section 12 appointed by the Administrative Agent with respect to matters relating to the Credit Facilities or appointed by the Collateral Agent with respect to matters relating to any Foreign Security Document, in each case, in its capacity as such, and in the case of the Administrative Agent and the Collateral Agent, only in respect of the Foreign Obligations.

"**Foreign Security Documents**" shall mean, collectively, (a) the Canadian Security Documents, (b) the German Security Documents, (c) the Irish Security Documents, (d) the U.K. Security Documents, (e) the Dutch Security Documents and (f) any other security agreement or document entered into by a Foreign Credit Party and the Collateral Agent for the purpose of securing all or part of the Foreign Obligations, including, without limitation, each of the security agreement listed on Schedule 1.1(g).

"**Foreign Subsidiary**" shall mean each Subsidiary of the Parent Borrower that is not a Domestic Subsidiary.

"**Foreign Swing Line Lender**" shall mean the Canadian Swing Line Lender or the European Swing Line Lender.

"**Foreign Swing Line Loans**" shall have the meaning provided in Section 3.2(a).

"**Foreign Swing Line Sublimit**" shall mean, with respect to all Foreign Swing Line Loans in the aggregate, a Dollar Amount in principal equal to the lesser of (a) $15,000,000 and (b) the aggregate principal amount of the Foreign Revolving Credit Commitments. The Foreign Swing Line Sublimit is part of, and not in addition to, the Foreign Revolving Credit Commitments.

"**Foreign Unused Amount**" shall mean, on any day the aggregate Foreign Revolving Credit Commitments then in effect *minus* the aggregate Foreign Revolving Credit Loans *minus* the aggregate Foreign L/C Obligations; *provided* that the Foreign Unused Amount shall never be less than zero.

"**Fund**" shall mean any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"**GAAP**" shall mean generally accepted accounting principles in the United States of America, as in effect from time to time; *provided*, *however*, that if the Parent Borrower notifies the Administrative Agent that the Parent Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Parent Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"**German Borrowers**" shall have the meaning specified in the introductory paragraph to this Agreement.

"**German Credit Parties**" shall mean the German Borrowers and the German Guarantors.

"**German Guarantors**" shall mean (a) each German Borrower (other than with respect to its own Foreign Obligations), (b) each direct parent company of each German Borrower that is a Foreign Subsidiary of the Parent Borrower.

"**German Security Documents**" shall mean (a) each German law governed security agreement set forth on Schedule 1.1(g) and (b) any other security agreement expressed to be governed by German law among one or more of the German Credit Parties (and such other Persons as may be party thereto) and, as applicable, the Foreign Secured Parties and/or the Collateral Agent for the benefit of the Foreign Secured Parties, including each pledge agreement, mortgage, security agreement, guarantee or other agreement that is entered into by any German Credit Party or any Person who is the holder of equity interests in any German Credit Party, in each case as the same may be amended, restated or otherwise modified from time to time.

"**Governmental Authority**" shall mean any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange and any supra-national bodies such as the European Union or the European Central Bank.

"**Granting Lender**" shall have the meaning provided in Section 13.6(f).

"**Guarantee**" shall mean the U.S. Guarantee and each of the Foreign Guarantees.

"**Guarantee Obligations**" shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such Indebtedness or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Indebtedness of the ability of the primary obligor to make payment of such Indebtedness or (d) otherwise to assure or hold harmless the owner of such Indebtedness against loss in respect thereof; *provided*, *however*, that the term "**Guarantee Obligations**" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"**Guarantors**" shall mean the U.S. Guarantors and the Foreign Guarantors.

"**Hazardous Materials**" shall mean (a) any petroleum or petroleum products spilled or released into the environment, radioactive materials, friable asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants", or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, for which a release into the environment is prohibited, limited or regulated by any Environmental Law.

"**Hedge Bank**" shall mean any Person (other than Holdings, the Parent Borrower or any Subsidiary of the Parent Borrower) that is a party to any Hedging Agreement and, in each case, at the time it enters into such Hedging Agreement or on the Closing Date, is a Joint Lead Arranger, a Lender, an Affiliate of a Lender or a Joint Lead Arranger.

"**Hedging Agreements**" shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward

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

"**Hedging Obligations**" shall mean, with respect to any Person, the obligations of such Person under Hedging Agreements.

"**Hedging Reserves**" shall mean such reserves as the Administrative Agent, from time to time, determines in its Permitted Discretion to reflect the reasonably anticipated liabilities and obligations of the Credit Parties with respect to applicable Hedging Obligations under Secured Hedging Agreements then provided or outstanding, to the extent secured by the applicable Collateral included in the applicable Borrowing Base.

"**Holdings**" shall mean, (a) Avaya Holdings or (b) any other partnership, limited partnership, corporation, limited liability company, or business trust or any successor thereto organized under the laws of the United States or any state thereof or the District of Columbia (the "**New Holdings**") that is a direct or indirect Wholly Owned Subsidiary of Avaya Holdings or that has merged, amalgamated or consolidated with Avaya Holdings (or, in either case, the previous New Holdings, as the case may be) (the "**Previous Holdings**"); *provided* that (i) such New Holdings owns directly or indirectly 100% of the Stock and Stock Equivalents of the Parent Borrower, (ii) the New Holdings shall expressly assume all the obligations of the Previous Holdings under this Agreement and the other Credit Documents to which it is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (iii) such substitution and any supplements to the Credit Documents shall preserve the enforceability of the U.S. Guarantee and the perfection and priority of the Liens under the Security Documents, and New Holdings shall have delivered to the Administrative Agent an officer's certificate to that effect and (iv) all assets of the Previous Holdings are contributed or otherwise transferred to such New Holdings; *provided*, *further*, that if the foregoing are satisfied, the Previous Holdings shall be automatically released of all its obligations under the Credit Documents and any reference to "Holdings" in the Credit Documents shall be meant to refer to the "New Holdings". Notwithstanding anything to the contrary contained in this Agreement, Holdings or any New Holdings may change its jurisdiction of organization or location for purposes of the UCC or its identity or type of

organization or corporate structure, subject to compliance with the terms and provisions of the U.S. Security Agreement.

"**Incremental Amendment**" shall have the meaning provided in Section 2.14(d).

"**Incremental Commitments**" shall have the meaning provided in Section 2.14(a).

"**Indebtedness**" of any Person shall mean (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (c) the deferred purchase price of assets or services that in accordance with GAAP would be included as a liability on the balance sheet of such Person, (d) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder, (e) all Indebtedness of any other Person secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (f) the principal component of all Capitalized Lease Obligations of such Person, (g) the Swap Termination Value of Hedging Obligations of such Person, (h) without duplication, all Guarantee Obligations of such Person, (i) Disqualified Stock of such Person and (j) Receivables Indebtedness of such Person; *provided* that Indebtedness shall not include (i) trade and other ordinary course payables and accrued expenses arising in the ordinary course of business, (ii) deferred or prepaid revenue, (iii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller, (iv) any Indebtedness defeased by such Person or by any Subsidiary of such Person, (v) contingent obligations incurred in the ordinary course of business and (vi) earnouts or similar obligation until earned, due and payable and not paid for a period of thirty (30) days.

For all purposes hereof, (a) 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 venture, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness constitutes Indebtedness for borrowed money, obligations in respect of Capitalized Lease Obligations and obligations evidenced by bonds, debentures, notes, loan agreement or other similar instruments, (b) the Indebtedness of the Parent Borrower and the Restricted Subsidiaries shall exclude all intercompany Indebtedness among the Parent Borrower and its Subsidiaries having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business and (c) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid principal amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"**indemnified liabilities**" shall have the meaning provided in Section 13.5.

"**Indemnified Taxes**" shall mean (a) all Taxes imposed on or with respect to any payment made on account of any obligation of any Credit Party under any Credit Document other than Excluded Taxes and VAT and (b) to the extent not otherwise described in (a), Other Taxes.

"**Independent Financial Advisor**" shall mean an accounting firm, appraisal firm, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Parent Borrower, qualified to perform the task for which it has been engaged and that is disinterested with respect to the applicable transaction.

"**Initial Maturity Date**" shall mean the earlier of (i) ~~D~~September ~~1~~25, 202~~2~~5 ~~-~~and (ii) 91 days before the earliest maturity date of any Indebtedness incurred under (x) the Initial Term Loans and any Refinancing Indebtedness in respect thereof or (y) the 2023 Notes and any Refinancing Indebtedness in respect thereof, unless, in the case of this clause (y), on such date and each subsequent day until the 2023 Notes (or any Refinancing Indebtedness in respect thereof) are paid in full (the "**2023 Notes Redemption Period**") the Borrower is in compliance with the Liquidity Threshold.

"**Initial Term Loans**" shall mean the "Initial Term Loans" under and as defined in the Term Loan Credit Agreement as in effect on the Amendment No. 1 Effective Date.

"**Insolvent**" shall mean, with respect to any Multiemployer Plan, the condition that such Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA.

"**Insolvency Regulation**" shall mean The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings.

"**Intercompany Subordinated Note**" shall mean the Intercompany Note, dated as of the Closing Date, executed by Holdings, the Parent Borrower and each Restricted Subsidiary, as supplemented from time to time.

"**Interest Payment Date**" shall mean, (a) as to any Loan other than an ABR Loan or Canadian Prime Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided* that if any Interest Period for a LIBOR Loan, CDOR Loan or EURIBOR Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; (b) as to any ABR Loan or Canadian Prime Rate Loan (including any Swing Line Loan that is an ABR Loan or a Canadian Prime Rate Loan), the last Business Day of each March, June, September and December and the Maturity Date; and (c) as to any Swing Line Loan that is an Overnight LIBOR Loan, the date such Overnight LIBOR Loan shall be paid in full and the Maturity Date.

"**Interest Period**" shall mean, with respect to any Revolving Credit Loan, the interest period applicable thereto, as determined pursuant to Section 2.9.

"**Interpolated Screen Rate**" shall mean, for any Interest Period with respect to a LIBOR Loan or a EURIBOR Loan, the rate which results from interpolating on a linear basis between (a) the applicable Screen Rate for the period next longer than the length of such Interest Period and (b) the applicable Screen Rate for the period next shorter than the length of such Interest Period.

"**Inventory**" shall mean (a) all goods intended for sale or lease by a Person, or for display or demonstration, all work in process, all raw materials and other materials and supplies of every nature and description used or which might be used in connection with the manufacturing, printing, packaging, shipping, advertising, selling, leasing or furnishing such goods or otherwise used or consumed in such Person's business and (b) without duplication, all "Inventory" as defined in the UCC or the PPSA, as applicable.

"**Inventory Reserves**" shall mean such reserves as may be established from time to time by the Administrative Agent, in its Permitted Discretion, (a) with respect to changes in the determination of the saleability of the Eligible Inventory or which reflect such other factors as negatively affect the market value of the Eligible Inventory; (b) to reflect amounts owed to any supplier with retention of title rights and (c) Shrink Reserves.

"**Investment**" shall mean, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of Stock, Stock Equivalents, bonds, notes, debentures, partnership, limited liability company membership or other ownership interests or other securities of any other Person (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such other Person) (including any partnership or joint venture); (c) the entering into of any Guarantee Obligation with respect to Indebtedness; or (d) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person; *provided* that, in the event that any Investment is made by the Parent Borrower or any Restricted Subsidiary in any Person through substantially concurrent interim transfers of any amount through one or more other Restricted Subsidiaries, then such other substantially concurrent interim transfers shall be disregarded for purposes of Section 10.5 (excluding, in the case of the Parent Borrower and the Restricted Subsidiaries, intercompany loans, advances and Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business). The amount of any Investment outstanding at any time shall be the original cost of such Investment reduced

by any Returns of the Parent Borrower or a Restricted Subsidiary in respect of such Investment (*provided* that, with respect to amounts received other than in the form of cash or Cash Equivalents, such amount shall be equal to the fair market value of such consideration).

"**Investment Grade Rating**" shall mean a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P.

"**Ireland**" shall mean the island of Ireland, exclusive of Northern Ireland.

"**Irish Borrower**" shall have the meaning specified in the introductory paragraph to this Agreement.

"**Irish Borrowing Base**" shall mean, on any date, an amount equal to (a) the sum of (i) 85% *multiplied* by the book value of the Eligible Accounts, *plus* (ii) 90% *multiplied* by the book value of the Eligible Investment Grade Accounts *plus* (iii) 85% *multiplied* by the Net Orderly Liquidation Value of Eligible Inventory, in each case of clauses (i) - (iii), owned by the Irish Borrower *minus* (b) any Reserves.

"**Irish Credit Parties**" shall mean the Irish Borrower and the Irish Guarantors.

"**Irish Guarantor**" shall mean (a) the Irish Borrower (other than with respect to its own Foreign Obligations) and (b) each direct parent company of the Irish Borrower that is a Foreign Subsidiary.

"**Irish Security Documents**" shall mean (a) the Irish Security Agreement (as defined on Schedule 1.1(g)) and (b) any other security agreement expressed to be governed by Irish law among one or more of the Irish Credit Parties (and such other Persons as may be party thereto) and, as applicable, the Foreign Secured Parties and/or the Collateral Agent for the benefit of the Foreign Secured Parties, including each pledge agreement, mortgage, security agreement, guarantee or other agreement that is entered into by any Irish Credit Party or any Person who is the holder of equity interests in any Irish Credit Party, in each case as the same may be amended, restated or otherwise modified from time to time.

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

"**Issuer Documents**" shall mean with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by an L/C Issuer and Holdings, the Parent Borrower or any of its Subsidiaries or in favor of an L/C Issuer and relating to such Letter of Credit.

"**Joint Lead Arrangers**" shall mean ~~each of Goldman Sachs Bank USA,~~(i) with respect to the original closing of this Agreement, each of Citigroup Global Markets Inc., ~~Barclays~~Goldman Sachs Bank ~~PLC, Credit Suisse Securities (~~USA~~) LLC~~, Deutsche Bank

Securities Inc. ~~and~~, JPMorgan Chase Bank, N.A. and Barclays Bank PLC, as joint lead arrangers and joint bookrunners for the Lenders under this Agreement and the other Credit Documents~~.~~ and (ii) with respect to the closing of Amendment No. 1, each of Citibank, N.A., Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A. and BofA Securities, Inc., as joint lead arrangers and joint bookrunners for the Lenders under Amendment No. 1.

"**Judgment Currency**" shall have the meaning provided in Section 13.20.

"**Junior Indebtedness**" shall have the meaning provided in Section 10.7(a).

"**Junior Lien Intercreditor Agreement**" shall mean, with respect to the incurrence of any Indebtedness that is secured by a Lien on all or part of the Collateral that is junior to the Lien on the Collateral securing the Obligations, a junior lien intercreditor agreement (which intercreditor agreement, with respect to the control of remedies, shall be subject to the ABL Intercreditor Agreement in all respects), with terms that are in substance substantially consistent with the form of Junior Lien Intercreditor Agreement attached to the Term Loan Credit Agreement as Exhibit H as in effect on the Closing Date, or such other form as reasonably agreed between the Parent Borrower and the Administrative Agent.

"**L/C Advance**" shall mean, with respect to each Appropriate Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share.

"**L/C Borrowing**" shall mean an extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed on the applicable Honor Date or refinanced as a Revolving Credit Borrowing.

"**L/C Credit Extension**" shall mean, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

"**L/C Issuer**" shall mean, individually or collectively, as the context may require, Citibank, N.A.~~, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A. and any~~and each other Lender listed on Schedule 1.1(a) or that becomes an L/C Issuer in accordance with Section 3.1(l) or 13.6, in each case, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. Any L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such L/C Issuer, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"**L/C Obligations**" shall mean, at any time, the sum of the U.S. L/C Obligations and the Foreign L/C Obligations.

"**L/C Sublimit**" shall mean (a) with respect to the L/C Issuers, taken as a whole, a Dollar Amount equal to $150,000,000 and (b) with respect each L/C Issuer, the amount set forth opposite such L/C Issuer's name on Schedule 1.1(a), or such other amounts as may be agreed to in writing between the Parent Borrower and each L/C Issuer from time to time; *provided*, that

neither the total L/C Sublimit under clause (a), nor the aggregate amount of the individual L/C Issuer amounts under clause (b), shall be reduced below $150,000,000 without the written consent of the Parent Borrower.

"**LCT Election**" shall have the meaning provided in Section 1.12.

"**LCT Test Date**" shall have the meaning provided in Section 1.12.

"**Lenders**" shall mean the U.S. Revolving Credit Lenders and/or the Foreign Revolving Credit Lenders, as applicable (including, for avoidance of doubt, each Additional Lender, to the extent any such Person has executed and delivered an Incremental Amendment and such Incremental Amendment shall have become effective in accordance with the terms hereof and thereof) and, as the context requires, includes each L/C Issuer and each Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a "Lender." "**Lender**" shall refer to any of the foregoing.

"**Lender Default**" shall mean (a) the refusal or failure (which has not been cured) of a Lender to make available its portion of any Borrowing, to fund its portion of any Unreimbursed Amounts or to purchase any participation that it is required to make or fund hereunder, (b) a Lender having notified the Administrative Agent and/or the Parent Borrower that it does not intend to comply with its funding obligations under this Agreement or has made a public statement to that effect with respect to its funding obligations under this Agreement, (c) a Lender has failed to confirm in a manner reasonably satisfactory to the Administrative Agent, the Parent Borrower, each L/C Issuer and each Swing Line Lender that it will comply with its funding obligations under this Agreement, (d) a Lender being deemed insolvent or becoming the subject of a bankruptcy or insolvency proceeding or has admitted in writing that it is insolvent, *provided* that a Lender Default shall not be in effect with respect to a Lender solely by virtue of the ownership or acquisition of any Stock or Stock Equivalents 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 or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender or (e) a Lender that has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action.

"**Lending Office**" shall mean, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Parent Borrower and the Administrative Agent.

"**Letter of Credit**" shall mean any (a) Commercial Letter of Credit, (b) standby letter of credit and (c) indemnity, guarantee, exposure transmittal memorandum or similar form of credit support, in each case issued (or deemed issued) or to be issued by an L/C Issuer pursuant to Section 3.1.

"**Letter of Credit Application**" shall mean an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant L/C Issuer.

"**Letter of Credit Expiration Date**" shall mean the day that is five (5) Business Days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"**Letter of Credit Fee**" shall have the meaning provided in Section 3.1(i).

"**LIBOR Loan**" shall mean any Loan bearing interest at a rate determined by reference to the LIBOR Rate.

"**LIBOR Rate**" shall mean, with respect to any Loan denominated in Dollars or any Alternative Currency (other than Euros), for any Interest Period, (i) the rate per annum equal to the Screen Rate for delivery on the first day of such Interest Period with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, (ii) if the rate referenced in the preceding clause (i) is not available at such time for such Interest Period, the rate per annum equal to the Interpolated Screen Rate for delivery on the first day of such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, or (iii) if the rates referenced in the preceding clauses (i) and (ii) are not available at such time for such Interest Period, the rate per annum equal to (x) the Screen Rate or (y) if the rate referenced in the preceding clause (x) is not available at such time for such Interest Period, the Interpolated Screen Rate, in each case with a term equivalent to such Interest Period quoted for delivery on the most recent Business Day preceding the first day of such Interest Period for which such rate is available (which Business Day shall be no more than seven (7) Business Days prior to the first day of such Interest Period), and in the case of clauses (i) through (iii), if any such rate is below ~~zero~~0.50%, the LIBOR Rate shall be deemed to be ~~zero~~0.50%. Notwithstanding the foregoing, in the case of any European Swing Line Loan denominated in Dollars, the LIBOR Rate shall be set at the commencement of the Interest Period.

"**Lien**" shall mean any mortgage, charge, pledge, security interest, hypothecation, collateral assignment, lien (statutory or other) or similar encumbrance (including any conditional sale or other title retention agreement or any Capital Lease).

"**Limited Condition Transaction**" shall mean (i) any Permitted Acquisition or other similar Investment whose consummation is not conditioned on the availability of, or on obtaining, third party financing and (ii) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

"**Liquidity Threshold**" shall mean Unrestricted Cash (calculated for such purpose to include all such Unrestricted Cash of Holdings) in excess of the aggregate principal amount required to pay in full all obligations outstanding under the 2023 Notes Indenture.

"**Loan**" shall mean an extension of credit by a Lender or the Administrative Agent to a Borrower in the form of a Revolving Credit Loan, a Swing Line Loan or a Protective Advance.

"**Master Agreement**" shall have the meaning provided in the definition of the term "Hedging Agreement".

"**Material Adverse Effect**" shall mean a material adverse effect on (a) the business, assets, operations, properties or financial condition of the Parent Borrower and its Restricted Subsidiaries, taken as a whole, (b) the ability of the Credit Parties, taken as a whole, to perform their payment obligations under the Credit Facilities, taken as a whole or (c) material rights or remedies (taken as a whole) of the Administrative Agent and the Lenders under the Credit Documents, excluding any matters (i) publicly disclosed prior to October 23, 2017, including in any first day pleadings or declarations, in each case in connection with the Case and the events and conditions related and/or leading up to the Case and the effects thereof ~~and~~, (ii) publicly disclosed prior to October 23, 2017 in the Annual Report on Form 10-K of the Parent Borrower and/or any subsequently filed quarterly or periodic report of the Parent Borrower~~.~~ and (iii) after the Amendment No. 1 Effective Date, publicly disclosed prior to the Amendment No. 1 Effective Date whether in the Annual Report on Form 10-K of the Parent Borrower and/or any subsequently filed quarterly or periodic report of the Parent Borrower.

"**Material Subsidiary**" shall mean, at any date of determination, each Restricted Subsidiary (a) whose total assets (when combined with the assets of such Restricted Subsidiary's Subsidiaries, after eliminating intercompany obligations) at the last day of the most recent Test Period for which Section 9.1 Financials have been delivered were equal to or greater than 5.0% of the Consolidated Total Assets of the Parent Borrower and the Restricted Subsidiaries at such date or (b) whose total revenues (when combined with the revenues of such Restricted Subsidiary's Subsidiaries, after eliminating intercompany obligations) during such Test Period were equal to or greater than 5.0% of the consolidated revenues of the Parent Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that at any date of determination, Restricted Subsidiaries that are not Material Subsidiaries shall not, in the aggregate, have (x) total assets (when combined with the assets of such Restricted Subsidiary's Subsidiaries, after eliminating intercompany obligations) at the last day of such Test Period equal to or greater than 10.0% of the Consolidated Total Assets of the Parent Borrower and the Restricted Subsidiaries at such date or (y) total revenues (when combined with the revenues of such Restricted Subsidiary's Subsidiaries, after eliminating intercompany obligations) during the most recent Test Period equal to or greater than 10.0% of the consolidated revenues of the Parent Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP, then (i) for purposes of Sections 8.1, 9.3, 9.5, 11.5 and 11.7, any Restricted Subsidiaries not satisfying the threshold in clause (a) or (b) above shall constitute Material Subsidiaries so that such condition no longer exists and (ii) for other purposes the Parent Borrower shall, on the date on which the officer's certificate delivered pursuant to Section 9.1(c) of this Agreement, designate in writing to the Administrative Agent one or more of such Restricted Subsidiaries as "Material Subsidiaries" so that such condition no longer exists. It is agreed and understood that neither Receivables Entity nor Securitization

Subsidiary shall be a Material Subsidiary and they shall be excluded from the Consolidated Total Assets and total revenue of the Parent Borrower and its Restricted Subsidiaries.

"**Maturity Date**" shall mean (a) with respect to any Loans or Revolving Credit Commitments, the Initial Maturity Date, (b) with respect to any Swing Line Loan, the Initial Maturity Date, and (c) with respect to any FILO Tranche, the maturity date applicable to such FILO Tranche in accordance with the terms hereof, *provided* that in each case, if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

"**Minority Investment**" shall mean any Person (other than a Subsidiary) in which the Parent Borrower or any Restricted Subsidiary owns Stock or Stock Equivalents, including any joint venture (regardless of form of legal entity).

"**Monthly Borrowing Base Certificate**" shall have the meaning provided in Section 9.1(i).

"**Moody's**" shall mean Moody's Investors Service, Inc. or any successor by merger or consolidation to its business.

"Multiemployer Plan" shall mean a plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA (i) to which any of the Parent Borrower, any Subsidiary of the Parent Borrower or any ERISA Affiliate is then making or has an obligation to make contributions or (ii) with respect to which the Parent Borrower, any Subsidiary of the Parent Borrower or any ERISA Affiliate could incur liability pursuant to Title IV of ERISA.

"**Narrative Report**" shall mean, with respect to the financial statements for which such narrative report is required, a management's discussion and analysis of the financial condition and results of operations of the Parent Borrower and its consolidated Subsidiaries for the applicable period to which such financial statements relate.

"**Net Cash Proceeds**" shall mean, with respect to the incurrence or issuance of any Indebtedness or the issuance of any Stock or Stock Equivalent or capital contribution, the excess, if any, of (a) the sum of cash and Cash Equivalents received in connection with such incurrence or issuance over (b) reasonable and customary fees, commissions, expenses (including attorney's fees, investment banking fees, survey costs, title insurance premiums and recording charges, transfer taxes, deed or mortgage recording taxes and other customary expenses and brokerage, consultant and other customary fees), issuance costs, premiums, discounts and other costs paid by the Parent Borrower or any Restricted Subsidiary in connection with such incurrence or issuance.

"**Net Orderly Liquidation Value**" shall mean, with respect to Inventory of any Person, the orderly liquidation value thereof, net of all costs of liquidation thereof, as based upon the most recent Inventory appraisal conducted by a qualified third-party appraisal company acceptable to the Administrative Agent in its reasonable discretion in accordance with this Agreement and expressed as a percentage of Cost of such Inventory.

"**New Holdings**" shall have the meaning provided in the definition of "Holdings".

"**Non-Consenting Lender**" shall have the meaning provided in Section 13.7(b).

"**Non-Defaulting Lender**" shall mean and include each Lender other than a Defaulting Lender.

"**Non-U.S. Lender**" shall mean any Agent or Lender that is not, for U.S. federal income tax purposes, (a) an individual who is a citizen or resident of the U.S., (b) a corporation, partnership or entity treated as a corporation or partnership created or organized in or under the laws of the U.S., or any political subdivision thereof, (c) an estate whose income is subject to U.S. federal income taxation regardless of its source or (d) a trust if a court within the U.S. is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of such trust or a trust that has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

"**Notice of Borrowing**" shall mean a request of a Borrower in accordance with the terms of Section 2.3 and substantially in the form of Exhibit A or such other form as shall be approved by the Administrative Agent (acting reasonably).

"**Notice of Conversion or Continuation**" shall mean a request of a Borrower in accordance with the terms of Section 2.3 and substantially in the form of Exhibit A or such other form as shall be approved by the Administrative Agent (acting reasonably).

"**Obligations**" shall mean, without duplication, (a) the U.S. Obligations and (b) the Foreign Obligations.

"**Organizational Documents**" shall mean, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization or incorporation and operating agreement (or, in the case of any company incorporated in Ireland or the United Kingdom, its constitutive documents) and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and, if applicable, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization or incorporation with the applicable Governmental Authority in the jurisdiction of its formation or organization or incorporation and, if applicable, any certificate or articles of formation or organization of such entity.

"**Other Taxes**" shall mean any and all present or future stamp, registration, documentary or other similar Taxes arising from any payment made or required to be made under this Agreement or any other Credit Document or from the execution or delivery of, registration or enforcement of, consummation or administration of, or otherwise with respect to, this Agreement or any other Credit Document except any such Taxes that are any Taxes imposed on any Agent or any Lender as a result of any current or former connection between such Agent or Lender and the jurisdiction of the Governmental Authority imposing such Tax or any political

subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Agent or Lender having executed, delivered or performed its obligations or received a payment under, or having been a party to or having enforced, this Agreement or any other Credit Document) imposed with respect to an assignment (other than an assignment made pursuant to Section 13.7 or Section ~~2.12~~2.12).

"**Outstanding Amount**" shall mean (a) with respect to the Revolving Credit Loans and Swing Line Loans on any date, the Dollar Amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans (including any refinancing of outstanding Unreimbursed Amounts under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the Dollar Amount thereof on such date after giving effect to any related L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Unreimbursed Amounts under related Letters of Credit (including any refinancing of outstanding Unreimbursed Amounts under related Letters of Credit or related L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

"**Overnight LIBOR Loan**" shall mean a Swing Line Loan denominated in an Alternative Currency which bears interest at the Overnight LIBOR Rate.

"**Overnight LIBOR Rate**" shall mean (i) with respect to Euros, the rate per annum applicable for deposits for a period equal to such Interest Period equal to the rate per annum at which the European Swing Line Lender is offering overnight deposits in Euro in amounts comparable to the Swing Line Loans denominated in Euro, and (ii) with respect to any Alternative Currency (other than Euros), the rate per annum applicable to an overnight period beginning on one Business Day and ending on the next Business Day equal to the rate per annum at which the European Swing Line Lender is offering overnight deposits in the applicable Alternative Currency (other than Euros) in amounts comparable to the Swing Line Loans denominated in such Alternative Currency (other than Euros); *provided* that if the European Swing Line Lender is unable to quote such a rate, the rate applicable to such Swing Line Lender shall be the rate applicable to a period of one day as displayed on the Reuters LIBOR01 Page or the EURIBOR 01 Page, as applicable, for deposits in the relevant currency with a term of one day. In the case of any European Swing Line Loan denominated in Sterling, the Overnight LIBOR Rate shall be set at the commencement of the Interest Period. In no event shall the Overnight LIBOR Rate at any time be less than 0.50~~0~~%.

"**Overnight Rate**" shall mean, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Effective Rate and (ii) an overnight rate determined by the Administrative Agent, an L/C Issuer or the Swing Line Lender, as applicable, in accordance with banking industry rules on interbank compensation and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for

such day by a branch or Affiliate of the Administrative Agent in the applicable offshore interbank market for such currency to major banks in such interbank market.

"**Parent Borrower**" shall have the meaning provided in the introductory paragraph to this Agreement.

"**Participant**" shall have the meaning provided in Section 13.6(c).

"**Participant Register**" shall have the meaning provided in Section 13.6(c)(iii).

"**Participating Member States**" shall mean each state so described in any EMU Legislation.

"**Participating Receivables Grantor**" shall mean the Parent Borrower or any Restricted Subsidiary that is or that becomes a participant or originator in a Permitted Receivables Financing.

"**Patriot Act**" shall have the meaning provided in Section 13.18.

"**Payment Conditions**" shall mean, at any time of determination with respect to any transaction, that:

(a) no Specified Event of Default exists or would arise after giving effect to such transaction,

(b) the Fixed Charge Coverage Ratio for the most recently ended Test Period shall not be less than 1.00 to 1.00 on a Pro Forma Basis after giving effect to such transaction; *provided*, that this clause (b) does not apply if the average Specified Aggregate Excess Availability for 20 consecutive calendar days ending on the date of such transaction, and the Specified Aggregate Excess Availability on the date of such transaction, shall be, in each case, (i) in the case of Section 10.6(p) or Section 10.7(a)(iii)(1)(II), in excess of the greater of (x) 20% of the Aggregate Line Cap and (y) $~~50~~33,000,000 and (ii) in the case of Section 10.1(ff) or 10.5(ii), in excess of the greater of (x) 17.5% of the Aggregate Line Cap and (y) $~~4~~28,000,000, in each case, calculated on a Pro Forma Basis immediately after giving effect to such transaction, and

(c) the average Specified Aggregate Excess Availability for 20 consecutive calendar days ending on the date of such transaction, and the Specified Aggregate Excess Availability on the date of such transaction, shall be, in each case, (i) in the case of Section 10.6(p) or 10.7(a)(iii)(1)(II), in excess of the greater of (x) 15% of the Aggregate Line Cap and (y) $~~36~~24,000,000 and (ii) in the case of Section 10.1(ff) or 10.5(ii), in excess of the greater of (x) 12.5% of the Aggregate Line Cap and (y) $~~3~~20,000,000, in each case, calculated on a Pro Forma Basis immediately after giving effect to such transaction.

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"**PBGC Stipulation of Settlement**" shall have the meaning assigned to such term in the Plan.

"**Pension Plan**" shall mean any employee pension benefit plan (as defined in Section 3(2) of ERISA, but excluding any Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code or Section 302 of ERISA and is maintained or contributed to by the Parent Borrower, any Subsidiary or ERISA Affiliate or with respect to which the Parent Borrower, any Subsidiary or any ERISA Affiliate could incur liability pursuant to Title IV of ERISA.

"**Perfection Certificate**" shall mean one or more certificates of the Borrowers substantially in the form of Exhibit E or any other form approved by the Administrative Agent (acting reasonably).

"**Permitted Acquisition**" shall mean the acquisition, by merger, consolidation, amalgamation or otherwise, by the Parent Borrower or any Restricted Subsidiary of assets (including assets constituting a business unit, line of business or division) or Stock or Stock Equivalents, so long as (a) if such acquisition involves any Stock or Stock Equivalents, such acquisition shall result in the issuer of such Stock or Stock Equivalents and its Subsidiaries becoming a Restricted Subsidiary and a U.S. Subsidiary Guarantor, to the extent required by Section 9.11 or designated as an Unrestricted Subsidiary pursuant to the terms hereof, (b) such acquisition shall result in the Collateral Agent, for the benefit of the applicable Secured Parties, being granted a security interest in any Stock, Stock Equivalent or any assets so acquired, to the extent required by Section 9.11, Section 9.12, Section 9.13 and/or the applicable Security Documents, (c) after giving effect to such acquisition, the Parent Borrower and the Restricted Subsidiaries shall be in compliance with Section 9.15 and (d) no Event of Default under Section 11.1 or 11.5 (solely with respect to the Parent Borrower) shall have occurred and be continuing.

"**Permitted Discretion**" shall mean the Administrative Agent's reasonable credit judgment (from the perspective of an asset-based lender) in establishing reserves or additional eligibility criteria, exercised in good faith in accordance with customary business practices for similar asset based lending facilities, based upon its consideration of any factor that it reasonably believes (i) could materially adversely affect the quantity, quality, mix or value of Collateral (including any Applicable Laws that may inhibit collection of a receivable), the enforceability or priority of the Administrative Agent's Liens thereon, or the amount that the Administrative Agent and the other Secured Parties could receive in liquidation of any Collateral; (ii) indicates that any collateral report or financial information delivered by any Borrower or any Guarantor is incomplete, inaccurate or misleading in any material respect; or (iii) creates an Event of Default. In exercising such judgment, the Administrative Agent may consider any factors that could materially increase the credit risk of lending to the Borrowers on the security of the Collateral. Notwithstanding anything to the contrary, the circumstances, conditions, events or contingencies existing or arising prior to the Closing Date and, in each case, disclosed in writing in any field examination or inventory appraisal delivered to the Administrative Agent in connection herewith

or otherwise known to the Administrative Agent, in either case, prior to the Closing Date (other than with respect to such circumstances, conditions, events or contingencies disclosed by the Administrative Agent to the Parent Borrower for which no Reserves have been taken on the Closing Date), shall not be the basis for any establishment of any Reserves or additional eligibility criteria after the Closing Date, unless such circumstances, conditions, events or contingencies shall have changed in a material and adverse respect since the Closing Date. Reserves shall not duplicate eligibility criteria contained in the definition of "Eligible Inventory", "Eligible Accounts", "Eligible Borrowing Base Cash" and related definitions and vice versa, or reserves or criteria deducted in computing the Net Orderly Liquidation Value of Eligible Inventory and vice versa. In addition, no Reserve for, or eligibility criteria based on, deferred revenues may be established under this Agreement. To the extent any Foreign Guarantee or Foreign Security Document, or any actions required to be taken thereunder cannot be completed on or prior to the Closing Date, the Administrative Agent may use its Permitted Discretion to make appropriate Reserves in the applicable Borrowing Base.

"**Permitted Encumbrances**" shall mean:

(a) Liens for taxes, assessments or governmental charges or claims (including Liens imposed by the PBGC or similar Liens) not yet delinquent or that are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established to the extent required by and in accordance with GAAP or that are not required to be paid pursuant to Section 9.4;

(b) Liens in respect of property or assets of the Parent Borrower or any Restricted Subsidiary imposed by Applicable Law, such as carriers', landlords', construction contractors', warehousemen's and mechanics' Liens and other similar Liens, arising in the ordinary course of business, in respect of amounts not more than 60 days overdue and not being contested so long as such Liens arise in the ordinary course of business and do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens arising from judgments or decrees in circumstances not constituting an Event of Default under Section 11.9;

(d) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance, old age part-time arrangements, employee benefit and pension liability and other types of social security or similar legislation, or to secure the performance of tenders, statutory obligations, trade contracts (other than for payment of Indebtedness), leases, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, surety, performance and return-of-money bonds and other similar obligations, in each case incurred in the ordinary course of business or otherwise constituting Investments permitted by Section 10.5;

(e) ground leases or subleases, licenses or sublicenses in respect of Real Estate on which facilities owned or leased by the Parent Borrower or any of the Restricted Subsidiaries are located;

(f) easements, rights-of-way, licenses, reservations, servitudes, permits, conditions, covenants, rights of others, restrictions (including zoning restrictions), royalty interests and leases, minor defects, exceptions or irregularities in title or survey, encroachments, protrusions and other similar charges or encumbrances (including those to secure health, safety and environmental obligations), which do not interfere in any material respect with the business of the Parent Borrower and the Restricted Subsidiaries, taken as a whole;

(g) with respect to any U.S. Mortgaged Property, any exception on the title policy issued and matters shown on the Survey delivered which do not in the aggregate materially adversely affect the value of said property or materially impair its use in the operation of the business of the Parent Borrower or any of the Restricted Subsidiaries;

(h) any interest or title of a lessor, sublessor, licensor, sublicensor or grantor of an easement or secured by a lessor's, sublessor's, licensor's, sublicensor's interest or grantor of an easement under any lease, sublease, license, sublicense or easement to be entered into by the Parent Borrower or any Restricted Subsidiary as lessee, sublessee, licensee, grantee or sublicensee to the extent permitted or not prohibited by this Agreement;

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

(j) leases, licenses, subleases or sublicenses granted to others not interfering in any material respect with the business of the Parent Borrower and the Restricted Subsidiaries, taken as a whole or constituting Disposition permitted under Section 10.4;

(k) Liens arising from precautionary Uniform Commercial Code or PPSA financing statement or similar filings made in respect of operating leases entered into by the Parent Borrower or any Restricted Subsidiary;

(l) any zoning, land use, environmental or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Estate that does not materially interfere with the ordinary conduct of the business of the Parent Borrower and the Restricted Subsidiaries, taken as a whole;

(m) any Lien arising by reason of deposits with or giving of any form of security to any Governmental Authority for any purpose at any time as required by Applicable Law as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Parent Borrower or any Restricted

Subsidiary to maintain self-insurance or to participate in any fund for liability on any insurance risks;

(n) rights reserved to or vested in any Governmental Authority by the terms of any right, power, franchise, grant, license or permit, or by any provision of Applicable Law, to terminate or modify such right, power, franchise, grant, license or permit or to purchase or recapture or to designate a purchaser of any of the property of such person;

(o) Liens arising under any obligations or duties affecting any of the property, the Parent Borrower or any Restricted Subsidiary to any Governmental Authority with respect to any franchise, grant, license or permit which do not materially impair the use of such property for the purposes for which it is held;

(p) rights reserved to or vested in any Governmental Authority to use, control or regulate any property of such Person, which do not materially impair the use of such property for the purposes for which it is held;

(q) any obligations or duties, affecting the property of the Parent Borrower or any Restricted Subsidiary, to any Governmental Authority with respect to any franchise, grant, license or permit;

(r) a set-off or netting rights granted by the Parent Borrower or any Restricted Subsidiary pursuant to any Hedging Agreements solely in respect of amounts owing under such agreements;

(s) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.5; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(t) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(u) Liens on cash and Cash Equivalents that are earmarked to be used to satisfy or discharge Indebtedness; *provided* that (i) such cash and/or Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be satisfied or discharged, (ii) such Liens extend solely to the account in which such cash and/or Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be satisfied or discharged, and (iii) the satisfaction or discharge of such Indebtedness is expressly permitted hereunder;

(v) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by Applicable Laws;

(w) Liens on Stock of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(x) Liens (i) of a collecting bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) or attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking or other financial institutions or other electronic payment service providers arising as a matter of law or customary contract or general standards and conditions of the account banks encumbering deposits, including deposits in "pooled deposit" or "sweep" accounts (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(y) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods entered into by the Parent Borrower or any Restricted Subsidiary in the ordinary course of business permitted or not prohibited by this Agreement;

(z) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.5;

(aa) any amounts held by a trustee in the funds and accounts under an indenture securing any revenue bonds issued for the benefit of the Parent Borrower or any Restricted Subsidiary;

(bb) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Parent Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Parent Borrower and the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Parent Borrower or any Restricted Subsidiary in the ordinary course of business;

(cc) Liens (i) on any cash earnest money deposits or cash advances made by the Parent Borrower or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted under this Agreement, (ii) on other cash advances in favor of the seller of any property to be acquired in an Investment or other acquisition permitted hereunder to be applied against the purchase price for such Investment or other acquisition, (iii) consisting of an agreement to Dispose of any property pursuant to a Disposition permitted hereunder (or reasonably expected to be so permitted by the Parent Borrower at the time such Lien was

granted) and (iv) on cash advances in favor of the purchaser of any property to be Disposed of in a Disposition permitted hereunder to secure indemnity, fees and other seller obligations;

(dd) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(ee) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business or consistent with past practice;

(ff) any restrictions on any Stock or Stock Equivalents or other joint venture interests of the Parent Borrower or any Restricted Subsidiary providing for a breach, termination or default under any owners, participation, shared facility, joint venture, stockholder, membership, limited liability company or partnership agreement between such Person and one or more other holders of such Stock or Stock Equivalents or interest of such Person, if a security interest or other Lien is created on such Stock or Stock Equivalents or interest as a result thereof and other similar Liens; and

(gg) Liens securing Indebtedness or other obligations (i) of the Parent Borrower or any Restricted Subsidiary in favor of a Credit Party and (ii) of any other Restricted Subsidiary that is not a Credit Party in favor of any other Restricted Subsidiary that is not a Credit Party.

"**Permitted Other Debt**" shall mean, collectively, Permitted Other Loans and Permitted Other Notes.

"**Permitted Other Loans**" shall mean senior secured or unsecured loans (which loans, if secured, may either be secured *pari passu* with the Term Loan Obligations or may be secured by a Lien ranking junior to the Lien securing the Term Loan Obligations but which in all cases shall be secured by Liens on the ABL Priority Collateral and/or the Foreign Collateral on a junior basis relative to the Liens on such Collateral securing the Obligations), "mezzanine" loans or subordinated loans, in either case issued by the Parent Borrower or a U.S. Guarantor (unless permitted to be incurred by a non-U.S. Credit Party under Section 10.1(k)), (a) if such Permitted Other Loans are incurred (and for the avoidance of doubt, not "assumed"), the scheduled final maturity and the Weighted Average Life to Maturity of which are no earlier than the Initial Maturity Date or, in the case of any Permitted Other Loans that are issued or incurred in exchange for, or which modify, replace, refinance, refund, renew, restructure or extend any other Indebtedness permitted by Section 10.1, no earlier than the scheduled final maturity and Weighted Average Life to Maturity of such exchanged, modified, replaced, refinanced, refunded, renewed, restructured or extended Indebtedness; *provided* that the requirements of the foregoing clause (a) shall not apply to any customary bridge facility so long as the Indebtedness into which such customary bridge facility is to be converted complies with such requirements, (b) the

covenants (excluding, for the avoidance of doubt, any pricing, fee, prepayment premiums, optional prepayment or redemption terms) and events of default of which, taken as a whole, are not materially more restrictive to the Parent Borrower and the Restricted Subsidiaries than the terms hereunder unless (1) Lenders hereunder also receive the benefit of such more restrictive terms, (2) such terms reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined in good faith by the Parent Borrower) (it being understood that to the extent that any financial maintenance covenant is included for the benefit of any Permitted Other Loans, such financial maintenance covenant shall be added for the benefit of the Lenders at the time of incurrence of such Permitted Other Loans (except for any financial maintenance covenants applicable only to periods after the Maturity Date, as determined at the time of issuance or incurrence of such Permitted Other Loans)) or (3) any such provisions apply after the Maturity Date as determined at the time of issuance or incurrence of such Permitted Other Loans, (c) unless permitted to be incurred by a non-U.S. Credit Party under Section 10.1(k), of which no Subsidiary of the Parent Borrower (other than a U.S. Guarantor) is an obligor and (d) if secured, unless permitted to be incurred by a non-U.S. Credit Party under Section 10.1(k), are not secured by any assets of the U.S. Credit Parties other than all or any portion of the U.S. Collateral.

"**Permitted Other Notes**" shall mean senior secured or unsecured notes (which notes, if secured, may either be secured *pari passu* with the Term Loan Obligations or may be secured by a Lien ranking junior to the Lien securing the Term Loan Obligations but which in all cases shall be secured by Liens on the ABL Priority Collateral and/or the Foreign Collateral on a junior basis relative to the Liens on such Collateral securing the Obligations), mezzanine notes or subordinated notes, in either case issued by the Parent Borrower or a U.S. Guarantor (unless permitted to be incurred by a non-U.S. Credit Party under Section 10.1(k)), (a) if such Permitted Other Notes are incurred (and for the avoidance of doubt, not "assumed"), the terms of which do not provide for any scheduled repayment, mandatory redemption or sinking fund obligations (other than customary scheduled principal amortization payments, customary offers to repurchase upon a change of control, asset sale or casualty or condemnation event, customary acceleration rights after an event of default, and AHYDO Catch-Up Payments) prior to, at the time of incurrence, the Initial Maturity Date or, in the case of any Permitted Other Notes that are issued or incurred in exchange for, or which modify, replace, refinance, refund, renew or extend any other Indebtedness permitted by Section 10.1, prior to the scheduled final maturity date of such exchanged, modified, replaced, refinanced, refunded, renewed or extended Indebtedness (other than customary scheduled principal amortization payments, customary offers to repurchase upon a change of control, asset sale or casualty or condemnation event, customary acceleration rights after an event of default, and AHYDO Catch-Up Payments); *provided* that the requirements of the foregoing clause (a) shall not apply to any customary bridge facility so long as the Indebtedness into which such customary bridge facility is to be converted complies with such requirements, (b) the covenants (excluding, for the avoidance of doubt, any pricing, fee, prepayment premiums, optional prepayment or redemption terms) and events of default of which, taken as a whole, are not materially more restrictive to the Parent Borrower and the Restricted Subsidiaries than the terms hereunder unless (1) Lenders also receive the benefit of such more restrictive terms, (2) such terms reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined in good faith by the Parent Borrower)

(it being understood that to the extent that any financial maintenance covenant is included for the benefit of any Permitted Other Notes, such financial maintenance covenant shall be added for the benefit of the Lenders hereunder at the time of incurrence of such Permitted Other Notes (except for any financial maintenance covenants applicable only to periods after the Maturity Date, as determined at the time of issuance or incurrence of such Permitted Other Notes)) or (3) any such provisions apply after the Maturity Date at the time of issuance or incurrence of such Permitted Other Notes, (c) unless permitted to be incurred by a non-U.S. Credit Party under Section 10.1(k), of which no Subsidiary of the Parent Borrower (other than a U.S. Guarantor) is an obligor and (d) if secured, unless permitted to be incurred by a non-U.S. Credit Party under Section 10.1(k), are not secured by any assets of the U.S. Credit Parties other than all or any portion of the U.S. Collateral.

"**Permitted Receivables Financing**" shall mean any of one or more receivables financing programs as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities and other customary forms of support, in each case made in connection with such facilities) to the Parent Borrower and the Restricted Subsidiaries (other than a Receivables Entity) providing for the sale, conveyance, or contribution to capital of Receivables Facility Assets by Participating Receivables Grantors in transactions purporting to be sales of Receivables Facility Assets to either (a) a Person that is not a Restricted Subsidiary or (b) a Receivables Entity that in turn funds such purchase by the direct or indirect sale, transfer, conveyance, pledge, or grant of participation or other interest in such Receivables Facility Assets to a Person that is not a Restricted Subsidiary.

"**Permitted Reorganization**" shall mean re-organizations and other activities related to tax planning and re-organization, excluding transactions described in Section 10.4(g), so long as, after giving effect thereto, the security interest of the Lenders in the Collateral or the value of the Guarantees, taken as a whole, is not materially impaired (as determined by the Parent Borrower in good faith).

"**Person**" shall mean any individual, partnership, joint venture, firm, corporation, company, limited liability company, association, trust or other enterprise or any Governmental Authority.

"**Plan**" shall have the meaning provided in the Recitals to this Agreement.

"**Platform**" shall have the meaning provided in Section 13.17(c).

"**Post-Transaction Period**" shall mean, with respect to any Specified Transaction, the period beginning on the date such Specified Transaction is consummated and ending on the last day of the eighth full consecutive fiscal quarter immediately following the date on which such Specified Transaction is consummated.

"**PPSA**" shall mean Personal Property Security Act (Ontario); *provided*, *however*, that, in the event that, by reason of any provisions of law, any of the attachment, validity, effect, perfection or priority of the Administrative Agent's security interest in any Collateral is governed

by the Personal Property Security Act as in effect in a jurisdiction other than the Province of Ontario, such term shall mean the Personal Property Security Act as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

"**Previous Holdings**" shall have the definition provided in the definition of "Holdings".

"**Priority Payables Reserve**" means at any time, with respect to any Foreign Borrower, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria:

(a) (i) the amount past due and owing by such Foreign Borrower, or the accrued amount for which such Foreign Borrower has an obligation to remit to a Governmental Authority or other Person pursuant to any Applicable Law in respect of (q) government royalties or pension fund obligations and liabilities; (r) unemployment insurance, unpaid wages, severance pay or termination pay owing to employees; (s) goods and services taxes, sales taxes, employee income taxes and other taxes payable or to be remitted or withheld; (t) workers' compensation; (u) vacation pay; (v) claims for unremitted and/or accelerated rents; (w) wages, withholding taxes, VAT and other amounts payable to an insolvency administrator, examiner, receiver or other insolvency official, (x) pension liabilities, (y) claims of unsecured creditors, and (z) other like charges and demands or other payments that enjoy priority as a matter of any Applicable Law, (ii) the amount of fees which an insolvency administrator or examiner in an insolvency proceeding is allowed to collect pursuant to German law, including, without limitation, determination fees and collection fees and (iii) with respect to the U.K. Borrower, (a) the amount of preferential debts within the meaning of preferential debt within section 386 of the *Insolvency Act 1986* (UK) and (b) amounts payable to or deductible by a liquidator, administrator, receiver or provisional liquidator prior to payment to the Lenders of the proceeds of the Collateral pursuant to the *Insolvency Act 1986* (UK) (including in respect of the claims of unsecured creditors pursuant to section 176A of the *Insolvency Act 1986* (UK); in each case with respect to the preceding clauses (i), (ii) and (iii), to the extent any Governmental Authority or other Person may claim a security interest, Lien, trust or other claim ranking or capable of ranking in priority to or *pari passu* with one or more of the first priority Liens granted in the Foreign Security Documents; and the aggregate amount of any liabilities of any Foreign Borrower (i) in respect of which a trust has been or may be imposed on any Foreign Collateral to provide for payment or (ii) which are secured by a security interest, pledge, Lien, charge, right or claim on any Foreign Collateral; in each case, pursuant to any Applicable Law and which trust, security interest, pledge, Lien, charge, right or claim ranks or, in the Permitted Discretion of the Administrative Agent, is capable of ranking in priority to or *pari passu* with one or more of the first priority Liens granted in the Foreign Security Documents (such as Liens, trusts, security interests, pledges, charges, rights or claims in favor of employees, landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens, trusts, security interests, pledges, charges, rights or claims for ad valorem, excise, sales, or other taxes where given priority under Applicable Law); in each case net of the aggregate amount of all restricted cash held or set aside for the payment of such obligations.

"**Process Agent**" shall have the meaning provided in Section 13.13.

"**Pro Forma Adjustment**" shall mean, for any Test Period that includes all or any part of a fiscal quarter included in any Post-Transaction Period, with respect to the Acquired EBITDA of the applicable Pro Forma Entity or the Consolidated EBITDA of the Parent Borrower, the pro forma increase or decrease in such Acquired EBITDA or such Consolidated EBITDA (including as the result of any "run-rate" synergies, operating expense reductions and improvements and cost savings), as the case may be, projected by the Parent Borrower in good faith as a result of (a) actions taken or with respect to which substantial steps have been taken or are expected to be taken, prior to or during such Post-Transaction Period for the purposes of realizing cost savings or (b) any additional costs incurred prior to or during such Post-Transaction Period, in each case in connection with the combination of the operations of such Pro Forma Entity with the operations of the Parent Borrower and the Restricted Subsidiaries; *provided* that (A) at the election of the Parent Borrower, such Pro Forma Adjustment shall not be required to be determined for any Pro Forma Entity to the extent the aggregate consideration paid in connection with such acquisition was less than $50,000,000 or the aggregate Pro Forma Adjustment would be less than $50,000,000 and (B) so long as such actions are taken, or to be taken, prior to or during such Post-Transaction Period or such costs are incurred prior to or during such Post-Transaction Period, as applicable, it may be assumed, for purposes of projecting such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, that the applicable amount of such "run rate" synergies, operating expense reductions and improvements and cost savings and other adjustments will be realizable during the entirety of such Test Period, or the applicable amount of such additional "run rate" synergies, operating expense reductions and improvements and cost savings and other adjustments, as applicable, will be incurred during the entirety of such Test Period; *provided*, *further*, that any such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, shall be without duplication for "run rate" synergies, operating expense reductions and improvements and cost savings and other adjustments or additional costs already included in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, for such Test Period.

"**Pro Forma Basis**" and "**Pro Forma Effect**" shall mean, with respect to compliance with any test or covenant hereunder, that (A) to the extent applicable, the Pro Forma Adjustment shall have been made and (B) all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (i) in the case of a Disposition of all or substantially all Stock in any Subsidiary of the Parent Borrower or any division, product line, or facility used for operations of the Parent Borrower or any Subsidiary of the Parent Borrower, shall be excluded, and (ii) in the case of a Permitted Acquisition or Investment described in the definition of "Specified Transaction", shall be included, (b) any retirement or repayment of Indebtedness, and (c) any incurrence or assumption of Indebtedness by the Parent Borrower or any Restricted Subsidiary in connection therewith (it being agreed that (x) if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable period for purposes of this definition

determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination, (y) interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by an Authorized Officer of the Parent Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP and (z) interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate as the Parent Borrower or any applicable Restricted Subsidiary may designate); *provided* that, without limiting the application of the Pro Forma Adjustment pursuant to (A) above (but without duplication thereof), the foregoing pro forma adjustments may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to events (including operating expense reductions) that are (i) (x) directly attributable to such transaction and (y) reasonably identifiable and factually supportable in the good faith judgment of the Parent Borrower or (ii) otherwise consistent with the definition of Pro Forma Adjustment.

"**Pro Forma Entity**" shall have the meaning provided in the definition of the term "Acquired EBITDA".

"**Pro Rata Share**" shall mean, with respect to each Lender at any time, (i) with respect to U.S. Revolving Credit Commitments, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the U.S. Revolving Credit Commitments of such Lender at such time and the denominator of which is the amount of the aggregate U.S. Revolving Credit Commitments at such time and (ii) with respect to Foreign Revolving Credit Commitments, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Foreign Revolving Credit Commitments of such Lender at such time and the denominator of which is the amount of the aggregate Foreign Revolving Credit Commitments at such time; *provided* that, if any Revolving Credit Commitments have been terminated, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

"**Prohibited Transaction**" shall have the meaning assigned to such term in Section 406 of ERISA or Section 4975(c) of the Code.

"**Projections**" shall have the meaning provided in Section 9.1(g).

"**Protective Advance**" shall have the meaning specified in Section 2.1(c).

"**PTE**" shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Public Reporting Entity**" shall mean an entity that (i) complies with the reporting obligations under U.S. securities laws, (ii) is designated by the Parent Borrower as a "Public Reporting Entity" and (iii) whose consolidated financial results include the financial results of the Parent Borrower and its consolidated subsidiaries and customary reconciliations to

eliminate the financial results of entities other than the Parent Borrower and its consolidated subsidiaries.

"**QFC**" shall have the meaning provided in Section 13.23(b).

"**QFC Credit Support**" shall have the meaning provided in Section 13.23.

"**Qualified Securitization Financing**" shall mean any Securitization Facility (and any guarantee of such Securitization Facility), that meets the following conditions: (i) the Parent Borrower shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Parent Borrower and the Restricted Subsidiaries; (ii) all sales or contribution of Securitization Assets and related assets by the Parent Borrower or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in good faith by the Parent Borrower); (iii) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Parent Borrower) and may include Standard Securitization Undertakings; and (iv) the obligations under such Securitization Facility are nonrecourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Parent Borrower or any Restricted Subsidiary (other than a Securitization Subsidiary).

"**Real Estate**" shall mean any interest in land, buildings and improvements owned, leased or otherwise held by any Credit Party, but excluding all operating fixtures and equipment.

"**Receivables Entity**" shall mean any Person formed solely for the purpose of (i) facilitating or entering into one or more Permitted Receivables Financings, and (ii) in each case, engaging in activities reasonably related or incidental thereto.

"**Receivables Facility Assets**" shall mean currently existing and hereafter arising or originated Accounts, Payment Intangibles and Chattel Paper (as each such term is defined in the UCC) owed or payable to any Participating Receivables Grantor, and to the extent related to or supporting any Accounts, Chattel Paper or Payment Intangibles, or constituting a receivable, all General Intangibles (as each such term is defined in the UCC) and other forms of obligations and receivables owed or payable to any Participating Receivables Grantor, including the right to payment of any interest, finance charges, late payment fees or other charges with respect thereto (the foregoing, collectively, being "**receivables**"), all of such Participating Receivables Grantor's rights as an unpaid vendor (including rights in any goods the sale of which gave rise to any receivables), all security interests or liens and property subject to such security interests or liens from time to time purporting to secure payment of any receivables or other items described in this definition, all guarantees, letters of credit, security agreements, insurance and other agreements or arrangements from time to time supporting or securing payment of any receivables or other items described in this definition, all customer deposits with respect thereto, all rights under any contracts giving rise to or evidencing any receivables or other items described in this definition, and all documents, books, records and information (including computer programs, tapes, disks, data processing software and related property and rights) relating to any receivables

or other items described in this definition or to any obligor with respect thereto and any other assets customarily transferred together with receivables in connection with a non-recourse accounts receivable factoring arrangement and which are sold, conveyed assigned or otherwise transferred or pledge in connection with a Permitted Receivables Financing, and all proceeds of the foregoing.

"**Receivables Indebtedness**" shall mean, at any time, with respect to any receivables, securitization or similar facility (including any Permitted Receivables Financing or any Qualified Securitization Financing but excluding any account receivable factoring facility entered into incurred in the ordinary course of business), the aggregate principal, or stated amount, of the "indebtedness", fractional undivided interests (which stated amount may be described as a "net investment" or similar term reflecting the amount invested in such undivided interest) or other securities incurred or issued pursuant to such receivables, securitization or similar facility, at such time, in each case outstanding at such time.

"**Receivables Reserves**" shall mean, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves, subject to Section ~~2.17~~2.17 as the Administrative Agent in the Administrative Agent's Permitted Discretion determines as being appropriate with respect to the determination of the collectability in the ordinary course of business of Eligible Accounts, including, without limitation, the Dilution Reserve, reconciliation of variances between the general ledger and the receivables aging, and unapplied cash received.

"**Receiver**" shall mean a receiver, interim receiver, or receiver and manager or, where permitted by law, an administrative receiver of the whole or any part of the Foreign Collateral, and that term will include any appointee under joint and/or several appointments.

"**Redemption Notice**" shall have the meaning provided in Section 10.7(a).

"**Refinancing Increased Amount**" shall have the meaning provided in the definition of Refinancing Indebtedness.

"**Refinancing Indebtedness**" shall mean, with respect to any Person, any modification, refinancing, refunding, renewal, replacement, exchange or extension of any Indebtedness of such Person (including in respect of any previously incurred Refinancing Indebtedness); *provided* that (a) unless incurred by utilizing another basket under Section 10.1, the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced, exchanged or extended except by an amount (the "**Refinancing Increased Amount**") equal to unpaid accrued interest and premium thereon (including tender premiums) *plus* other reasonable amounts paid, and fees and expenses (including upfront fees and original issue discount) reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement, exchange or extension *plus* an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Refinancing Indebtedness in respect of Indebtedness permitted pursuant to Section 10.1(h) or (i) or with respect to any customary bridge facility so long as the Indebtedness into which such customary bridge facility

is to be converted complies with the requirements in this clause (b), such modification, refinancing, refunding, renewal, replacement, exchange or extension has a scheduled final maturity date and, with respect to term loans or notes, a Weighted Average Life to Maturity, as applicable, equal to or later than the scheduled final maturity date and the Weighted Average Life to Maturity, as applicable, of the Indebtedness being modified, refinanced, refunded, renewed, replaced, exchanged or extended (except by virtue of amortization or prepayment of such Indebtedness prior to the time of incurrence of such Refinancing Indebtedness), (c) with respect to a Refinancing Indebtedness in respect of Junior Indebtedness, (i) at the time thereof, no Event of Default shall have occurred and be continuing, (ii) if such Junior Indebtedness is subordinated to the Obligations in right of payment, the Refinancing Indebtedness is subordinated to the Obligations and the applicable Guarantee at least to the same extent as (and on terms that are at least as favorable to the Secured Parties as those contained in) such Junior Indebtedness so refinanced, (iii) if such Junior Indebtedness is unsecured, the Refinancing Indebtedness is unsecured, (iv) if such Indebtedness is subordinated to the Obligations with respect to lien priority with respect to any of the Collateral, the Refinancing Indebtedness is subordinated to the Obligations with respect to lien priority to the same extent (provided that if such Indebtedness is secured by Liens that are senior to the Liens over the Term Priority Collateral securing the Obligations, the Refinancing Indebtedness may be secured by Liens that are senior or junior to the Liens over the Term Priority Collateral securing the Obligations) and (v) unless incurred by utilizing another basket under Section 10.1, such modification, refinancing, refunding, renewal, replacement, exchange or extension is incurred by the Persons who are the obligors of the Indebtedness being modified, refinanced, refunded, renewed, replaced, exchanged or extended, (d) if the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended was subject to any intercreditor agreement (including any Applicable Intercreditor Agreement), to the extent the Refinancing Indebtedness is secured by any U.S. Collateral, the holders thereof (or their representative on their behalf) shall become party to each Applicable Intercreditor Agreement, (e) [reserved] and (f) in the case of a Refinancing Indebtedness of any Indebtedness permitted pursuant to Section 10.1(c), (k), (v) or (w), such Indebtedness meets the requirements of the definition of Permitted Other Loans or Permitted Other Notes, as applicable.

"**Register**" shall have the meaning provided in Section 13.6(b)(iii).

"**Regulation T**" shall mean Regulation T of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"**Regulation U**" shall mean Regulation U of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"**Regulation X**" shall mean Regulation X of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"**Related Parties**" shall mean, with respect to any specified Person, such Person's Affiliates (or, for purposes of clauses (A) and (B) of the last proviso of Section 13.5 and the penultimate paragraph of Section 13.5, such Person's controlled Affiliates) and the directors, officers, employees, agents, trustees and advisors of such Person and any Person that possesses,

directly or indirectly, the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

"**Relevant Governmental Body**" shall mean (a) the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto and (b) with respect to Revolving Credit Loans denominated in an Alternative Currency, in addition to the Persons named in clause (a) of this definition, the comparable governmental authority or other applicable Person for loans in such Alternative Currency as determined by the Administrative Agent in its sole discretion.

"**Relevant LIBOR Rate**" shall have the meaning provided in the definition of "ABR".

"**Reportable Event**" shall mean, with respect to a Pension Plan, an event described in Section 4043 of ERISA and the regulations thereunder, other than any event as to which the thirty day notice period has been waived.

"**Required Lenders**" shall mean, at any date, Lenders holding more than 50% of the sum of (a) the Aggregate Revolving Credit Exposure (with each Lender's participations in L/C Obligations, Swing Line Loans and Protective Advances being deemed "held" by such Lender) and (b) the unused Aggregate Revolving Credit Commitments; *provided* that the Aggregate Revolving Credit Exposure and Revolving Credit Commitments of any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"**Reserves**" shall mean, with respect to the applicable Borrowing Base, without duplication, all, if any, of the Availability Reserves, Inventory Reserves, Receivables Reserves, Unpaid Supplier Reserves, Wage Earner Priority Lien Reserves, Retention of Title Reserves, Bank Product Reserves, Hedging Reserves, Priority Payables Reserves, Carrier Reserve, and any and all other reserves, including warranty reserves, which the Administrative Agent deems necessary in its Permitted Discretion to maintain with respect to Eligible Accounts or Eligible Inventory that have been established in accordance with Section ~~2.17~~2.17.

"**Resolution Authority**" shall mean an EEA Resolution Authority or, with respect to any U.K. Financial Institution, a U.K. Resolution Authority.

"**Restricted Foreign Subsidiary**" shall mean a Foreign Subsidiary that is a Restricted Subsidiary.

"**Restricted Payment**" shall mean, with respect to the Parent Borrower or any Restricted Subsidiary, any dividend or return any capital to its stockholders or any other distribution, payment or delivery of property or cash to its stockholders on account of such Stock and Stock Equivalents, or redemption, retirement, purchase or other acquisition, directly or indirectly, for consideration, any shares of any class of its Stock or Stock Equivalents or set aside any funds for any of the foregoing purposes, other than dividends payable solely in its Stock or Stock Equivalents (other than Disqualified Stock). For the avoidance of doubt, any Excess

Contribution shall not constitute a Restricted Payment hereunder on account of any equity interests in Avaya Holdings by the PBGC.

"**Restricted Subsidiary**" shall mean any Subsidiary of the Parent Borrower other than an Unrestricted Subsidiary.

"**Retention of Title Reserve**" shall mean, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, a reserve with respect to Accounts of Foreign Borrowers that are subject to extended retention of title arrangements (for example, *verlängerter Eigentumsvorbehalt* or *erweiterter Eigentumsvorbehalt*, including a processing clause, *Verarbeitungsklausel*) with respect to any part of the inventory or goods giving rise to such Account or similar arrangements under any Applicable Law to the extent of a claim that validly survives by law or contract that can effectively be enforced pursuant to such title retention arrangements.

"**Returns**" shall mean, with respect to any Investment, any dividend, distribution, interest, fees, premium, return of capital, repayment of principal, income, profits (from a Disposition or otherwise) and other amounts received or realized in respect of such Investment.

"**Revaluation Date**" shall mean (a) with respect to any Loan made in an Alternative Currency, each of the following: (i) each date of a Borrowing of such Loan, (ii) each date of a continuation of a LIBOR Loan, CDOR Loan or EURIBOR Loan pursuant to Section 2.3, and (iii) such additional dates as the Administrative Agent shall reasonably determine or the Required Lenders shall reasonably require; and (b) with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by an L/C Issuer under any Letter of Credit denominated in an Alternative Currency and (iv) such additional dates as the Administrative Agent or the relevant L/C Issuer shall reasonably determine or the Required Lenders shall reasonably require.

"**Revolving Credit Borrowing**" shall mean a borrowing consisting of Revolving Credit Loans to the same Borrower in the same currency and of the same Type and, in the case of LIBOR Loans, CDOR Loans and EURIBOR Loans, having the same Interest Period, made by the Appropriate Lenders pursuant to Section 2.1(a).

"**Revolving Credit Commitments**" shall mean the U.S. Revolving Credit Commitments and the Foreign Revolving Credit Commitments.

"**Revolving Credit Extension Request**" shall have the meaning provided in Section 2.15(a).

"**Revolving Credit Loan**" shall have the meaning specified in Section 2.1(a).

"**S&P**" shall mean Standard & Poor's Financial Services LLC or any successor by merger or consolidation to its business.

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

"**Sanctioned Person**" shall mean, at any time, any Person with which dealings are prohibited by Sanctions.

"**Sanctions**" shall have the meaning provided in Section 8.19.

"**Sanctions Laws**" shall have the meaning provided in Section 8.19.

"**Screen Rate**" shall mean the rate appearing on Reuters Page LIBOR01 (or any successor or substitute page of such Reuters service, or if the Reuters service ceases to be available, any successor to or substitute for such service providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time in consultation with the Parent Borrower, for purposes of providing quotations of interest rates applicable to deposits in the relevant currency in the London interbank market).

"**SEC**" shall mean the Securities and Exchange Commission or any successor thereto.

"**Section 2.15 Additional Amendment**" shall have the meaning provided in Section 2.15(c).

"**Section 9.1 Financials**" shall mean the financial statements delivered, or required to be delivered, pursuant to Section 9.1(a) or (b), together with the accompanying officer's certificate delivered, or required to be delivered, pursuant to Section 9.1(c).

"**Secured Cash Management Agreement**" shall mean any Cash Management Agreement that is entered into by and between the Parent Borrower or any Restricted Subsidiary and any Cash Management Bank, and that is designated by the Parent Borrower in writing to the Administrative Agent as "Secured Cash Management Obligations" which will thereby become Obligations hereunder and under the Security Agreement.

"**Secured Hedging Agreement**" shall mean any Hedging Agreement that is entered into by and between the Parent Borrower or any Restricted Subsidiary and any Hedge Bank, and that is designated by the Parent Borrower in writing to the Administrative Agent as "Secured Hedging Obligations" which will thereby become Obligations hereunder and under the Security Agreement.

"**Secured Parties**" shall mean, without duplication, the U.S. Secured Parties and/or the Foreign Secured Parties, as applicable.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Securitization Asset**" shall mean (a) any accounts receivable, royalty or other revenue streams and other rights to payment or related assets and the proceeds thereof, in each case, subject to a Securitization Facility and (b) all collateral securing such receivable or asset, all contracts and contract rights, guaranties or other obligations in respect of such receivable or asset, lockbox accounts and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted), together with accounts or assets in a securitization financing and which in the case of clause (a) and (b) above are sold, conveyed, assigned or otherwise transferred or pledged in connection with a Qualified Securitization Financing.

"**Securitization Facility**" shall mean any transaction or series of securitization financings that may be entered into by the Parent Borrower or any Restricted Subsidiary pursuant to which the Parent Borrower or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Parent Borrower or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Parent Borrower or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Parent Borrower or any of its Subsidiaries.

"**Securitization Repurchase Obligation**" shall mean any obligation of a seller (or any guaranty of such obligation) of (i) Receivables Facility Assets under a Permitted Receivables Financing to repurchase Receivables Facility Assets or (ii) Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets, in either case, arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"**Securitization Subsidiary**" shall mean any Subsidiary of the Parent Borrower in each case formed for the purpose of, and that solely engages in, one or more Qualified Securitization Financings and other activities reasonably related thereto or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Parent Borrower or any Restricted Subsidiary makes an Investment and to which the Parent Borrower or such Restricted Subsidiary transfers Securitization Assets and related assets.

"**Security Documents**" shall mean, collectively, the U.S. Security Documents and the Foreign Security Documents.

"**Shrink**" shall mean Inventory identified by any Borrower as lost, misplaced, or stolen.

"**Shrink Reserve**" shall mean an amount reasonably estimated by the Administrative Agent to be equal to that amount which is required in order that the Shrink reflected in current general ledger of the applicable Credit Party would be reasonably equivalent to the Shrink calculated as part of the applicable Credit Party's most recent physical inventory (it being understood and agreed that no Shrink Reserve established by the Administrative Agent shall be duplicative of any Shrink as so reflected in the current general ledger of the applicable Credit Party or estimated by the applicable Credit Party for purposes of computing the applicable Borrowing Base).

"**Similar Business**" shall mean any business conducted or proposed to be conducted by the Parent Borrower and the Restricted Subsidiaries, taken as a whole, on the Closing Date or any other business activities which are reasonable extensions thereof or otherwise similar, incidental, corollary, complementary, synergistic, reasonably related, or ancillary to any of the foregoing (including non-core incidental businesses acquired in connection with any Permitted Acquisition or permitted Investment), in each case as determined by the Parent Borrower in good faith.

"**SOFR**" with respect to any day shall mean the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"**Sold Entity or Business**" shall have the meaning provided in the definition of the term "Consolidated EBITDA".

"**Solvent**" shall mean, with respect to any Person (other than a German Credit Party in respect of which the term "Solvent" shall mean that none of the circumstances set out in Section 11.5 exist with respect to it), that as of the Closing Date (and with respect to Amendment No. 1, as of the Amendment No. 1 Effective Date), (i) the present fair saleable value of the property (on a going concern basis) of such Person is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business, (ii) such Person is not engaged in, and are not about to engage in, business contemplated as of the date hereof for which they have unreasonably small capital and (iii) such Person is able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured in the ordinary course of business, and (iv) the fair value of the assets (on a going concern basis) of such Person exceeds, their debts and liabilities, subordinated, contingent or otherwise. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"**Specified Aggregate Excess Availability**" shall mean the sum of (i) Aggregate Excess Availability and (ii) the amount by which the Aggregate Borrowing Base at such time

exceeds the Aggregate Revolving Credit Commitments, up to an amount for this clause (ii) not to exceed 2.50% of the Aggregate Revolving Credit Commitments.

"**Specified Event of Default**" shall mean (i) any Event of Default under Section 11.1 or 11.5, (ii) any Event of Default under Section 11.2 with respect to the representation and warranty set forth in Section 8.8(c), (iii) any Event of Default under Section 11.3(b)(i), (iv) any Event of Default under Section 11.3(b)(ii) or (v) any Event of Default arising from failure to comply with the Financial Covenant.

"**Specified Existing Revolving Credit Commitment**" shall have the meaning provided in Section 2.15(a).

"**Specified Representations**" shall mean the representations and warranties made by the Borrowers and, to the extent applicable, the Guarantors, set forth in (i) Section 8.1(a) (solely with respect to valid existence), (ii) Section 8.2, (iii) Section 8.3(c) (solely with respect to the Organizational Documents of any Credit Party), (iv) Section 8.5, (v) Section 8.7, (vi) Section 8.16 (which shall be satisfied by the delivery of a solvency certificate substantially in the form of the solvency certificate attached as Annex III to Exhibit C of the Commitment Letter), (vii) Section 8.17, and (viii) the last sentence of Section 8.19.

"**Specified Transaction**" shall mean, with respect to any period, any Investment, any Disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, Subsidiary designation, the incurrence of any Incremental Commitments or other event that by the terms of this Agreement requires any test or covenant to be calculated on a "Pro Forma Basis".

"**Spot Rate**" for a currency shall mean the rate determined by the Administrative Agent, an L/C Issuer or a Swing Line Lender, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; *provided* that the Administrative Agent, any L/C Issuer or any Swing Line Lender, as applicable, may obtain such spot rate from another financial institution designated by the Administrative Agent, such L/C Issuer or such Swing Line Lender, as applicable, if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided that the L/C Issuer or Swing Line Lender may use such spot rate quoted on the date as of which the foreign exchange computation is made.

"**SPV**" shall have the meaning provided in Section 13.6(f).

"**Standard Securitization Undertakings**" shall mean representations, warranties, covenants and indemnities entered into by the Borrowers or any Restricted Subsidiary which the Parent Borrower has determined in good faith to be customary in a Securitization Facility, including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"**Stated Maturity**" shall mean, with respect to any installment of principal on any series of Indebtedness, the date on which such payment of principal was scheduled to be paid in the original documentation governing such Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for payment thereof.

"**Sterling**" and "£" mean lawful money of the United Kingdom.

"**Stock**" shall mean shares of capital stock or shares in the capital, as the case may be (whether denominated as common stock or preferred stock or ordinary shares or preferred shares, as the case may be), beneficial, partnership or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting, *provided* that any instrument evidencing Indebtedness convertible or exchangeable for Stock shall not be deemed to be Stock unless and until such instrument is so converted or exchanged; *provided*, *further* that, solely with respect to any CFC or CFC Holding Company, Stock shall also include any instrument or security treated as stock for U.S. federal income tax purposes.

"**Stock Equivalents**" shall mean all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable, *provided* that any instrument evidencing Indebtedness convertible or exchangeable for Stock Equivalents shall not be deemed to be Stock Equivalents unless and until such instrument is so converted or exchanged; *provided*, *further* that, solely with respect to any CFC or CFC Holding Company, Stock Equivalent shall also include any instrument or security treated as stock equivalent for U.S. federal income tax purposes.

"**Subsequent Transaction**" shall have the meaning provided in Section 1.11.

"**Subsidiary**" of any Person shall mean and include (a) any corporation more than 50% of whose Stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time Stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (b) any limited liability company, unlimited company, partnership, association, joint venture or other entity of which such Person directly or indirectly through Subsidiaries has more than a 50% voting equity interest at the time or is a controlling general partner. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Parent Borrower.

"**Successor Parent Borrower**" shall have the meaning provided in Section 10.3(a).

"**Supermajority Lenders**" shall mean, at any date, Lenders holding more than 66.7% of the sum of (a) the Aggregate Revolving Credit Exposure (with each Lender's participations in L/C Obligations, Swing Line Loans and Protective Advances being deemed

"held" by such Lender) and (b) the unused Aggregate Revolving Credit Commitments; *provided* that the Aggregate Revolving Credit Exposure and Revolving Credit Commitments of any Defaulting Lender shall be excluded for purposes of making a determination of Supermajority Lenders.

"**Supported QFC**" shall have the meaning provided in Section 13.23.

"**Survey**" shall mean a survey of any U.S. Mortgaged Property (and all improvements thereon), including a survey based on aerial photography that is (a) (i) prepared by a licensed surveyor or engineer, (ii) certified by the surveyor (in a manner reasonable in light of the size, type and location of the Real Estate covered thereby) to the Administrative Agent and the Collateral Agent and (iii) sufficient, either alone or in connection with a survey (or "no change") affidavit in form and substance customary in the applicable jurisdiction, for the applicable title company to remove (to the extent permitted by Applicable Law) or amend all standard survey exceptions from the title insurance policy (or commitment) relating to such U.S. Mortgaged Property and issue such endorsements or other survey coverage, to the extent available in the applicable jurisdiction, as the Collateral Agent may reasonably request or (b) otherwise reasonably acceptable to the Collateral Agent, taking into account the size, type and location of the Real Estate covered thereby.

"**Swap Obligation**" shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

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

"**Swing Line Borrowing**" shall mean a borrowing of Swing Line Loans to the same Borrower in the same currency pursuant to Section 3.2.

"**Swing Line Lender**" shall mean, individually or collectively, as the context may require, each of the U.S. Swing Line Lender, the Canadian Swing Line Lender and the European Swing Line Lender.

"**Swing Line Loan**" shall have the meaning specified in Section 3.2(a).

"**Swing Line Loan Notice**" shall mean a notice of a Swing Line Borrowing pursuant to Section 3.2(b), which, if in writing, shall be substantially in the form of Exhibit A.

"**Swing Line Sublimit**" shall mean the Foreign Swing Line Sublimit or the U.S. Swing Line Sublimit, as the context may require.

"**TARGET Day**" shall mean any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

"**Tax Distribution**" shall have the meaning provided in Section 10.6(d)(i).

"**Taxes**" shall mean any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings or other similar charges imposed by any Governmental Authority whether computed on a separate, consolidated, unitary, combined or other basis and any interest, fines, penalties or additions to tax with respect to the foregoing.

"**Term Loan Administrative Agent**" shall mean Goldman Sachs Bank USA in its capacity as the administrative agent under the Term Loan Credit Agreement and/or any successor agent under the Term Loan Credit Documents.

"**Term Loan Collateral Agent**" shall mean Goldman Sachs Bank USA in its capacity as the collateral agent under the Term Loan Credit Agreement and/or any successor agent under the Term Loan Credit Documents.

"**Term Loan Credit Agreement**" shall mean the Term Loan Credit Agreement dated as of December 15, 2017 among Holdings, the Parent Borrower, the Term Loan Administrative Agent and the several banks and other financial institutions from time to time ~~parties~~party thereto, as ~~such agreement may be~~amended by that certain Amendment No 1 dated as of June 18, 2018 and as may be otherwise amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time, in each case to the extent permitted hereunder and under the Applicable Intercreditor Agreements (unless such agreement, instrument or document expressly provides that it is not intended to be and is not the Term Loan Credit Agreement).

"**Term Loan Credit Documents**" shall mean, collectively, (a) the Term Loan Credit Agreement and (b) the security documents, intercreditor agreements, guarantees, joinders and other agreements or instruments executed in connection therewith, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time.

"**Term Loan Obligations**" shall mean "Obligations" under and as defined in the Term Loan Credit Agreement.

"**Term Loans**" shall mean "Term Loans" under and as defined in the Term Loan Credit Agreement.

"**Term Priority Collateral**" shall have the meaning under and as defined in the ABL Intercreditor Agreement.

"**Term SOFR**" shall mean the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Test Period**" shall mean, for any determination under this Agreement, the four consecutive fiscal quarters of the Parent Borrower then last ended and for which Section 9.1 Financials have been or were required to have been delivered (or, for purposes of any calculation of a financial ratio under this Agreement other than the Financial Covenant, for which the financial statements described in Section 9.1(a) or (b) are otherwise available).

"**Tranche**" shall mean, within the Revolving Credit Commitments, each of (x) the tranche of the U.S. Revolving Credit Commitments and (y) the tranche of the Foreign Revolving Credit Commitments (as applicable).

"**Transaction Expenses**" shall mean any fees, costs, liabilities or expenses incurred or paid by Avaya Holdings, the Parent Borrower or any of their respective Subsidiaries in connection with the Transactions, this Agreement and the other Credit Documents and the transactions contemplated hereby and thereby including in respect of the commitments, negotiation, syndication, documentation and closing (and post-closing actions in connection with the Collateral) of the Credit Facilities.

"**Transactions**" shall mean, collectively, the (i) consummation of the Closing Refinancing, (ii) the consummation of the Plan, (iii) the execution of and funding under the Credit Documents and the Term Loan Credit Documents, (iv) the other transactions contemplated by the Plan, and (v) the payment of fees, costs, liabilities and expenses in connection with each of the foregoing and the consummation of any other transaction connected with the foregoing.

"**Transferee**" shall have the meaning provided in Section 13.6(e).

"**Type**" shall mean, as to any Revolving Credit Loan denominated in Dollars or Canadian Dollars, its nature as an ABR Loan, a Canadian Prime Rate Loan, a CDOR Loan, or a LIBOR Loan.

"**UCC**" shall mean the Uniform Commercial Code of the State of New York, or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**U.K. Borrower**" shall have the meaning specified in the introductory paragraph to this Agreement.

"**U.K. Borrowing Base**" shall mean, on any date, an amount equal to (a) the sum of (i) 85% *multiplied* by the book value of the Eligible Accounts and *plus* (ii) 90% *multiplied* by

the book value of the Eligible Investment Grade Accounts, in each case of clauses (i) - (ii), owned by the U.K. Borrower *minus* (b) any Reserves.

"**U.K. Credit Parties**" shall mean the U.K. Borrower and the U.K. Guarantors.

"**U.K. Financial Institution**" shall mean any BBRD 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.

"**U.K. Guarantors**" shall mean (a) the U.K. Borrower (other than with respect to its own Foreign Obligations) and (b) each direct parent company of the U.K. Borrower that is a Foreign Subsidiary.

"**U.K. Resolution Authority**" shall mean the Bank of England and any other public administrative authority having responsibility for the resolution of any U.K. Financial Institution.

"**U.K. Security Documents**" shall mean (a) the U.K. Security Agreement (as defined on Schedule 1.1(g)), (b) the U.K. Share Charge (as defined on Schedule 1.1(g)) and (c) any other security agreement expressed to be governed by English law and entered into among one or more of the applicable Foreign Credit Parties (and such other Persons as may be party thereto) and, as applicable, the Foreign Secured Parties and/or the Collateral Agent for the benefit of the Foreign Secured Parties, including each pledge agreement, mortgage, security agreement, guarantee or other agreement that is entered into by any Foreign Credit Party or any Person who is the holder of equity interests in any Foreign Credit Party, in each case as the same may be amended, restated or otherwise modified from time to time.

"**Unadjusted Benchmark Replacement**" shall mean the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

"**Unfinanced Capital Expenditures**" shall mean, for any period, the aggregate of all expenditures paid in cash by the Parent Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on a consolidated statement of cash flows of the Parent Borrower or the Restricted Subsidiary and excluding: (i) expenditures to the extent financed with (A) insurance proceeds, (B) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (C) proceeds from any Disposition of assets that are permitted to be re-invested or not required to be applied to prepay Term Loan Obligations, (D) any Indebtedness (other than the Loans hereunder) or (E) amounts included in the definition of "Available Equity Amount", (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) expenditures that are accounted for as capital expenditures by the Parent Borrower or any

Restricted Subsidiary and that actually are paid for, or reimbursed to the Parent Borrower or any Restricted Subsidiary in cash or Cash Equivalents, by a Person other than the Parent Borrower or any Restricted Subsidiary and for which neither the Parent Borrower nor any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation (other than rent) in respect of such expenditures to such Person or any other Person (whether before, during or after such period), (iv) the book value of any asset owned by the Parent Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period, *provided* that (x) any expenditure necessary in order to permit such asset to be reused shall be included as a capital expenditure during the period in which such expenditure actually is made and (y) such book value shall have been included in capital expenditures when such asset was originally acquired, (v) expenditures that constitute Permitted Acquisitions, (vi) interest capitalized during such period, (vii) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (A) used or surplus equipment traded in at the time of such purchase and (B) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business or (viii) expenditures relating to the construction, acquisition, replacement, reconstruction, development, refurbishment, renovation or improvement of any property which has been transferred to a Person other than the Parent Borrower or a Restricted Subsidiary during the same fiscal year in which such expenditures were made pursuant to a sale-leaseback transaction to the extent of the cash proceeds received by the Parent Borrower or such Restricted Subsidiary pursuant to such sale-leaseback transaction.

"**Unfunded Current Liability**" of any Pension Plan shall mean the amount, if any, by which the Accumulated Benefit Obligation (as defined under Statement of Financial Accounting Standards No. 87 ("**SFAS 87**")) under the Pension Plan as of the close of its most recent plan year, determined in accordance with SFAS 87 as in effect on the Closing Date, exceeds the fair market value of the assets allocable thereto.

"**Unpaid Supplier Reserve**" shall mean, at any time, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, with respect to the Canadian Borrower, the amount equal to the percentage applicable to Inventory in the calculation of the Canadian Borrowing Base *multiplied* by the aggregate value of the Eligible Inventory which the Administrative Agent, in its Permitted Discretion, considers is or may be subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the Bankruptcy and Insolvency Act (Canada) or any other laws of Canada or any other applicable jurisdiction granting revendication or similar rights to unpaid suppliers, in each case, where such supplier's right ranks or is capable of ranking in priority to or pari passu with one or more of the first priority Liens granted in the Foreign Security Documents.

"**unreallocated portion**" shall have the meaning provided in Section 2.16(a)(ii).

"**Unreimbursed Amount**" shall have the meaning provided in Section 3.1(b)(iii).

"**Unrestricted Cash**" shall mean, without duplication, all cash and Cash Equivalents included in the cash and Cash Equivalents accounts listed on the consolidated balance sheet of the Parent Borrower and the Restricted Subsidiaries as at such date, excluding any cash and Cash Equivalents with respect to which a Lien (other than any Lien permitted under clause (x) or (bb) of the definition of Permitted Encumbrance) senior to the Lien securing the Obligations is granted for the benefit of other Indebtedness or obligations (but may include cash and Cash Equivalents securing the Obligations along with the Term Loan Obligations pursuant to the Applicable Intercreditor Agreements).

"**Unrestricted Escrow Subsidiary**" shall have the meaning provided in Section 1.11.

"**Unrestricted Subsidiary**" shall mean (a) any Subsidiary of the Parent Borrower that is formed or acquired after the Closing Date; *provided* that at such time (or promptly thereafter) the Parent Borrower designates such Subsidiary an Unrestricted Subsidiary in a written notice to the Administrative Agent, (b) any Restricted Subsidiary designated as an Unrestricted Subsidiary by the Parent Borrower after the Closing Date in a written notice to the Administrative Agent; *provided* that in each case of clauses (a) and (b), (x) such designation shall be deemed to be an Investment (or reduction in an outstanding Investment, in the case of a designation of an Unrestricted Subsidiary as a Restricted Subsidiary) on the date of such designation in an amount equal to the net book value of the investment therein and such designation shall be permitted only to the extent permitted under Section 10.5 on the date of such designation, (y) subject to Section 1.12, no Event of Default exists or would result from such designation after giving Pro Forma Effect thereto and (z) such Unrestricted Subsidiary shall also be designated as an "Unrestricted Subsidiary" under any Indebtedness in a principal amount of not less than $100,000,000 (to the extent such concept exists under the definitive documentation in respect thereof) and (c) each Subsidiary of an Unrestricted Subsidiary; *provided*, *further*, that if a Subsidiary being designated as an Unrestricted Subsidiary has assets included in the Aggregate Borrowing Base before the designation of at least 5% of the Aggregate Borrowing Base, then the Parent Borrower shall deliver an updated Borrowing Base Certificate to the Administrative Agent at the time of such designation. No Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would constitute a "Restricted Subsidiary" under the definitive documentation in respect of any Indebtedness in a principal amount of not less than $100,000,000 (to the extent such concept exists under the definitive documentation in respect of such Indebtedness). The Parent Borrower may, by written notice to the Administrative Agent, re-designate any Unrestricted Subsidiary as a Restricted Subsidiary, and thereafter, such Subsidiary shall no longer constitute an Unrestricted Subsidiary, but only if, subject to Section 1.12, no Event of Default exists or would result from such re-designation. Such redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary shall be deemed to constitute the incurrence of Indebtedness and Liens of such Subsidiary (and reduction in an outstanding Investment). No Foreign Credit Party shall be designated as an Unrestricted Subsidiary.

"**U.S. Borrowing Base**" shall mean, on any date, an amount equal to (a) the sum of (i) 85% *multiplied* by the book value of the Eligible Accounts, *plus* (ii) 90% *multiplied* by the book value of the Eligible Investment Grade Accounts, *plus* (iii) 85% *multiplied* by the Net

Orderly Liquidation Value of Eligible Inventory *plus* (iv) 100% of Eligible Borrowing Base Cash, in each case of clauses (i) - (iv), owned by the Parent Borrower or any U.S. Subsidiary Guarantor *minus* (b) any Reserves.

"**U.S. Borrowing Base Excess Amount**" shall mean, at any time, the amount of (a) the U.S. Borrowing Base *minus* (b) the aggregate U.S. Revolving Credit Exposure, or if such amount is negative, zero.

"**U.S. Cash Management Bank**" shall mean a Cash Management Bank party to a Secured Cash Management Agreement with a U.S. Credit Party or a Restricted Subsidiary of a U.S. Credit Party.

"**U.S. Collateral**" shall mean all property pledged, mortgaged or purported to be pledged or mortgaged pursuant to the U.S. Security Documents (excluding, for the avoidance of doubt, all U.S. Excluded Collateral).

"**U.S. Credit Parties**" shall mean Holdings, the Parent Borrower and the U.S. Subsidiary Guarantors.

"**U.S. Excluded Collateral**" shall mean (i) [reserved], (ii) any vehicles and other assets subject to certificates of title; (iii) letter-of-credit rights to the extent a security interest therein cannot be perfected by a UCC filing (other than supporting obligations); (iv) any property subject to a Lien permitted under Section 10.2 securing a purchase money agreement, Capital Lease or similar arrangement permitted hereunder in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting U.S. Excluded Collateral), to the extent, and for so long as, the creation of a security interest therein is prohibited thereby (or otherwise requires consent, *provided* that there shall be no obligation to seek such consent) or creates a right of termination or favor of a third party, in each case, excluding the proceeds and receivables thereof to the extent not otherwise constituting U.S. Excluded Collateral; (v) (x) all leasehold interests in Real Estate (and there shall not be any requirement to obtain any landlord or other third party waivers, estoppels, consents or collateral access letters in respect of such leasehold interests) and (y) any parcel of Real Estate located in the United States and the improvements thereto owned in fee by a U.S. Credit Party with a fair market value of $10,000,000 or less (at the time of acquisition) (but not any U.S. Collateral located thereon) or any parcel of Real Estate and the improvements thereto owned in fee by a U.S. Credit Party outside the United States; (vi) any "intent to use" trademark application filed and accepted in the United States Patent and Trademark Office unless and until an amendment to allege use or a statement of use has been filed and accepted by the United States Patent and Trademark Office to the extent, if any, that, and solely during the period, if any, in which the grant of security interest therein could impair the validity or enforceability of such "intent to use" trademark application under federal law; (vii) any charter, permit, franchise, authorization, lease, license or agreement, in each case, only to the extent and for so long as the grant of a security interest therein (or the assets subject thereto) by the applicable U.S. Credit Party (x) would violate invalidate such charter, permit, franchise, authorization, lease, license, or agreement or (y) would give any party (other than a Credit Party) to any such charter, permit,

franchise, authorization, lease, license or agreement the right to terminate its obligations thereunder or (z) is permitted under such charter, permit, franchise, lease, license or agreement only with consent of the parties thereto (other than consent of a Credit Party) and such necessary consents to such grant of a security interest have not been obtained (it being understood and agreed that no Credit Party or Restricted Subsidiary has any obligation to obtain such consents) other than, in each case referred to in clauses (x) and (y) and (z), as would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction, in each case excluding the proceeds and receivables thereof which are not otherwise U.S. Excluded Collateral; (viii) any Commercial Tort Claim (as defined in the U.S. Security Agreement) for which no claim has been made or with a value of less than $10,000,000 for which a claim has been made; (ix) any U.S. Excluded Stock and Stock Equivalents; (x) any assets with respect to which, the Parent Borrower and the Collateral Agent reasonably determine, the cost or other consequences of granting a security interest or obtaining title insurance in favor of the Secured Parties under the U.S. Security Documents shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom; (xi) any assets with respect to which granting a security interest in such assets in favor of the Secured Parties under the U.S. Security Documents could reasonably be expected to result in a material adverse tax consequence as reasonably determined by the Parent Borrower and the Collateral Agent; (xii) any margin stock; (xiii) [reserved]; and (xiv) any assets with respect to which granting a security interest in such assets is prohibited by or would violate law, treaty, rule, or regulation or determination of an arbitrator or a court or other Governmental Authority or which would require obtaining the consent, approval, license or authorization of any Governmental Authority (unless such consent, approval, license or authorization has been received; *provided* that there shall be no obligation to obtain such consent) or create a right of termination in favor of any governmental or regulatory third party, in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting U.S. Excluded Collateral); *provided* that with respect to clauses (iv), (vii) and (xiv), such property shall be U.S. Excluded Collateral only to the extent and for so long as such prohibition, violation, invalidation or consent right, as applicable, is in effect and in the case of any such agreement or consent, was not created in contemplation thereof or of the creation of a security interest therein. Notwithstanding anything set forth herein, U.S. Excluded Collateral shall not include any assets owned by the U.S. Credit Parties that constitute collateral securing the Term Loans.

"**U.S. Excluded Stock and Stock Equivalents**" shall mean (i) any Stock or Stock Equivalents with respect to which, in the reasonable judgment of the Collateral Agent and the Parent Borrower, the burden or cost of pledging such Stock or Stock Equivalents in favor of the Collateral Agent under the Security Documents shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (ii) (A) solely in the case of any pledge of Voting Stock of (x) any Foreign Subsidiary that is a CFC or (y) any CFC Holding Company, in each case, owned directly by a Credit Party, any Voting Stock in excess of 65% of each outstanding class of Voting Stock of such Foreign Subsidiary that is a CFC or such CFC Holding Company and (B) any Stock or Stock Equivalents of (x) any Foreign Subsidiary that is a CFC or (y) any CFC Holding Company in each case not owned directly by a Credit Party, (iii) any Stock or

Stock Equivalents to the extent the pledge thereof would violate any Applicable Law or any Contractual Requirement (including any legally effective requirement to obtain the consent or approval of, or a license from, any Governmental Authority or any other regulatory third party unless such consent, approval or license has been obtained (it being understood that the foregoing shall not be deemed to obligate the Parent Borrower or any Subsidiary of the Parent Borrower to obtain any such consent, approval or license)), (iv) any Stock or Stock Equivalents of each Subsidiary to the extent that a pledge thereof to secure the Obligations is prohibited by any applicable Organizational Document of such Subsidiary or requires third party consent (other than the consent of a Credit Party), unless consent has been obtained to consummate such pledge (it being understood that the foregoing shall not be deemed to obligate the Parent Borrower or any Subsidiary to obtain any such consent), in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law, excluding the proceeds and receivables thereof (to the extent not otherwise constituting U.S. Excluded Collateral), (v) Stock or Stock Equivalents of any non-Wholly Owned Subsidiary, (vi) any Stock or Stock Equivalents of any Subsidiary to the extent that the pledge of such Stock or Stock Equivalents could reasonably be expected to result in material adverse tax or accounting consequences to Holdings or any Subsidiary thereof as reasonably determined by the Parent Borrower and the Collateral Agent, (vii) any Stock or Stock Equivalents that are margin stock, (viii) any Stock or Stock Equivalents owned by a CFC or a CFC Holding Company, and (ix) any Stock and Stock Equivalents of any Unrestricted Subsidiary or of any Restricted Subsidiary that does not constitute a Material Subsidiary (other than (A) to the extent a perfected security interest therein can be obtained by filing a UCC-1 financing statement or (B) as otherwise agreed to by the Parent Borrower in its sole discretion), any Person not constituting a Subsidiary, any Captive Insurance Subsidiary, any Broker-Dealer Subsidiary, any not-for-profit Subsidiary and any special purpose entity (including any Receivables Entity and any Securitization Subsidiary); *provided* that U.S. Excluded Stock and Stock Equivalents shall not include proceeds of the foregoing property to the extent otherwise constituting Collateral.

"**U.S. Excluded Subsidiary**" shall mean (a) each Domestic Subsidiary of the Parent Borrower designated by the Parent Borrower for the purpose of this clause (a) from time to time, for so long as any such Domestic Subsidiary does not constitute a Material Subsidiary as of the most recently ended Test Period; *provided* that if such Domestic Subsidiary would constitute a Material Subsidiary as of the end of such Test Period, the Parent Borrower shall cause such Domestic Subsidiary to become a Guarantor pursuant to Section 9.11, (b) each Domestic Subsidiary that is not a Wholly Owned Subsidiary or otherwise constitutes a joint venture (for so long as such Subsidiary remains a non-Wholly Owned Restricted Subsidiary or joint venture), (c) any CFC or CFC Holding Company, (d) each Domestic Subsidiary that is (i) prohibited by any applicable (x) Contractual Requirement, (y) Applicable Law (including without limitation as a result of applicable financial assistance, directors' duties or corporate benefit requirements) or (z) Organizational Document (in the case of clauses (x) and (z), in effect on the Closing Date or any date of acquisition of such Subsidiary (to the extent such prohibition was not entered into in contemplation of the Guarantee)) from guaranteeing or granting Liens to secure the Obligations at the time such Subsidiary becomes a Restricted Subsidiary (and for so long as such restriction or any replacement or renewal thereof is in effect), or (ii) required to

obtain consent, approval, license or authorization of a Governmental Authority for such guarantee or grant (unless such consent, approval, license or authorization has already been received); *provided* that there shall be no obligation to obtain such consent, (e) each Domestic Subsidiary that is a Subsidiary of a CFC or CFC Holding Company, (f) any other Domestic Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Parent Borrower, the cost or other consequences (including any material adverse tax consequences) of guaranteeing the Obligations shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (g) each Unrestricted Subsidiary, (h) any Foreign Subsidiary, (i) any special purpose entity, including any Receivables Entity and any Securitization Subsidiary, (j) any Subsidiary to the extent that the guarantee of the Obligations by such Subsidiary could reasonably be expected to result in material adverse tax consequences (as determined by the Parent Borrower and the Administrative Agent), (k) any Captive Insurance Subsidiary, (l) any non-profit Subsidiary or (m) any Broker-Dealer Subsidiary; *provided* that U.S. Excluded Subsidiary shall not include any Domestic Subsidiary of the Parent Borrower to the extent such Domestic Subsidiary guarantees the Term Loans.

"**U.S. Guarantee**" shall mean the U.S. Guarantee made by the U.S. Guarantors in favor of the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit C.

"**U.S. Guarantors**" shall mean (a) Holdings, (b) each Domestic Subsidiary (other than a U.S. Excluded Subsidiary) that provides the U.S. Guarantee on the Closing Date or becomes a party to the U.S. Guarantee after the Closing Date pursuant to Section 9.11 or otherwise and (c) the Parent Borrower (other than with respect to its own U.S. Obligations).

"**U.S. Hedge Bank**" shall mean each Hedge Bank party to a Secured Hedging Agreement with a U.S. Credit Party or a Restricted Subsidiary of a U.S. Credit Party.

"**U.S. L/C Issuer**" shall mean an L/C Issuer in its capacity as the issuer of a U.S. Letter of Credit.

"**U.S. L/C Obligations**" shall mean, at any time, the aggregate maximum amount then available to the drawn under all outstanding U.S. Letters of Credit (whether or not (i) such maximum amount is then in effect under any such U.S. Letter of Credit if such maximum amount increases periodically pursuant to the terms of such U.S. Letter of Credit or (ii) the conditions to drawing can then be satisfied) *plus* the aggregate of all Unreimbursed Amounts in respect of U.S. Letters of Credit, including all L/C Borrowings in respect of U.S. Letters of Credit. For all purposes of this Agreement, if on any date of determination a U.S. Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be outstanding in the amount so remaining available to be drawn.

"**U.S. Lender**" shall have the meaning provided in Section 5.4(h).

"**U.S. Letter of Credit**" shall have the meaning provided in Section 3.1(a).

"**U.S. Line Cap**" shall mean, at any time, the lesser of (a) the U.S. Borrowing Base at such time and (b) the aggregate U.S. Revolving Credit Commitments at such time.

"**U.S. Mortgage**" shall mean a mortgage or a deed of trust, deed to secure debt, trust deed or other security document entered into by the owner of a U.S. Mortgaged Property and the Collateral Agent for the benefit of the Secured Parties in respect of that U.S. Mortgaged Property, in a form to be mutually agreed with the Administrative Agent.

"**U.S. Mortgaged Property**" shall mean all Real Estate (i) set forth on Schedule 1.1(b) and (ii) with respect to which a U.S. Mortgage is required to be granted pursuant to Section 9.12.

"**U.S. Obligations**" shall mean all advances to, and debts, liabilities, obligations, covenants and duties of, the Parent Borrower and the other U.S. Credit Parties arising under any Credit Document or otherwise with respect to any Loan to the Parent Borrower, any U.S. L/C Obligations, or any Cash Management Obligations of the Parent Borrower and its Restricted Subsidiaries under Secured Cash Management Agreements or Hedging Obligations of the Parent Borrower and its Restricted Subsidiaries under Secured Hedging Agreements (and in each case including in respect of any Guarantee thereof made by a U.S. Credit Party), whether direct or indirect (including those acquired by assumption), absolute or Obligations, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any U.S. Credit Party of any proceeding under any bankruptcy or insolvency law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, in each case, other than Excluded Swap Obligations. Without limiting the generality of the foregoing but without duplication of the Foreign Obligations of the U.S. Credit Parties, the U.S. Obligations of the U.S. Credit Parties under the Credit Documents (and any of their Restricted Subsidiaries to the extent they have obligations under the Credit Documents) (i) include the obligation (including Guarantee Obligations) to pay principal, interest, charges, expenses, fees, attorney costs, indemnities and other amounts payable by any U.S. Credit Party under any Credit Document and (ii) exclude for any U.S. Credit Party, notwithstanding any term or condition in this Agreement or any other Credit Documents, ~~any~~its Excluded Swap Obligations.

"**U.S. Revolving Credit Commitments**" shall mean, as to each Lender, its obligation to (a) make U.S. Revolving Credit Loans to the Parent Borrower pursuant to Section 2.1(a), (b) purchase participations in U.S. L/C Obligations in respect of U.S. Letters of Credit, (c) purchase participations in U.S. Swing Line Loans and (d) purchase participations in U.S. Protective Advances, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth, and opposite such Lender's name on Schedule 1.1(a) under the caption "U.S. Revolving Credit Commitment" or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including with respect to Incremental Commitments). The aggregate U.S. Revolving Credit Commitments of all Lenders is $225,000,000 on the Closing Date (which shall be reduced to $150,000,000 on and after the Amendment No. 1

Effective Date), as such amount may be adjusted from time to time in accordance with the terms of this Agreement, including pursuant to Section 4.2, Section 4.3 or Section ~~2.14~~2.14.

"**U.S. Revolving Credit Exposure**" shall mean, as to each U.S. Revolving Credit Lender at any time, the sum of the Outstanding Amount of such Lender's U.S. Revolving Credit Loans and its Pro Rata Share or other applicable share provided for under this Agreement of the U.S. L/C Obligations, the U.S. Swing Line Loans and the U.S. Protective Advances at such time.

"**U.S. Revolving Credit Lender**" shall mean, at any time, any Lender that has a U.S. Revolving Credit Commitment at such time, or if the U.S. Revolving Credit Commitments have been terminated, any U.S. Revolving Credit Exposure.

"**U.S. Secured Parties**" shall mean the Administrative Agent, the Collateral Agent, each U.S. L/C Issuer, each U.S. Swing Line Lender, each U.S. Revolving Credit Lender, each U.S. Hedge Bank, each U.S. Cash Management Bank and each sub-agent pursuant to Section 12 appointed by the Administrative Agent with respect to matters relating to the Credit Facilities or appointed by the Collateral Agent with respect to matters relating to any U.S. Security Document, in each case, in its capacity as such.

"**U.S. Security Agreement**" shall mean the U.S. Security Agreement, dated as of the Closing Date, in substantially the form attached hereto as Exhibit D (as the same may be amended, restated, amended and restated, supplemented or otherwise modified or replaced from time to time), entered into by the Parent Borrower, the other grantors party thereto and the Collateral Agent for the benefit of the Secured Parties.

"**U.S. Security Documents**" shall mean, collectively, (a) the U.S. Security Agreement, (b) the U.S. Mortgages, (c) all Applicable Intercreditor Agreements and (d) each intellectual property security agreement and each other security agreement or other instrument or document executed and delivered pursuant to Section 9.11, 9.12 or pursuant to any other such U.S. Security Document.

"**U.S. Subsidiary Guarantors**" shall mean each Domestic Subsidiary of the Parent Borrower that provides the U.S. Guarantee.

"**U.S. Swing Line Lender**" shall mean Citibank, N.A., in its capacity as provider of U.S. Swing Line Loans, or any successor swing line lender to the Parent Borrower hereunder.

"**U.S. Swing Line Loan**" shall have the meaning provided in Section 3.2(a).

"**U.S. Swing Line Sublimit**" shall mean an amount equal to the lesser of (a) $30,000,000 and (b) the aggregate amount of the U.S. Revolving Credit Commitments. The U.S. Swing Line Sublimit is part of, and not in addition to, the U.S. Revolving Credit Commitments.

"**U.S. Unused Amount**" shall mean, on any day the aggregate U.S. Revolving Credit Commitments then in effect *minus* the aggregate U.S. Revolving Credit Loans *minus* the

aggregate U.S. L/C Obligations; *provided* that the U.S. Unused Amount shall never be less than zero.

"**VAT**" shall mean (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax as amended (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred in (a) above, or imposed elsewhere.

"**Voting Stock**" shall mean, with respect to any Person, such Person's Stock or Stock Equivalents having the right to vote for the election of directors or other governing body of such Person under ordinary circumstances; *provided* that for the purpose of the definition of "U.S. Excluded Stock and Stock Equivalents" and in each reference to the Voting Stock of any CFC or CFC Holding Company, Voting Stock shall also include any instrument treated as voting stock or stock equivalent for U.S. federal income tax purposes.

"**Wage Earner Priority Lien Reserve**" on any date of determination, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, a reserve established from time to time by the Administrative Agent in its Permitted Discretion with respect to the Canadian Borrowing Base in such amount as the Administrative Agent determines reflects the amounts that may become due under sections 81.3 or 81.4 of the *Bankruptcy and Insolvency Act* (Canada), which would give rise to a Lien with priority under Applicable Law over the Lien of the Administrative Agent.

"**Weekly Monitoring Period**" shall mean a period (a) during the occurrence and continuance of any Specified Event of Default or (b) commencing on the date on which the Specified Aggregate Excess Availability shall have been less than the greater of (x) $~~3~~20,000,000 and (y) 12.5% of the Aggregate Line Cap for five (5) consecutive Business Days and ending on the date on which the Specified Aggregate Excess Availability shall have been at least the greater of (x) $~~3~~20,000,000 and (y) 12.5% of the Aggregate Line Cap for twenty consecutive calendar days.

"**Weighted Average Life to Maturity**" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between each such date and the making of each such payment; by (b) the then-outstanding principal amount of such Indebtedness; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness (the "**Applicable Indebtedness**"), the effects of any prepayments or amortization made on such Applicable Indebtedness prior to the date of the applicable determination date shall be disregarded.

"**Wholly Owned**" shall mean, with respect to the ownership by a Person of a Subsidiary, that all of the Stock of such Subsidiary (other than directors' qualifying shares or

nominee or other similar shares required pursuant to Applicable Law) are owned by such Person or another Wholly Owned Subsidiary of such Person.

"**Withdrawal Liability**" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

"**Write-Down and Conversion Powers**" shall mean, with (a) 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 any UK Resolution Authority, (i) any powers under any Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person 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 and (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 Other Interpretive Provisions

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

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "herein", "hereto", "hereof" and "hereunder" and words of similar import when used in any Credit Document shall refer to such Credit Document as a whole and not to any particular provision thereof.

(c) Article, Section, Exhibit and Schedule references are to the Credit Document in which such reference appears.

(d) The term "including" is by way of example and not limitation.

(e) 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.

(f) The words "asset" and "property" shall be construed to have the same meaning and effect and refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(g) All references to "knowledge" or "awareness" of any Credit Party or a Restricted Subsidiary thereof means the actual knowledge of an Authorized Officer of a Credit Party or such Restricted Subsidiary.

(h) 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".

(i) Any reference herein to any Person shall be construed to include such Person's successors and permitted assigns and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all of the functions thereof.

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

(k) For purposes of determining compliance with any one of Sections 9.9, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7 and 1.1, (i) in the event that any Lien, Investment, Indebtedness, merger, consolidation, amalgamation or similar fundamental change, Disposition, Restricted Payment, Affiliate transaction, contractual obligation or prepayment of Junior Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Section, such transaction (or portion thereof) at any time and from time to time shall be permitted under one or more of such clauses as determined by the Parent Borrower (and the Parent Borrower shall be entitled to redesignate use of any such clauses from time to time) in its sole discretion at such time; *provided* that (x) all Indebtedness outstanding under the Credit Documents will be deemed at all times to have been incurred in reliance only on the exception in clause (a) of Section 10.1 and (y) all Indebtedness outstanding under the Term Loan Credit Documents (and any Refinancing Indebtedness thereof) will be deemed at all times to have been incurred in reliance only on the exception in clause (b) of Section 10.1 and (ii) with respect to any Lien, Investment, Indebtedness, merger, consolidation, amalgamation or similar fundamental change, Disposition, Restricted Payment, Affiliate transaction, contractual obligation or prepayment of Junior Indebtedness or other applicable transaction in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Lien, Investment, Indebtedness, merger, consolidation, amalgamation or similar fundamental change, Disposition, Restricted Payment, Affiliate transaction, contractual obligation or prepayment of Junior Indebtedness or other applicable transaction is made (so long as such Lien, Investment, Indebtedness, merger, consolidation, amalgamation or similar fundamental change, Disposition, Restricted Payment, Affiliate transaction, contractual obligation or prepayment of Junior Indebtedness or other applicable transaction at the time incurred or made was permitted hereunder).

(l) All references to "in the ordinary course of business" of the Parent Borrower or any Subsidiary thereof means (i) in the ordinary course of business of, or in furtherance of an objective that is in the ordinary course of business of the Parent Borrower or

such Subsidiary, as applicable, (ii) customary and usual in the industry or industries of the Parent Borrower and its Subsidiaries in the United States or any other jurisdiction in which the Parent Borrower or any Subsidiary does business, as applicable, or (iii) generally consistent with the past or current practice of the Parent Borrower or such Subsidiary, as applicable, or any similarly situated businesses in the United States or any other jurisdiction in which the Parent Borrower or any Subsidiary does business, as applicable.

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.

(b) Notwithstanding anything to the contrary herein, (i) other than in connection with the actual testing of the Financial Covenant, for purposes of determining compliance with any test or covenant contained in this Agreement with respect to any period during which any Specified Transaction occurs (or, for purposes of determining compliance with any test or covenant governing the permissibility of any transaction hereunder, during such period and thereafter and on or prior to such date of determination), the Consolidated Total Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, and the Consolidated Secured Net Leverage Ratio shall each be calculated with respect to such period and such Specified Transaction on a Pro Forma Basis and (ii) for purposes of determining compliance with any ratio governing the permissibility of any transaction to be consummated on a Pro Forma Basis hereunder, (A) the cash proceeds of any incurrence of debt then being incurred in connection with such transaction shall not be netted from Consolidated Total Debt and (B) Consolidated Total Debt shall be calculated after giving effect to any prepayment of Indebtedness, in each case for purposes of calculating the Consolidated First Lien Net Leverage Ratio, Consolidated Secured Net Leverage Ratio or Consolidated Total Net Leverage Ratio, as applicable. If since the beginning of any applicable Test Period, any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Parent Borrower or any of the Restricted Subsidiaries, in each case, since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this definition, then such financial ratio or test (or Consolidated EBITDA or Consolidated Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this definition. Solely for purposes of the calculation of the Fixed Charge Coverage Ratio to determine whether the conditions set forth in Section 10.6(c) are satisfied, the denominator thereof shall also include the actual amount of such Restricted Payment actually being made in cash on a Pro Forma Basis.

1.4 Rounding

Any financial ratios required to be maintained by the Parent Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed

herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.5 References to Agreements, Laws, Etc.

Unless otherwise expressly provided herein, (a) references to organizational documents, agreements (including the Credit Documents) and other Contractual Requirements shall be deemed to include all subsequent amendments, restatements, amendment and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendment and restatements, extensions, supplements and other modifications are permitted or not prohibited by any Credit Document and (b) references to any Applicable Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

1.6 Times of Day

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

1.7 Timing of Payment or Performance

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as applicable.

1.8 Additional Alternative Currencies

(a) The Parent Borrower may from time to time request that Revolving Credit Loans be made and/or Letters of Credit be issued in a currency other than Dollars or those specifically listed in the definition of "Alternative Currency"; *provided* that such requested currency is a lawful currency that is freely transferable and readily convertible into Dollars in the applicable interbank market. With respect to Revolving Credit Loans, such request shall be subject to the approval of the Administrative Agent and each Appropriate Lender, and, in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the applicable L/C Issuer and the Administrative Agent.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m. (New York time), ten Business Days prior to the date of the desired Borrowing or issuance of a Letter of Credit (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Revolving Credit Loans, the Administrative Agent shall promptly notify each Appropriate Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the applicable L/C Issuer thereof. Each Appropriate

Lender and the applicable L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m. (New York time), five Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Revolving Credit Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or an L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or L/C Issuer, as the case may be, to permit Revolving Credit Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all Appropriate Lenders consent to making Revolving Credit Loans in such requested currency, the Administrative Agent shall so notify the Parent Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Borrowing of Revolving Credit Loans. If the applicable L/C Issuer consents to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Parent Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.8, the Administrative Agent shall promptly so notify the Parent Borrower.

1.9 Currency Equivalents Generally

(a) The Administrative Agent shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur.

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

(c) In determining whether any Indebtedness, Investment, Lien, Disposition, Restricted Payment or any other amount under a "fixed amount" basket denominated in Dollars may be incurred in a currency other than Dollars, such amount shall be determined based on the currency exchange rate determined at the time of such incurrence (or, in the case of any revolving Indebtedness or any amount committed to be made, at the time it is first committed); provided that no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness, Investment, Lien, Disposition, Restricted Payment or such other amount is incurred or made;

provided, further that for purpose of determining Consolidated Net Income, Consolidated EBITDA, Consolidated Total Debt or any other amount or ratio determined based on Consolidated Net Income, Consolidated EBITDA or Consolidated Total Debt, amounts in currencies other than Dollars shall be translated into Dollars at the currency exchange rates used in preparing the most recently delivered Section 9.1 Financials.

1.10 Classification of Loans and Borrowings

For purposes of this Agreement, Revolving Credit Loans may be classified and referred to by Type (e.g., a "LIBOR Loan"). Borrowings also may be classified and referred to by Type (e.g., a "LIBOR Borrowing").

1.11 Unrestricted Escrow Subsidiary

Any Indebtedness permitted to be incurred hereunder may be incurred, at the option of the Parent Borrower, by a newly created and newly designated Unrestricted Subsidiary (an "**Unrestricted Escrow Subsidiary**") with no assets other than the cash proceeds of such incurred Indebtedness *plus*, subject to compliance with Section 10.5, any cash and Cash Equivalents contributed to such Unrestricted Escrow Subsidiary as deposit of interest expenses and fees, additional cash collateral or for other purposes, which Unrestricted Escrow Subsidiary will then merge with and into the Parent Borrower or any of the Restricted Subsidiaries with the Parent Borrower or such Restricted Subsidiary surviving the merger and assuming all obligations of the Unrestricted Escrow Subsidiary. So long as such Indebtedness would have been permitted to be incurred directly by the Parent Borrower or any Restricted Subsidiary upon the incurrence of such Indebtedness by the Unrestricted Escrow Subsidiary, or, with respect to any Indebtedness incurred in connection with a Limited Condition Transaction, at the option of the Parent Borrower, at the time the LCT Election is made, the creation, designation and re-designation of the Unrestricted Escrow Subsidiary and the merger of the Unrestricted Escrow Subsidiary into the Parent Borrower or any Restricted Subsidiary shall not be subject to any additional condition, including any condition that no Default or Event of Default shall have occurred and be continuing at such time.

1.12 Limited Condition Transactions

In connection with any action being taken in connection with a Limited Condition Transaction, for purposes of (i) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test or (ii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Consolidated EBITDA or Consolidated Total Assets), in each case, at the option of the Parent Borrower (the Parent Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"; *provided* that such election may be revoked by the Parent Borrower at any time prior to the consummation or abandonment of the Limited Condition Transaction in question), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreement for such Limited Condition Transaction is entered into (the "**LCT Test Date**"), and if, after giving Pro Forma Effect to the Limited Condition Transaction, the Parent Borrower or any of its Restricted Subsidiaries would

have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Parent Borrower has made an LCT Election and, following the LCT Test Date, any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would have failed to have been satisfied as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA, Consolidated Interest Expense or Consolidated Total Assets following the LCT Test Date but at or prior to the consummation of the relevant Limited Condition Transaction, such baskets, tests or ratios will not be deemed to have failed to have been satisfied as a result of such fluctuations. If the Parent Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any event or transaction occurring after the relevant LCT Test Date and prior to the earliest of the date on which (i) such Limited Condition Transaction is consummated, (ii) the LCT Election is revoked by the Parent Borrower and (iii) the date that the definitive agreement or date for redemption, repurchase, defeasance, satisfaction and discharge or repayment specified in an irrevocable notice for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction (a "**Subsequent Transaction**") in connection with which a ratio, test or basket availability calculation must be made on a Pro Forma Basis or giving Pro Forma Effect to such Subsequent Transaction, for purposes of determining whether such ratio, test or basket availability has been complied with under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith have been consummated.

1.13 CFCs, CFC Holding Companies and Foreign Credit Parties not Liable for U.S. Obligations.

Notwithstanding any provision hereof or of any other Credit Document, (i) none of the Foreign Credit Parties or any CFC or CFC Holding Company shall guarantee or be required to guarantee any U.S. Obligation or be liable to pay or otherwise be liable, in whole or in part, for any U.S. Obligation, and (ii) no Foreign Collateral granted by the Foreign Credit Parties or a CFC or CFC Holding Company as security for all or any part of the Foreign Obligations, or any other credit enhancement provided by a non-U.S. obligor hereunder or under any Credit Document, shall secure any U.S. Obligation. Notwithstanding any provision hereof or any other Credit Document, in the event that the Borrowers are required to pay any amounts under this Agreement or the other Credit Documents that are fees, costs or expenses that are not in the nature of interest or principal, if such amounts cannot be directly charged to either the Parent Borrower or the applicable Foreign Borrower(s) as specifically related to either the U.S. Obligations or the Foreign Obligations, then such amounts shall be paid by each of the Parent Borrower and the Foreign Borrowers pro rata based upon the total amount of the Obligations attributable to such Borrower outstanding at such time. Notwithstanding anything herein or in any other Credit Document to the contrary, any payment made by any Foreign Credit Party with respect to the Obligations shall be made and treated solely as a payment with respect to the Foreign Obligations.

1.14 Divisions.

For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its capital stock at such time.

SECTION 2 Amount and Terms of Credit

2.1 Revolving Credit Borrowing

(a) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, (i) each U.S. Revolving Credit Lender severally agrees to make revolving credit loans (each such loan, a "**U.S. Revolving Credit Loan**") to the Parent Borrower from time to time, on any Business Day after the Closing Date until the Maturity Date, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender's U.S. Revolving Credit Commitment; *provided* that after giving effect to any such Revolving Credit Borrowing, each of the Availability Requirements shall be met and (ii) each Foreign Revolving Credit Lender severally agrees to make revolving credit loans (each such loan, a "**Foreign Revolving Credit Loan**"; U.S. Revolving Credit Loan or Foreign Revolving Credit Loan, each a "**Revolving Credit Loan**") to any Foreign Borrower, in each case as elected by the Administrative Borrower pursuant to Section 2.3 from time to time, on any Business Day after the Closing Date until the Maturity Date, in an aggregate Dollar Amount in principal amount not to exceed at any time outstanding the amount of such Lender's Foreign Revolving Credit Commitment; *provided* that after giving effect to any such Revolving Credit Borrowing, each of the Availability Requirements shall be met. Revolving Credit Loans may be made (i) to the Parent Borrower in Dollars, Euro or any Alternative Currency provided under Section 1.8, (ii) to the Canadian Borrower in Dollars, Canadian Dollars or any Alternative Currency provided under Section 1.8 or (iii) to any European Borrower in Dollars, Euro, Sterling or any Alternative Currency provided under Section 1.8. Revolving Credit Loans (i) to the Parent Borrower or the Canadian Borrower denominated in Dollars may be ABR Loans or LIBOR Loans, as further provided herein, (ii) to the Canadian Borrower denominated in Canadian Dollars may be Canadian Prime Rate Loans or CDOR Loans, as further provided herein, and (iii) to any European Borrower may be LIBOR Loans denominated in Dollars or Sterling, or EURIBOR Loans denominated in Euros, as further provided herein. Within the limits of each Lender's U.S. Revolving Credit Commitment or Foreign Revolving Credit Commitment, as applicable, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.1(a), prepay under Section 2.5 and reborrow under this Section 2.1(a).

(b) Subject to the limitations set forth below (and notwithstanding anything to the contrary in Section 2.1(a) or in Section 7), (i) the Administrative Agent is authorized by the Parent Borrower and the U.S. Revolving Credit Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation), to make

loans denominated in Dollars that are ABR Loans (each such loan, a "**U.S. Protective Advance**") on behalf of all U.S. Revolving Credit Lenders to the Parent Borrower and (ii) the Administrative Agent is authorized by all Foreign Borrowers and the Foreign Revolving Credit Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation), to make loans denominated in Dollars that are ABR Loans (each such loan, a "**Foreign Protective Advance**"; U.S. Protective Advance or Foreign Protective Advance, each a "**Protective Advance**") on behalf of all Foreign Revolving Credit Lenders to any Foreign Borrower, in each case of clauses (i) and (ii), at any time that any condition precedent set forth in Section 7 has not been satisfied or waived, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (x) to preserve or protect the Collateral, or any portion thereof or (y) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations. Any Protective Advance may be made in a principal amount that would result in the Availability Requirements not being met; *provided* that (i) no U.S. Protective Advance may be made to the extent that, after giving effect to such Protective Advance (together with the Outstanding Amount of any other outstanding U.S. Protective Advances) the aggregate Outstanding Amount of all U.S. Protective Advances outstanding hereunder would exceed 5% of the U.S. Borrowing Base as determined on the date of such proposed Protective Advance and (ii) no Foreign Protective Advance may be made to the extent that, after giving effect to such Protective Advance (together with the Outstanding Amount of any other outstanding Foreign Protective Advances) the aggregate Outstanding Amount of all Foreign Protective Advances outstanding hereunder would exceed 5% of the Foreign Borrowing Base as determined on the date of such proposed Protective Advance; *provided further* that (x) the aggregate U.S. Revolving Credit Exposure at such time shall not exceed the aggregate U.S. Revolving Credit Commitments as then in effect and (y) the aggregate Foreign Revolving Credit Exposure at such time shall not exceed the aggregate Foreign Revolving Credit Commitments as then in effect. Each U.S. Protective Advance shall be secured by the Liens in favor of the Administrative Agent on behalf of the Secured Parties in and to the U.S. Collateral and shall constitute U.S. Obligations hereunder. Each Foreign Protective Advance shall be secured by the Liens in favor of the Administrative Agent on behalf of the Secured Parties in and to the Collateral and shall constitute Foreign Obligations hereunder. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and will become effective prospectively upon the Administrative Agent's receipt thereof. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion and under no circumstance shall any Borrower have the right to require that a Protective Advance be made. At any time that the conditions precedent set forth in Section 7 have been satisfied or waived, the Administrative Agent may request (i) the U.S. Revolving Credit Lenders to make a U.S. Revolving Credit Loan to repay a U.S. Protective Advance and/or (ii) the Foreign Revolving Credit Lenders to make a Foreign Revolving Credit Loan to repay a Foreign Protective Advance. At any other time, the Administrative Agent may require the Appropriate Lenders to fund their risk participations described in Section 2.1(c) below.

(c) Upon the making of a U.S. Protective Advance or a Foreign Protective Advance, as applicable, by the Administrative Agent (whether before or after the occurrence of a Default or an Event of Default), (i) each U.S. Revolving Credit Lender shall be

deemed, without further action by any party hereto, unconditionally and irrevocably to have purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such U.S. Protective Advance in proportion to its Pro Rata Share and (ii) each Foreign Revolving Credit Lender shall be deemed, without further action by any party hereto, unconditionally and irrevocably to have purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Foreign Protective Advance in proportion to its Pro Rata Share. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

(d) Notwithstanding anything to the contrary in any Credit Document, but subject to Section ~~2.12~~2.12, each Lender may, at its option, make Revolving Credit Loans, Swing Line Loans or Protective Advances, as applicable, available to the Borrowers by causing its applicable Lending Office or any foreign or domestic branch or Affiliate of such Lender to make such Loans; *provided* that (i) any exercise of such option shall not affect the obligation of the applicable Borrower to repay such Loan in accordance with the terms of this Agreement and the other Credit Documents and (ii) no Credit Party shall be obliged to make any payment pursuant to Section 2.10, ~~2.11~~2.11, 5.4 (or the comparable provisions in Section 14) in excess of any payment that would have been due to Lender pursuant to Section 2.10, ~~2.11~~2.11 or 5.4 (or the comparable provisions under Section 14), respectively, if the Lender had made such Loan through its Lending Office (other than (i) Loans made through any foreign or domestic branch or Affiliate of a Lender at the written request of the Parent Borrower or (ii) payments as a result of any change after the exercise of such option in (or in the interpretation, administration, or application of) any law or treaty or any published practice or published concession of any relevant taxing authority).

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit, Swing Line Loans and Protective Advances are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

2.2 Minimum Amount of Each Borrowing; Maximum Number of Borrowings

(a) Each Borrowing of, conversion to or continuation of LIBOR Loans, CDOR Loans or EURIBOR Loans shall be in a principal Dollar Amount of $1,000,000 or a whole multiple of the Dollar Amount of $500,000 in excess thereof.

(b) Except as provided in Sections 3.1(c) and 3.2(c), and except for Protective Advances which shall be made in the amounts required by Section 2.1(b), each Borrowing of or conversion to ABR Loans or Canadian Prime Rate Loans shall be in a principal

Dollar Amount of $500,000 or a whole multiple of the Dollar Amount of $100,000 in excess thereof.

(c) After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than twenty (20) Interest Periods in effect unless otherwise agreed between the Parent Borrower and the Administrative Agent.

2.3 Borrowings, Conversions and Continuations

(a) Each Revolving Credit Borrowing, each conversion of Revolving Credit Loans from one Type to the other, and each continuation of LIBOR Loans, EURIBOR Loans or CDOR Loans shall be made upon the applicable Administrative Borrower's revocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent (i) not later than 12:00 noon (New York, New York time) (A) three (3) Business Days prior to the requested date of any Borrowing or continuation of LIBOR Loans denominated in Dollars or any conversion of ABR Loans to LIBOR Loans, (B) four (4) Business Days prior to the requested date of any Borrowing or continuation of CDOR Loans or any conversion of Canadian Prime Rate Loans to CDOR Loans, and (C) four (4) Business Days prior to the requested date of any Borrowing or continuation of LIBOR Loans denominated in Sterling or EURIBOR Loans, and (ii) not later than 11:00 a.m. (New York, New York time) on the requested date of any Borrowing of ABR Loans or Canadian Prime Rate Loans. Each telephonic notice by the Parent Borrower pursuant to this Section 2.3(a) must be confirmed promptly by delivery to the Administrative Agent of a written Notice of Borrowing or Notice of Conversion or Continuation, appropriately completed and signed by an Authorized Officer of the applicable Administrative Borrower. Each Notice of Borrowing or Notice of Conversion or Continuation (whether telephonic or written) shall specify (i) whether the requesting Borrower is requesting a Revolving Credit Borrowing, a conversion of Revolving Credit Loans from one Type to the other, or a continuation of LIBOR Loans, EURIBOR Loans or CDOR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the currency in which the Loans to be borrowed are to be denominated, (v) the Type of Loans to be borrowed or to which existing Revolving Credit Loans are to be converted, (vi) the identity of the requesting Borrower and (vii) if applicable, the duration of the Interest Period with respect thereto. If the requesting Borrower fails to specify a Type of Loan in a Notice of Borrowing or Notice of Conversion or Continuation or fails to give a timely notice requesting a conversion or continuation, then the applicable Revolving Credit Loans shall be made as, or converted to, (i) in the case of Loans to the Parent Borrower or the Canadian Borrower denominated in Dollars, ABR Loans, (ii) in the case of Loans to the Canadian Borrower denominated in Canadian Dollars, Canadian Prime Rate Loans, (iii) in the case of Loans to a European Borrower denominated in Dollars or Sterling, LIBOR Loans with an Interest Period of one month and (iv) in the case of Loans denominated in Euros, EURIBOR Loans with an Interest Period of one month. Any such automatic conversion to ABR Loans or Canadian Prime Rate Loans, as applicable, shall be effective as of the last day of the Interest

Period then in effect with respect to the applicable LIBOR Loans or CDOR Loans, as applicable. If the requesting Borrower requests a Borrowing of, conversion to, or continuation of LIBOR Loans, CDOR Loans or EURIBOR Loans in any such Notice of Borrowing or Notice of Conversion or Continuation, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. If no currency is specified, the requested Borrowing shall be in Dollars. Notwithstanding anything to the contrary, no Revolving Credit Loan to a European Borrower may be converted to ABR Loans.

(b) Following receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify each Appropriate Lender of the amount (and currency) of its Pro Rata Share of the applicable Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the requesting Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to ABR Loans or Canadian Prime Rate Loans or continuation of Loans to a European Borrower described in Section 2.2(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the respective currency not later than (i) 1:00 p.m. (New York, New York time), in the case of any Loan denominated in Dollars or any Canadian Prime Rate Loan denominated in Canadian Dollars, and (ii) 9:00 a.m. (New York, New York time), in the case of any CDOR Loan denominated in Canadian Dollars and any Loan denominated in Sterling or Euro, in each case on the Business Day specified in the applicable Notice of Borrowing. Upon satisfaction of the applicable conditions set forth in Section 7, the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of such Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the requesting Borrower; *provided* that (x) if, on the date the Notice of Borrowing with respect to a Borrowing is given by the Parent Borrower, there are L/C Borrowings in respect of U.S. Letters of Credit outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowings and second, to the Parent Borrower as provided above and (y) if, on the date the Notice of Borrowing with respect to a Borrowing is given by a Foreign Borrower, there are L/C Borrowings in respect of Foreign Letters of Credit outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowings and second, to the Foreign Borrower as provided above.

(c) The Administrative Agent shall promptly notify the applicable Administrative Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBOR Loans, CDOR Loans or EURIBOR Loans upon determination of such interest rate. The determination of the LIBOR Rate, CDOR Rate or EURIBOR Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that ABR Loans or Canadian Prime Rate Loans are outstanding, the Administrative Agent shall notify the applicable Administrative Borrower and the Appropriate Lenders of any change in the Administrative Agent's prime rate used in determining the ABR or Canadian Prime Rate promptly following the public announcement of such change.

(d) Except as otherwise provided herein, a LIBOR Loan, a CDOR Loan or a EURIBOR Loan may be continued or converted only on the last day of an Interest Period for such LIBOR Loan, CDOR Loan or EURIBOR Loan. During the existence of an Event of Default, the Administrative Agent or the Required Lenders may require that no Loans may be converted or continued as LIBOR Loans, CDOR Loans or EURIBOR Loans, and that (unless repaid) any or all of the then-outstanding Loans in Alternative Currencies be redenominated into Dollars in the amount of the Dollar Amount thereof, on the last day of the then-current Interest Period with respect thereto.

2.4 Disbursement of Funds

(a) Unless the Administrative Agent shall have received notice from an Appropriate Lender prior to the date of any Borrowing that such Lender does not intend to make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share available to the Administrative Agent on the date of such Borrowing in accordance with Section 2.3(b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the applicable Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such Pro Rata Share available to the Administrative Agent, each of such Lender and applicable Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the applicable Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of such Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Overnight Rate *plus* any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.4(a) shall be conclusive in the absence of manifest error. If such 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 such Borrower (to the extent such amount is covered by interest paid by such Lender) the amount of such interest paid by such 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 any Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Nothing in this Section 2.4 shall be deemed to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that any Borrower may have against any Lender as a result of any default by such Lender hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to fulfill its commitments hereunder).

2.5 Repayment of Loans; Evidence of Debt

(a) Revolving Credit Loans. Each Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date the aggregate principal amount of all of its Revolving Credit Loans outstanding on such date.

(b) Swing Line Loans. Each Borrower shall repay each of its Swing Line Loans on the Maturity Date.

(c) Protective Advances. Each Borrower shall repay to the Administrative Agent the then unpaid amount of each of its Protective Advances on the Maturity Date.

(d) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of any Borrower to the appropriate Lending Office of such Lender resulting from each Loan made by such Lending Office of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lending Office of such Lender from time to time under this Agreement.

(e) The Administrative Agent shall maintain the Register pursuant to Section 13.6(b), and a subaccount for each Lender, in which Register and subaccounts (taken together) shall be recorded (i) the amount of each Loan made hereunder and, if applicable, the relevant tranche thereof and the Type of each Loan made and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from each Borrower and each Lender's share thereof.

(f) The entries made in the Register and accounts and subaccounts maintained pursuant to clauses (d) and (e) of this Section 2.5 shall, to the extent permitted by Applicable Law, be prima facie evidence of the existence and amounts of the obligations of each Borrower therein recorded; *provided*, *however*, that the failure of any Lender or the Administrative Agent to maintain such account, such Register or such subaccount, as applicable, or any error therein, shall not in any manner affect the obligation of each Borrower to repay (with applicable interest) the Loans made to such Borrower by such Lender in accordance with the terms of this Agreement.

(g) Each Borrower hereby agrees that, upon request of any Lender at any time and from time to time after such Borrower has made an initial Borrowing hereunder, such Borrower shall provide to such Lender, at such Borrower's expense a promissory note substantially in the form of Exhibit B, evidencing the Loans owing to such Lender. Each Lender may attach schedules to its note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.6 Designation of Administrative Borrower

Each Foreign Borrower irrevocably appoints the Irish Borrower and the Parent Borrower as its agent for all purposes relevant to this Agreement, including the giving and receipt of notices and execution and delivery of all documents, instruments, and certificates contemplated herein (including, without limitation, execution and delivery to the Administrative Agent of Notice of Borrowing and Notice of Conversion or Continuation) and all modifications hereto. Any acknowledgment, consent, direction, certification, or other action which might otherwise be valid or effective only if given or taken by all or any of the Foreign Borrowers acting singly, shall be valid and effective if given or taken only by the Irish Borrower or the Parent Borrower with respect to the Foreign Borrowers, whether or not any of the other Foreign Borrowers join therein, and the Agents and the Lenders shall have no duty or obligation to make further inquiry with respect to the authority of the Irish Borrower or the Parent Borrower; provided that nothing herein shall limit the effectiveness of, or the right of the Agents and the Lenders to rely upon, any notice (including, without limitation, a Notice of Borrowing and a Notice of Conversion or Continuation), document, instrument, certificate, acknowledgment, consent, direction, certification or other action delivered by any Borrower pursuant to this Agreement. For the purposes of this Section, each of the other Foreign Borrowers releases the Irish Borrower and the Parent Borrower, as applicable from the restrictions imposed by Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and any similar restrictions set forth in any other Applicable Law.

2.7 [Reserved]

2.8 Interest

(a) Subject to the provisions of Section 2.8(b), (i) each LIBOR Loan denominated in Dollars shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the LIBOR Rate for such Interest Period *plus* the Applicable Rate; (ii) each LIBOR Loan that is denominated in Sterling shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the LIBOR Rate for such Interest Period *plus* the Applicable Rate; (iii) each EURIBOR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the EURIBOR Rate for such Interest Period *plus* the Applicable Rate; (iv) each CDOR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the CDOR Rate for such Interest Period *plus* the Applicable Rate; (v) each ABR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the ABR *plus* the Applicable Rate; (vi) each Canadian Prime Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Canadian Prime Rate *plus* the Applicable Rate and (vii) each Overnight LIBOR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Overnight LIBOR Rate *plus* the Applicable Rate. For the avoidance of doubt, each Loan denominated in Sterling (other than a Swing Line Loan) shall be a LIBOR Loan, and each Loan denominated in Euro (other than a Swing Line Loan) shall be a EURIBOR Loan.

(b) If all or a portion of (i) the principal amount of any Loan or (ii) any interest payable thereon or any other amount hereunder shall not be paid when due (whether at the Stated Maturity, by acceleration or otherwise), and an Event of Default under Section 11.1 or 11.5 shall have occurred and be continuing, then, upon the giving of written notice by the Administrative Agent to the Parent Borrower (except in the case of an Event of Default under Section 11.5, for which no notice is required), such overdue amount (other than any such amount owed to a Defaulting Lender) shall bear interest at a rate *per annum* (the "**Default Rate**") that is (x) in the case of overdue principal, the rate that would otherwise be applicable thereto *plus* 2% or (y) in the case of any overdue interest or other amounts due hereunder, to the extent permitted by Applicable Law, the rate described in Section 2.8(a)(v) *plus* 2% from the date of written notice to the date on which such amount is paid in full (after as well as before judgment) (or if an Event of Default under Section 11.5 shall have occurred and be continuing, the date of the occurrence of such Event of Default).

(c) Interest on each Loan shall accrue from and including the date of any Borrowing to but excluding the date of any repayment thereof; *provided* that any Loan that is repaid on the same date on which it is made shall bear interest for one day. Interest on each Loan shall be payable in the currency in which such Loan was made. Except as provided below, interest shall be payable (i) in respect of each ABR Loan and each Canadian Prime Rate Loan, quarterly in arrears on the last Business Day of each March, June, September and December, (ii) in respect of each LIBOR Loan, CDOR Loan or EURIBOR Loan, on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of three months, on each date occurring at three-month intervals after the first day of such Interest Period, and (iii) in respect of each Loan, (A) on any prepayment; *provided* that interest on ABR Loans or Canadian Prime Rate Loans shall only become due pursuant to this clause (A) if the aggregate principal amount of the ABR Loans or Canadian Prime Rate Loans then-outstanding is repaid in full, (B) at maturity (whether by acceleration or otherwise) and (C) after such maturity, on demand.

(d) All computations of interest hereunder shall be made in accordance with Section 5.5.

2.9 Interest Periods

At the time the applicable Administrative Borrower gives a Notice of Borrowing or Notice of Conversion or Continuation in respect of the making of, or conversion into or continuation as, a Borrowing of LIBOR Loans, CDOR Loans or EURIBOR Loans in accordance with Section 2.3(a), the applicable Administrative Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of the Interest Period applicable to such Borrowing, which Interest Period shall, at the option of the applicable Administrative Borrower, be a one, two, three or six or (if available to all Appropriate Lenders) a twelve month period or a period of less than one month.

Notwithstanding anything to the contrary contained above:

(a) the initial Interest Period for any Borrowing of LIBOR Loans, CDOR Loans or EURIBOR Loans shall commence on the date of such Borrowing (including the

date of any conversion from a Borrowing of ABR Loans) and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the preceding Interest Period expires;

(b) if any Interest Period relating to a Borrowing of LIBOR Loans, CDOR Loans or EURIBOR Loans begins on the last Business Day of a calendar month or begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) 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 in respect of a LIBOR Loan, CDOR Loan or EURIBOR 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 next preceding Business Day; and

(d) the Borrowers shall not be entitled to elect any Interest Period in respect of any LIBOR Loan, CDOR Loan or EURIBOR Loan if such Interest Period would extend beyond the Maturity Date.

2.10 Increased Costs, Illegality, ~~LIBOR/EURIBOR Discontinuation,~~ Etc.

(a) In the event that (x) in the case of clause (i) below, the Administrative Agent or (y) in the case of clauses (ii) and (iii) below, the Required Lenders shall have reasonably determined (which determination shall, absent clearly demonstrable error, be final and conclusive and binding upon all parties hereto):

(i) on any date for determining the LIBOR Rate, CDOR Rate or EURIBOR Rate for any Interest Period that (x) deposits in the principal amounts and currencies of the Loans comprising such Borrowing are not generally available in the relevant market or (y) by reason of any changes arising on or after the Closing Date affecting the interbank market for such rate, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of LIBOR Rate, CDOR Rate or EURIBOR Rate; or

(ii) at any time, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any LIBOR Loans, CDOR Loans or EURIBOR Loans (other than any increase or reduction attributable to (A) Indemnified Taxes and Taxes indemnifiable under Section 5.4 (or the comparable provisions under Section 14), (B) net income Taxes and franchise and excise Taxes (imposed in lieu of net income Taxes) imposed on any Agent or Lender or (C) Taxes included under clauses (c) through (e) of the definition of "Excluded Taxes") because of (x) any change since the Closing Date in any Applicable Law (or in the interpretation or administration thereof and including the introduction of any new

Applicable Law), such as, for example, without limitation, a change in official reserve requirements, and/or (y) other circumstances affecting the interbank market for such rate or the position of such Lender in such market; or

(iii) at any time, that the making or continuance of any LIBOR Loan has become unlawful as a result of compliance by such Lender in good faith with any Applicable Law (or would conflict with any such Applicable Law not having the force of law even though the failure to comply therewith would not be unlawful), or has become impracticable as a result of a contingency occurring after the Closing Date that materially and adversely affects the interbank LIBOR market;

then, and in any such event, such Lender (or the Administrative Agent, in the case of clause (i) above) shall within a reasonable time thereafter give notice (if by telephone, confirmed in writing) to the Parent Borrower and to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Appropriate Lenders). Thereafter (x) in the case of clause (i) above, LIBOR Loans, CDOR Loans or EURIBOR Loans shall no longer be available until such time as the Administrative Agent notifies the Parent Borrower and the Appropriate Lenders that the circumstances giving rise to such notice by the Administrative Agent no longer exist (which notice the Administrative Agent agrees to give at such time when such circumstances no longer exist), and any Notice of Borrowing or Notice of Conversion or Continuation given by the applicable Administrative Borrower with respect to LIBOR Loans, CDOR Loans or EURIBOR Loans that have not yet been incurred shall be deemed rescinded by such Administrative Borrower, as applicable, (y) in the case of clause (ii) above, the applicable Borrower shall pay to such Lender, promptly after receipt of written demand therefor such additional amounts (in the form of an increased rate of or a different method of calculating, interest or otherwise, as such Lender in its reasonable discretion shall determine) as shall be required to compensate such Lender for such increased costs or reductions in amounts receivable hereunder (it being agreed that a written notice as to the additional amounts owed to such Lender, showing in reasonable detail the basis for the calculation thereof, submitted to the Parent Borrower by such Lender shall, absent clearly demonstrable error, be final and conclusive and binding upon all parties hereto) and (z) in the case of clause (iii) above, the applicable Borrower shall take one of the actions specified in Section 2.10(b) as promptly as possible and, in any event, within the time period required by Applicable Law.

(b) At any time that any LIBOR Loan, CDOR Loan or EURIBOR Loan is affected by the circumstances described in Section 2.10(a)(ii) or (iii), the applicable Borrower may (and in the case of a LIBOR Loan affected pursuant to Section 2.10(a)(iii) shall) either (x) if the affected LIBOR Loan, CDOR Loan or EURIBOR Loan is then being made pursuant to a Borrowing, cancel such Borrowing by giving the Administrative Agent telephonic notice (confirmed promptly in writing) thereof on the same date that the Parent Borrower was notified by a Lender pursuant to Section 2.10(a)(ii) or (iii) or (y) if the affected LIBOR Loan, CDOR Loan or EURIBOR Loan is then-outstanding, upon at least three Business Days' notice to the Administrative Agent require the affected Lender to convert each LIBOR Loan into an ABR Loan denominated in Dollars and each CDOR Loan into Canadian Prime Rate Loan; *provided*

that if more than one Lender is affected at any time, then all affected Lenders must be treated in the same manner pursuant to this Section 2.10(b).

(c) If, after the Closing Date, any Change in Law relating to capital adequacy or liquidity of any Lender or compliance by any Lender or its parent with any Change in Law relating to capital adequacy or liquidity occurring after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or its parent's or its Affiliates' capital or assets as a consequence of such Lender's commitments or obligations hereunder to a level below that which such Lender or its parent or any Affiliate thereof could have achieved but for such Change in Law (taking into consideration such Lender's or parent's policies with respect to capital adequacy or liquidity), then from time to time, promptly after written demand by such Lender (with a copy to the Administrative Agent), the applicable Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or its parent for such reduction, it being understood and agreed, however, that a Lender shall not be entitled to such compensation as a result of such Lender's compliance with, or pursuant to any request or directive to comply with, any Applicable Law as in effect on the Closing Date. Each Lender, upon determining in good faith that any additional amounts will be payable pursuant to this Section 2.10(c), will give prompt written notice thereof to the Parent Borrower, which notice shall set forth in reasonable detail the basis of the calculation of such additional amounts, although the failure to give any such notice shall not, subject to Section ~~2.13~~2.13, release or diminish any Borrower's obligations to pay additional amounts pursuant to this Section 2.10(c) upon receipt of such notice.

(d) Notwithstanding the foregoing, no Lender shall demand compensation pursuant to this Section 2.10 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities.

~~(e) Notwithstanding anything contained herein to the contrary, and without limiting the provisions of Section 2.6, in the event that the Administrative Agent or the Required Lenders shall have determined (which determination shall be final and conclusive and binding upon all parties hereto absent manifest error) that any of the LIBOR Rate or the EURIBOR Rate for a particular Interest Period is not available at such time for any reason, then the LIBOR Rate or the EURIBOR Rate (as applicable) for such Interest Period shall be (x) a comparable successor or alternative interbank rate for deposits in Dollars, Sterling or Euros (as applicable) that is, at such time, broadly accepted by the syndicated loan market in lieu of the LIBOR Rate or the EURIBOR Rate (as applicable) and is reasonably acceptable to the Parent Borrower and the Administrative Agent or (y) solely if no such broadly accepted comparable successor interbank rate exists at such time, a successor or alternative index rate as the Administrative Agent and the Parent Borrower may determine with the consent of the Required Lenders.~~

2.11 Compensation

If (i) any payment of principal of any LIBOR Loan, CDOR Loan or EURIBOR Loan is made by the applicable Borrower to or for the account of a Lender other than on the last day of the Interest Period for such LIBOR Loan, CDOR Loan or EURIBOR Loan as a result of a

payment or conversion pursuant to Section 2.5, 2.6, 2.10, 5.1, 5.2 or 13.7, as a result of acceleration of the maturity of the Loans pursuant to Section 11 or for any other reason, (ii) any Borrowing of LIBOR Loans, CDOR Loans or EURIBOR Loans is not made as a result of a withdrawn Notice of Borrowing, (iii) any ABR Loan is not converted into a LIBOR Loan as a result of a withdrawn Notice of Conversion or Continuation, (iv) any LIBOR Loan, CDOR Loan or EURIBOR Loan is not continued as a LIBOR Loan, CDOR Loan or EURIBOR Loan, as the case may be, as a result of a withdrawn Notice of Conversion or Continuation or (v) any prepayment of principal of any LIBOR Loan, CDOR Loan or EURIBOR Loan is not made as a result of a withdrawn notice of prepayment pursuant to Section 5.1 or 5.2, the applicable Borrower shall, after receipt of a written request by such Lender (which request shall set forth in reasonable detail the basis for requesting such amount), pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that such Lender may reasonably incur as a result of such payment, failure to convert, failure to continue or failure to prepay, including any loss, cost or expense (excluding loss of anticipated profits) actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such LIBOR Loan, CDOR Loan or EURIBOR Loan. Notwithstanding the foregoing, no Lender shall demand compensation pursuant to this Section 2.11 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities.

2.12 Change of Lending Office

Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.10(a)(ii), 2.10(a)(iii), 2.10(c) or 5.4 (or the comparable provisions under Section 14) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another Lending Office for any Loans affected by such event; provided that such designation is made on such terms that such Lender and its Lending Office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of any such Section. Nothing in this Section ~~2.12~~2.12 shall affect or postpone any of the obligations of the applicable Borrower or the right of any Lender provided in Section 2.10 or 5.4 (or the comparable provisions under Section 14). The applicable Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with such designation.

2.13 Notice of Certain Costs

Notwithstanding anything in this Agreement to the contrary, to the extent any notice required by Section 2.10, ~~2.11~~2.11 or 5.4 (or the comparable provisions in Section 14) is given by any Lender more than 180 days after such Lender has knowledge (or should have had knowledge) of the occurrence of the event giving rise to the additional cost, reduction in amounts, loss, tax or other additional amounts described in such Sections, such Lender shall not be entitled to compensation under Section 2.10, ~~2.11~~2.11 or 5.4 (or the comparable provisions under Section 14), as the case may be, for any such amounts incurred or accruing prior to the

181st day prior to the giving of such notice to the Parent Borrower (except that, if the event giving rise to such additional cost, reduction in amounts, loss, tax or other additional amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

2.14 Incremental Credit Extensions

(a) Incremental Revolving Credit Request. The Borrowers may at any time and from time to time, on one or more occasions, after the Closing Date, by notice to the Administrative Agent, request one or more increases to the aggregate principal amount of the Revolving Credit Commitments (the "**Incremental Commitments**"). Such increase may be an increase to the U.S. Revolving Credit Commitments and/or the Foreign Revolving Credit Commitments and shall not be required to be pro rata as between the two Tranches.

(b) Size. The aggregate principal amount of all Incremental Commitments hereunder shall not exceed the sum of (x) $50,000,000, *plus* (y) an amount equal to the excess of the Aggregate Borrowing Base set forth in the Borrowing Base Certificate most recently delivered pursuant to Section 9.1(i) over the principal amount of the Aggregate Revolving Credit Commitments at such time. Each Incremental Commitment will be in an integral multiple of $1,000,000 and in an aggregate principal amount that is not less than $5,000,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the limit set forth above.

(c) Incremental Lenders. Incremental Commitments may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to make all or any portion of the Incremental Commitments, nor will the Borrowers have any obligation to approach any existing Lender(s) to provide any Incremental Commitments) or by any Additional Lender on terms permitted by this Section ~~2.14~~2.14; *provided* that the Administrative Agent, each Swing Line Lender for the applicable Tranche and each L/C Issuer for the applicable Tranche shall have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Incremental Commitments if such consent would be required under Section 13.6(b)(ii) for an assignment of Revolving Credit Commitments to such Person. Final allocations of Incremental Commitments will be made by the Parent Borrower together with the arrangers thereof, if any, in their discretion.

(d) Incremental Amendments. Incremental Commitments shall become U.S. Revolving Credit Commitments and/or Foreign Revolving Credit Commitments, as applicable, under this Agreement pursuant to an amendment (each, an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Credit Documents, executed by the Borrowers, each Person providing such Incremental Commitments and the Administrative Agent. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Amendment. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be

necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section ~~2.14~~2.14. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Credit Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Commitments.

(e) Conditions. The availability of the Incremental Commitments under this Agreement will be subject solely to the following conditions:

(i) No Event of Default shall have occurred and be continuing or would exist after giving effect thereto; and

(ii) all representations and warranties set forth in Section 8 and the other Credit Documents shall be true and correct in all material respects on and as of the date of effectiveness of the Incremental Commitments except any representations and warranties which expressly relate to a given date or period shall be required only to be true and correct in all material respects as of the respective date or for the respective period, as the case may be, *provided* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(f) Terms. Except as set forth in clause (g) below or with respect to any FILO Tranche under Section 2.14(h) below, any Incremental Commitments shall be on the same terms (including as to maturity and guarantee and collateral) and pursuant to the same documentation applicable to the U.S. Revolving Credit Commitments and/or the Foreign Revolving Credit Commitments, as applicable; provided that if a financial covenant is added for the benefit of the Incremental Commitments, no consent from any Lender or the Administrative Agent is required to the extent that such financial covenant is also added for the benefit of the existing Credit Facilities.

(g) Pricing. Other than (x) in the case of a FILO Tranche as described below and (y) upfront fees paid upon the effectiveness of the Incremental Commitments, the pricing in respect of the Incremental Commitments shall be identical to the existing Revolving Credit Commitments.

(h) FILO Tranche. Notwithstanding anything set forth above, the Borrowers may incur Incremental Commitments in the form of a separate "first-in, last-out" or "last-out" tranche (the "**FILO Tranche**") with interest rate margins, rate floors, upfront fees, funding discounts and original issue discounts, in each case to be agreed upon among the Borrowers and the lenders providing the FILO Tranche (which, for the avoidance of doubt, shall not require any adjustment to the Applicable Rate for the existing Revolving Credit Loans) so long as (a) the final scheduled maturity of any FILO Tranche shall not occur, and no FILO Tranche shall require mandatory commitment reductions prior to, the latest then-existing Maturity Date; and (b) the other terms of the FILO Tranche shall be reasonably satisfactory to the Administrative Agent.

(i) Reallocation of Revolving Credit Exposure. Upon the effectiveness of the Incremental Commitments (other than pursuant to clause (h) above):

(i) each U.S. Revolving Credit Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing an increase to the U.S. Revolving Credit Commitments, and each such Lender will automatically and without further act be deemed to have assumed, a portion of such U.S. Revolving Credit Lender's participations hereunder in outstanding U.S. Letters of Credit and U.S. Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in U.S. Letters of Credit and U.S. Swing Line Loans held by each U.S. Revolving Credit Lender will equal the percentage of the aggregate U.S. Revolving Credit Commitments of all U.S. Revolving Credit Lenders represented by such U.S. Revolving Credit Lender's U.S. Revolving Credit Commitments;

(ii) each Foreign Revolving Credit Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing an increase to the Foreign Revolving Credit Commitments, and each such Lender will automatically and without further act be deemed to have assumed, a portion of such Foreign Revolving Credit Lender's participations hereunder in outstanding Foreign Letters of Credit and Foreign Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in Foreign Letters of Credit and Foreign Swing Line Loans held by each Foreign Revolving Credit Lender will equal the percentage of the aggregate Foreign Revolving Credit Commitments of all Foreign Revolving Credit Lenders represented by such Foreign Revolving Credit Lender's Foreign Revolving Credit Commitments; and

(iii) if, on the date of any increase to U.S. Revolving Credit Commitments or Foreign Revolving Credit Commitments, as applicable, there are any U.S. Revolving Credit Loans or Foreign Revolving Credit Loans outstanding, such applicable Revolving Credit Loans shall on or prior to the effectiveness of such Incremental Commitments be prepaid from the proceeds of Revolving Credit Loans made hereunder (reflecting such increase in the applicable Tranche of Revolving Credit Commitments), which prepayment shall be accompanied by accrued interest on the Revolving Credit Loans being prepaid and any costs incurred by any Lender in accordance with Section ~~2.11~~2.11.

(j) The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to this Section 2.14.

2.15 Extension of Revolving Credit Commitments

(a) The Borrowers may at any time and from time to time request that all or a portion of the U.S. Revolving Credit Commitments and/or the Foreign Revolving Credit

Commitments, each existing at the time of such request (each, an "**Existing Revolving Credit Commitment**" and any related Revolving Credit Loans thereunder, "**Existing Revolving Credit Loans**") be converted to extend the Maturity Date thereof (any such Existing Revolving Credit Commitments which have been so extended, "**Extended Revolving Credit Commitments**" and any related Revolving Credit Loans, "**Extended Revolving Credit Loans**") and to provide for other terms consistent with this Section ~~2.15~~2.15. In order to establish any Extended Revolving Credit Commitments, the Parent Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each Appropriate Lender of the Existing Revolving Credit Commitments which such request shall be offered equally to all such Lenders) (a "**Revolving Credit Extension Request**") setting forth the proposed terms of the Extended Revolving Credit Commitments to be established, which, shall either, at the option of the Parent Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined in good faith by the Parent Borrower) or (B) if not consistent with the terms of the applicable Existing Revolving Credit Commitments, shall not be materially more restrictive to the Credit Parties (as determined in good faith by the Parent Borrower), when taken as a whole, than the terms of such Existing Revolving Credit Commitments (the "**Specified Existing Revolving Credit Commitment**") unless (x) the Lenders providing Existing Revolving Credit Commitments receive the benefit of such more restrictive terms or (y) any such provisions apply after the Maturity Date of any Revolving Credit Commitments then outstanding under this Agreement, in each case, to the extent provided in the applicable Extension Amendment; *provided*, *however*, that (w) all or any of the final maturity dates of such Extended Revolving Credit Commitments may be delayed to later dates than the final maturity dates of the Specified Existing Revolving Credit Commitments, (x) (A) the interest rates, interest margins, rate floors, upfront fees, funding discounts, original issue discount and premiums with respect to the Extended Revolving Credit Commitments may be higher or lower than the interest margins rate floors, upfront fees, funding discounts, original issue discount and premiums for the Specified Existing Revolving Credit Commitments and/or (B) additional fees and premiums may be payable to the Lenders providing such Extended Revolving Credit Commitments in addition to or in lieu of any of the items contemplated by the preceding clause (A), (y) the commitment fee rate with respect to the Extended Revolving Credit Commitments may be higher or lower than the commitment fee rate for the Specified Existing Revolving Credit Commitment and (z) the amount of the Extended Revolving Credit Commitments and the principal amount of the Extended Revolving Credit Loans shall not exceed the amount of the Specified Existing Revolving Credit Commitments being extended and the principal amount of the related Existing Revolving Credit Loans being extended, respectively, and *provided further* that, notwithstanding anything to the contrary in this Section ~~2.15~~2.15 or otherwise, (1) the borrowing and repayment (other than in connection with a permanent repayment and termination of commitments) of the Extended Revolving Credit Loans under any Extended Revolving Credit Commitments shall be made on a *pro rata* basis with any borrowings and repayments of the Specified Existing Revolving Credit Commitment and the other Existing Revolving Credit Commitments (the mechanics for which may be implemented through the applicable Extension Amendment and may include technical changes related to the borrowing and repayment procedures of the applicable Credit Facility) and (2) assignments and participations of Extended Revolving Credit Commitments and Extended Revolving Credit Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit Commitments and the Revolving

Credit Loans related to such Revolving Credit Commitments set forth in Section 13.6. No Lender shall have any obligation to agree to have any of its Revolving Credit Loans or Revolving Credit Commitments converted into Extended Revolving Credit Loans or Extended Revolving Credit Commitments pursuant to any Revolving Credit Extension Request. Any Extended Revolving Credit Commitments shall constitute a separate class of revolving credit commitments from the Specified Existing Revolving Credit Commitments and from any other Existing Revolving Credit Commitments; *provided* that any Extended Revolving Credit Commitments may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any then outstanding class of Revolving Credit Commitments other than the Existing Revolving Credit Commitments from which such Extended Revolving Credit Commitments were converted.

(b) Any Lender (an "**Extending Lender**") wishing to have all or a portion of its Revolving Credit Commitments subject to such Revolving Credit Extension Request converted into Extended Revolving Credit Commitments shall notify the Administrative Agent (an "**Extension Election**") on or prior to the date specified in such Extension Request of the amount of its Revolving Credit Commitments subject to such Extension Request that it has elected to convert into Extended Revolving Credit Commitments. In the event that the aggregate amount of Revolving Credit Commitments subject to Extension Elections exceeds the amount of Extended Revolving Credit Commitments requested pursuant to the Extension Request, Revolving Credit Commitments subject to Extension Elections shall be converted to Extended Revolving Credit Commitments on a *pro rata* basis based on the amount of Revolving Credit Commitments included in each such Extension Election. Notwithstanding the conversion of any Existing Revolving Credit Commitment into an Extended Revolving Credit Commitment, such Extended Revolving Credit Commitment shall be treated identically to all then-outstanding Revolving Credit Commitments for purposes of the obligations of a Revolving Credit Lender in respect of Letters of Credit or Swing Line Loans under Section 3, except that the applicable Extension Amendment may provide that the Letter of Credit Expiration Date may be extended and the related obligations to issue Letters of Credit may be continued so long as the applicable L/C Issuer has consented to such extensions in its sole discretion (it being understood that no consent of any other Lender shall be required in connection with any such extension).

(c) Extended Revolving Credit Commitments shall be established pursuant to an amendment (an "**Extension Amendment**") to this Agreement (which, except to the extent expressly contemplated by the last sentence of this Section 2.15(c) and notwithstanding anything to the contrary set forth in Section 13.1, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Revolving Credit Commitments) executed by the Credit Parties, the Administrative Agent and the Extending Lenders. No Extension Amendment shall provide for Extended Revolving Credit Commitments in an aggregate principal amount that is less than $10,000,000. Notwithstanding anything to the contrary in this Section ~~2.15~~2.15, and without limiting the generality or applicability of Section 13.1 to any Section ~~2.15~~2.15 Additional Amendments, any Extension Amendment may provide for additional terms and/or additional amendments other than those referred to or contemplated above (any such additional amendment, a "**Section ~~2.15~~2.15 Additional Amendment**") to this Agreement and the other Credit Documents; *provided* that such Section ~~2.15~~2.15 Additional

Amendments comply with the requirements of Section ~~2.15~~2.15 and do not become effective prior to the time that such Section ~~2.15~~2.15 Additional Amendments have been consented to (including, without limitation, consents applicable to holders of any Extended Revolving Credit Commitments provided for in any Extension Amendment) by such of the Lenders, Credit Parties and other parties (if any) as may be required in order for such Section ~~2.15~~2.15 Additional Amendments to become effective in accordance with Section 13.1.

(d) Notwithstanding anything to the contrary contained in this Agreement, if on any date on which any Existing Revolving Credit Commitments are converted, any Loans of any Extending Lender are outstanding under the applicable Specified Existing Revolving Credit Commitments, such Loans (and any related participations) shall be deemed to be allocated as Extended Revolving Credit Loans (and related participations) and Existing Revolving Credit Loans (and related participations) in the same proportion as such Extending Lender's Specified Existing Revolving Credit Commitments to Extended Revolving Credit Commitments.

(e) The Administrative Agent and the Lenders hereby consent to the consummation of the transactions contemplated by this Section ~~2.15~~2.15 (including, for the avoidance of doubt, payment of any interest, fees, or premium in respect of any Extended Revolving Credit Commitments on such terms as may be set forth in the relevant Extension Amendment) and hereby waive the requirements of any provision of this Agreement (including, without limitation, any pro rata payment or amendment section) or any other Credit Document that may otherwise prohibit or restrict any such extension or any other transaction contemplated by this Section ~~2.15~~2.15.

(f) No conversion of Loans or Revolving Credit Commitments pursuant to any Extension Amendment in accordance with this Section ~~2.15~~2.15 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

2.16 Defaulting Lender

(a) Reallocation. Notwithstanding anything to the contrary herein, if a Lender becomes, and during the period it remains, a Defaulting Lender, the following provisions shall apply with respect to any outstanding Protective Advance participation pursuant to Section 2.1(c), any outstanding Letter of Credit participation pursuant to Section 3.1 and Swing Line Loan participation pursuant to Section 3.2 of such Defaulting Lender:

(i) (A) the U.S. Protective Advance participation pursuant to Section 2.1(c), the U.S. Letter of Credit participation pursuant to Section 3.1 and the U.S. Swing Line Loan participation pursuant to Section 3.2, in each case, of such Defaulting Lender will, subject to the limitation in the proviso below, automatically be reallocated (effective on the day such Lender becomes a Defaulting Lender) among the Non-Defaulting Lenders who are U.S. Revolving Credit Lenders pro rata in accordance with their respective U.S. Revolving Credit Commitments and (B) the Foreign Protective Advance participation pursuant to Section 2.1(c), the Foreign Letter of Credit participation pursuant to Section 3.1 and the Foreign Swing Line Loan participation pursuant to

Section 3.2, in each case, of such Defaulting Lender will, subject to the limitation in the proviso below, automatically be reallocated (effective on the day such Lender becomes a Defaulting Lender) among the Non-Defaulting Lenders who are Foreign Revolving Credit Lenders pro rata in accordance with their respective Foreign Revolving Credit Commitments; *provided* that, in each cases of clauses (A) and (B) above, (a) (A) the U.S. Revolving Credit Exposure of each Non-Defaulting Lender may not in any event exceed its U.S. Revolving Credit Commitment as in effect at the time of such reallocation and (B) the Foreign Revolving Credit Exposure of each Non-Defaulting Lender may not in any event exceed its Foreign Revolving Credit Commitment as in effect at the time of such reallocation and (b) neither such reallocation nor any payment by a Non-Defaulting Lender pursuant thereto will constitute a waiver or release of any claim the Borrowers, the Administrative Agent, the L/C Issuers, the applicable Swing Line Lender or any other Lender may have against such Defaulting Lender or cause such Defaulting Lender to be a Non-Defaulting Lender; and

(ii) to the extent that any portion (the "**unreallocated portion**") of any Defaulting Lender's Letter of Credit participation pursuant to Section 3.1 and Swing Line Loan participation pursuant to Section 3.2 cannot be so reallocated, whether by reason of the proviso in clause (i) above or otherwise, the applicable Borrowers will, not later than two Business Days after demand by the Administrative Agent (at the direction of the relevant L/C Issuer and/or the relevant Swing Line Lender, as the case may be), (1) Cash Collateralize the obligations of such Borrower to the relevant L/C Issuer in respect of such Letter of Credit participation pursuant to Section 3.1, in an amount equal to the aggregate amount of the unreallocated portion of such Letter of Credit participation pursuant to Section 3.1, or (2) in the case of such Swing Line Loan participation pursuant to Section 3.2, prepay and/or Cash Collateralize in full the unreallocated portion thereof, or (3) make other arrangements satisfactory to the Administrative Agent, and to the relevant L/C Issuer and the Swing Line Lender, as the case may be, in their sole discretion to protect them against the risk of nonpayment by such Defaulting Lender.

(b) Fees. Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to Section 3.1(i) (without prejudice to the rights of the Lenders other than Defaulting Lenders in respect of such fees); *provided* that in the case of any such Defaulting Lender that was or is a Lender (x) to the extent that a portion of the Letter of Credit participation pursuant to Section 3.1 of such Defaulting Lender is reallocated to the applicable Non-Defaulting Lenders pursuant to Section 2.16(a) above, such fees under Section 3.1(i) that would have accrued for the benefit of such Defaulting Lender will instead accrue for the benefit of and be payable to such Non-Defaulting Lenders, pro rata in accordance with their applicable U.S. Revolving Credit Commitments or Foreign Revolving Credit Commitments, as applicable, and (y) to the extent any portion of such Letter of Credit participation pursuant to Section 3.1 cannot be so reallocated, such fees will instead accrue for the benefit of and be payable to the relevant L/C Issuer, as their interests appear.

(c) Cure. If the Parent Borrower, the Administrative Agent, each L/C Issuer and each Swing Line Lender agree in writing in their discretion that a Lender that is a Defaulting Lender should no longer be deemed to be 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), such Lender will, to the extent applicable, purchase such portion of outstanding Loans of the other Lenders and/or make such other adjustments as the Administrative Agent may determine to be necessary to cause the aggregate Revolving Credit Commitments, Revolving Credit Loans, Letter of Credit participations pursuant to Section 3.1 and Swing Line Loan participations pursuant to Section 3.2 of the Lenders to be on a pro rata basis in accordance with their respective Revolving Credit Commitments, whereupon such Lender will cease to be a Defaulting Lender and will be a Non-Defaulting Lender (and such Revolving Credit Commitments and Loans of each Lender will automatically be adjusted on a prospective basis to reflect the foregoing); *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Borrower while such 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 Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

2.17 Reserves

Notwithstanding anything to the contrary, the Administrative Agent may at any time and from time to time in the exercise of its Permitted Discretion establish and increase or decrease Reserves; *provided* that the Administrative Agent shall have provided the Parent Borrower at least five (5) Business Days' prior written notice of any such establishment or change. Upon delivery of such notice, the Administrative Agent shall be available to discuss the proposed Reserve or change, and the Borrowers may take such action as may be required so that the event, condition, circumstance or new fact that is the basis for such Reserve or change no longer exists, in a manner and to the extent reasonably satisfactory to the Administrative Agent in the exercise of its Permitted Discretion. In no event shall such notice and opportunity limit the right of the Administrative Agent to establish or change such Reserve, unless the Administrative Agent shall have determined in its Permitted Discretion that the event, condition, other circumstance or new fact that is the basis for such new Reserve or such change no longer exists or has otherwise been adequately addressed by the Borrowers. Any Reserve established or modified by the Administrative Agent shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such Reserve, as reasonably determined, without duplication, by the Administrative Agent in its Permitted Discretion.

2.18 Effect of Benchmark Transition Event

(a) Notwithstanding anything to the contrary herein or in any other Credit Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent, Holdings and the Borrowers may amend this Agreement to replace the LIBOR Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth

(5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrowers so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the LIBOR Rate with a Benchmark Replacement pursuant to this Section 2.18 will occur prior to the applicable Benchmark Transition Start Date.

(b) 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 Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(c) The Administrative Agent will promptly notify each Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.18 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, 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 hereto, except, in each case, as expressly required pursuant to this Section 2.18.

(d) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a LIBOR Loan, conversion to or continuation of a LIBOR Loan 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 ABR Loans. During any Benchmark Unavailability Period, the component of ABR based upon the LIBOR Rate will not be used in any determination of ABR.

2.19 CDOR Discontinuation

(a) If the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify the Administrative Agent that the Required Lenders have determined, that:

(i) adequate and reasonable means do not exist for ascertaining the CDOR Rate, including because the Reuters Screen CDOR Page is not available or

published on a current basis for the applicable period and such circumstances are unlikely to be temporary;

(ii) the administrator of the CDOR Rate or a Governmental Authority having jurisdiction has made a public statement identifying a specific date after which the CDOR Rate will permanently or indefinitely cease to be made available or permitted to be used for determining the interest rate of loans;

(iii) a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the CDOR Rate shall no longer be permitted to be used for determining the interest rate of loans (each such specific date in clause (ii) above and in this clause (iii) a **"CDOR Scheduled Unavailability Date**"); or

(iv) syndicated loans currently being executed, or that include language similar to that contained in this Section 2.19, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the CDOR Rate,

then reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrowers may mutually agree upon a successor rate to the CDOR Rate, and the Administrative Agent and the Borrowers may amend this Agreement to replace the CDOR Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar Canadian Dollars denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a "**CDOR Successor Rate**"), together with any proposed CDOR Successor Rate conforming changes and any such amendment shall become effective at 5:00 p.m. (Toronto time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrowers unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders do not accept such amendment.

(b) If no CDOR Successor Rate has been determined and the circumstances under Subsection 2.19(a)(i) exist or a CDOR Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the applicable Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain bankers' acceptances, shall be suspended (to the extent of the affected bankers' acceptances). Upon receipt of such notice, the applicable Borrower may revoke any pending request for an advance of, conversion to or rollover of bankers' acceptances, (to the extent of the affected bankers' acceptances) or, failing that, will be deemed to have converted such request into a request for an advance of Canadian Prime Rate Loans (subject to the foregoing Subsection 2.19(b)) in the amount specified therein.

(c) Notwithstanding anything else herein, any definition of the CDOR Successor Rate (exclusive of any margin) shall provide that in no event shall such CDOR Successor Rate be less than 0.5% for the purposes of this Agreement.

SECTION 3 Letters of Credit and Swing Line Loans

3.1 Letters of Credit

(a) The Letter of Credit Commitments.

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Appropriate Lenders set forth in this Section 3.1, (x) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in an Alternative Currency for the account of any Borrower (*provided* that any Letter of Credit may be for the benefit of any direct or indirect Subsidiary of the Parent Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 3.1(b), and (y) to honor drawings under the Letters of Credit and (B) (1) the U.S. Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Parent Borrower or any of its Restricted Subsidiaries (each, a "**U.S. Letter of Credit**") and (2) the Foreign Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Foreign Borrowers (each, a "**Foreign Letter of Credit**"), in each case, pursuant to this Section 3.1; *provided* that after giving effect to each L/C Credit Extension, (i) the Availability Requirements shall be satisfied and (ii) the Outstanding Amount of the L/C Obligations, and the Outstanding Amount of the L/C Obligations of each L/C Issuer, shall not exceed the applicable L/C Sublimit; *provided further* that (i) Goldman Sachs Bank USA (or any of its branches or Affiliates) shall not be required to issue Commercial Letters of Credit or Letters of Credit denominated in a currency other than Dollars without its prior written consent and (ii) JPMorgan Chase Bank, N.A. may issue any Letter of Credit acting through any of its branches or designated Affiliates that it determines necessary and appropriate. Each request by any Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Closing Date Existing Letters of Credit shall be deemed to have been issued pursuant to this Section 3.1(a) hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof. Each L/C Issuer party hereto that is an issuer of Closing Date Existing Letters of Credit agrees to the foregoing arrangements with respect to the Closing Date Existing Letters of Credit issued by it, notwithstanding that such provisions may cause the Outstanding Amount of the L/C Obligations of such L/C Issuer to exceed its applicable L/C Sublimit; *provided*

that, in such event, such L/C Issuer shall not be obligated to issue or renew any new Letters of Credit until the applicable conditions precedent in Section 3.1(a) have been satisfied.

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

(A) subject to Section 3.1(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless otherwise agreed by the applicable L/C Issuer and the Administrative Agent in their sole discretion;

(B) the expiry date of such requested Letter of Credit would occur after the applicable Letter of Credit Expiration Date, unless (1) each Appropriate Lender shall have approved such expiry date or (2) the Outstanding Amount of the L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or otherwise backstopped in a manner that is mutually agreeable between the Parent Borrower and the applicable L/C Issuer; or

(C) the beneficiary of the Letter of Credit is either resident in Ireland or, where such beneficiary is a legal person, its place of establishment to which the Letter of Credit relates is Ireland unless the L/C Issuer is either (x) authorized under the laws of Ireland to issue Letters of Credit to any such beneficiary or (y) exempted from the requirement to have any such authorization under the laws of Ireland.

(iii) An L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Applicable Law or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or direct that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such L/C Issuer is not otherwise compensated hereunder);

(B) the issuance of such Letter of Credit would violate one or more policies or procedures of such L/C Issuer applicable to letters of credit generally; or

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer pursuant to Section 1.8, such Letter of Credit is to be denominated in a currency other than Dollars and any currency listed in clause (a) of the definition of "Alternative Currency".

(iv) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(v) Each L/C Issuer shall act on behalf of the Appropriate Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Section 12 with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Section 12 included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; AutoRenewal Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the applicable Administrative Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by an Authorized Officer of the applicable Administrative Borrower. Such Letter of Credit Application must be received by the relevant L/C Issuer and the Administrative Agent not later than 12:00 noon (New York, New York time) at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (b) the amount thereof; (c) the expiry date thereof; (d) the name and address of the beneficiary thereof, and the name of the applicable Borrower for whose account the Letter of Credit is to be issued; (e) the documents to be presented by such beneficiary in case of any drawing thereunder; (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (g) the currency in which the requested Letter of Credit will be denominated; (h) the Tranche of Revolving Credit Commitments under which such Letter of Credit is to be issued (provided that any Letter of Credit for the benefit of the Parent Borrower or any of its Domestic Subsidiaries shall not be issued under the Tranche with respect to the Foreign Revolving Credit Commitments) and (i) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the relevant L/C Issuer may reasonably request.

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

(iii) If the applicable Administrative Borrower so requests in any applicable Letter of Credit Application, the relevant L/C Issuer shall agree to issue a Letter of Credit that has automatic renewal provisions (the maturity of which shall in no event extend beyond the Letter of Credit Expiration Date, unless such Letter of Credit has been Cash Collateralized or otherwise backstopped in a manner that is mutually agreeable between the Parent Borrower and the applicable L/C Issuer) (each, an "**Auto-Renewal Letter of Credit**"); *provided* that any such Auto-Renewal Letter of Credit must permit the relevant L/C Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Nonrenewal Notice Date**") in each such twelve-month period to be agreed upon by the relevant L/C Issuer and the Parent Borrower at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the Parent Borrower shall not be required to make a specific request to the relevant L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Appropriate Lenders shall be deemed to have authorized (but may not require) the relevant L/C Issuer to permit the renewal of such Letter of Credit at any time until an expiry date not later than the applicable Letter of Credit Expiration Date unless such Letter of Credit has been Cash Collateralized or otherwise backstopped in a manner that is mutually agreeable between the Parent Borrower and the applicable L/C Issuer); *provided* that the relevant L/C Issuer shall not permit any such renewal if (A) the relevant L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 3.1(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Nonrenewal Notice Date from the Administrative Agent or any Appropriate Lender, or the Parent Borrower that one or more of the applicable conditions specified in Section 7 is not then satisfied.

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

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant L/C Issuer shall examine drawing documents within the period stipulated by the terms and conditions of the Letter of Credit. After such examination, such L/C Issuer shall notify promptly the applicable Administrative Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the applicable Borrower shall reimburse the relevant L/C Issuer in such Alternative Currency, unless (A) the relevant L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the applicable Administrative Borrower shall have notified the relevant L/C Issuer promptly following receipt of the notice of drawing that the applicable Borrower will reimburse such L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the relevant L/C Issuer shall notify the applicable Administrative Borrower of the Dollar Amount of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the first Business Day following the date of any payment by any L/C Issuer under a Letter of Credit to be reimbursed in Dollars (including all Letters of Credit denominated in Dollars), or the Applicable Time on the first Business Day following the date of any payment by any L/C Issuer under an Alternative Currency Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "**Honor Date**"), the applicable Borrower shall reimburse the applicable L/C Issuer in an amount equal to the amount of such drawing and in the applicable currency. If the applicable Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars or in the Dollar Amount thereof in the case of an Alternative Currency) (the "**Unreimbursed Amount**"), and the amount of such Appropriate Lender's Pro Rata Share thereof. In such event, the applicable Administrative Borrower shall be deemed to have requested a Revolving Credit Borrowing of ABR Loans in Dollars to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount (or, in the case of an Unreimbursed Amount denominated in a currency other than Dollars, the Dollar Amount thereof), without regard to the minimum and multiples specified in Section 2.2 for the principal amount of ABR Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments of the Appropriate Lenders, and subject to the conditions set forth in Section 7 (other than the delivery of a Notice of Borrowing). Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 3.1(c)(i) may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an

immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) (A) Each U.S. Revolving Credit Lender (including any such U.S. Revolving Credit Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 3.1(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer at the Administrative Agent's Office for payments in an amount equal to its Pro Rata Share of any Unreimbursed Amount in respect of a U.S. Letter of Credit and (B) each Foreign Revolving Credit Lender (including any such Foreign Revolving Credit Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 3.1(c)(i) make funds available to the Administrative Agent for the relevant L/C Issuer at the Administrative Agent's Office for payments in an amount equal to its Pro Rata Share of any Unreimbursed Amount in respect of a Foreign Letter of Credit, in each case, not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent (which may be the same Business Day such notice is provided if such notice is provided prior to 12:00 noon), whereupon, subject to the provisions of Section 3.1(c)(iii), each Lender that so makes funds available shall be deemed to have made a Revolving Credit Loan that is an ABR Loan in Dollars to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(iii) With respect to any Unreimbursed Amount in respect of a Letter of Credit that is not fully refinanced by a Revolving Credit Borrowing because the conditions set forth in Section 7 cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the relevant L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 3.1(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 3.1.

(iv) Until each Appropriate Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 3.1(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of the relevant L/C Issuer.

(v) Each Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse an L/C Issuer for amounts drawn under the applicable Letters of Credit, as contemplated by this Section 3.1(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant L/C Issuer, the Borrowers or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Lender's obligation to make

Revolving Credit Loans pursuant to this Section 3.1(c) is subject to the conditions set forth in Section 7 (other than delivery by the Administrative Borrower of a Notice of Borrowing). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the applicable Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 3.1(c) by the time specified in Section 3.1(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect *plus* any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. A certificate of the relevant L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this Section 3.1(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) If, at any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Appropriate Lender such Lender's L/C Advance in respect of such payment in accordance with this Section 3.1(d), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from any Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Appropriate Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 3.1(c)(i) is required to be returned under any of the circumstances described in Section 13.19 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause (d)(ii) shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the applicable Borrower to reimburse the relevant L/C Issuer for each drawing under each Letter of Credit issued by it and

to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

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

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Holdings or any Credit Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the relevant L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the relevant L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Parent Borrower or any Subsidiary or in the relevant currency markets generally;

(vi) any exchange, release or nonperfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guarantees or any other guarantee, for all or any of the Obligations of any Credit Party in respect of such Letter of Credit; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Credit Party;

provided that the foregoing shall not excuse any L/C Issuer from liability to the Borrowers to the extent of any direct damages (as opposed to punitive or consequential damages or lost profits, claims in respect of which are waived by the Borrowers to the extent permitted by Applicable

Law) suffered by any Borrower that are caused by acts or omissions of such L/C Issuer constituting gross negligence or willful misconduct on the part of such L/C Issuer.

(f) Role of L/C Issuers. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the relevant L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers nor any of the respective correspondents, participants or assignees of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) a problem with the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers nor any of the respective correspondents, participants or assignees of any L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (iii) of this Section 3.1(f); *provided* that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to lost profits or punitive or consequential damages suffered by any Borrower that were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral. If (i) any Event of Default occurs and is continuing and the Required Lenders require the Borrowers to Cash Collateralize their respective L/C Obligations pursuant to Section 11 or (ii) an Event of Default set forth under Section 11.5 occurs and is continuing or (iii) for any reason, any Letter of Credit is outstanding at the time of termination of the Revolving Credit Commitments and a backstop letter of credit that is satisfactory to the L/C Issuer in its sole discretion is not in place, then the applicable Borrowers shall Cash Collateralize the then Outstanding Amount of all L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such Event of Default or such termination date), and shall do so not later than 2:00 p.m. on (x) in the case of the immediately preceding clause (i) or (iii), (1) the Business Day that the Parent Borrower receives notice thereof, if such notice is received on such day prior to 12:00 noon or (2) if clause (1) above does

not apply, the Business Day immediately following the day that the Parent Borrower receives such notice and (y) in the case of the immediately preceding clause (ii), the Business Day on which an Event of Default set forth under Section 11.5 occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. The applicable Borrowers hereby grant to the Administrative Agent, for the benefit of the L/C Issuers and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked accounts at the Administrative Agent and may be invested in Cash Equivalents made available by the Administrative Agent and elected by the applicable Administrative Borrower. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under Applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrowers. In the case of clause (i) or (ii) above, if such Event of Default is cured or waived and no other Event of Default is then occurring and continuing, the amount of any Cash Collateral shall be refunded to the Borrowers.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the relevant L/C Issuer and the Parent Borrower (or other applicable Borrower) when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance, shall apply to each Commercial Letter of Credit.

(i) Letter of Credit Fees. Each Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Pro Rata Share a letter of credit fee (the "**Letter of Credit Fee**") for each Letter of Credit issued for the account of such Borrower or its Subsidiaries pursuant to this Agreement equal to the Applicable Rate times the daily maximum Dollar Amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum Dollar Amount increases periodically pursuant to the terms of such Letter of Credit). Such Letter of Credit Fees shall be computed on a quarterly basis in arrears. Such Letter of Credit Fees shall be due and payable in Dollars on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers. Each Borrower shall pay directly to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued by it for the account of such Borrower or its Subsidiaries equal to 0.125% per annum of the daily maximum Dollar Amount then available to be drawn under such Letter of Credit. Such fronting fees shall be computed on a quarterly basis in arrears. Such fronting fees shall be due and payable on the last Business Day of each March,

June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, each Borrower shall pay directly to each L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(k) Conflict with Letter of Credit Application. Notwithstanding anything else to the contrary in any Letter of Credit Application, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(l) Addition of an L/C Issuer.

(i) A Lender may become an additional L/C Issuer hereunder pursuant to a written agreement among the Parent Borrower, the Administrative Agent and such Lender. The Administrative Agent shall notify the Lenders of any such additional L/C Issuer.

(ii) On the last Business Day of each March, June, September and December (and on such other dates as the Administrative Agent may request), each L/C Issuer shall provide the Administrative Agent a list of all Letters of Credit issued by it that are outstanding at such time together with such other information as the Administrative Agent may from time to time reasonably request.

(m) 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 Restricted Subsidiary, the Parent Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Parent Borrower hereby acknowledges that the issuance of Letters of Credit for the account of the Restricted Subsidiaries of the Parent Borrower inures to the benefit of the Parent Borrower, and that the Parent Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

3.2 Swing Line Loans

(a) The Swing Line. Subject to the terms and conditions set forth herein, (i) the U.S. Swing Line Lender agrees to make loans in Dollars (each such loan, a "**U.S. Swing Line Loan**") to the Parent Borrower in an aggregate principal amount not to exceed at any time outstanding the amount of the U.S. Swing Line Sublimit, (ii) the Canadian Swing Line Lender agrees to make loans in Dollars or Canadian Dollars (each such loan, a "**Canadian Swing Line Loan**") to the Canadian Borrower in an aggregate Dollar Amount in principal not to exceed at any time outstanding, when combined with the aggregate Dollar Amount in principal of the European Swing Line Loans, the amount of the Foreign Swing Line Sublimit, and (iii) the European Swing Line Lender agrees to make loans in Dollars, Euro or Sterling (each such loan, a

"**European Swing Line Loan**" and, collectively with the Canadian Swing Line Loans, each a "**Foreign Swing Line Loan**"; Foreign Swing Line Loans, collectively with the U.S. Swing Line Loans, each a "**Swing Line Loan**") to any European Borrower in an aggregate Dollar Amount in principal not to exceed at any time outstanding, when combined with the aggregate Dollar Amount in principal of the Canadian Swing Line Loans, the amount of the Foreign Swing Line Sublimit, in each case from time to time on any Business Day during the period from the Closing Date until the Maturity Date, notwithstanding the fact that (i) such U.S. Swing Line Loans, when aggregated with the Pro Rata Share of the Outstanding Amount of U.S. Revolving Credit Loans and U.S. L/C Obligations of any Lender acting as a Swing Line Lender, may exceed the amount of such Lender's U.S. Revolving Credit Commitment and/or (ii) such Foreign Swing Line Loans, when aggregated with the Pro Rata Share of the Outstanding Amount of Foreign Revolving Credit Loans and Foreign L/C Obligations of any Lender acting as a Swing Line Lender, may exceed the amount of such Lender's Foreign Revolving Credit Commitment; *provided* that (i) (A) after giving effect to any U.S. Swing Line Loan, each U.S. Revolving Credit Lender's U.S. Revolving Credit Exposure shall not exceed such Lender's U.S. Revolving Credit Commitment then in effect and (B) after giving effect to any Foreign Swing Line Loan, each Foreign Revolving Credit Lender's Foreign Revolving Credit Exposure shall not exceed such Lender's Foreign Revolving Credit Commitment then in effect and (ii) after giving effect to each Swing Line Loan and to the application of the proceeds thereof, the Availability Requirements shall be met. Within the foregoing limits, and subject to the other terms and conditions hereof, each Borrower may borrow under this Section 3.2, prepay under Section 2.5, and re-borrow under this Section 3.2. Each Swing Line Loan (i) made to the Parent Borrower shall be an ABR Loan denominated in Dollars, (ii) made to the Canadian Borrower shall be an ABR Loan if denominated in Dollars or a Canadian Prime Rate Loan if denominated in Canadian Dollars and (iii) made to a European Borrower shall be a LIBOR Loan if denominated in Dollars or an Overnight LIBOR Loan if denominated in Euro or Sterling. Immediately upon the making of a U.S. Swing Line Loan, each U.S. Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the U.S. Swing Line Lender a risk participation in such U.S. Swing Line Loan in an amount equal to the product of such U.S. Revolving Credit Lender's Pro Rata Share times the amount of such U.S. Swing Line Loan. Immediately upon the making of a Foreign Swing Line Loan, each Foreign Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Foreign Swing Line Lender a risk participation in such Foreign Swing Line Loan in an amount equal to the product of such Foreign Revolving Credit Lender's Pro Rata Share times the amount of such Foreign Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the applicable Administrative Borrower's irrevocable written notice to the applicable Swing Line Lender and the Administrative Agent. Each such notice must be received by the applicable Swing Line Lender and the Administrative Agent not later than (A) in the case of a U.S. Swing Line Loan, 1:00 p.m. (New York time), on the requested borrowing date, (B) in the case of a Canadian Swing Line Loan denominated in Dollars, 1:00 p.m. (New York time), on the requested borrowing date, (C) in the case of a Canadian Swing Line Loan denominated in Canadian Dollars, 11:00 a.m. (New York time), on the requested borrowing date, and (D) in the case of a European Swing Line Loan, 10:00 a.m. (London time), on the requested borrowing

date, and shall specify (i) the amount and currency to be borrowed, which shall be a minimum Dollar Amount of $100,000 (and any Dollar Amount in excess of $100,000 shall be an integral multiple Dollar Amount of $25,000), (ii) the applicable Borrower and (iii) the requested borrowing date, which shall be a Business Day. Each such notice must be made by delivery to the applicable Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by an Authorized Officer of the applicable Administrative Borrower. Promptly after receipt by the applicable Swing Line Lender of any Swing Line Loan Notice, such Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, such Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless a Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. (New York time, in the case of a U.S. Swing Line Loan or Canadian Swing Line Loan, or London time, in the case of a European Swing Line Loan) on the date of the proposed Swing Line Borrowing (A) directing such Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 3.2(a), or (B) that one or more of the applicable conditions specified in Section 7 is not then satisfied, then, subject to the terms and conditions hereof, such Swing Line Lender will, not later than (x) 3:00 p.m. (New York time, in the case of a U.S. Swing Line Loan or a Canadian Swing Line Loan) or (y) 6:00 p.m. (London time, in the case of a European Swing Line Loan), in each case on the borrowing date specified in such Swing Line Loan Notice, make the amount of the Swing Line Loan available to the applicable Borrower.

(c) Refinancing of Swing Line Loans.

(i) Each Swing Line Lender at any time in its sole and absolute discretion may request the applicable Borrower to which the applicable Swing Line Loans has been made (and the applicable Borrower hereby agrees to submit a Notice of Borrowing requesting), that (A) each U.S. Revolving Credit Lender make a U.S. Revolving Credit Loan in an amount equal to such U.S. Revolving Credit Lender's Pro Rata Share of the amount of the U.S. Swing Line Loans then outstanding to such Borrower and/or (B) each Foreign Revolving Credit Lender make a Foreign Revolving Credit Loan in an amount equal to such Foreign Revolving Credit Lender's Pro Rata Share of the amount of the Foreign Swing Line Loans then outstanding to such Borrower, in each case of clauses (A) and (B), which Revolving Credit Loan shall be (A) in the case of a U.S. Swing Line Loan, an ABR Loan, (B) in the case of a Canadian Swing Line Loan denominated in Dollars, an ABR Loan, (C) in the case of a Canadian Swing Line Loan denominated in Canadian Dollars, a Canadian Prime Rate Loan, and (D) in the case of a European Swing Line Loan denominated in Dollars or Sterling, a LIBOR Loan with an Interest Period of one month, and (E) in the case of a European Swing Line Loan denominated in Euros, a EURIBOR Loan with an Interest Period of one month. Such request shall be made in a Notice of Borrowing and in accordance with the requirements of Section 2.3, without regard to the minimum and multiples specified therein for the principal amount of Revolving Credit Loans, but subject to the unutilized portion of the applicable U.S. Revolving Credit Commitments or Foreign Revolving Credit

Commitments, as applicable, and the conditions set forth in Section 7. The applicable Borrower shall furnish the applicable Swing Line Lender with a copy of each applicable Notice of Borrowing promptly after delivering such notice to the Administrative Agent. Each Appropriate Lender shall make an amount equal to its Pro Rata Share of the amount specified in each such Notice of Borrowing available to the Administrative Agent in Same Day Funds for the account of the applicable Swing Line Lender at the applicable Administrative Agent's Office not later than the time specified in Section 2.3(b) on the date specified in such Notice of Borrowing, whereupon, subject to Section 3.2(c)(ii), each Lender that so makes funds available shall be deemed to have made Revolving Credit Loans to the applicable Borrowers in such respective amounts. The Administrative Agent shall remit the funds so received to the applicable Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 3.2(c)(i), the request for Loans submitted by the applicable Borrower as set forth herein shall be deemed to be a request by the applicable Swing Line Lender that each of the Appropriate Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the applicable Swing Line Lender pursuant to Section 3.2(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the applicable Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 3.2(c) by the time specified in Section 3.2(c)(i), such Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, *plus* any administrative, processing or similar fees customarily charged by such Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the applicable Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 3.2(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Lender's obligation to make Revolving Credit Loans pursuant to this Section 3.2(c) is subject to the conditions set forth in Section 7 (other than delivery by the

applicable Administrative Borrower of a Notice of Borrowing). No such funding of risk participations shall relieve or otherwise impair the obligation of any Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the applicable Swing Line Lender receives any payment on account of such Swing Line Loan, such Swing Line Lender will distribute to such Lender its Pro Rata Share of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by such Swing Line Lender.

(ii) If any payment received by a Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by such Swing Line Lender under any of the circumstances described in Section 13.19 (including pursuant to any settlement entered into by such Swing Line Lender in its discretion), each Lender with a participation in such Swing Line Loan shall pay to such Swing Line Lender its Pro Rata Share thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the applicable Swing Line Lender. The obligations of the applicable Lenders under this clause (d)(ii) shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. Each Swing Line Lender shall be responsible for invoicing the applicable Administrative Borrower for interest on the applicable Swing Line Loans. Until each applicable Lender funds its Revolving Credit Loan or risk participation pursuant to this Section 3.2 to refinance such Lender's Pro Rata Share of any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the applicable Swing Line Lender.

(f) Payments Directly to Swing Line Lender. Each Borrower shall make all payments of principal and interest in respect of the Swing Line Loans made to it directly to the applicable Swing Line Lender.

SECTION 4 Fees; Commitments; Removal of Foreign Borrowers

4.1 Fees

(a) The Parent Borrower shall pay to the Administrative Agent for the account of each U.S. Revolving Credit Lender in accordance with its Pro Rata Share, a commitment fee equal to 0.375% *times* the actual daily U.S. Unused Amount; *provided* that any commitment fee accrued with respect to any of the U.S. Revolving Credit Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender

and unpaid at such time shall not be payable by the Parent Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Parent Borrower prior to such time; *provided further* that no commitment fee shall accrue on any of the U.S. Revolving Credit Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fees shall accrue at all times from the Closing Date until the Maturity Date, including at any time during which one or more of the conditions in Section 7 is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with December 31, 2017, and on the Maturity Date.

(b) The Foreign Borrowers shall pay to the Administrative Agent for the account of each Foreign Revolving Credit Lender in accordance with its Pro Rata Share, a commitment fee equal to 0.375% times the actual daily Foreign Unused Amount; *provided* that any commitment fee accrued with respect to any of the Foreign Revolving Credit Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Foreign Borrowers so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Foreign Borrowers prior to such time; provided further that no commitment fee shall accrue on any of the Foreign Revolving Credit Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fees shall accrue at all times from the Closing Date until the Maturity Date, including at any time during which one or more of the conditions in Section 7 is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with December 31, 2017, and on the Maturity Date.

(c) The Parent Borrower agrees to pay directly to the Administrative Agent for its own account the administrative agent fees as set forth in the Fee Letter.

4.2 Termination or Reduction of Revolving Credit Commitments, L/C Sublimit or Swing Line Sublimit

(a) Optional. Upon at least one Business Day's prior revocable written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent at the Administrative Agent's Office (which notice the Administrative Agent shall promptly transmit to each of the Appropriate Lenders), the Parent Borrower shall have the right, without premium or penalty, on any day, permanently to terminate or reduce the U.S. Revolving Credit Commitments, the Foreign Revolving Credit Commitments, any L/C Sublimit or any Swing Line Sublimit, in each case, in whole or in part (and such termination or reduction shall not be required to be pro rata as between the two Tranches of Revolving Credit Commitments); *provided* that (i) any such termination or reduction of Revolving Credit Commitments of any Tranche shall apply proportionately and permanently to reduce the Revolving Credit Commitments of each of the Lenders of such Tranche, (ii) any partial reduction pursuant to this Section 4.2(a) shall be in an aggregate Dollar Amount in principal of $500,000 or any whole multiple of the Dollar Amount in principal of $100,000 in excess thereof and (iii) after giving effect to such termination or reduction and to any prepayments of the Revolving Credit Loans,

the Swing Line Loans or cancellation or Cash Collateralization of Letters of Credit made on the date thereof in accordance with this Agreement (including pursuant to Section 5.2), (A) each Lender's U.S. Revolving Credit Exposure shall not exceed its U.S. Revolving Credit Commitment, (B) each Lender's Foreign Revolving Credit Exposure shall not exceed its Foreign Revolving Credit Commitment, (C) the L/C Sublimit with respect to the L/C Issuers, taken as a whole, shall not be greater than the Aggregate Revolving Credit Commitments, (D) the L/C Sublimit of each L/C Issuer shall not be less than the Outstanding Amount of the Letters of Credit issued by such L/C Issuer, (E) the U.S. Swing Line Sublimit shall not be greater than the aggregate U.S. Revolving Credit Commitments, (F) the aggregate Foreign Swing Line Sublimit shall not be greater than the aggregate Foreign Revolving Credit Commitments, (G) the Outstanding Amount of U.S. Swing Line Loans shall not exceed the U.S. Swing Line Sublimit and (H) the Outstanding Amount of Foreign Swing Line Loans shall not exceed the Foreign Swing Line Sublimit.

(b) Mandatory. The Revolving Credit Commitments shall terminate on the Maturity Date.

(c) Notice of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of Revolving Credit Commitments, L/C Sublimit or Swing Line Sublimit pursuant to this Section 4.2. All commitment fees accrued until the effective date of any termination of the Revolving Credit Commitments shall be paid on the effective date of such termination.

4.3 Re-Allocation of Revolving Credit Commitments

Up to one time in any fiscal quarter of the Parent Borrower, so long as after giving effect thereto the Availability Requirements would be satisfied, the Borrowers may convert all or a portion of any Lender's U.S. Revolving Credit Commitments to Foreign Revolving Credit Commitments or all or a portion of any Lender's Foreign Revolving Credit Commitments to U.S. Revolving Credit Commitments, by written notice to the Administrative Agent and with the written consent of each Lender whose Revolving Credit Commitments are converted. Upon the effectiveness of such conversion, (a) the applicable Borrowers shall have repaid any outstanding Revolving Credit Loans in full (which may be with any Borrowing of Revolving Credit Loans under the applicable Tranche after giving effect to the conversion) and (b) the participations in Swing Line Loans and L/C Obligations under each Tranche of Revolving Credit Commitments shall be re-allocated among the Lenders of the applicable Tranche so they will each hold their Pro Rata Share of the applicable participations based on the new Revolving Credit Commitments under the applicable Tranche.

4.4 Removal of Foreign Borrower

The Parent Borrower may, upon written notice to the Administrative Agent, remove any Foreign Borrower as a Borrower under this Agreement without reducing any Revolving Credit Commitments and thereafter such Foreign Borrower and any Foreign Guarantor that is a direct parent of such Foreign Borrower shall be released as a party under all Credit Documents and the security interest over all assets of such Foreign Borrower and Foreign

Guarantor shall also be released, so long as, upon the removal and release of such Foreign Borrower and the relevant Foreign Guarantors:

(a) no Event of Default shall have occurred and be continuing or result therefrom, other than any Event of Default that will be cured after the removal and release of such Foreign Borrower;

(b) all Loans and other Obligations owed by such Foreign Borrower shall be paid in full (other than Cash Management Obligations under Secured Cash Management Agreements, Hedging Obligations under Secured Hedging Agreements or Contingent Obligations) and all Letters of Credit issued for the account of such Foreign Borrower shall be terminated (unless such Letters of Credit have been Cash Collateralized, backstopped or otherwise collateralized on terms and conditions reasonably satisfactory to the applicable L/C Issuer); and

(c) the Availability Requirements shall have been satisfied after giving effect thereto.

After the removal of any Person as a Foreign Borrower or Foreign Guarantor pursuant to this Section 4.4, any reference to a Foreign Borrower, Borrower, Foreign Guarantor, Foreign Credit Party or any similar term shall be deemed to exclude such Person and any provision applicable to such Person in its capacity as a Foreign Borrower or Foreign Guarantor shall cease to apply to such Person, whether or not it remains a Subsidiary of the Parent Borrower. Upon the request of the Parent Borrower, the Administrative Agent agrees, and the Lenders and the L/C Issuers hereby authorize the Administrative Agent, to enter into amendments to this Agreement and the other Credit Documents in form and substance reasonably acceptable to the Parent Borrower and the Administrative Agent in furtherance of the preceding sentence without consent of any other Person.

SECTION 5 Payments

5.1 Voluntary Prepayments

(a) Each Borrower shall have the right to prepay Loans, without premium or penalty (other than amounts, if any, required to be paid pursuant to Section ~~2.11~~2.11 with respect to prepayments of LIBOR Loans, CDOR Loans or EURIBOR Loans made on any date other than the last day of the applicable Interest Period), in whole or in part, from time to time on the following terms and conditions: (a) the Administrative Borrower shall give the Administrative Agent at the Administrative Agent's Office revocable written notice (or telephonic notice promptly confirmed in writing) of its intent to make such prepayment, the amount of such prepayment and Type(s) of Revolving Credit Loans to be prepaid, which notice shall be given by the applicable Administrative Borrower no later than 1:00 p.m. (New York, New York time in the case of Revolving Credit Loans denominated in Dollars or Canadian Dollars, or London, England time in the case of Revolving Credit Loans denominated in Sterling or Euro) (A) three Business Days prior to any date of prepayment of LIBOR Loans denominated in Dollars, (B) three (3) Business Days prior to any date of prepayment of CDOR Loans, (C) four

(4) Business Days prior to any date of prepayment of LIBOR Loans denominated in Sterling or EURIBOR Loans and (D) on the date of prepayment of ABR Loans or Canadian Prime Rate Loans and shall be promptly transmitted by the Administrative Agent to each Appropriate Lender together with each such Lender's Pro Rata Share of such prepayment, (b)(A) each partial prepayment of LIBOR Loans, CDOR Loans or EURIBOR Loans shall be in a principal Dollar Amount of $1,000,000 or a whole multiple of the Dollar Amount of $500,000 in excess thereof; and (B) each partial prepayment of ABR Loans (other than Swing Line Loans and Protective Advances) or Canadian Prime Rate Loans (other than Swing Line Loans) shall be in a principal Dollar Amount of $500,000 or a whole multiple of the Dollar Amount of $100,000 in excess thereof or, in each case of clauses (A) and (B), if less, the entire principal amount thereof then outstanding (it being understood that ABR Loans shall be denominated in Dollars only) and (c) any prepayment of LIBOR Loans, CDOR Loans or EURIBOR Loans pursuant to this Section 5.1 on any day prior to the last day of an Interest Period applicable thereto shall be subject to compliance by the applicable Borrower with the applicable provisions of Section ~~2.11~~2.11. Each prepayment of principal of, and interest on, any Loan shall be made in the currency in which borrowed (even if the applicable Borrower is required to convert currency to do so). Each prepayment of the Loans pursuant to this Section 5.1(a) shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares.

(b) The Parent Borrower, the Canadian Borrower and the European Borrowers may, upon notice by the applicable Administrative Borrower to the applicable Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the applicable Swing Line Lender and the Administrative Agent not later than 1:00 p.m. (New York time, in the case of a U.S. Swing Line Loan or a Canadian Swing Line Loan, or London time, in the case of a European Swing Line Loan) on the date of the prepayment and (2) any such prepayment shall be in a minimum principal Dollar Amount of $100,000 or a whole multiple of the Dollar Amount of $25,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) The Borrowers may, upon notice to the Administrative Agent, at any time or from time to time, voluntarily prepay Protective Advances in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (2) any such prepayment shall be in a minimum principal Dollar Amount of $100,000 or a whole multiple of the Dollar Amount of $25,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

5.2 Mandatory Prepayments

(a) If at any time any of the Availability Requirements fail to be satisfied (except as the result of the making of a Protective Advance, unless requested by the Administrative Agent), then, the applicable Borrowers shall promptly prepay Loans and Cash Collateralize L/C Obligations (it being understood that any such L/C Obligations so Cash Collateralized will not be deemed to be outstanding for purposes of this Section 5.2(a)) so that the Availability Requirements will be satisfied.

(b) At all times following the establishment of the Cash Management Systems for the relevant jurisdiction pursuant to Section 9.16 and during the Cash Dominion Period (subject to the provisions of the Security Documents), on each Business Day, at or before 1:00 p.m. (local time), the Administrative Agent shall apply all immediately available funds credited to any Concentration Account, (i) with respect to any Concentration Account of any U.S. Credit Party, *first* to pay any fees or expense reimbursements then due to the Administrative Agent, the Collateral Agent, each U.S. L/C Issuer, and the U.S. Revolving Credit Lenders hereunder, in each case in their capacity as such, pro rata, *second* to pay interest due and payable in respect of any Loans (including U.S. Swing Line Loans and U.S. Protective Advances) of the Parent Borrower that may be outstanding, pro rata, *third* to prepay the principal of any U.S. Protective Advances to the Parent Borrower that may be outstanding, pro rata and *fourth* to prepay the principal of the U.S. Revolving Credit Loans and U.S. Swing Line Loans to the Parent Borrower and to Cash Collateralize U.S. L/C Obligations of the Parent Borrower, pro rata and (ii) with respect to any Concentration Account of any Foreign Borrower, *first* to pay any fees or expense reimbursements then due to the Administrative Agent, the Collateral Agent, each Foreign L/C Issuer, and the Foreign Revolving Credit Lenders hereunder, in each case in their capacity as such, pro rata, *second* to pay interest due and payable in respect of any Loans (including Foreign Swing Line Loans and Foreign Protective Advances) of such Borrower that may be outstanding, pro rata, *third* to prepay the principal of any Foreign Protective Advances to such Borrower that may be outstanding, pro rata and *fourth* to prepay the principal of the Foreign Revolving Credit Loans and Foreign Swing Line Loans to such Borrower and to Cash Collateralize Foreign L/C Obligations of such Borrower, pro rata, *fifth* to pay interest due and payable in respect of any remaining Loans (including Swing Line Loans and Protective Advances) of the Foreign Borrowers that may be outstanding, pro rata, *sixth* to prepay the principal of any remaining Foreign Protective Advances that may be outstanding, pro rata and *seventh* to prepay the principal of any remaining Foreign Revolving Credit Loans and Foreign Swing Line Loans and to Cash Collateralize any remaining Foreign L/C Obligations, pro rata; *provided* that, at any time that a certificate is delivered or comes into effect pursuant to Section 14.2(c) with respect to a German Borrower (and for so long as any such certificate is in effect with respect to such German Borrower, unless and until otherwise ordered by a court of competent jurisdiction), funds credited to any Concentration Account of such German Borrower shall only be applied pursuant to the *first* through the *fourth* sub-clauses above of this clause (ii).

5.3 Method and Place of Payment

(a) All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds not later than 2:00 p.m. on the date specified herein. If, for any reason, any Borrower is prohibited by any Applicable Law from making any required payment hereunder in any Alternative Currency, the Borrowers shall make such payment in Dollars in the Dollar Amount of the applicable foreign currency payment amount. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m. (New York, New York time), in the case of payments in Dollars, or (ii) after the Applicable Time in the case of payments in any Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Unless the Parent Borrower has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder for the account of any Lender or an L/C Issuer hereunder, that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to such Lender or L/C Issuer. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then such Lender or L/C Issuer shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender or L/C Issuer in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender or L/C Issuer to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect.

(c) A notice of the Administrative Agent to any Lender or the Borrowers with respect to any amount owing under this Section 5.3 shall be conclusive, absent manifest error.

5.4 Net Payments

The provisions below shall not apply with respect to any payments in connection with any Loan or other Credit Extension to the Foreign Borrowers.

(a) Any and all payments made by or on behalf of the Parent Borrower or any U.S. Guarantor under this Agreement or any other Credit Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes; *provided* that if the Parent Borrower or any U.S. Guarantor or the Administrative Agent shall be required by Applicable Law (as determined in the good faith discretion of an applicable withholding agent) to deduct or withhold any Taxes from such payments, then (i) the Parent Borrower or such U.S. Guarantor or the Administrative Agent shall make such deductions or withholdings and (ii) the

Parent Borrower or such U.S. Guarantor or the Administrative Agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority within the time allowed and in accordance with Applicable Law. If such a Tax is an Indemnified Tax, the sum payable by the Parent Borrower or any U.S. Guarantor shall be increased as necessary so that after making all such required deductions and withholdings (including such deductions or withholdings applicable to additional sums payable under this Section 5.4), the Administrative Agent, the Collateral Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made. Whenever any Indemnified Taxes are payable by the Parent Borrower or such U.S. Guarantor, as promptly as practicable thereafter, the Parent Borrower or the U.S. Guarantor shall send to the Administrative Agent for its own account or for the account of such Lender, as the case may be, a certified copy of an original official receipt (or other evidence acceptable to such Lender, acting reasonably) received by the Parent Borrower or such U.S. Guarantor showing payment thereof.

(b) The Parent Borrower shall timely pay to the relevant Governmental Authority Other Taxes in accordance with Applicable Law, or at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes that are paid by the Administrative Agent to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Parent Borrower shall indemnify and hold harmless the Administrative Agent, the Collateral Agent and each Lender within fifteen Business Days after written demand therefor, for the full amount of any Indemnified Taxes imposed on the Administrative Agent, the Collateral Agent or such Lender as the case may be, on or with respect to any payment by or on account of any obligation of the Parent Borrower or any U.S. Guarantor hereunder or under any other Credit Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.4) payable or paid by such Agent or Lender or required to be withheld or deducted from a payment to such Agent or Lender and any reasonable out-of-pocket 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 setting forth reasonable detail as to the amount of such payment or liability delivered to the Parent Borrower by a Lender (with a copy to the Administrative Agent), the Administrative Agent or the Collateral Agent (as applicable) on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Parent Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Parent Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.6 relating to the maintenance of a 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 this Agreement or any Credit Document, and any reasonable expenses arising therefrom or with respect thereof, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability

delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Any Non-U.S. Lender claiming a basis for an exemption from or reduction of withholding Tax under the law of the jurisdiction in which the Parent Borrower is resident for tax purposes, or under any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Credit Document shall, to the extent it is legally able to do so, deliver to the Parent Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Parent Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding or as will permit the Parent Borrower or the Administrative Agent to determine the withholding or deduction required to be made. In addition, any Lender, if requested by the Parent Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Parent Borrower or the Administrative Agent as will enable the Parent 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 this Section 5.4(d), the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.4(f), 5.4(i) and 5.4(j) 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.

(f) Without limiting the generality of Section 5.4(e), each Non-U.S. Lender with respect to any amounts payable hereunder or under any other Credit Document shall, to the extent it is legally entitled to do so*:*

(i) deliver to the Parent Borrower and the Administrative Agent, on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Parent Borrower or the Administrative Agent), two executed copies of (x) in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding Tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", United States Internal Revenue Service Form W-8BEN or W-8BEN-E (together with a certificate substantially in the form of Exhibit J-1 representing that such Non-U.S. Lender is not a bank within the meaning of Section 881(c)(3)(A) of the Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Parent Borrower, any interest payment received by such Non-U.S. Lender under this Agreement or any other Credit Document is not effectively connected with the conduct of a trade or business in the United States and is not a controlled foreign corporation related to the Parent Borrower (within the meaning of Section 864(d)(4) of the Code)), (y) Internal

Revenue Service Form W-8BEN, Form W-8-BEN-E or Form W-8ECI, in each case properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or reduced rate of, U.S. Federal withholding Tax on payments under any Credit Document or (z) to the extent a Non-U.S. Lender is not the beneficial owner with respect to any portion of any sums paid or payable to such Lender under any of the Credit Documents (for example, in the case of a typical participation or where Non-U.S. Lender is a pass through entity) Internal Revenue Service Form W-8IMY and all necessary attachments (including the forms described in clauses (x) and (y) above and in Section 5.4(i), Exhibit J-2, Exhibit J-3 and or other certification documents from each beneficial owner, as applicable); *provided* that if the Non-U.S. Lender is a partnership it may provide Exhibit J-4 on behalf of one or more of its direct or indirect partners that are claiming the portfolio interest exemption; and

(ii) deliver to the Parent Borrower and the Administrative Agent two further copies of any such form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate in any respect and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Parent Borrower or the Administrative Agent.

If in any such case any Change in Law has occurred prior to the date on which any such delivery would otherwise be required that renders any such form inapplicable or would prevent such Non-U.S. Lender from duly completing and delivering any such form with respect to it, such Non-U.S. Lender shall promptly so advise the Parent Borrower and the Administrative Agent.

(g) If any Lender, the Administrative Agent or the Collateral Agent, as applicable, determines, in its sole discretion exercised in good faith, that it had received and retained a refund of an Indemnified Tax or additional sums payable under this Section 5.4 (including an Other Tax) for which a payment has been made by the Parent Borrower pursuant to this Agreement, which refund in the good faith judgment of such Lender, the Administrative Agent or the Collateral Agent, as the case may be, is attributable to such payment made by the Parent Borrower, then the Lender, the Administrative Agent or the Collateral Agent, as the case may be, shall reimburse the Parent Borrower for such amount (net of all out-of-pocket expenses of such Lender, the Administrative Agent or the Collateral Agent, as the case may be, and without interest other than any interest received thereon from the relevant Governmental Authority with respect to such refund) as the Lender, the Administrative Agent or the Collateral Agent, as the case may be, determines in its sole discretion exercised in good faith to be the proportion of the refund as will leave it, after such reimbursement, in no better or worse position (taking into account expenses or any Taxes imposed on the refund) than it would have been in if the payment had not been required; *provided* that the Parent Borrower, upon the request of the Lender, the Administrative Agent or the Collateral Agent, agrees to repay the amount paid over to the Parent Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender, the Administrative Agent or the Collateral Agent in the event the Lender, the Administrative Agent or the Collateral Agent is required to repay such refund to such Governmental Authority. A Lender, the Administrative Agent or the Collateral

Agent shall claim any refund that it determines is available to it, unless it concludes in its sole discretion that it would be adversely affected by making such a claim. None of any Lender, the Administrative Agent or the Collateral Agent shall be obliged to disclose any information regarding its tax affairs that it deems confidential to any Credit Party in connection with this clause (g).

(h) If the Parent Borrower determines that a reasonable basis exists for contesting a Tax, each Lender or Agent, as the case may be, shall use reasonable efforts to cooperate with the Parent Borrower as the Parent Borrower may reasonably request in challenging such Tax. Subject to the provisions of Section ~~2.12~~2.12, each Lender and Agent agrees to use reasonable efforts to cooperate with the Parent Borrower as the Parent Borrower may reasonably request to minimize any amount payable by the Parent Borrower or any U.S. Guarantor pursuant to this Section 5.4. The Parent Borrower shall indemnify and hold each Lender and Agent harmless against any out-of-pocket expenses incurred by such Person in connection with any request made by the Parent Borrower pursuant to this Section 5.4(h). Nothing in this Section 5.4(h) shall obligate any Lender or Agent to take any action that such Person, in its sole judgment, determines may result in a material detriment to such Person.

(i) Without limiting the generality of Section 5.4(d), with respect to any amounts payable hereunder or under any other Credit Document, each Lender or Agent that is a United States person under Section 7701(a)(30) of the Code (each, a "**U.S. Lender**") shall deliver to the Parent Borrower and the Administrative Agent two United States Internal Revenue Service Forms W-9 (or substitute or successor form), properly completed and duly executed, certifying that such Lender or Agent is exempt from United States backup withholding (i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), (ii) on or before the date that such form expires or becomes obsolete or inaccurate in any respect, (iii) after the occurrence of a change in such Agent's or Lender's circumstances requiring a change in the most recent form previously delivered by it to the Parent Borrower and the Administrative Agent and (iv) from time to time thereafter if reasonably requested by the Parent Borrower or the Administrative Agent.

(j) If a payment made to any Agent or Lender would be subject to U.S. federal withholding Tax imposed under FATCA if such Agent or Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Agent or Lender shall deliver to the Parent Borrower and the Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Parent Borrower or such Agent, such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such other documentation reasonably requested by the Administrative Agent and the Parent Borrower as may be necessary for the Administrative Agent and the Parent Borrower to comply with their obligations under FATCA, to determine whether such Agent or Lender has or has not complied with such Agent's or Lender's FATCA obligations and to determine the amount, if any, to deduct and withhold from such payment and deliver to the Parent Borrower and the Administrative Agent two further copies of any such documentation on or before the date that any such documentation expires or becomes obsolete or

inaccurate in any respect and after the occurrence of any event requiring a change in the documentation previously delivered by it to the Parent Borrower or the Administrative Agent. Solely for purposes of this subsection (j), "FATCA" shall include any amendments made to FATCA after the date of this Agreement and any current or future intergovernmental agreements and any Applicable Law implementing such agreement entered into in connection therewith.

(k) The agreements in this Section 5.4 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 this Agreement and the payment of the Loans and all other amounts payable hereunder and under any other Credit Document.

5.5 Computations of Interest and Fees

All computations of interest (i) for ABR Loans when the ABR is determined on the basis of the rate of interest in effect for such date as publicly announced from time to time by the Administrative Agent as its "prime rate", (ii) for Loans denominated in Canadian Dollars or (iii) for Loans denominated in Sterling, shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360 day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year) or, in the case of interest in respect of Loans denominated in Euro as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 5.3(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

5.6 Limit on Rate of Interest

(a) No Payment Shall Exceed Lawful Rate. Notwithstanding any other term of this Agreement, no Borrower shall be obligated to pay any interest or other amounts under or in connection with this Agreement or otherwise in respect of the Obligations in excess of the amount or rate permitted under or consistent with any Applicable Law.

(b) Payment at Highest Lawful Rate. If any Borrower is not obliged to make a payment that it would otherwise be required to make, as a result of Section 5.6(a), such Borrower shall make such payment to the maximum extent permitted by or consistent with Applicable Laws.

(c) Adjustment if Any Payment Exceeds Lawful Rate. If any provision of this Agreement or any of the other Credit Documents would obligate any Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate that would be prohibited by any Applicable Law, then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by

Applicable Law, such adjustment to be effected, to the extent necessary, by reducing the amount or rate of interest required to be paid by such Borrower to the affected Lender under Section 2.8.

(d) Spreading. In determining whether the interest hereunder is in excess of the amount or rate permitted under or consistent with any Applicable Law, the total amount of interest shall be spread throughout the entire term of this Agreement until its payment in full.

(e) Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if any Lender shall have received from any Borrower an amount in excess of the maximum permitted by any Applicable Law, then such Borrower shall be entitled, by notice in writing to the Administrative Agent to obtain reimbursement from that Lender in an amount equal to such excess, and pending such reimbursement, such amount shall be deemed to be an amount payable by that Lender to such Borrower.

5.7 Limitation on Tax Gross-Up

Notwithstanding anything set forth herein or in any other Credit Document, any amounts payable pursuant to the gross-up or indemnification obligations under Section 5.4 or the comparable provisions under Section 14 shall be made without duplication.

SECTION 6 Conditions Precedent to the Closing Date

The obligation of each Lender and each L/C Issuer to make a Credit Extension hereunder on the Closing Date is subject to the satisfaction in all material respects of the conditions set forth below, except as otherwise agreed between the Parent Borrower and the Commitment Parties (as defined in the Commitment Letter).

6.1 Credit Documents

The Administrative Agent shall have received (a) this Agreement, executed and delivered by an Authorized Officer of the Parent Borrower and each other Credit Party party hereto as of the Closing Date, (b) the U.S. Guarantee, executed and delivered by an Authorized Officer of each U.S. Guarantor as of the Closing Date, (c) the U.S. Security Agreement, executed and delivered by an Authorized Officer of each grantor party thereto as of the Closing Date and (d) each Foreign Security Document executed and delivered by an Authorized Officer of each grantor party thereto as of the Closing Date.

6.2 Collateral

(a) All outstanding Stock of the Parent Borrower and all Stock of each Subsidiary of the Parent Borrower directly owned by the Parent Borrower or any U.S. Subsidiary Guarantor, in each case, as of the Closing Date, shall have been pledged pursuant to the U.S. Security Agreement (except that such Credit Parties shall not be required to pledge any U.S. Excluded Stock and Stock Equivalents) and the Collateral Agent (or the Term Loan Administrative Agent in accordance with the ABL Intercreditor Agreement) shall have received

all certificates, if any, representing such securities pledged under the U.S. Security Agreement, accompanied by instruments of transfer and undated stock powers endorsed in blank.

(b) All certificates, if any, representing the shares charged under the Foreign Security Documents executed and delivered as of the Closing Date, accompanied by executed stock transfers forms in blank.

(c) All Indebtedness of the Parent Borrower and each Subsidiary of the Parent Borrower that is owing to the Parent Borrower or a U.S. Subsidiary Guarantor shall, to the extent exceeding $10,000,000 in aggregate principal amount, be evidenced by one or more global promissory notes and shall have been pledged pursuant to the U.S. Security Agreement, and the Collateral Agent (or the Term Loan Administrative Agent in accordance with the ABL Intercreditor Agreement) shall have received all such promissory notes, together with instruments of transfer with respect thereto endorsed in blank.

(d) All documents and instruments, including Uniform Commercial Code or other applicable personal property financing statements, reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by any U.S. Security Document to be executed on the Closing Date and to perfect such Liens to the extent required by, and with the priority required by, such U.S. Security Document shall have been delivered to the Collateral Agent in proper form for filing, registration or recording and none of the U.S. Collateral shall be subject to any other pledges, security interests or mortgages, except for Liens permitted hereunder.

(e) The Parent Borrower shall deliver to the Collateral Agent the completed Perfection Certificates with respect to the applicable Borrowers party hereto on the Closing Date, executed and delivered by an Authorized Officer of the applicable Borrower, together with all attachments contemplated thereby.

Notwithstanding anything set forth above, to the extent any security interest (other than to the extent that a lien on the U.S. Collateral may be perfected by the filing of a financing statement under the Uniform Commercial Code or by the delivery of stock or other equity certificates of the Parent Borrower or a Material Subsidiary of the Parent Borrower constituting a Wholly Owned Domestic Subsidiary that is part of the U.S. Collateral and such stock or other equity certificates have been received from the Parent Borrower) is not or cannot be provided or perfected on the Closing Date after the Parent Borrower's use of commercially reasonable efforts to do so, or without undue burden or expense, the creation or perfection of such security interest shall not constitute a condition precedent to the availability of the initial Credit Extension on the Closing Date but shall instead be required to be delivered or provided within 90 days after the Closing Date (or such later date as may be reasonably agreed by the Parent Borrower and the Term Loan Administrative Agent (with respect to Term Priority Collateral) or the Administrative Agent (with respect to ABL Priority Collateral)) pursuant to arrangements to be mutually agreed by the Parent Borrower and the Term Loan Administrative Agent or the Administrative Agent.

6.3 Legal Opinions

The Administrative Agent shall have received the executed customary legal opinions of Kirkland & Ellis LLP, special New York counsel to the Credit Parties together with customary legal opinions of local counsel for each relevant jurisdiction in respect of matters relating to the applicable Credit Documents and the related transactions as the Administrative Agent may reasonably request. Holdings, the Borrowers, the other Credit Parties and the Administrative Agent hereby instruct such counsel to deliver such legal opinions.

6.4 Closing Certificates

The Administrative Agent shall have received a certificate of the Parent Borrower, dated the Closing Date, in respect of the conditions set forth in Sections 6.7, 6.8, 6.11, 6.12 and 6.13.

6.5 Authorization of Proceedings of Each Credit Party

The Administrative Agent shall have received (a) a copy of the resolutions of the board of directors and/or shareholders, or other managers, general partner or other applicable body of each Credit Party (or a duly authorized committee thereof) authorizing (i) the execution, delivery and performance of the Credit Documents referred to in Section 6.1 (and any agreements relating thereto) to which it is a party and (ii) in the case of each Borrower, the extensions of credit contemplated hereunder, (b) true and complete copies of the Organizational Documents of each Credit Party as of the Closing Date, and (c) good standing certificates (to the extent such concept exists in the relevant jurisdiction of organization or incorporation) of the Borrowers and the Guarantors and, in the case of each U.K. Credit Party, a certificate from an Authorized Officer dated the Closing Date, certifying that the Organizational Documents of that U.K. Credit Party and the resolutions of the board of directors and the shareholders of that U.K. Credit Party are correct and complete and have not been amended or superseded prior to the Closing Date.

6.6 Fees

All fees required to be paid on the Closing Date pursuant to the Fee Letter and reasonable and documented out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Closing Date, shall have been paid, or shall be paid substantially concurrently with, the initial Borrowings hereunder.

6.7 Representations and Warranties

All Specified Representations shall be true and correct in all material respects on the Closing Date (except to the extent any such representation or warranty is stated to relate solely to an earlier date, it shall be true and correct in all material respects as of such earlier date).

6.8 Company Material Adverse Change

No Company Material Adverse Change shall have occurred since October 23, 2017.

6.9 Solvency Certificate

On the Closing Date, the Administrative Agent shall have received a certificate from the chief financial officer of Holdings substantially in the form of Annex I to Exhibit D of the Commitment Letter.

6.10 Financial Statements

(a) The Joint Lead Arrangers shall have received copies of (i) the audited consolidated balance sheet and the related audited consolidated statements of income, cash flows and shareholders' equity of the Parent Borrower and its Subsidiaries as of and for the fiscal years ended September 30, 2015 and September 30, 2016 and (ii) the unaudited consolidated balance sheet and the related consolidated statements of income and cash flows of the Parent Borrower and its Subsidiaries as of and for each subsequent fiscal quarter (other than the fourth fiscal quarter of the Parent Borrower's Fiscal Year) ended at least 45 days before the Closing Date.

(b) The Joint Lead Arrangers shall have received an unaudited pro forma consolidated balance sheet and related unaudited pro forma consolidated statement of income of the Parent Borrower and its Subsidiaries as of and for the twelve-month period ending on June 30, 2017, prepared after giving effect to the Transactions as if the Transactions had occurred on such date (in the case of such pro forma balance sheet) or on the first day of such period (in the case of such pro forma statement of income), as applicable which need not be prepared in compliance with Regulations S-X of the Securities Act of 1933, as amended, or include adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standards Codification 805, Business Combinations (formerly SFAS 141R)).

6.11 Plan Consummation

The Plan shall not have been amended, modified or supplemented after October 23, 2017 in any manner or any condition to the effectiveness thereof shall not have been waived that, individually or in the aggregate, would reasonably be expected to adversely affect the interests of the Joint Lead Arrangers and the Lenders (taken as a whole and in their capacities as such) in any material respect. The Confirmation Order shall be in form and substance materially consistent with the Plan and the Commitment Letter and otherwise reasonably satisfactory to the Joint Lead Arrangers and shall have been entered confirming the Plan. Each of the Approval Order and the Confirmation Order shall be in full force and effect and not have been stayed, reversed, or vacated, amended, supplemented, or modified except that such applicable order may be further amended, supplemented or otherwise modified in any manner that would not reasonably be expected to adversely affect the interests of the Joint Lead Arrangers and the

Lenders (taken as a whole and in their capacities as such) in any material respect and shall not be subject to any pending appeals, except for any of the following, which shall be permissible appeals the pendency of which shall not prevent the occurrence of the Closing Date: (i) any appeal brought (A) by or on behalf of any member of the Ad Hoc Crossover Group (as defined in the Disclosure Statement (as defined the Plan)), whether individually or as a group, asserting objections described in [Docket No. 955] in the Case, (B) by or on behalf of the Second Lien Notes Trustee (as defined in the Plan) asserting objections described in [Docket No. 957] or [Docket No. 954] in the Case, (C) by or on behalf of Ms. Marlene Clark asserting objections with respect to the subject matter addressed by the Bankruptcy Court's opinion at [Docket No. 1182] in the Case, (D) by or on behalf of SAE Power Inc. and/or SAE Power Co. asserting the claims described in [Docket No. 925] in the Case, or (E) asserting objections of the type described in [Docket No. 1195] and similar objections, (ii) any appeal with respect to or relating to the distributions (or the allocation of such distributions) between and among creditors under the Plan, or (iii) any other appeal, the result of which would not have a materially adverse effect on the rights and interests of the Joint Lead Arrangers and the Lenders (taken as a whole and in their capacities as such). The Confirmation Order shall authorize the Avaya Debtors and the Credit Parties to execute, deliver and perform all of their obligations under all Credit Documents and shall contain no term or provision that contradicts such authorization. The Avaya Debtors shall be and shall have been in compliance with the Confirmation Order in all material respects. The Plan shall have become effective in accordance with its terms and all conditions to the effectiveness of the Plan shall have been satisfied or waived without giving effect to any waiver that would reasonably be expected to adversely affect the interests of the Joint Lead Arrangers and the Lenders in any material respect unless consented to by the Joint Lead Arrangers (such consent not to be unreasonably withheld, conditioned or delayed), and all transactions contemplated therein or in the Confirmation Order to occur on the effective date of the Plan shall have been (or concurrently with the Closing Date, shall be) substantially consummated in accordance with the terms thereof and in compliance with Applicable Laws.

6.12 Refinancing

The Closing Refinancing shall have been made or consummated prior to, or shall be made or consummated substantially concurrently with, the initial borrowing of the Initial Term Loans. The principal amount of all third party indebtedness for borrowed money (which, for the avoidance of doubt, does not include intercompany loans or comfort letters reinstated pursuant through the Plan) of the Avaya Debtors on the Closing Date that is incurred, issued, or reinstated or otherwise not discharged in connection with consummation of the Plan (giving effect to any amendments thereto), excluding all such amounts that are (i) not impaired under the Plan (without giving effect to any amendments thereto) and (ii) not required to be paid in full upon the consummation of the Plan (without giving effect to any amendments thereto) (such exclusion to include, without limitation, all Capital Leases in existence on the Closing Date), shall not exceed in the aggregate (x) $2,925 million *plus* all additional amounts incurred to fund OID and/or upfront fees as contemplated hereunder and (y) the Credit Facilities hereunder.

6.13 PBGC Settlement

The PBGC Settlement Order (as defined in the Plan) shall have been entered and be in effect and the PBGC Settlement (as defined in the Plan) shall have been entered into and consummated, in each case, without giving effect to any amendment, modification or supplement that would, individually or in the aggregate, reasonably be expected to adversely affect the interests of the Joint Lead Arrangers or the Lenders in any material respect.

6.14 Patriot Act

The Administrative Agent shall have received (at least 3 Business Days prior to the Closing Date) all documentation and other information about each Borrower and each Guarantor as has been reasonably requested in writing at least 10 Business Days prior to the Closing Date by the Administrative Agent or the Lenders that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the Patriot Act.

6.15 Borrowing Base Certificate

The Administrative Agent shall have received a Borrowing Base Certificate setting forth each Borrowing Base as of October 31, 2017.

6.16 Availability

After giving effect to the initial Credit Extension, the Availability Requirements shall be satisfied.

For purposes of determining compliance with the conditions specified in Section 6 on the Closing Date, each Lender that has signed or authorized the signing of this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6 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 7 Conditions Precedent to All Credit Extensions After the Closing Date

The obligation of each Lender and each L/C Issuer to make a Credit Extension hereunder (other than with respect to borrowings made pursuant to Section ~~2.14~~2.14 in connection with a Limited Condition Transaction to be funded with the proceeds of a FILO Tranche and excluding any conversion or continuation of any LIBOR Loan, CDOR Loan or EURIBOR Loan) after the Closing Date is subject to the satisfaction in all material respects of the conditions set forth below.

7.1 Accuracy of Representations and Warranties

(i) with respect to each Credit Extension to the Parent Borrower, the representations and warranties of the Parent Borrower and any other U.S. Credit Party contained in Section 8 or any other Credit Document shall be true and correct in all material respects on and as of the date of such Credit Extension and (ii) with respect to any Credit Extension to a Foreign Borrower, the representations and warranties of the U.S. Credit Parties and the Foreign Credit Parties contained in Section 8, the applicable provisions in Section 14 or any other Credit Document shall be true and correct in all material respects on and as of the date of such Credit Extension; *provided* that, in each case of clauses (i) and (ii), to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided*, *further* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

7.2 No Default

No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

7.3 Availability

After giving effect to such Credit Extension, the Availability Requirements shall be satisfied.

7.4 Notice of Borrowing

The Administrative Agent and, if applicable, the relevant L/C Issuer or the Swing Line Lender shall have received a Notice of Borrowing or a Letter of Credit Application in accordance with the requirements hereof.

Each Notice of Borrowing submitted by a Borrower shall be deemed to be a representation and warranty that the conditions specified in Section 7 have been satisfied on and as of the date of the applicable Credit Extension.

SECTION 8 Representations and Warranties

In order to induce the Lenders and the L/C Issuers to enter into this Agreement and to make the Revolving Credit Loans and issue or participate in Letters of Credit as provided for herein, each of Holdings and the Borrowers make the following representations and warranties to the Lenders and the L/C Issuers, all of which shall survive the execution and delivery of this Agreement and the making of the Revolving Credit Loans and the issuance of the Letters of Credit:

8.1 Corporate Status; Compliance with Laws

Each of Holdings, the Parent Borrower and each Material Subsidiary of the Parent Borrower that is a Restricted Subsidiary (a) is a duly organized or incorporated and validly existing corporation or other entity in good standing (as applicable) under the laws of the jurisdiction of its organization or incorporation and has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is engaged, except as would not reasonably be expected to result in a Material Adverse Effect, (b) has duly qualified and is authorized to do business and is in good standing (if applicable) in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect and (c) is in compliance with all Applicable Laws, except to the extent that the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect.

8.2 Corporate Power and Authority

Each U.S. Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is a party. Each U.S. Credit Party has duly executed and delivered each Credit Document to which it is a party and each such Credit Document constitutes the legal, valid and binding obligation of such U.S. Credit Party enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law) (*provided* that, with respect to the creation and perfection of security interests with respect to Indebtedness, Stock and Stock Equivalents of Foreign Subsidiaries, only to the extent the creation and perfection of such obligation is governed by the UCC).

8.3 No Violation

Neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party nor the compliance with the terms and provisions thereof nor the consummation of the financing transactions contemplated hereby and thereby will (a) contravene any applicable provision of any material Applicable Law (including material Environmental Laws) other than any contravention which would not reasonably be expected to result in a Material Adverse Effect, (b) result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien upon any of the property or assets of Holdings, the Parent Borrower or any Restricted Subsidiary (other than Liens permitted hereunder) pursuant to the terms of any material indenture, loan agreement, lease agreement, mortgage, deed of trust or other material debt agreement or instrument to which Holdings, the Parent Borrower or any Restricted Subsidiary is a party or by which it or any of its property or assets is bound (any such term, covenant, condition or provision, a "**Contractual Requirement**") other than any such breach, default or Lien that would not reasonably be expected to result in a Material Adverse Effect, or (c) violate any provision of the Organizational Documents of any U.S. Credit Party.

8.4 Litigation

Except as set forth on Schedule 8.4, there are no actions, suits or proceedings pending or, to the knowledge of the Parent Borrower, threatened in writing with respect to Holdings, the Parent Borrower or any of the Restricted Subsidiaries that have a reasonable likelihood of adverse determination and such determination would reasonably be expected to result in a Material Adverse Effect.

8.5 Margin Regulations

Neither the making of Credit Extensions hereunder nor the use of the proceeds thereof will violate the provisions of Regulation T, U or X of the Board.

8.6 Governmental Approvals

The execution, delivery and performance of the Credit Documents does not require any consent or approval of, registration or filing with, or other action by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect, (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents and (iii) such licenses, authorizations, consents, approvals, registrations, filings or other actions the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

8.7 Investment Company Act

None of the Credit Parties is an "investment company" within the meaning of, and subject to registration under, the Investment Company Act of 1940, as amended.

8.8 True and Complete Disclosure

(a) None of the written factual information and written data (taken as a whole) heretofore or contemporaneously furnished by or on behalf of Holdings, the Parent Borrower, any of the Subsidiaries of the Parent Borrower or any of their respective authorized representatives to the Administrative Agent, any Joint Lead Arranger and/or any Lender on or before the Closing Date (including all such information and data contained in the Credit Documents) regarding Holdings, the Parent Borrower and its Restricted Subsidiaries in connection with the Transactions for purposes of or in connection with this Agreement or any transaction contemplated herein contained any untrue statement of any material fact or omitted to state any material fact necessary to make such information and data (taken as a whole) not materially misleading at such time in light of the circumstances under which such information or data was furnished, it being understood and agreed that for purposes of this Section 8.8(a), such factual information and data shall not include projections or estimates (including financial estimates, forecasts and other forward-looking information) and information of a general economic or general industry nature.

(b) The projections posted to the Lenders on November 2, 2017 are based upon good faith estimates and assumptions believed by the Parent Borrower to be reasonable at the time made, it being recognized by the Agents, Joint Lead Arrangers and the Lenders that such projections, forward-looking statements, estimates and pro forma financial information are not to be viewed as facts or a guarantee of performance, and are subject to material contingencies and assumptions, many of which are beyond the control of the Credit Parties, and that actual results during the period or periods covered by any such projections, forward-looking statements, estimates and pro forma financial information may differ materially from the projected results.

(c) The information set forth in each Borrowing Base Certificate is true and correct in all material respects and has been prepared in all material respects in accordance with this Agreement. The Accounts that are identified by the Parent Borrower as Eligible Accounts and the Inventory that is identified by the Parent Borrower as Eligible Inventory, in each Borrowing Base Certificate submitted to the Administrative Agent, at the time of submission, comply in all material respects with the criteria set forth in the definitions of Eligible Accounts and Eligible Inventory, respectively.

8.9 Financial Condition; Financial Statements

The financial statements described in Section 6.10 present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent Borrower and its consolidated Subsidiaries, in each case, as of the dates thereof and for such period covered thereby in accordance with GAAP, consistently applied throughout the periods covered thereby, except as otherwise noted therein, and subject, in the case of any unaudited financial statements, to changes resulting from normal year-end adjustments and the absence of footnotes. There has been no Material Adverse Effect since the Closing Date (and, with respect to representations and warranties made after the Amendment No. 1 Effective Date, since September 30, 2019).

8.10 Tax Matters

Except where the failure of which would not be reasonably expected to have a Material Adverse Effect, (a) each of Holdings, the Parent Borrower and each of the Restricted Subsidiaries has filed all federal income Tax returns and all other Tax returns, domestic and foreign, required to be filed by it (after giving effect to all applicable extensions) and has paid all material Taxes payable by it that have become due (whether or not shown on such Tax return), other than those (i) not yet delinquent or (ii) contested in good faith as to which adequate reserves have been provided to the extent required by law and in accordance with GAAP, (b) each of Holdings, the Parent Borrower and each of the Restricted Subsidiaries has provided adequate reserves in accordance with GAAP for the payment of, all federal, state, provincial and foreign Taxes not yet due and payable, and (c) each of Holdings, the Parent Borrower and each of the Restricted Subsidiaries has satisfied all of its Tax withholding obligations.

8.11 Compliance with ERISA

(a) No ERISA Event has occurred or is reasonably expected to occur; and no Lien imposed under the Code or ERISA on the assets of the Parent Borrower or any ERISA Affiliate exists (or is reasonably likely to exist) nor has the Parent Borrower or any ERISA Affiliate been notified in writing that such a Lien will be imposed on the assets of Holdings, the Parent Borrower or any ERISA Affiliate on account of any Pension Plan, except to the extent that a breach of any of the representations, warranties or agreements in this Section 8.11(a) would not result, individually or in the aggregate, in an amount of liability that would be reasonably likely to have a Material Adverse Effect. No Pension Plan has an Unfunded Current Liability that would, individually or when taken together with any other liabilities referenced in this Section 8.11(a), be reasonably likely to have a Material Adverse Effect.

(b) All Foreign Plans are in compliance with, and have been established, administered and operated in accordance with, the terms of such Foreign Plans and Applicable Law, except for any failure to so comply, establish, administer or operate the Foreign Plans as would not reasonably be expected to have a Material Adverse Effect. All contributions or other payments which are due with respect to each Foreign Plan have been made in full and there are no funding deficiencies thereunder, except to the extent any such events would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

8.12 Subsidiaries

Schedule 8.12 lists each Subsidiary of Holdings (and the direct and indirect ownership interest of Holdings therein), in each case existing on the Closing Date (after giving effect to the Transactions).

8.13 Intellectual Property

Each of Holdings, the Parent Borrower and the Restricted Subsidiaries has good and marketable title to, or a valid license or right to use, all patents, trademarks, servicemarks, trade names, copyrights and all applications therefor and licenses thereof, and all other intellectual property rights, free and clear of all Liens (other than Liens permitted hereunder), that are necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such title, license or rights would not reasonably be expected to have a Material Adverse Effect.

8.14 Environmental Laws

Except as would not reasonably be expected to have a Material Adverse Effect: (a) Holdings, the Parent Borrower and the Restricted Subsidiaries and all Real Estate are in compliance with all Environmental Laws; (b) Holdings, the Parent Borrower and the Restricted Subsidiaries have, and have timely applied for renewal of, all permits under Environmental Law to construct and operate their facilities as currently constructed; (c) except as set forth on Schedule 8.14, neither Holdings, the Parent Borrower nor any Restricted Subsidiary is subject to any pending or, to the knowledge of the Parent Borrower, threatened Environmental Claim or

any other liability under any Environmental Law, including any such Environmental Claim, or, to the knowledge of the Parent Borrower, any other liability under Environmental Law related to, or resulting from the business or operations of any predecessor in interest of any of them; (d) none of Holdings, the Parent Borrower or any Restricted Subsidiary is conducting or financing or, to the knowledge of the Parent Borrower, is required to conduct or finance, any investigation, removal, remedial or other corrective action pursuant to any Environmental Law at any location; (e) to the knowledge of the Parent Borrower, no Hazardous Materials have been released into the environment at, on or under any Real Estate currently owned or leased by Holdings, the Parent Borrower or any Restricted Subsidiary and (f) neither Holdings, the Parent Borrower nor any Restricted Subsidiary has treated, stored, transported, released, disposed or arranged for disposal or transport for disposal of Hazardous Materials at, on, under or from any currently or, to the knowledge of the Parent Borrower, formerly owned or leased Real Estate or facility. Except as provided in this Section 8.14, Holdings, the Parent Borrower and the Restricted Subsidiaries make no other representations or warranties regarding Environmental Laws.

8.15 Properties

Except as set forth on Schedule 8.15, Holdings, the Parent Borrower and the Restricted Subsidiaries have good title to or valid leasehold or easement interests or other license or use rights in all properties that are necessary for the operation of their respective businesses as currently conducted, free and clear of all Liens (other than any Liens permitted under this Agreement) and except where the failure to have such good title, leasehold or easement interests or other license or use rights would not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, the Parent Borrower and the Restricted Subsidiaries do not own in fee any Real Estate with a fair market value of $10,000,000 or more.

8.16 Solvency

(a) On the Closing Date, after giving effect to the Transactions, immediately following the borrowing of the Initial Term Loans on such date, and after giving effect to the application of the proceeds of the Initial Term Loans, Holdings on a consolidated basis with its Subsidiaries will be Solvent.

(b) On the Amendment No. 1 Effective Date, after giving effect to Amendment No. 1 on such date, Holdings on a consolidated basis with its Subsidiaries will be Solvent.

8.17 U.S. Security Interests

Subject to the qualifications set forth in Section 6.2 and the terms and conditions of any Applicable Intercreditor Agreement then in effect, with respect to each U.S. Credit Party, the U.S. Security Documents, taken as a whole, are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first priority security interest (subject to Liens permitted hereunder) in the U.S. Collateral described therein, in each case, to the extent required under the U.S. Security Documents, the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting

creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. In the case of (i) the Stock described in the U.S. Security Agreement that is in the form of securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the New York UCC ("**Certificated Securities**"), when certificates representing such Stock are delivered to the Collateral Agent along with instruments of transfer in blank or endorsed to the Collateral Agent, and (ii) all other U.S. Collateral constituting personal property described in the U.S. Security Agreement, when financing statements, intellectual property security agreements and other required filings, recordings, agreements and actions in appropriate form are executed and delivered, performed, recorded or filed in the appropriate offices, as the case may be, the Collateral Agent, for the benefit of the applicable Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the U.S. Credit Parties in all U.S. Collateral that may be perfected by filing, recording or registering a financing statement, an intellectual property security agreement or analogous document (to the extent such Liens may be perfected by possession of the Certificated Securities by the Collateral Agent or such filings, agreements or other actions or perfection is otherwise required by the terms of any Credit Document), in each case, to the extent required under the U.S. Security Documents, as security for the Obligations, in each case prior and superior in right to any other Lien (except, in the case of Liens permitted hereunder).

8.18 Labor Matters

Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against Holdings, the Parent Borrower or any Restricted Subsidiary pending or, to the knowledge of the Parent Borrower, threatened in writing; and (b) hours worked by and payment made for such work to employees of Holdings, the Parent Borrower and each Restricted Subsidiary have not been in violation of the Fair Labor Standards Act or any other Applicable Law dealing with such matters.

8.19 Sanctioned Persons; Anti-Corruption Laws; Patriot Act

None of Holdings, the Parent Borrower or any of its Subsidiaries or any of their respective directors or officers is subject to any economic embargoes or similar sanctions administered or enforced by (a) the U.S. Department of State or the U.S. Department of the Treasury (including the Office of Foreign Assets Control), (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom, (c) the relevant sanctions authorities in Canada, Ireland and Germany or (d) any other applicable sanctions authority (collectively, "**Sanctions**", and the associated laws, rules, regulations and orders, collectively, "**Sanctions Laws**"). Each of Holdings, the Parent Borrower and its Subsidiaries and their respective officers and directors is in compliance, in all material respects, with (i) all Sanctions Laws, (ii) (A) the United States Foreign Corrupt Practices Act of 1977, as amended, and any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders, (B) the UK Bribery Act of 2010 and (C) all laws, rules and regulations relating to bribery in Canada, Ireland and Germany ((A), (B) and (C) collectively, "**Anti-Corruption Laws**") and (iii) the Patriot Act and any other applicable anti-terrorism and anti-money laundering laws, rules,

regulations and orders. No part of the proceeds of the Loans or Letters of Credit will be used, directly or indirectly, in violation of the Patriot Act, the Anti-Corruption Laws, Sanctions Laws and/or any other anti-terrorism or anti-money laundering laws in any material respect.

8.20 Use of Proceeds

The Borrowers will use the proceeds of the Credit Extensions in accordance with Section 9.14 of this Agreement.

SECTION 9 Affirmative Covenants

The Borrowers hereby covenant and agree that on the Closing Date (immediately after giving effect to the Transactions) and thereafter, until the Aggregate Revolving Credit Commitments and all Letters of Credit have terminated (other than Letters of Credit that have been Cash Collateralized, backstopped or otherwise collateralized on terms and conditions reasonably satisfactory to the applicable L/C Issuer) and the Loans, together with interest, fees and all other Obligations (other than Hedging Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreements or Contingent Obligations), are paid in full:

9.1 Information Covenants

The Parent Borrower will furnish 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 available and in any event on or before the date that is 90 days after the end of each Fiscal Year (or, in the case of the Fiscal Years ended September 30, 2017 and September 30, 2018, the date that is 120 days after the end of such Fiscal Year), the consolidated balance sheet of the Parent Borrower and its consolidated Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of operations and cash flows for such Fiscal Year, setting forth comparative consolidated figures for the preceding Fiscal Year (commencing with the Fiscal Year ended September 30, 2019), all in reasonable detail and prepared in accordance with GAAP in all material respects and, in each case, except with respect to any such reconciliation, certified by independent certified public accountants of recognized national standing whose opinion shall not be qualified as to the scope of audit or as to the status of the Parent Borrower and its consolidated Subsidiaries as a going concern (other than any exception or qualification that is a result of (x) a current maturity date of any Indebtedness or (y) any actual or prospective default of a financial maintenance covenant (including the Financial Covenant)), all of which shall be (i) certified by an Authorized Officer of the Parent Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Parent Borrower and its consolidated Subsidiaries (or Holdings or an indirect parent of the Parent Borrower and its consolidated Subsidiaries, as the case may be) in accordance with GAAP in all material respects and (ii) accompanied by a Narrative Report with respect thereto.

(b) Quarterly Financial Statements. As soon as available and in any event on or before the date that is 45 days after the end of each of the first three fiscal quarters of any Fiscal Year (or, in the case of financial statements for the fiscal quarters ending December 31, 2017, March 31, 2018 and June 30, 2018, on or before the date that is 75 days (with respect to the quarter ending December 31, 2017) or 60 days after the end of such fiscal quarter), the consolidated balance sheets of the Parent Borrower and its consolidated Subsidiaries, in each case, as at the end of such quarterly period and the related consolidated statements of operations for such quarterly accounting period and for the elapsed portion of the Fiscal Year ended with the last day of such quarterly period, and the related consolidated statement of cash flows for such quarterly accounting period and for the elapsed portion of the Fiscal Year ended with the last day of such quarterly period, and, commencing with the fiscal quarter ended on March 31, 2019, setting forth comparative consolidated figures for the related periods in the prior Fiscal Year or, in the case of such consolidated balance sheet, for the last day of the prior Fiscal Year, all of which shall be (i) certified by an Authorized Officer of the Parent Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Parent Borrower and its consolidated Subsidiaries (or Holdings or an indirect parent of the Parent Borrower and its consolidated Subsidiaries, as the case may be) in accordance with GAAP in all material respects, subject to changes resulting from audit, normal year-end audit adjustments and absence of footnotes and (ii) accompanied by a Narrative Report with respect thereto.

(c) Officer's Certificates. Within five Business Days of the delivery of the financial statements provided for in Sections 9.1(a) and (b), a certificate of an Authorized Officer of the Parent Borrower to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof, which certificate shall set forth with specification of any change in the identity of the Restricted Subsidiaries and Unrestricted Subsidiaries as at the end of such Fiscal Year or period, as the case may be, from the Restricted Subsidiaries and Unrestricted Subsidiaries, respectively, provided to the Lenders on the Closing Date or the most recent Fiscal Year or period, as the case may be. Within five Business Days of the delivery of the financial statements provided for in Section 9.1(a), a certificate of an Authorized Officer of the Parent Borrower setting forth (A) in reasonable detail the Available Equity Amount as at the end of the Fiscal Year to which such financial statements relate and (B) the information required pursuant to Sections I and II of the Perfection Certificate or confirming that there has been no change in such information since the Closing Date or the date of the most recent certificate delivered pursuant to this clause (c)(B), as the case may be.

(d) Notice of Default; Litigation; ERISA Event. Promptly after an Authorized Officer of the Parent Borrower or any Restricted Subsidiary obtains knowledge thereof, notice of (i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Parent Borrower proposes to take with respect thereto, (ii) any litigation, regulatory or governmental proceeding pending against the Parent Borrower or any Restricted Subsidiary that has a reasonable likelihood of adverse determination and such determination would reasonably be expected to be determined adversely and, if so determined, to result in a Material Adverse

Effect and (iii) the occurrence of any ERISA Event, or any ERISA Event that is reasonably expected to occur, that would reasonably be expected to result in a Material Adverse Effect.

(e) Other Information. Promptly upon filing thereof, copies of any filings (including on Form 10-K, 10-Q or 8-K) or registration statements (other than drafts of pre-effective versions of registration statements) with, and reports to, the SEC or any analogous Governmental Authority in any relevant jurisdiction by Holdings, the Parent Borrower or any Restricted Subsidiary (other than amendments to any registration statement (to the extent such registration statement, in the form it becomes effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statements on Form S-8) and copies of all financial statements, proxy statements, notices and reports that Holdings, the Parent Borrower or any Restricted Subsidiary shall send to the Term Loan Administrative Agent or lenders under the Term Loan Credit Agreement or the holders of any publicly issued debt with a principal amount in excess of $300,000,000 of Holdings, the Parent Borrower and/or any Restricted Subsidiary in their capacity as such holders (in each case to the extent not theretofore delivered to the Administrative Agent pursuant to this Agreement).

(f) Requested Information. With reasonable promptness, following the reasonable request of the Administrative Agent, such other information (financial or otherwise) as the Administrative Agent on its own behalf or on behalf of any Lender (acting through the Administrative Agent) may reasonably request in writing from time to time; *provided* that, notwithstanding anything to the contrary in this Section 9.1(f), none of Holdings, the Parent Borrower or any of its Restricted Subsidiaries will be required to provide any such other information pursuant to this Section 9.1(f) to the extent that (i) the provision thereof would violate any attorney client privilege (as reasonably determined by counsel (internal or external) to the Credit Parties), law, rule or regulation, or any contractual obligation of confidentiality binding on the Credit Parties or their respective Affiliates (so long as not entered into in contemplation hereof) or (ii) such information constitutes attorney work product (as reasonably determined by counsel (internal or external) to the Credit Parties).

(g) Projections. Within 90 days (or 120 days for the Fiscal Year ended on September 30, 2018) after the end of each Fiscal Year of the Parent Borrower ended after the Closing Date, a reasonably detailed consolidated budget for the following Fiscal Year as customarily prepared by management of the Parent Borrower for its internal use (including a projected consolidated balance sheet of the Parent Borrower and the Restricted Subsidiaries as of the end of such Fiscal Year, the related consolidated statements of projected cash flow and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of an Authorized Officer of the Parent Borrower stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were based on good faith estimates and assumptions believed by management of the Parent Borrower to be reasonable at the time of preparation of such Projections, it being understood that such Projections and assumptions as to future events are not to be viewed as facts or a guarantee of performance, are subject to significant uncertainties and contingencies, many of which are

beyond the control of the Parent Borrower and its Subsidiaries, and that actual results may vary from such Projections and such differences may be material.

(h) Reconciliations. Simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 9.1(a) and (b) above, reconciliations for such consolidated financial statements or other consolidating information reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements; *provided* that the Parent Borrower shall be under no obligation to deliver the reconciliations or other information described in this clause (h) if the Consolidated Total Assets and the Consolidated EBITDA of the Parent Borrower and its consolidated Subsidiaries (which Consolidated Total Assets and Consolidated EBITDA shall be calculated in accordance with the definitions of such terms, but determined based on the financial information of the Parent Borrower and its consolidated Subsidiaries, and not the financial information of the Parent Borrower and its Restricted Subsidiaries) do not differ from the Consolidated Total Assets and the Consolidated EBITDA, respectively, of the Parent Borrower and its Restricted Subsidiaries by more than 2.5%.

(i) Borrowing Base Certificates. On or prior to (x) the date of a Notice of Borrowing made after the Closing Date, if such Notice of Borrowing is submitted before the Monthly Borrowing Base Certificate described in the following clause (y) is delivered to the Administrative Agent, with respect to the calendar month ended November 30, 2017, (y) January 31, 2018 with respect to the calendar month ended December 31, 2017, and (z) the 20th calendar day of each subsequent calendar month (or on a more frequent basis at the discretion of the Parent Borrower; *provided* that once a more frequent basis is elected by the Parent Borrower, it must be continued for no less than 60 calendar days after the date of such election), beginning with the calendar month ended January 31, 2018 (or if such day is not a Business Day, the next succeeding Business Day), a Borrowing Base Certificate showing each of the Borrowing Base and the calculation of the Aggregate Excess Availability and the Specified Aggregate Excess Availability, in each case as of the close of business on the last day of the immediately preceding calendar month (the Borrowing Base Certificate delivered as of each month end, the "**Monthly Borrowing Base Certificate**") (or, at the option of the Parent Borrower, as of a more recent date), each such Borrowing Base Certificate to be certified as complete and correct in all material respects on behalf of the Borrowers by an Authorized Officer of the Parent Borrower; *provided* that during the Weekly Monitoring Period, a Borrowing Base Certificate showing the Parent Borrower's reasonable estimate (which shall be based on the most current accounts receivable aging reasonably available and shall be calculated in a consistent manner with the most recent Monthly Borrowing Base Certificate delivered pursuant to this Section) of each Borrowing Base and the calculation of the Aggregate Excess Availability and Specified Aggregate Excess Availability as of the close of business on the last day of the immediately preceding calendar week, unless the Administrative Agent otherwise agrees in its reasonably discretion, shall be furnished on Wednesday of each week (or if Wednesday is not a Business Day, on the next succeeding Business Day); *provided* that any Borrowing Base Certificate delivered pursuant to this Section 9.1(i) other than with respect to month's end may be based on such estimates by the Parent Borrower as the Parent Borrower may deem necessary;

(j) at the time of the delivery of each Monthly Borrowing Base Certificate provided for in Section 9.1(i), the Parent Borrower, the Canadian Borrower and the Irish Borrower shall each provide Inventory reports by category and location, together with reconciliation to the corresponding Monthly Borrowing Base Certificate, a reasonably detailed calculation of Eligible Inventory, and a reconciliation of the U.S. Credit Parties', the Canadian Borrower's and the Irish Borrower's respective Inventory between the amounts shown in each such Person's stock ledger and any Inventory reports delivered pursuant to this clause (j); *provided*, that any Borrowing Base Certificate delivered other than with respect to month's end may be based on such estimates by the U.S. Credit Parties, the Canadian Borrower or the Irish Borrower, as applicable, of Shrink and other amounts as the Parent Borrower may deem necessary;

(k) at the time of the delivery of each Monthly Borrowing Base Certificate provided for in Section 9.1(i), the Parent Borrower shall provide a current accounts receivable aging along with a reconciliation between the amounts that appear on such aging and the amount of accounts receivable presented on the concurrently delivered balance sheet; and

(l) (i) the Parent Borrower shall notify the Administrative Agent of a pending withdrawal of cash or Cash Equivalents constituting Eligible Borrowing Base Cash from a Blocked Account subject to a Blocked Account Agreement under Section 9.16 prior to making such withdrawal, and (ii) within one (1) Business Day of such a withdrawal, the Parent Borrower shall provide the Administrative Agent with an updated Borrowing Base Certificate reflecting the updated Eligible Borrowing Base Cash.

Notwithstanding the foregoing, the obligations in clauses (a), (b), (e) and (g) of this Section 9.1 may be satisfied with respect to financial information of the Parent Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of Holdings or any direct or indirect parent of Holdings or (B) the Parent Borrower's (or Holdings' or any direct or indirect parent thereof), as applicable, Form 8-K, 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to each of clauses (A) and (B) of this paragraph, to the extent such information relates to Holdings or a direct or indirect parent of Holdings, such information is accompanied by consolidating or other information that explains in reasonable detail the differences between the information relating to Holdings or such parent, on the one hand, and the information relating to the Parent Borrower and its consolidated Restricted Subsidiaries on a standalone basis, on the other hand (*provided*, *however*, that the Parent Borrower shall be under no obligation to deliver such consolidating or other explanatory information if the Consolidated Total Assets and the Consolidated EBITDA of the Parent Borrower and its consolidated Restricted Subsidiaries do not differ from the Consolidated Total Assets and the Consolidated EBITDA, respectively, of Holdings or any direct or indirect parent of Parent Borrower and its consolidated Subsidiaries by more than 2.5%). Documents required to be delivered pursuant to clauses (a), (b) and (e) of this Section 9.1 (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 Parent Borrower posts such documents, or provides a link thereto on the Parent Borrower's website as notified to the Administrative Agent; or (ii) on which such documents are posted on the Parent Borrower's

behalf on an Internet or intranet website, if any, or filed with the SEC, and available in EDGAR (or any successor) to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

9.2 Books, Records and Inspections

(a) The Parent Borrower will, and will cause each Restricted Subsidiary to, permit officers and designated representatives of the Administrative Agent or the Required Lenders (as accompanied by the Administrative Agent) to visit and inspect any of the properties or assets of the Parent Borrower or such Restricted Subsidiary in whomsoever's possession to the extent that it is within such party's control to permit such inspection (and shall use commercially reasonable efforts to cause such inspection to be permitted to the extent that it is not within such party's control to permit such inspection), and to examine the books and records of the Parent Borrower and any such Restricted Subsidiary and discuss the affairs, finances and accounts of the Parent Borrower and of any such Restricted Subsidiary with, and be advised as to the same by, its and their officers and independent accountants, all at such reasonable times and intervals and to such reasonable extent as the Administrative Agent or Required Lenders may desire (and subject, in the case of any such meetings or advice from such independent accountants, to such accountants' customary policies and procedures); *provided* that, excluding any such visits and inspections during the continuation of an Event of Default (i) only the Administrative Agent, whether on its own or in conjunction with the Required Lenders, may exercise rights of the Administrative Agent and the Lenders under this Section 9.2, (ii) the Administrative Agent shall not exercise such rights more than one time in any calendar year and (iii) only one such visit shall be at the Parent Borrower's expense; *provided*, *further*, that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Parent Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Required Lenders shall give the Parent Borrower the opportunity to participate in any discussions with the Parent Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 9.2, neither the Parent Borrower nor any Restricted Subsidiary will be required under this Section 9.2 to disclose or permit the inspection or discussion of any document, information or other matter to the extent that such action would violate any attorney-client privilege (as reasonably determined by counsel (internal or external) to the Credit Parties), law, rule or regulation, or any contractual obligation of confidentiality (not created in contemplation thereof) binding on the Credit Parties or their respective Affiliates or constituting attorney work product (as reasonably determined by counsel (internal or external) to the Credit Parties).

(b) The Parent Borrower will, and will cause each Restricted Subsidiary to, maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity, in all material respects, with GAAP shall be made of all material financial transactions and matters involving the assets of the business of the Parent Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that any Restricted Subsidiary may maintain its individual books and

records in conformity with local standards or customs and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

9.3 Maintenance of Insurance

The Parent Borrower will, and will cause each Material Subsidiary that is a Restricted Subsidiary to, at all times maintain in full force and effect, pursuant to self-insurance arrangements or with insurance companies that the Parent Borrower believes (in the good faith judgment of the management of the Parent Borrower, as applicable) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Parent Borrower believes (in the good faith judgment of management of the Parent Borrower, as applicable) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as the Parent Borrower believes (in the good faith judgment of management of the Parent Borrower, as applicable) is reasonable and prudent in light of the size and nature of its business and the availability of insurance on a cost-effective basis; and will furnish to the Administrative Agent, upon written reasonable request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried, *provided*, *however*, that for so long as no Event of Default has occurred and is continuing, the Administrative Agent shall be entitled to make such request only once in any calendar year. With respect to each U.S. Mortgaged Property, obtain flood insurance ~~in such total amount as the Administrative Agent may from time to time require~~as required by the Flood Laws or otherwise satisfactory to all U.S. Lenders, if at any time the area in which any improvements located on any U.S. Mortgaged Property is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood ~~Disaster Protection Act of 1973, as amended from time to time~~Laws.

9.4 Payment of Taxes

The Parent Borrower will pay and discharge, and will cause each of the Restricted Subsidiaries to pay and discharge, all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims in respect of any Taxes imposed, assessed or levied that, if unpaid, could reasonably be expected to become a material Lien upon any properties of the Parent Borrower or any Restricted Subsidiary; *provided* that neither the Parent Borrower nor any such Restricted Subsidiary shall be required to pay any such tax, assessment, charge, levy or claim (i) that is being contested in good faith and by proper proceedings if it has maintained adequate reserves (in the good faith judgment of management of the Parent Borrower) with respect thereto in accordance with GAAP or (ii) with respect to which the failure to pay would not reasonably be expected to result in a Material Adverse Effect.

9.5 Consolidated Corporate Franchises

The Parent Borrower will do, and will cause each Material Subsidiary that is a Restricted Subsidiary to do, or cause to be done, all things necessary to preserve and keep in full

force and effect its existence, corporate rights and authority, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect; *provided*, *however*, that the Parent Borrower and the Restricted Subsidiaries may consummate any transaction otherwise permitted hereby, including under Section 10.2, 10.3, 10.4 or 10.5.

9.6 Compliance with Statutes, Regulations, Etc

The Parent Borrower will, and will cause each Restricted Subsidiary to, comply with all Applicable Laws applicable to it or its property, including all governmental approvals or authorizations required to conduct its business, and to maintain all such governmental approvals or authorizations in full force and effect, in each case except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

9.7 Lender Calls

At the reasonable request of the Administrative Agent, the Parent Borrower shall conduct a conference call that Lenders may attend to discuss the financial condition and results of operations of the Parent Borrower and its Restricted Subsidiaries for the most recently ended measurement period for which financial statements have been delivered pursuant to Section 9.1(a) or (b) (beginning with the fiscal period of the Parent Borrower ended March 31, 2018), at a date and time to be determined by the Parent Borrower with reasonable advance notice to the Administrative Agent, limited to one conference call per fiscal quarter.

9.8 Maintenance of Properties

The Parent Borrower will, and will cause the Restricted Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition (ordinary wear and tear, casualty and condemnation excepted), except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

9.9 Transactions with Affiliates

The Parent Borrower will conduct, and will cause the Restricted Subsidiaries to conduct, all transactions with any of its or their respective Affiliates (other than (x) any transaction or series of related transactions with an aggregate value that is equal to or less than $25,000,000 or (y) transactions between or among (i) the Parent Borrower and the Restricted Subsidiaries or any Person that becomes a Restricted Subsidiary as a result of such transactions and (ii) the Parent Borrower, the Restricted Subsidiaries and to the extent in the ordinary course or consistent with past practice, Holdings) on terms that are, taken as a whole, not materially less favorable to the Parent Borrower or such Restricted Subsidiary as it would obtain in a comparable arm's-length transaction with a Person that is not an Affiliate (as determined in good faith by the Borrower); *provided* that the foregoing restrictions shall not apply to:

(a) transactions permitted by Section 10 (other than Section 10.6(m) and any provision of Section 10 permitting transactions by reference to Section 9.9),

(b) the Transactions and the payment of the Transaction Expenses,

(c) the issuance of Stock or Stock Equivalents of the Parent Borrower (or any direct or indirect parent thereof) to the management of the Parent Borrower (or any direct or indirect parent thereof) or any Subsidiary of the Parent Borrower in connection with the Transactions or pursuant to arrangements described in clause (e) of this Section 9.9,

(d) loans, advances and other transactions between or among the Parent Borrower, any Subsidiary of the Parent Borrower or any joint venture (regardless of the form of legal entity) in which the Parent Borrower or any Subsidiary of the Parent Borrower has invested (and which Subsidiary or joint venture would not be an Affiliate of the Parent Borrower but for the Parent Borrower's or such Subsidiary's Subsidiary ownership of Stock or Stock Equivalents in such joint venture or Subsidiary) to the extent permitted under Section 10,

(e) (i) employment, consulting and severance arrangements between the Parent Borrower and the Restricted Subsidiaries (or any direct or indirect parent of the Borrower) and their respective officers, employees, directors or consultants in the ordinary course of business (including payments, loans and advances in connection therewith) and (ii) issuances of securities, or other payments, awards or grants in cash, securities or otherwise and other transactions pursuant to any equityholder, employee or director equity plan or stock or other equity option plan or any other management or employee benefit plan or agreement, other compensatory arrangement or any stock or other equity subscription, co-invest or equityholder agreement,

(f) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, consultants, officers and employees of the Parent Borrower (or, to the extent attributable to the ownership of the Parent Borrower and its Restricted Subsidiaries, any direct or indirect parent thereof) and the Subsidiaries of the Parent Borrower,

(g) the issuance of Stock or Stock Equivalents (other than Disqualified Stock) of the Parent Borrower (or any direct or indirect parent thereof) to Holdings or to any director, officer, employee or consultant,

(h) any customary transactions with a Receivables Entity effected as part of a Permitted Receivables Financing and any customary transactions with a Securitization Subsidiary effected as part of a Qualified Securitization Financing,

(i) transactions pursuant to permitted agreements in existence on the Closing Date and, to the extent each such transaction is valued in excess of $25,000,000, set forth on Schedule 9.9 or any amendment, modification, supplement, replacement, extension, renewal or restructuring thereto to the extent such an amendment, modification, supplement, replacement, extension renewal or restructuring (together with any other amendment or supplemental agreements) is not materially adverse, taken as a whole, to the Lenders (in the good faith determination of the Parent Borrower),

(j) transactions in which Holdings (or any indirect parent of the Parent Borrower), the Parent Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Parent Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 9.9,

(k) the existence and performance of agreements and transactions with any Unrestricted Subsidiary that were entered into prior to the designation of a Restricted Subsidiary as such Unrestricted Subsidiary to the extent that the transaction was permitted at the time that it was entered into with such Restricted Subsidiary and transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that such transaction was not entered into in contemplation of such designation or redesignation, as applicable,

(l) Affiliate repurchases of the Term Loans or commitments in respect thereof to the extent permitted under the Term Loan Credit Agreement and the payments and other transactions reasonably related thereto, and

(m) transactions constituting any part of a Permitted Reorganization.

9.10 End of Fiscal Years

The Parent Borrower will, for financial reporting purposes, cause its Fiscal Year to end on September 30 of each year (each a "**Fiscal Year**") and cause its Restricted Subsidiaries to maintain their fiscal years as in effect on the Closing Date; *provided*, *however*, that the Parent Borrower may, upon written notice to the Administrative Agent change its Fiscal Year or the fiscal years of its Restricted Subsidiaries with the prior written consent of the Administrative Agent (not to be unreasonably withheld, conditioned, delayed or denied), in which case the Parent Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

9.11 Additional U.S. Guarantors and Grantors

Subject to any applicable limitations set forth in the U.S. Guarantee, the U.S. Security Documents, or any Applicable Intercreditor Agreement and this Agreement (including Section 9.12), the Parent Borrower will cause each direct or indirect Wholly Owned Domestic Subsidiary of the Parent Borrower (excluding any U.S. Excluded Subsidiary) formed or otherwise purchased or acquired after the Closing Date and each other Domestic Subsidiary of the Parent Borrower that ceases to constitute a U.S. Excluded Subsidiary to, within 60 days from the date of such formation, acquisition or cessation (which in the case of any Subsidiary ceasing to constitute a U.S. Excluded Subsidiary pursuant to clause (a) thereof, commencing on the date of delivery of the applicable compliance certificate pursuant to Section 9.1(c)), as applicable (or such longer period as the Administrative Agent may agree in its reasonable discretion), execute (A) a supplement to each of the U.S. Guarantee and the U.S. Security Agreement in order to

become a Guarantor under such Guarantee and a grantor/pledgor under the U.S. Security Agreement and (B) a joinder to the Intercompany Subordinated Note.

9.12 Further Assurances With Respect to U.S. Guarantors and Grantors

(a) Subject to the applicable limitations set forth in this Agreement (including Section 9.11) and the U.S. Security Documents and any Applicable Intercreditor Agreement, the Parent Borrower will, and will cause each other U.S. Credit Party to, 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, fixture filings, mortgages, deeds of trust and other documents) that may be required under any Applicable Law, or that the Collateral Agent may reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the applicable U.S. Security Documents, all at the expense of the Parent Borrower and the Restricted Subsidiaries.

(b) Subject to any applicable limitations set forth in the U.S. Security Documents (including in any U.S. Mortgage), if any assets that are of the nature secured by any U.S. Security Documents (including any owned Real Estate or improvements thereto constituting U.S. Collateral with a fair market value in excess of $10,000,000) are acquired by the Parent Borrower or any U.S. Subsidiary Guarantor after the Closing Date or are held by any Domestic Subsidiary on or after the time it becomes a U.S. Subsidiary Guarantor pursuant to Section 9.11 (other than assets constituting U.S. Collateral under the U.S. Security Documents that become subject to the Lien of any U.S. Security Document upon acquisition thereof or assets subject to a Lien granted pursuant to Section 10.2(d) or 10.2(g)), the Parent Borrower will promptly notify the Collateral Agent thereof and, if requested by the Collateral Agent, will cause such assets to be subjected to a Lien securing the Obligations and will take, and cause the other U.S. Credit Parties to take, such actions as shall be necessary or reasonably requested by the Collateral Agent, as soon as commercially reasonable but in no event later than 120 days, unless extended by the Collateral Agent in its reasonable discretion, to grant and perfect such Liens consistent with the applicable requirements of the U.S. Security Documents, including actions described in paragraph (a) of this Section, all at the expense of the U.S. Credit Parties~~.~~; *provided* that such deadline for providing any U.S. Mortgage shall be automatically extended until each U.S. Lender confirms to the Administrative Agent and Collateral Agent that such Lender has completed all flood due diligence, received copies of all flood insurance documentation and confirmed flood insurance compliance as required by the Flood Laws or as otherwise satisfactory to such Lender.

(c) Any U.S. Mortgage delivered to the Collateral Agent in accordance with the preceding clause (b) shall be accompanied by those items set forth in clause (d) that are customary for the type of assets covered by such U.S. Mortgage. Any items that are customary for the type of assets covered by such U.S. Mortgage may be delivered within a commercially reasonable period of time after the delivery of a U.S. Mortgage if they are not reasonably available at the time the U.S. Mortgage is delivered.

(d) With respect to any U.S. Mortgaged Property, within 120 days, unless extended by the Collateral Agent in its reasonable discretion, the Parent Borrower will

deliver, or cause to be delivered, to the Collateral Agent (i) a U.S. Mortgage with respect to each U.S. Mortgaged Property, executed by an Authorized Officer of each obligor party thereto, (ii) a policy or policies of title insurance insuring the Lien of each such U.S. Mortgage as a valid Lien on the U.S. Mortgaged Property described therein, free of any other Liens except Permitted Encumbrances or consented to in writing (including via email) by the Collateral Agent, together with such endorsements and reinsurance as the Collateral Agent may reasonably request, together with evidence reasonably acceptable to the Collateral Agent of payment of all title insurance premiums, search and examination charges, escrow charges and related charges, fees, costs and expenses required for the issuance of the title insurance policies referred to above, (iii) a Survey, to the extent reasonably necessary to satisfy the requirements of clause (ii) above, (iv) all other documents and instruments, including Uniform Commercial Code or other applicable fixture security financing statements, reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by any such U.S. Mortgage and perfect such Liens to the extent required by, and with the priority required by, such U.S. Mortgage shall have been delivered to the Collateral Agent in proper form for filing, registration or recording and (v) written opinions of legal counsel in the states in which each such U.S. Mortgaged Property is located in customary form and substance. If any building or other improvement included in any U.S. Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or as hereafter in effect or successor act thereto), then the Parent Borrower shall, prior to delivery of the U.S. Mortgages, deliver or cause to be delivered, (i) a completed Federal Emergency Management Agency Standard Flood Determination with respect to each U.S. Mortgaged Property, in each case in form and substance reasonably satisfactory to the Collateral Agent and (ii) evidence of flood insurance with respect to each U.S. Mortgaged Property, to the extent and in amounts required by Applicable Laws, in each case in form and substance reasonably satisfactory to the Collateral Agent.

(e) Notwithstanding anything herein to the contrary, if the Parent Borrower and the Collateral Agent mutually agree in their reasonable judgment (confirmed in writing to the Parent Borrower and the Administrative Agent) that the cost or other consequences (including adverse tax and accounting consequences) of creating or perfecting any Lien on any property is excessive in relation to the benefits afforded to the Secured Parties thereby, then such property may be excluded from the U.S. Collateral for all purposes of the Credit Documents.

(f) Notwithstanding anything herein or in any other Credit Document to the contrary, the Parent Borrower and the U.S. Guarantors shall not be required, nor shall the Collateral Agent be authorized, (i) to perfect the above-described pledges, security interests and mortgages by any means other than by (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of the relevant State(s), (B) filings in United States government offices with respect to intellectual property as expressly required herein and under the other Credit Documents, (C) delivery to the Collateral Agent (or, subject to the Applicable Intercreditor Agreements, to the Term Loan Collateral Agent or another representative acting as its gratuitous bailee), for its (or such other Person's) possession, of all U.S. Collateral consisting of material intercompany notes, stock certificates of the Parent

Borrower and its Restricted Subsidiaries or (D) U.S. Mortgages required to be delivered pursuant to this Section 9.12, (ii) to enter into any control agreement with respect to any deposit account, securities account or commodities account or contract (other than for which control agreements are required to be obtained pursuant to Section 9.16), (iii) to take any action in any non-U.S. jurisdiction or pursuant to the requirements of the laws of any non-U.S. jurisdiction in order to create any security interests or to perfect any security interests, including with respect to any intellectual property registered outside of the United States (it being understood that there shall be no security agreements or pledge agreements governed by the laws of any non-U.S. jurisdiction in respect of any U.S. Collateral), (iv) except as expressly set forth above, to take any other action with respect to any U.S. Collateral to perfect through control agreements or to otherwise perfect by "control" or (v) to provide any notice to obtain the consent of governmental authorities under the Federal Assignment of Claims Act (or any state equivalent thereof).

9.13 Foreign Collateral and Guarantee Requirements

(a) with respect to any Foreign Borrower, so long as it remains a party hereunder, if at any time one or more Wholly Owned Foreign Subsidiaries of the Parent Borrower become the new direct parent of such Foreign Borrower, then within (60) days after the occurrence thereof (or such longer period as the Administrative Agent may agree in its reasonable discretion), the Borrowers shall cause each such new parent to deliver any and all certificates representing Stock and Stock Equivalents (to the extent certificated) in such Foreign Borrower, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank (or any other documents customary under local law), and to duly execute and deliver to the Administrative Agent a supplement to each of the applicable Foreign Guarantee and the applicable Foreign Security Document (or if such supplement is not customary or possible to provide, to provide any new Foreign Guarantee and/or new Foreign Security Document (to be based on substantially the same form as the Foreign Guarantee and/or Foreign Security Document being replaced by such new Foreign Guarantee and/or Foreign Security Document)) in order to become a Foreign Guarantor under such Foreign Guarantee and a grantor, pledgor or chargor under each applicable Foreign Security Document.

(b) with respect to any Foreign Borrower, if at any time such Foreign Borrower acquires, forms, designates or otherwise owns any Wholly Owned Material Subsidiary that constitutes a Restricted Subsidiary organized, incorporated or established in the same jurisdiction as such Foreign Borrower or in any of Germany, the United Kingdom, Ireland or Canada, within 60 days after such acquisition, formation, designation or ownership (or such longer period as the Administrative Agent may agree in its reasonable discretion), the Borrowers shall (A) cause each such Subsidiary to deliver any and all certificates representing Stock and Stock Equivalents (to the extent certificated) in such Subsidiary, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank (or any other documents customary under local law), and (B) to duly execute and deliver to the Administrative Agent any such supplement, filings security agreement or document, and take any as required under each applicable Foreign Security Document in order to grant a perfected first priority Lien over such Stock and Stock Equivalent (subject to the applicable Foreign Legal Reservations and Foreign Perfection Requirements).

(c) Subject to the applicable limitations set forth in this Agreement and the Foreign Security Documents, the Borrowers will, and will cause each other Foreign Credit Party to, execute any and all further documents, financing statements (including PPSA financing statements), agreements and instruments, and take all such further actions (including the filing and recording of financing statements (including PPSA financing statements), fixture filings, mortgages, deeds of trust and other documents) that may be required under any Applicable Law, or that the Collateral Agent may reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the applicable Foreign Security Documents (subject to the applicable Foreign Legal Reservations and Foreign Perfection Requirements), all at the expense of the Borrowers and the Restricted Subsidiaries.

(d) Subject to any applicable limitations set forth in the Foreign Security Documents, if any assets that are of the nature secured by any Foreign Security Documents are acquired by any Foreign Borrower after the Closing Date (other than assets constituting Foreign Collateral under the applicable Foreign Security Documents that become subject to the Lien of any Foreign Security Document upon acquisition thereof or assets subject to a Lien granted pursuant to Section 10.2(d) or 10.2(g)), the Borrowers will promptly notify the Collateral Agent thereof and, if requested by the Collateral Agent, will cause such assets to be subjected to a Lien securing the Foreign Obligations and will take, and cause the other Foreign Credit Parties to take, such actions as shall be necessary or reasonably requested by the Collateral Agent, as soon as commercially reasonable but in no event later than 120 days, unless extended by the Collateral Agent in its reasonable discretion, to grant and perfect such Liens consistent with the applicable requirements of the Foreign Security Documents (subject to the applicable Foreign Legal Reservations and Foreign Perfection Requirements), including actions described in paragraph (c) of this Section, all at the expense of the Foreign Credit Parties.

9.14 Use of Proceeds

The Borrowers will use the Letters of Credit issued on the Closing Date to backstop or replace any letters of credit issued to the Parent Borrower or any Restricted Subsidiary prior to the Closing Date. The Borrowers will, after the Closing Date, use the proceeds of the Credit Extensions for working capital and general corporate purposes (including Permitted Acquisitions and other Investments, capital expenditure, Restricted Payments and all other transactions not prohibited hereunder and under the other Credit Documents).

9.15 Changes in Business

The Parent Borrower and the Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by the Parent Borrower and the Restricted Subsidiaries, taken as a whole, on the Closing Date and other business activities which are extensions thereof or otherwise similar, incidental, complementary, synergistic, reasonably related or ancillary to any of the foregoing (and non-core incidental businesses acquired in connection with any Permitted Acquisition or permitted Investment), in each case as determined by the Parent Borrower in good faith.

9.16 Cash Management Systems

(a) Annexed hereto as Schedule 9.16 is a schedule of all DDAs that are maintained by the Borrowers and the U.S. Subsidiary Guarantors that are Material Subsidiaries as of the Closing Date, which Schedule includes, with respect to each depository (i) the name and address of such depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository and (iv) identifying whether such DDA must be subject to a Blocked Account Agreement.

(b) Within 120 days after the Closing Date, or such longer period as the Administrative Agent may agree in its reasonable discretion, each Borrower and each U.S. Subsidiary Guarantor will use commercially reasonable efforts to enter into a springing blocked account agreement (each, a "**Blocked Account Agreement**," which, for the avoidance of doubt, may be included in any Foreign Security Document), reasonably satisfactory to the Administrative Agent, with respect to the DDAs (other than Excluded Accounts) (such DDAs subject to Blocked Account Agreements, collectively, the "**Blocked Accounts**"). If such Blocked Account Agreements are not obtained within 120 days after the Closing Date (or such later date as the Administrative Agent shall reasonably agree), each Borrower and each U.S. Subsidiary Guarantor shall, within 60 days thereof (or such later date as the Administrative Agent may reasonably agree) to move its applicable DDAs to the Administrative Agent or another financial institution that will provide such Blocked Account Agreements. Each Borrower hereby agrees that, once the Blocked Account Agreements are entered into, all cash received by such Borrower or any U.S. Subsidiary Guarantor in any DDA that is not a Blocked Account (other than amounts held in Excluded Accounts and, solely in respect of Excluded Accounts identified in clause (ii) of the definition thereof, required by Applicable Law) will be promptly transferred into a Blocked Account (other than, during a Cash Dominion Period, a Blocked Account that is a cash pooling account). After entering into the Blocked Account Agreement, there shall be at all times thereafter at least one Blocked Account that is not a cash pooling account. To the extent that any DDA is used for both collection and for other purposes (including payments and disbursements or cash pooling functions), then within ninety (90) days after the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion) the Borrowers shall either (i) terminate such other functions (other than collections) of each such account or (ii) transition the collection function of such account to another account that is subject to a Blocked Account Agreement and dedicated solely to collections.

(c) Each Blocked Account Agreement shall permit the Administrative Agent to instruct the depository, (x) after the occurrence and during the continuance of a Specified Event of Default, in the case of a Blocked Account that is a cash pooling account of a Foreign Borrower or (y) during a Cash Dominion Period, in the case of all other Blocked Accounts (and delivery of notice thereof from the Administrative Agent), to transfer on each Business Day all available cash receipts to a concentration account maintained by the Administrative Agent at Citibank, N.A. (each, a "**Concentration Account**"), from:

(i) the sale of Inventory and other Collateral (other than Term Priority Collateral);

(ii) all proceeds of collections of Accounts; and

(iii) each Blocked Account (including all cash deposited therein from each DDA) (other than, except during a continuing Specified Event of Default, a cash pooling account).

If, at any time during the Cash Dominion Period, any cash or Cash Equivalents owned by any Borrower or any U.S. Subsidiary Guarantor (other than amounts held in Excluded Accounts and, solely in respect of Excluded Accounts identified in clause (ii) of the definition thereof, required by Applicable Law) are deposited to any account, or held or invested in any manner, other than in a Blocked Account (other than a Blocked Account that is a cash pooling account) that is subject to a Blocked Account Agreement (or a DDA which is swept daily to a Blocked Account (other than a Blocked Account that is a cash pooling account)), the Administrative Agent may require the applicable Person to close such account and have all funds therein transferred to a Blocked Account (other than a cash pooling account), and all future deposits made to a Blocked Account (other than a Blocked Account that is a cash pooling account) which is subject to a Blocked Account Agreement; *provided* that, to the extent that cash or Cash Equivalents are deposited in any Blocked Account that is a cash pooling account during a Cash Dominion Period, the Borrowers shall transfer such cash and Cash Equivalents to a Blocked Account that is not a cash pooling account, but, unless a Specified Event of Default has occurred and is continuing, the Administrative Agent may not require that (i) any such cash pooling account be closed or (ii) any cash and Cash Equivalents on deposit in any such cash pooling account prior to the commencement of a Cash Dominion Period be transferred to a Blocked Account that is not a cash pooling account. In addition to the foregoing, during the Cash Dominion Period, at the request of the Administrative Agent, the Borrowers shall provide the Administrative Agent with an accounting of the contents of the Blocked Accounts, which shall identify, to the reasonable satisfaction of the Administrative Agent, the proceeds from the Collateral which were deposited into a Blocked Account and swept to a Concentration Account.

(d) The Borrowers and the U.S. Subsidiary Guarantors may close DDAs or Blocked Accounts and/or open new DDAs or Blocked Accounts, subject to the execution and delivery to the Administrative Agent of appropriate Blocked Account Agreements (except with respect to any Excluded Accounts) consistent with and to the extent required by the provisions of this Section 9.16 and otherwise reasonably satisfactory to the Administrative Agent. Each such Person shall furnish the Administrative Agent with prior written notice of its intention to open or close a Blocked Account and the Administrative Agent shall promptly notify the Parent Borrower as to whether the Administrative Agent shall require a Blocked Account Agreement with the Person with whom such account will be maintained.

(e) The Borrowers and the U.S. Subsidiary Guarantors may also maintain one or more zero balance disbursement accounts to be used by such Persons for disbursements and payments (including payroll) in the ordinary course of business or as otherwise permitted hereunder.

(f) Each Concentration Account shall at all times be under the sole dominion and control of the Administrative Agent. Each Credit Party hereby acknowledges and agrees that (i) such Credit Party has no right of withdrawal from any Concentration Account, (ii) the funds on deposit in each Concentration Account shall at all times continue to be collateral security for all of the Obligations pursuant to the Security Documents, and (iii) the funds on deposit in each Concentration Account shall be applied as provided in this Agreement. In the event that, notwithstanding the provisions of this Section 9.16, during a Cash Dominion Period, any Credit Party receives or otherwise has dominion and control of any such proceeds or collections related to Collateral (other than Term Priority Collateral), such proceeds and collections shall be held in trust by such Person for the Administrative Agent, shall not be commingled with any of such Person's other funds or deposited in any account of such Person and shall promptly be deposited into a Concentration Account or dealt with in such other fashion as such Person may be instructed by the Administrative Agent.

(g) So long as no Cash Dominion Period is in existence, the Borrowers and the U.S. Subsidiary Guarantors may direct, and shall have sole control over, the manner of disposition of funds in the Blocked Accounts (other than Blocked Accounts that are cash pooling accounts, for which the Borrowers and the U.S. Subsidiary Guarantors may direct, and shall have sole control over, the manner of disposition of funds so long as no Specified Event of Default has occurred and is continuing).

(h) Any amounts received in any Concentration Account at any time shall be remitted to the operating account of the applicable Borrowers after the application of such amounts pursuant to Section 5.2(b).

(i) The Administrative Agent shall promptly (but in any event within one Business Day) furnish written notice to each Person with whom a Blocked Account is maintained, upon any termination of a Cash Dominion Period or a Specified Event of Default, as applicable, in each case for which the Administrative Agent has delivered a notice pursuant to Section 9.16(c), of the termination of such notice.

(j) The following shall apply to deposits and payments under and pursuant to this Agreement:

(i) Funds shall be deemed to have been deposited to the applicable Concentration Account on the Business Day on which deposited, *provided* that such deposit is available to the Administrative Agent by 4:00 p.m. on that Business Day (except that if the Obligations are being paid in full, by 2:00 p.m. New York City time, on that Business Day);

(ii) Funds paid to the Administrative Agent, other than by deposit to a Concentration Account, shall be deemed to have been received on the Business Day when they are good and collected funds, *provided* that such payment is available to the Administrative Agent by 4:00 p.m. on that Business Day (except that if the Obligations are being paid in full, by 2:00 p.m. New York City time, on that Business Day);

(iii) If a deposit to a Concentration Account or payment is not available to the Administrative Agent until after 4:00 p.m. on a Business Day, such deposit or payment shall be deemed to have been made at 9:00 a.m. on the then next Business Day; and

(iv) If any item deposited to any Concentration Account and applied in accordance with Section 5.2(b) is dishonored or returned unpaid for any reason, whether or not such return is rightful or timely, the Administrative Agent shall have the right to reverse such application and the Borrowers shall indemnify the Secured Parties against all reasonable out-of-pocket claims and losses resulting from such dishonor or return.

9.17 Appraisals and Field Examinations

The Administrative Agent may carry out, at the applicable Borrowers' expense, one inventory appraisal and one field exam in any Fiscal Year; *provided*, *however*, that notwithstanding the foregoing limitations, (x) at any time after the date on which the Aggregate Excess Availability has been less than the greater of $~~3~~20,000,000 and 12.5% of the Aggregate Line Cap for five (5) consecutive Business Days, one additional field examination and one additional inventory appraisal may be conducted during each Fiscal Year until the Aggregate Excess Availability has been at least the greater of $~~3~~20,000,000 and 12.5% of the Aggregate Line Cap for 20 consecutive calendar days and (y) at any time during the continuation of an Event of Default, field examinations and inventory appraisals may be conducted at the applicable Borrowers' expense as frequently as determined by the Administrative Agent in its Permitted Discretion.

9.18 Post-Closing Obligations

The Credit Parties shall deliver, or cause to be delivered, each of the items set forth on Schedule 9.18 hereto on or prior to the dates set forth therein, as such time periods may be extended by the Administrative Agent in its reasonable discretion.

SECTION 10 Negative Covenants

The Borrowers hereby covenant and agree that on the Closing Date (immediately after giving effect to the Transactions) and thereafter, until the Aggregate Revolving Credit Commitments, all Loans, all Letters of Credit have terminated (other than Letters of Credit that have been backstopped, Cash Collateralized or otherwise collateralized on terms and conditions reasonably satisfactory to the applicable L/C Issuer) and the Loans, together with interest, fees and all other Obligations (other than Hedging Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreement or Contingent Obligations), are paid in full:

10.1 Limitation on Indebtedness

The Parent Borrower will not, and will not permit the Restricted Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness. Notwithstanding the foregoing, the

limitations set forth in the immediately preceding sentence shall not apply to any of the following:

(a) Indebtedness arising under the Credit Documents (including any Indebtedness incurred as permitted by Sections 2.14, 2.15 and 13.1);

(b) Indebtedness under the Term Loan Credit Documents and any Refinancing Indebtedness thereof, in an aggregate principal amount not to exceed the sum of (i) $2,925,000,000 *plus* (ii) the principal amount of "Incremental Facilities" (as defined in the Term Loan Credit Agreement as in effect on the Closing Date) measured at the time of incurrence pursuant to the Term Loan Credit Agreement as in effect on the Closing Date *plus* (iii) solely in the case of any such Refinancing Indebtedness, the Refinancing Increased Amount with respect thereto.

(c) [reserved];

(d) subject to compliance with Section 10.5, Indebtedness of the Parent Borrower or any Restricted Subsidiary owed to the Parent Borrower or any Restricted Subsidiary; *provided* that all such Indebtedness of any Credit Party owed to any Person that is not a Credit Party shall be (x) evidenced by the Intercompany Subordinated Note (*provided* that any Person becoming a Restricted Subsidiary after the Closing Date may enter into the Intercompany Subordinated Note within the time period set forth in Section 9.11) or (y) otherwise be subject to subordination terms substantially identical to the subordination terms set forth in the Intercompany Subordinated Note or otherwise reasonably acceptable to the Administrative Agent;

(e) subject to compliance with Section 10.5, Guarantee Obligations incurred by (i) Restricted Subsidiaries in respect of Indebtedness of the Parent Borrower or any other Restricted Subsidiary that is permitted to be incurred under this Agreement and (ii) the Parent Borrower in respect of Indebtedness of Restricted Subsidiaries that is permitted to be incurred under this Agreement; *provided* that (x) if the Indebtedness being guaranteed under this Section 10.1(e) is subordinated to the Obligations, such Guarantee Obligations shall be subordinated to the Guarantee of the Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the subordination of such Indebtedness and (y) a Restricted Subsidiary that is not a U.S. Credit Party may not, by virtue of this Section 10.1(e), guarantee Indebtedness that such Restricted Subsidiary could not otherwise incur under this Section 10.1;

(f) Indebtedness in respect of any bankers' acceptance, bank guarantees, letter of credit, warehouse receipt or similar facilities entered into in the ordinary course of business (including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims and similar obligations);

(g) Guarantee Obligations (i) incurred in the ordinary course of business in respect of obligations of (or to) suppliers, customers, franchisees, lessors and

licensees, (ii) otherwise constituting Investments permitted by Section 10.5 (other than Investments permitted by Section 10.5(l) by reference to Section 10.1 and Section 10.5(q)); *provided* that this clause (ii) shall not be construed to limit the requirements of Section 10.1(d) and (e), or (iii) contemplated by the Plan;

(h) Indebtedness (including Indebtedness arising under Capital Leases) incurred to finance the purchase price, cost of design, acquisition, construction, repair, restoration, replacement, expansion, installation or improvement of fixed or capital assets or otherwise in respect of capital expenditures, so long as such Indebtedness is incurred concurrently with or within 270 days of the acquisition, construction, repair, restoration, replacement, expansion, installation or improvement of such fixed or capital assets or incurrence of such capital expenditure, and any Refinancing Indebtedness thereof, in an aggregate principal amount not to exceed (i) the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance *plus* the principal amount of Capital Leases outstanding on the Closing Date, in each case at any time outstanding *plus* (ii) solely in the case of any such Refinancing Indebtedness, the Refinancing Increased Amount with respect thereto;

(i) Indebtedness permitted to remain outstanding under the Plan, and to the extent such Indebtedness exceeds $5,000,000, set forth on Schedule 10.1 and any Refinancing Indebtedness thereof; provided that in the case of any Refinancing Indebtedness of any such Indebtedness, each obligor of such Refinancing Indebtedness is an obligor of such Indebtedness;

(j) Indebtedness in respect of Hedging Agreements; *provided* that such Hedging Agreements are not entered into for speculative purposes (as determined by the Parent Borrower in good faith);

(k) (i) Permitted Other Debt assumed or incurred for any purpose, including to finance a Permitted Acquisition, other permitted Investments or capital expenditures; *provided* that (A) if such Indebtedness is incurred or assumed by a Restricted Subsidiary that is not a Credit Party, such Indebtedness is not guaranteed in any respect by the Parent Borrower or any other Guarantor except as permitted under Section 10.5, (B) the aggregate principal amount of Indebtedness incurred or assumed under this Section 10.1(k)(i) shall not exceed (1) the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance *plus* (2) additional amounts if, on a Pro Forma Basis after giving effect to the incurrence or assumption of such Indebtedness and the application of proceeds thereof and, if applicable, the Permitted Acquisition, permitted Investment or capital expenditure, the Consolidated Total Net Leverage Ratio is not greater than 3.30 to 1.00 or, to the extent incurred or assumed in connection with a Permitted Acquisition or similar Investment, the Consolidated Total Net Leverage Ratio (on a Pro Forma Basis for such transaction and the incurrence or assumption of such Indebtedness) is not greater than (I) 3.30 to 1.00 or (II) the Consolidated Total Net Leverage Ratio immediately prior to such Permitted Acquisition or similar Investment and (C) [reserved] and (ii) any Refinancing Indebtedness in respect of the Indebtedness under

clause (i) above; *provided* that Indebtedness incurred or assumed by Restricted Subsidiaries that are not U.S. Subsidiary Guarantors under this Section 10.1(k), when combined with the total amount of Indebtedness incurred by Restricted Subsidiaries that are not U.S. Subsidiary Guarantors pursuant to Section 10.1(ee), shall not exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance, in each case at any time outstanding;

(l) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations not in connection with money borrowed, in each case provided in the ordinary course of business or consistent with past practice, including those incurred to secure health, safety and environmental obligations in the ordinary course of business (including in respect of construction or restoration activities) or consistent with past practice;

(m) additional Indebtedness; *provided* that the aggregate amount of Indebtedness incurred or issued pursuant to this Section 10.1(m) shall not exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance, in each case at any time outstanding;

(n) Indebtedness in respect of Cash Management Services and other Indebtedness in respect of overdraft facilities, employee credit card programs, netting services, automatic clearinghouse arrangements and other cash management and similar arrangements in the ordinary course of business;

(o) (i) Indebtedness incurred in the ordinary course of business in respect of obligations of the Parent Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (ii) Indebtedness in respect of intercompany obligations of the Parent Borrower or any Restricted Subsidiary with the Parent Borrower or any Restricted Subsidiary in respect of accounts payable incurred in connection with goods sold or services rendered in the ordinary course of business and not in connection with the borrowing of money;

(p) Indebtedness arising from agreements of the Parent Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations (including earn-outs), in each case entered into in connection with Permitted Acquisitions, other Investments and the Disposition of any business, assets or Stock or Stock Equivalents permitted hereunder;

(q) Indebtedness of the Parent Borrower or any Restricted Subsidiary consisting of (i) financing of insurance premiums or (ii) take or pay obligations contained in supply agreements, in each case arising in the ordinary course of business;

(r) Indebtedness representing deferred compensation, or similar arrangement, to employees, consultants or independent contractors of the Parent Borrower and the Restricted Subsidiaries incurred in the ordinary course of business;

(s) Indebtedness consisting of promissory notes issued by the Parent Borrower or any Restricted Subsidiary to present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) to finance the purchase or redemption of Stock or Stock Equivalents of the Parent Borrower (or any direct or indirect parent thereof) permitted by Section 10.6(b);

(t) Indebtedness consisting of obligations of the Parent Borrower and the Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions and Permitted Acquisitions or any other Investment permitted hereunder;

(u) Indebtedness in respect of (i) Permitted Receivables Financings owed by a Receivables Entity or Qualified Securitization Financings owed by a Securitization Subsidiary and (ii) accounts receivable factoring facilities in the ordinary course of business; *provided* that the aggregate amount of Receivables Indebtedness pursuant to this clause (u) shall not exceed $160,000,000 at any time outstanding;

(v) Indebtedness in respect of (i) [reserved], (ii) Incremental Equivalent Debt (as defined in, and subject to the limitations set forth in, the Term Loan Credit Agreement as in effect on the date hereof; *provided* that references therein to "Permitted Other Loans" and "Permitted Other Notes" shall be deemed to be references to such terms as defined herein and references to Section 10.1(k) therein shall be deemed to be references to Section 10.1(k) hereof); and (iii) any Refinancing Indebtedness in respect thereof;

(w) [reserved];

(x) Indebtedness in an amount not to exceed the Available Equity Amount;

(y) Indebtedness of any Minority Investments or Indebtedness incurred on behalf thereof or representing guarantees of such Indebtedness of any Minority Investment, in an amount not to exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance, in each case at any time outstanding;

(z) intercompany Indebtedness among the Parent Borrower and its Subsidiaries constituting any part of any Permitted Reorganization;

(aa) to the extent constituting Indebtedness, customer deposits and advance payments (including progress payments) received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;

(bb) (i) Indebtedness of the Parent Borrower or any Restricted Subsidiary supported by a letter of credit, in a principal amount not in excess of the stated amount of such letter of credit so long as such letter of credit is otherwise permitted to be

incurred pursuant to this Section 10.1 or (ii) obligations in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of the Parent Borrower or any Subsidiary of the Parent Borrower in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than the United States;

(cc) Indebtedness owing to the seller of any business or assets permitted to be acquired by the Parent Borrower or any Restricted Subsidiary under this Agreement; *provided* that the aggregate amount of Indebtedness permitted under this clause (cc) shall not exceed the greater of $160,000,000 and 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) outstanding at any time;

(dd) obligations in respect of Disqualified Stock in an amount not to exceed the greater of $25,000,000 and 3% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) outstanding at any time;

(ee) Indebtedness incurred by Restricted Subsidiaries that are not U.S. Subsidiary Guarantors under this clause (ee), when combined with the total amount of Indebtedness incurred by Restricted Subsidiaries that are not U.S. Subsidiary Guarantors pursuant to Section 10.1(k), shall not exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(ff) so long as the Payment Conditions have been satisfied at the time of incurrence and after giving effect thereto, unsecured Indebtedness of a Credit Party; *provided* that the scheduled final maturity date and the Weighted Average Life to Maturity of such Indebtedness shall not be earlier than the Initial Maturity Date; and

(gg) all premiums (if any), interest (including post-petition interest), fees, expenses, charges, and additional or contingent interest on obligations described in clauses (a) through (ff) above.

For the avoidance of doubt, any Indebtedness permitted to be incurred under any clause of this Section 10.1 may be used to modify, refinance, refund, renew, replace, exchange or extend any outstanding Indebtedness, including any such Indebtedness incurred under any other clause of this Section 10.1 and any such Indebtedness with respect to which the incurrence of Refinancing Indebtedness is expressly permitted under this Section 10.1, in each case, subject to the restrictions set forth in Section 10.7.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness or Disqualified Stock will not be deemed to be an incurrence or issuance of Indebtedness or Disqualified Stock for purposes of this covenant.

This Agreement will not treat (1) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (2) senior Indebtedness as

subordinated or junior to any other senior Indebtedness merely because it has a junior lien priority with respect to the same collateral.

10.2 Limitation on Liens

The Parent Borrower will not, and will not permit the Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any property or assets of any kind (real or personal, tangible or intangible) of the Parent Borrower or such Restricted Subsidiary, whether now owned or hereafter acquired, except:

(a) Liens arising under the Security Documents;

(b) Liens securing Indebtedness permitted to be incurred pursuant to Section 10.1(b), and Hedging Obligations and Cash Management Obligations permitted to be secured on a *pari passu* basis with the Term Loans under the Term Credit Documents; *provided* that such Lien over the U.S. Collateral shall be subject to the Applicable Intercreditor Agreements;

(c) [reserved];

(d) Liens securing Indebtedness permitted pursuant to Section 10.1(h); *provided* that except as otherwise permitted hereby, such Liens attach at all times only to the assets so financed except (1) for accessions to the property financed with the proceeds of such Indebtedness and the proceeds and the products thereof and (2) that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(e) Liens permitted to remain outstanding under the Plan; *provided* that any Lien securing Indebtedness or other obligations in excess of $5,000,000 shall only be permitted to the extent such Lien is listed on Schedule 10.2;

(f) (i) Liens securing Indebtedness permitted to be incurred under clause (B)(2) of the proviso to Section 10.1(k)(i) or Section 10.1(v)(ii); *provided* that (A) the representative of such Indebtedness shall have entered into the Applicable Intercreditor Agreements to the extent secured by the U.S. Collateral reflecting its junior priority status as compared with the Liens on the ABL Priority Collateral securing the Obligations and its senior, pari passu or junior priority status as compared with the Liens on the Term Priority Collateral securing the Obligations, (B) (I) with respect to Indebtedness incurred in reliance on clause (B)(2) of the proviso to Section 10.1(k)(i) that is secured by Liens on the Term Priority Collateral that are pari passu with the Liens on the Term Priority Collateral securing the Term Loan Obligations, immediately after the incurrence thereof, on a Pro Forma Basis, the Consolidated First Lien Net Leverage Ratio is no greater than 3.30 to 1.00 and (II) with respect to Indebtedness incurred in reliance on clause (B)(2) of the proviso to Section 10.1(k)(i) that is secured by Liens on the Term Priority Collateral that are junior to the Liens on the Term Priority Collateral securing the Term Loan Obligations, immediately after the incurrence thereof, on a Pro Forma Basis, the Consolidated Secured Net Leverage Ratio is no greater than 3.30 to 1.00

and (C) any such Liens on Foreign Collateral shall be junior to the Liens on such Collateral securing the Foreign Obligations pursuant to an Applicable Intercreditor Agreement and (ii) Liens securing Refinancing Indebtedness permitted to be incurred under Section 10.1(k)(ii) or Section 10.1(v)(iii);

(g) Liens existing on the assets of any Person that becomes a Restricted Subsidiary (or is a Restricted Subsidiary that survives a merger with such Person or any of its Subsidiaries) pursuant to a Permitted Acquisition or other permitted Investment or the designation of an Unrestricted Subsidiary as a Restricted Subsidiary or existing on assets acquired after the Closing Date, to the extent the Liens on such assets secure Indebtedness permitted by Section 10.1; *provided* that such Liens (i) are not created or incurred in connection with, or in contemplation of, such Person becoming such a Restricted Subsidiary or such assets being acquired and (ii) attach at all times only to the same assets to which such Liens attached and after-acquired property, property that is affixed or incorporated into the property covered by such Lien and accessions thereto and products and proceeds thereof, after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment (or assets affixed or appurtenant thereto and additions and accessions) provided by any lender, other equipment financed by such lender, it being understood that such requirement to pledge such after-acquired property shall not be permitted to apply to any such after-acquired property to which such requirement would not have applied but for such acquisition except as otherwise permitted hereunder, and any Refinancing Indebtedness thereof permitted by Section 10.1;

(h) additional Liens on assets of any Restricted Subsidiary that is not a U.S. Credit Party securing Indebtedness of such Restricted Subsidiary permitted pursuant to Section 10.1 (or other obligations of such Restricted Subsidiary not constituting Indebtedness);

(i) additional Liens on assets that do not constitute Collateral prior to the creation of such Liens, so long as the Credit Facilities hereunder are equally and ratably secured thereby and the aggregate amount of Indebtedness secured thereby at any time outstanding does not exceed $160,000,000; *provided* that such Liens are subject to intercreditor arrangements reasonably satisfactory to the Parent Borrower and the Collateral Agent; it being understood and agreed that intercreditor arrangements in substantially the form of the Applicable Intercreditor Agreements are satisfactory;

(j) additional Liens on U.S. Collateral, so long as (i)(x) with respect to Indebtedness that is secured by Liens on the Term Priority Collateral that are pari passu with the Liens on the Term Priority Collateral securing the Term Loan Obligations, immediately after the incurrence thereof, on a Pro Forma Basis, the Consolidated First Lien Net Leverage Ratio is no greater than 3.30 to 1.00 and (y) with respect to Indebtedness that is secured by Liens on the Term Priority Collateral that are junior to the Liens on the Term Priority Collateral securing the Term Loan Obligations, immediately after the incurrence thereof, on a Pro Forma Basis, the

Consolidated Secured Net Leverage Ratio is no greater than 3.30 to 1.00, (ii) such Liens shall be junior to the Liens over the ABL Priority Collateral securing the Obligations and (iii) the holder(s) of such Liens (or a representative thereof) shall have entered into the Applicable Intercreditor Agreements;

(k) additional Liens, so long as the aggregate amount of obligations secured thereby at any time outstanding does not exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of incurrence or issuance;

(l) (i) Liens on accounts receivable, other Receivables Facility Assets, or accounts into which collections or proceeds of Receivables Facility Assets are deposited, in each case arising in connection with a Permitted Receivables Financing permitted under Section 10.1(u) and (ii) Liens on Securitization Assets and related assets arising in connection with a Qualified Securitization Financing permitted under Section 10.1(u), *provided* that no such Liens shall extend to any assets included in the Borrowing Base or to any Blocked Account;

(m) Permitted Encumbrances; and

(n) the supplement, amendment, amendment and restatement, modification, replacement, refinancing, refunding, restructuring, extension or renewal of any Lien permitted by clause (e), clause (g) and clause (i) of this Section 10.2 upon or in the same assets theretofore subject to such Lien (or upon or in after-acquired property that is affixed or incorporated into the property covered by such Lien and accessions thereto or any proceeds or products thereof) or the Refinancing Indebtedness (without a change in any obligor, except to the extent otherwise permitted hereunder) of the Indebtedness or other obligations secured thereby (including any unused commitments), to the extent such Refinancing Indebtedness is permitted by Section 10.1; *provided* that in the case of any such supplement, amendment, amendment and restatement, modification, replacement, refinancing, refunding, restructuring, extension or renewal of any Lien permitted by clause (g) and clause (i) of this Section 10.2, the requirements set forth in the proviso to clause (g) or clause (i), as applicable, shall have been satisfied.

10.3 Limitation on Fundamental Changes

The Parent Borrower will not, and will not permit the Restricted Subsidiaries to, consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease, assign, transfer or otherwise consummate the Disposition of, all or substantially all its business units, assets or other properties, except that:

(a) so long as both before and after giving effect to such transaction, no Event of Default has occurred and is continuing or would result therefrom, any Subsidiary of the Parent Borrower (other than a Foreign Credit Party) or any other Person may be merged, amalgamated or consolidated with or into the Parent Borrower; *provided* that (A) the Parent Borrower shall be the continuing or surviving company or (B) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Parent Borrower (such

other Person, the "**Successor Parent Borrower**"), (1) the Successor Parent Borrower (if other than the Parent Borrower) shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof, (2) the Successor Parent Borrower (if other than the Parent Borrower) shall expressly assume all the obligations of the Parent Borrower under this Agreement and the other Credit Documents pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (3) each U.S. Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the U.S. Guarantee confirmed that its guarantee thereunder shall apply to any Successor Parent Borrower's obligations under this Agreement, (4) each grantor and each pledgor, unless it is the other party to such merger or consolidation, shall have by a supplement to the U.S. Security Agreement, affirmed that its obligations thereunder shall apply to its U.S. Guarantee as reaffirmed pursuant to clause (3), (5) each mortgagor of a U.S. Mortgaged Property, unless it is the other party to such merger or consolidation, shall have affirmed that its obligations under the applicable U.S. Mortgage shall apply to its U.S. Guarantee as reaffirmed pursuant to clause (3) and (6) the Successor Parent Borrower shall have delivered to the Administrative Agent an officer's certificate stating that such merger or consolidation and such supplements preserve the enforceability of this Agreement and the U.S. Guarantee and the perfection and priority of the Liens under the applicable U.S. Security Documents;

(b) so long as no Event of Default has occurred and is continuing, or would result therefrom, any Subsidiary of the Parent Borrower or any other Person (in each case, other than the Parent Borrower) may be merged, amalgamated or consolidated with or into any one or more Subsidiaries of the Parent Borrower; *provided* that (i) in the case of any merger, amalgamation or consolidation involving one or more Restricted Subsidiaries, (A) a Restricted Subsidiary shall be the continuing or surviving Person or (B) the Parent Borrower shall cause the Person formed by or surviving any such merger, amalgamation or consolidation (if other than a Restricted Subsidiary) to become a Restricted Subsidiary, (ii) in the case of any merger, amalgamation or consolidation involving one or more U.S. Guarantors, a U.S. Guarantor shall be the continuing or surviving Person or the Person formed by or surviving any such merger, amalgamation or consolidation (if other than a U.S. Guarantor) shall execute a supplement to the U.S. Guarantee and the relevant U.S. Security Documents each in form and substance reasonably satisfactory to the Administrative Agent in order to become a U.S. Guarantor and pledgor, mortgagor and grantor, as applicable, thereunder for the benefit of the Secured Parties and to acknowledge and agree to the terms of the Intercompany Subordinated Note, and (iii) the Parent Borrower shall have delivered to the Administrative Agent an officers' certificate stating that such merger, amalgamation or consolidation and any such supplements to the U.S. Guarantee and any U.S. Security Document preserve the enforceability of the U.S. Guarantee and the perfection and priority of the Liens under the applicable U.S. Security Documents to the extent otherwise required;

(c) any Permitted Reorganization may be consummated;

(d) any Restricted Subsidiary that is not a Credit Party may sell, lease, transfer or otherwise Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Parent Borrower or any other Restricted Subsidiary;

(e) the Parent Borrower or any Subsidiary of the Parent Borrower (other than a Foreign Borrower) may sell, lease, transfer or otherwise Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any U.S. Credit Party; *provided* that the consideration for any such Disposition by any Person other than a U.S. Guarantor shall not exceed the fair value of such assets;

(f) any Restricted Subsidiary (other than a Foreign Borrower) may liquidate or dissolve if (i) the Parent Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Parent Borrower and is not materially disadvantageous to the Lenders and (ii) to the extent such Restricted Subsidiary is a Credit Party, any assets or business of such Restricted Subsidiary not otherwise disposed of or transferred in accordance with Section 10.4 or 10.5, or in the case of any such business, discontinued, shall be transferred to, or otherwise owned or conducted by, a Credit Party after giving effect to such liquidation or dissolution;

(g) the Parent Borrower or any Restricted Subsidiary may change its legal form, so long as (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) the Liens granted pursuant to any Security Documents to which such Person is a party remain perfected and in full force and effect, to the extent otherwise required hereby;

(h) any merger, consolidation or amalgamation the purpose and only substantive effect of which is to reincorporate or reorganize the Parent Borrower or any Restricted Subsidiary that is a Domestic Subsidiary in a jurisdiction in the United States, any state thereof or the District of Columbia, so long as the Liens granted pursuant to the U.S. Security Documents to which the Parent Borrower is a party remain perfected and in full force and effect, to the extent otherwise required hereby;

(i) the Transactions and any transactions as contemplated by the Plan may be consummated; and

(j) the Parent Borrower and the Restricted Subsidiaries may consummate a merger, amalgamation dissolution, liquidation, windup, consolidation or Disposition, constituting, or otherwise resulting in, a transaction permitted by Section 10.4 (other than pursuant to (x) Section 10.4(d) and (y) the Disposition of all or substantially all of the assets of the Parent Borrower and its Restricted Subsidiaries, taken as a whole, to any Person other than the Parent Borrower or any U.S. Guarantor), an Investment permitted pursuant to Section 10.5 (other than Section 10.5(l)), and any Restricted Payments permitted pursuant to Section 10.6 (other than Section 10.6(f)).

10.4 Limitation on Disposition

The Parent Borrower will not, and will not permit the Restricted Subsidiaries to make any Disposition, except that (in each subject to the requirements set forth in the last sentence of this Section 10.4, if applicable):

(a) the Parent Borrower and the Restricted Subsidiaries may sell, transfer or otherwise Dispose of (i) obsolete, negligible, immaterial, worn-out, uneconomical, scrap, used, or surplus or mothballed assets (including any such equipment that has been refurbished in contemplation of such Disposition) or assets no longer used or useful in the business or no longer commercially desirable to maintain, (ii) inventory or goods (or other assets) held for sale in the ordinary course of business, (iii) cash and Cash Equivalents, (iv) immaterial assets (including allowing any registrations or any applications for registration of any intellectual property rights to lapse or go abandoned in the ordinary course of business), and (v) assets for the purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Parent Borrower and the Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(b) the Parent Borrower and the Restricted Subsidiaries may make Dispositions of assets; *provided* that (i) [reserved], (ii) as of the date of signing of the definitive agreement for such Disposition, no Event of Default shall have occurred and be continuing, (iii) with respect to any Disposition pursuant to this clause (b) for a purchase price in excess of $50,000,000, the Person making such Disposition shall receive fair market value and not less than 75% of such consideration in the form of cash or Cash Equivalents; *provided* that for the purposes of this clause (iii) the following shall be deemed to be cash: (A) any liabilities (as shown on the Parent Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto, or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Parent Borrower's or such Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet) of the Parent Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the payment in cash of the Obligations (other than intercompany liabilities owing to a Restricted Subsidiary being Disposed of) and that are (1) assumed by the transferee (or a third party in connection with such transfer) with respect to the applicable Disposition and for which the Parent Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing or indemnified from such liabilities or (2) otherwise cancelled or terminated in connection therewith, (B) any securities, notes or other obligations received by the Person making such Disposition from the purchaser that are converted by such Person into cash or Cash Equivalents or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, (C) consideration consisting of Indebtedness of any Credit Party (other than subordinated Indebtedness) received after the Closing Date from Persons who are not Restricted Subsidiaries (so long as such Indebtedness is not cancelled or forgiven) and (D) any Designated Non-Cash Consideration received by the Person making such Disposition having an aggregate fair market value, taken together with all

other Designated Non-Cash Consideration received pursuant to this Section 10.4(b) that is at that time outstanding, not in excess of the greater of $160,000,000 and 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value and (iv) any non-cash proceeds received in the form of Real Estate, Indebtedness or Stock and Stock Equivalents are pledged to the Collateral Agent to the extent required under Section 9.11, 9.12 or the Security Agreement;

(c) (i) the Parent Borrower and the Restricted Subsidiaries may make Dispositions to the Parent Borrower or any other Credit Party, (ii) any Restricted Subsidiary that is not a Credit Party may make Dispositions to the Parent Borrower or any Subsidiary of the Parent Borrower; *provided* that with respect to any such Disposition to an Unrestricted Subsidiary, such Disposition shall be for fair value and (iii) any Credit Party may make Dispositions to a non-Credit Party to the extent constituting an Investment permitted under Section 10.5 (other than Section 10.5(l));

(d) the Parent Borrower and any Restricted Subsidiary may effect any transaction permitted by Sections 10.2, 10.3 (other than Section 10.3(j)), 10.5 (other than Section 10.5(l)) or 10.6 (other than Section 10.6(f));

(e) the Parent Borrower and any Restricted Subsidiary may lease, sublease, license (only on a non-exclusive basis, with respect to any intellectual property) or sublicense (only on a non-exclusive basis, with respect to any intellectual property) real, personal or intellectual property in the ordinary course of business;

(f) Dispositions of property (including like-kind exchanges) to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property (excluding any boot thereon) or (ii) the proceeds of such Disposition are applied to the purchase price of such replacement property, in each case under Section 1031 of the Code or otherwise;

(g) the Parent Borrower and any other U.S. Credit Party may transfer or otherwise Dispose of any intellectual property for fair market value to any Restricted Subsidiary of the Parent Borrower that is not a U.S. Credit Party; *provided* that (i) the transferee shall be (A) a direct or indirect Wholly Owned Restricted Subsidiary and (B) a special purpose entity that does not incur any third-party Indebtedness for borrowed money (for the avoidance of doubt, such entity may have employees managing its intellectual property assets and conducting internal research and development activities), (ii) the consideration received by the Credit Party from such Disposition shall be in the form of (A) cash and Cash Equivalents, (B) intercompany notes owed to the Credit Party transferor/licensor by the non-Credit Party transferee/licensee, which intercompany notes are pledged to secure the Obligations and/or (C) Stock and Stock Equivalent of the transferee/licensee (or a parent entity of such transferee/licensee so long as such parent entity and any intermediate holding entity otherwise satisfies the requirements set forth in clause (i) above) and the Stock and Stock Equivalents of such transferee/licensee (or the parent entity) are pledged to secure the Obligations (subject to the limitation set forth in the

Security Agreement on the pledge of Voting Stock of any CFC or CFC Holding Company) and (iii) such Disposition shall be subject to a license of such intellectual property to the Administrative Agent to be enforceable solely in connection with the exercise of the Administrative Agent's rights and remedies under the Credit Documents with respect to the ABL Priority Collateral or the Foreign Collateral; *provided* that in the case of this clause (ii)(C), the aggregate fair market value of any and all intellectual property so Disposed of shall not exceed $100,000,000;

(h) Dispositions of (i) Investments in joint ventures (regardless of the form of legal entity) to the extent required by, or made pursuant to, customary buy/sell arrangements or put/call arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements or (ii) to joint ventures in connection with the dissolution or termination of a joint venture to the extent required pursuant to joint venture and similar arrangements;

(i) (i) Dispositions of Receivables Facility Assets in connection with any Permitted Receivables Financing, and any Disposition of Securitization Assets in connection with any Qualified Securitization Financing and (ii) Dispositions in connection with accounts receivable factoring facilities in the ordinary course of business, *provided* that the Indebtedness arising in connection therewith shall not exceed the amount of Indebtedness permitted by Section 10.1(u);

(j) Dispositions listed on Schedule 10.4 or to consummate the Transactions, including transactions contemplated by the Plan;

(k) transfers of property subject to any damage, destruction, other casualty or loss or in connection with any seizure, condemnation, confiscation or taking proceeding or similar events upon receipt of the net cash proceeds in connection therewith;

(l) Dispositions or discounts of accounts receivable or notes receivable in connection with the collection or compromise thereof or the conversion of accounts receivable to notes receivable;

(m) Dispositions of any assets not constituting Collateral in an aggregate amount not to exceed $160,000,000;

(n) the execution of (or amendment to), settlement of or unwinding of any Hedging Agreement;

(o) any issuance or sale of Stock or Stock Equivalent in, or Indebtedness or other securities of, any Unrestricted Subsidiary;

(p) the surrender or waiver of contractual rights and settlement or waiver of contractual or litigation claims;

(q) Dispositions of any assets (including Stock and Stock Equivalents) acquired in connection with any Permitted Acquisition or other Investment not prohibited hereunder, which assets are not used or useful to the core or principal business of the Parent Borrower and its Restricted Subsidiaries (as determined by the Parent Borrower in good faith); and

(r) other Dispositions (including those of the type otherwise described herein) made for fair market value in an aggregate amount not to exceed the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(s) the Parent Borrower and any Restricted Subsidiary may (i) terminate or otherwise collapse its cost sharing agreements with the Parent Borrower or any Subsidiary and settle any crossing payments in connection therewith, (ii) convert any intercompany Indebtedness to Stock or any Stock to intercompany Indebtedness, (iii) settle, discount, write off, forgive or cancel any intercompany Indebtedness or other obligation owing by the Parent Borrower or any Restricted Subsidiary or (iv) settle, discount, write off, forgive or cancel any Indebtedness owing by any present or former consultants, managers, directors, officers or employees of Holdings, the Parent Borrower, any direct or indirect parent thereof, or any Subsidiary thereof or any of their successors or assigns;

(t) any Disposition of property to the extent that (1) such property is exchanged for credit against the purchase price of similar replacement property that is purchased within 270 days thereof or (2) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually purchased within 270 days thereof);

(u) any Disposition in connection with a Permitted Reorganization;

(v) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater fair market value or usefulness to the business of the Parent Borrower and the Restricted Subsidiaries, taken as a whole, as determined in good faith by the Parent Borrower; and

(w) Dispositions of any asset between or among the Parent Borrower and/or any Restricted Subsidiary as a substantially concurrent interim Disposition in connection with a Disposition otherwise permitted pursuant to clauses (a) through (v) above; *provided* that after giving effect to any such Disposition, to the extent the assets subject to such Dispositions constituted Collateral, such assets shall remain subject to, or be rejoined to, the Lien of the Security Documents.

Notwithstanding the foregoing, no transfer or other Disposition of any intellectual property by a U.S. Credit Party to a Subsidiary that is not a U.S. Credit Party may be made

except pursuant to Section 10.4(c)(iii) (solely in respect of Investments permitted by the proviso to Section 10.5(w)), (e) or (g).

Substantially simultaneously with the consummation of any Disposition (other than any Disposition permitted under Section 10.4(a)(ii)), if assets constituting more than 5% of the Aggregate Borrowing Base are Disposed of in such Disposition, the Parent Borrower shall deliver an updated Borrowing Base Certificate that gives Pro Forma Effect to such Disposition, together with calculations sufficient to demonstrate that the Availability Requirements shall be satisfied immediately after giving effect to such Disposition.

10.5 Limitation on Investments

The Parent Borrower will not, and will not permit the Restricted Subsidiaries, to make any Investment except:

(a) extensions of trade credit, asset purchases (including purchases of inventory, supplies, materials and equipment) and the licensing or contribution of intellectual property pursuant to joint marketing arrangements, original equipment manufacturer arrangements or development agreements with other Persons, in each case in the ordinary course of business;

(b) Investments in cash or Cash Equivalents when such Investments were made;

(c) loans and advances to officers, managers, directors, employees, consultants and independent contractors of the Parent Borrower (or any direct or indirect parent thereof) or any Subsidiary of the Parent Borrower (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes (including employee payroll advances), (ii) in connection with such Person's purchase of Stock or Stock Equivalents of Holdings (or any direct or indirect parent thereof; *provided* that, to the extent such loans and advances are made in cash, the amount of such loans and advances used to acquire such Stock or Stock Equivalents shall be contributed to the Parent Borrower in cash) and (iii) for purposes not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount outstanding pursuant to clause (iii) shall not exceed $25,000,000 at any one time outstanding;

(d) Investments (i) contemplated by the Plan or to consummate the Transactions and (ii) existing on, or made pursuant to legally binding written commitments in existence on, the Closing Date and, to the extent such Investments exceed $5,000,000, set forth on Schedule 10.5 and any supplement, amendment, amendment and restatement, modification, replacement, refinancing, refunding, restructuring, renewal or extension thereof, only to the extent that the amount of any Investment made pursuant to this clause (d)(ii) does not at any time exceed the amount of such Investment set forth on Schedule 10.5 (except by an amount equal to the unpaid accrued interest and premium thereon *plus* any unused commitments *plus* amounts paid in respect of fees, premiums, costs and expenses incurred in connection with such

supplement, amendment, amendment and restatement, modification, replacement, refinancing, refunding, restructuring, renewal or extension or as otherwise permitted hereunder);

(e) any Investment acquired by the Parent Borrower or any Restricted Subsidiary (i) in exchange for any other Investment or accounts receivable held by the Parent Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization, or recapitalization of, or settlement of delinquent accounts or disputes with or judgments against, the issuer, obligor or borrower of such original Investment or accounts receivable, (ii) as a result of a foreclosure by the Parent Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default or (iii) as a result of the settlement, compromise or resolution of litigation, arbitration or other disputes with Persons who are not Affiliates or in satisfaction or judgments against other Persons;

(f) Investments to the extent that payment for such Investments is made with (i) Stock or Stock Equivalents (other than Disqualified Stock) of the Parent Borrower (or any direct or indirect parent thereof) or (ii) the proceeds from the issuance of Stock or Stock Equivalents (other than Disqualified Stock, any sale or issuance to any Subsidiary and any issuance applied pursuant to Section 10.6(a) or Section 10.6(b)(i)) of the Parent Borrower (or any direct or indirect parent thereof); *provided* that such Stock or Stock Equivalents or proceeds of such Stock or Stock Equivalents will not increase the Available Equity Amount;

(g) Investments (other than in the form of direct or indirect transfers or Dispositions of intellectual property from a U.S. Credit Party to a non-U.S. Credit Party) by the Parent Borrower or any Restricted Subsidiary in the Parent Borrower or any Restricted Subsidiary or any Person that will, upon such Investment become a Restricted Subsidiary;

(h) Investments constituting Permitted Acquisitions;

(i) Investments constituting (i) Minority Investments and Investments in Unrestricted Subsidiaries and (ii) Investments in joint ventures (regardless of the form of legal entity) or similar Persons that do not constitute Restricted Subsidiaries, in each case valued at the fair market value (determined by the Parent Borrower acting in good faith) of such Investment at the time each such Investment is made, in an aggregate amount at any one time outstanding pursuant to this clause (i) that, at the time each such Investment is made, would not exceed an amount equal to the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(j) Investments constituting non-cash proceeds received from Dispositions of assets pursuant to Section 10.4;

(k) Investments made to repurchase or retire Stock or Stock Equivalents of the Parent Borrower or any direct or indirect parent thereof owned by any employee or any stock ownership plan or key employee stock ownership plan of the Parent Borrower (or any direct or indirect parent thereof) in an aggregate amount, when combined with

distributions made pursuant to Section 10.6(b), not to exceed the limitations set forth in such Section;

(l) Investments consisting of or resulting from Indebtedness, Liens, Restricted Payments, fundamental changes and Dispositions permitted by Section 10.1 (other than Sections 10.1(d), 10.1(e) and 10.1(g)(ii)), 10.2, 10.3 (other than Section 10.3(j)), 10.4 (other than Section 10.4(d)), 10.6 (other than Section 10.6(f)), 10.7 or 10.8, as applicable;

(m) loans and advances to any direct or indirect parent of the Parent Borrower in lieu of, and not in excess of the amount of, Restricted Payments to the extent permitted to be made to such parent in accordance with Section 10.6; *provided* that the aggregate amount of such loans and advances shall reduce the ability of the Parent Borrower and the Restricted Subsidiaries to make Restricted Payments under the applicable clauses of Section 10.6 by such amount;

(n) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(o) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(p) advances of payroll payments to employees, consultants or independent contractors or other advances of salaries or compensation to employees, consultants or independent contractors, in each case in the ordinary course of business;

(q) Guarantee Obligations of the Parent Borrower or any Restricted Subsidiary of leases (other than Capital Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(r) Investments held by a Person acquired (including by way of merger, amalgamation or consolidation) after the Closing Date otherwise in accordance with this Section 10.5 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(s) Investments in Hedging Agreements permitted by Section 10.1;

(t) Investments in or by a Receivables Entity or a Securitization Subsidiary arising out of, or in connection with, any Permitted Receivables Financing or Qualified Securitization Financing, as applicable; *provided* that any such Investment in a Receivables Entity or a Securitization Subsidiary is in the form of a contribution of additional Receivables Facility Assets or Securitization Assets, as applicable, or as equity;

(u) Investments consisting of deposits of cash and Cash Equivalents as collateral support permitted under Section 10.2;

(v) other Investments not to exceed an amount equal to the Available Equity Amount at the time such Investments are made;

(w) other Investments in an amount at any one time outstanding not to exceed an amount equal to the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis); *provided* that up to an amount equal to the greater of (i) $80,000,000 and (ii) 10% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) may be made in the form of Disposition of intellectual property by a U.S. Credit Party to a Restricted Subsidiary that is not a U.S. Credit Party;

(x) Investments consisting of purchases and acquisitions of assets and services in the ordinary course of business;

(y) Investments in the ordinary course of business consisting of Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practice;

(z) Investments made as a part of, or in connection with or to otherwise fund the Transactions;

(aa) contributions in connection with compensation arrangements to a "rabbi" trust for the benefit of employees, directors, partners, members, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Parent Borrower or any of its Restricted Subsidiaries;

(bb) Investments relating to pension trusts;

(cc) Investments in Similar Business in an amount at any one time outstanding not to exceed an amount equal to the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(dd) Investments in connection with Permitted Reorganizations;

(ee) Investments in deposit accounts, commodities and securities accounts opened in the ordinary course of business;

(ff) Investments solely to the extent such Investments reflect an increase in the value of Investments otherwise permitted under this Agreement;

(gg) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;

(hh) Term Loans repurchased by the Parent Borrower or a Restricted Subsidiary pursuant to and in accordance with Section 13.6(g) of the Term Loan Credit Agreement; and

(ii) other Investments in an unlimited amount, so long as the Payment Conditions are satisfied at the time of and after giving effect to the Investment.

Notwithstanding the foregoing, no Investment consisting of or resulting from any transfer or other Disposition of any intellectual property by a U.S. Credit Party to a Subsidiary that is not a U.S. Credit Party may be made except pursuant to (i) Section 10.5(l) (solely in respect of Dispositions permitted by Section 10.4(e) or (g)) or (ii) the proviso to Section 10.5(w).

10.6 Limitation on Restricted Payments

The Parent Borrower will not, and will not permit the Restricted Subsidiaries to, declare or pay any Restricted Payments except that:

(a) the Parent Borrower may (or may make Restricted Payments to permit any direct or indirect parent thereof to) redeem in whole or in part any of its Stock or Stock Equivalents for another class of its (or such parent's) Stock or Stock Equivalents or with proceeds from substantially concurrent equity contributions or issuances of new Stock or Stock Equivalents (other than any Disqualified Stock, any sale or issuance to any Subsidiary and any contribution or issuance applied pursuant to Section 10.5(f)(ii) or Section 10.6(b)(i)); *provided* that (i) such new Stock or Stock Equivalents contain terms and provisions (taken as a whole) at least as advantageous to the Lenders, taken as a whole, in all respects material to their interests as those contained in the Stock or Stock Equivalents redeemed thereby and (ii) the cash proceeds from any such contribution or issuance shall not increase the Available Equity Amount;

(b) the Parent Borrower may (or may make Restricted Payments to permit any direct or indirect parent thereof to) redeem, acquire, retire or repurchase shares of its (or such parent's) Stock or Stock Equivalents held by any present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) of the Parent Borrower (or any direct or indirect parent thereof) and any Subsidiaries, so long as such repurchase is pursuant to, and in accordance with the terms of, any stock option or stock appreciation rights plan, any management, director and/or employee benefit, stock ownership or option plan, stock subscription plan or agreement, employment termination agreement or any employment agreements or stockholders' or shareholders' agreement; *provided*, *however* , that the aggregate amount of payments made under this Section 10.6(b), when combined with Investments made pursuant to Section 10.5(k), do not exceed in any Fiscal Year $20,000,000 (with unused amounts in any Fiscal Year being carried over to succeeding Fiscal Years subject to a maximum (without giving effect to the following proviso) of $30,000,000 in any Fiscal Year); *provided*, *further*, that such amount in any Fiscal Year may be increased by an amount not to exceed:

(i) the cash proceeds from the sale of Stock (other than Disqualified Stock, any sale or issuance to any Subsidiary and any contribution or issuance applied pursuant to Section 10.5(f)(ii) or Section 10.6(a)) of the Parent Borrower and, to the extent contributed to the Parent Borrower, Stock of any of the Parent Borrower's direct or indirect parent companies, in each case to present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) of the Parent Borrower (or any of its direct or indirect parent companies) or any Subsidiary of the Parent Borrower that occurs after the Closing Date; *provided* that such Stock or proceeds of such Stock will not increase the Available Equity Amount; *plus*

(ii) the cash proceeds of key man life insurance policies received by the Parent Borrower or any Restricted Subsidiary after the Closing Date; less

(iii) the amount of any Restricted Payment previously made with the cash proceeds described in clauses (i) and (ii) above;

and *provided*, *further*, that cancellation of Indebtedness owing to the Parent Borrower or any Restricted Subsidiary from present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) of the Parent Borrower (or any of its direct or indirect parent companies), or any Subsidiary of the Parent Borrower in connection with a repurchase of Stock or Stock Equivalents of the Parent Borrower or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(c) so long as no Event of Default under Section 11.1 or 11.5 shall have occurred and be continuing or would result therefrom, the Parent Borrower make Restricted Payments; *provided* that the amount of all such Restricted Payments paid from the Closing Date pursuant to this clause (c) shall not exceed an amount equal to the Available Equity Amount at the time such Restricted Payments are paid;

(d) the Parent Borrower may make Restricted Payments to any direct or indirect parent company of the Parent Borrower in amount required for any such direct or indirect parent to pay, in each case without duplication:

(i) foreign, federal, state and local income Taxes for any taxable period in respect of which a consolidated, combined, unitary or affiliated return is filed by such direct or indirect parent that includes the Parent Borrower and/or any of its Subsidiaries; *provided* that for purposes of this Section 10.6(d)(i), such Taxes shall be deemed to equal the amount that the Parent Borrower and its Subsidiaries would be required to pay in respect of foreign, federal, state and local income Taxes if the Parent Borrower were the parent of a standalone consolidated, combined, affiliated, unitary or similar tax group including its Subsidiaries (any such Restricted Payments, "**Tax Distributions**");

(ii) (A) such parents' general operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties) to the extent such costs and expenses are attributable to the ownership or operation of the Parent Borrower and its Restricted Subsidiaries and (to the extent of cash actually paid by Unrestricted Subsidiaries to the Parent Borrower or its Restricted Subsidiaries for such purposes) Unrestricted Subsidiaries, (B) any indemnification claims made by directors or officers of the Parent Borrower (or any parent thereof) to the extent such claims are attributable to the ownership or operation of the Parent Borrower or any Restricted Subsidiary and (to the extent of cash actually paid by Unrestricted Subsidiaries to the Parent Borrower or its Restricted Subsidiaries for such purposes) Unrestricted Subsidiaries or (C) fees and expenses otherwise due and payable by the Parent Borrower (or any parent thereof) or any Restricted Subsidiary and not prohibited to be paid by the Parent Borrower and its Restricted Subsidiaries hereunder;

(iii) franchise and excise Taxes and other fees, Taxes and expenses required to maintain the corporate existence of any direct or indirect parent of the Parent Borrower;

(iv) to any direct or indirect parent of the Parent Borrower to finance any Investment permitted to be made by the Parent Borrower or any Restricted Subsidiary pursuant to Section 10.5; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment, (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets, Stock or Stock Equivalents) to be contributed to the Parent Borrower or such Restricted Subsidiary or (2) the merger, amalgamation or consolidation (to the extent permitted in Section 10.5) of the Person formed or acquired into the Parent Borrower or any Restricted Subsidiary, (C) the Parent Borrower or such Restricted Subsidiary shall comply with Section 9.11, Section 9.12 and the Security Agreement to the extent applicable, (D) the aggregate amount of such Restricted Payments shall reduce the ability of the Parent Borrower and the Restricted Subsidiary to make Investments under the applicable clauses of Section 10.5 by such amount and (E) any property received by the Parent Borrower or the Restricted Subsidiaries in connection with such transaction shall only increase the Available Equity Amount to the extent the fair market value of such property as determined in good faith by the Board of Directors of the Parent Borrower exceeds the aggregate amount of Restricted Payments made pursuant to this clause (iv);

(v) customary costs, fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering or acquisition or Disposition payable by the Parent Borrower or the Restricted Subsidiaries;

(vi) customary salary, bonus, severance and other benefits payable to officers, employees or consultants of any direct or indirect parent company of the Parent Borrower to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Parent Borrower, its Restricted Subsidiaries and (to the

extent of cash actually paid by Unrestricted Subsidiaries to the Parent Borrower or its Restricted Subsidiaries for such purposes) Unrestricted Subsidiaries;

(vii) AHYDO Catch-Up Payments with respect to Indebtedness of any direct or indirect parent of the Parent Borrower; *provided* that the Net Cash Proceeds of such Indebtedness have been contributed to the Parent Borrower as a capital contribution; and

(viii) expenses incurred by any direct or indirect parent of the Parent Borrower in connection with any public offering or other sale of Stock or Stock Equivalents (including in respect of the listing of Avaya Holdings on the Closing Date) or Indebtedness (i) other than in connection with the listing of Avaya Holdings on the Closing Date, where the Net Cash Proceeds of such offering or sale are intended to be received by or contributed to the Parent Borrower or a Restricted Subsidiary, (ii) in a pro-rated amount of such expenses in proportion to the amount of such Net Cash Proceeds intended to be so received or contributed or (iii) otherwise on an interim basis prior to completion of such offering so long as any direct or indirect parent of the Parent Borrower shall cause the amount of such expenses to be repaid to the Parent Borrower or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if completed;

(e) Restricted Payments made to dissenting equityholders in connection with their exercise of appraisal rights or the settlement of any claim or actions with respect thereto in connection with any Permitted Acquisition or similar Investment permitted under Section 10.5 (other than Section 10.5(l));

(f) Restricted Payments consisting of or resulting from Liens, fundamental changes, Dispositions, Investments or other payments permitted by 10.2, 10.3 (other than Section 10.3(j)), 10.4 (other than Section 10.4(d)), 10.5 (other than Section 10.5(l)), 10.7 or 10.8, as applicable;

(g) the Parent Borrower may repurchase Stock or Stock Equivalents of the Parent Borrower (or any direct or indirect parent thereof) deemed to occur upon exercise of stock options or warrants if such Stock or Stock Equivalents represents a portion of the exercise price of such options or warrants, and the Parent Borrower may pay Restricted Payments to any direct or indirect parent thereof as and when necessary to enable such parent to effect such repurchases;

(h) the Parent Borrower may (i) pay cash in lieu of fractional shares in connection with any Restricted Payment, distribution, split, reverse share split, merger, consolidation, amalgamation or other combination thereof or any Permitted Acquisition, and any Restricted Payment to the Parent Borrower's direct or indirect parent in order to effect the same and (ii) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(i) the Parent Borrower may make any Restricted Payment within 60 days after the date of declaration thereof or giving irrevocable notice thereof, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;

(j) so long as no Event of Default shall have occurred and is continuing or would result therefrom, the Parent Borrower may make Restricted Payments, so long as the aggregate amount of all such Restricted Payments in any Fiscal Year does not exceed 6% of the market capitalization of the Public Reporting Entity calculated on a trailing twelve month average basis;

(k) the Parent Borrower may make Restricted Payments in an amount equal to withholding or similar Taxes payable or expected to be payable by present or former officer, manager, consultant, director or employee (or their respective wealth management vehicles, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees, estates or immediate family members) and any repurchases of Stock or Stock Equivalents in consideration of such payments including deemed repurchases in connection with the exercise of stock options;

(l) so long as no Event of Default shall have occurred and is continuing or would result therefrom, the Parent Borrower may (or may make Restricted Payments to permit any direct or indirect parent thereof to) make Restricted Payments in an aggregate amount not to exceed $5 million per fiscal quarter;

(m) the Parent Borrower may make payments described in Section 9.9 (other than Section 9.9(a) and Section 9.9(d) (to the extent expressly permitted by reference to Section 10.6);

(n) the Parent Borrower may make Restricted Payments in connection with the Transactions or contemplated by the Plan;

(o) so long as no Event of Default shall have occurred and is continuing or would result therefrom, the Parent Borrower may make Restricted Payments in amounts up to the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis);

(p) the Parent Borrower may make Restricted Payments in an unlimited amount, *provided* that the Payment Conditions shall be satisfied at the time of the making of such Restricted Payment and after giving effect thereto;

(q) Restricted Payments in respect of working capital adjustments or purchase price adjustments pursuant to any Permitted Acquisition or other Investment permitted hereunder and to satisfy indemnity and other similar obligations in connection with any Permitted Acquisition or other Investment permitted hereunder;

(r) the distribution, by dividend or otherwise, of shares of Stock or Stock Equivalents of, or Indebtedness owed to the Parent Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries or the proceeds thereof;

(s) [reserved]; and

(t) each Restricted Subsidiary may make Restricted Payments to the Parent Borrower and other Restricted Subsidiaries of the Parent Borrower (and, in the case of a Restricted Payment by a non-Wholly Owned Restricted Subsidiary, to the Parent Borrower and any other Restricted Subsidiary, as compared to the other owners of Stock in such Restricted Subsidiary, on a pro rata or more than pro rata basis based on their ownership interests of the relevant class of Stock).

Notwithstanding the foregoing, no Restricted Payment consisting of or resulting from any transfer or other Disposition of any intellectual property by a U.S. Credit Party to a Subsidiary that is not a U.S. Credit Party may be made except pursuant to Section 10.6(f) solely in respect of Dispositions permitted by Section 10.4(c)(iii) (solely in respect of Investments permitted by the proviso to Section 10.5(w)), (e) or (g).

10.7 Limitations on Debt Prepayments and Amendments

(a) The Parent Borrower will not, and will not permit the Restricted Subsidiaries to, voluntarily prepay, repurchase or redeem or otherwise defease prior to the scheduled maturity thereof any Indebtedness that is subordinated in right of payment or lien to the Obligations (in the case of Lien subordination, with respect to all of the Collateral) with a principal amount in excess of $50,000,000 (the "**Junior Indebtedness**"), except that the Parent Borrower and its Restricted Subsidiaries may (i) make payments of regularly scheduled principal and interest, (ii) make AHYDO Catch-Up Payments, (iii) so long as no Event of Default shall have occurred and be continuing or would result therefrom, prepay, repurchase or redeem or otherwise defease Junior Indebtedness in an aggregate principal amount from the Closing Date not in excess of the sum of, (1) (I) the greater of (x) $160,000,000 and (y) 20% of Consolidated EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) and (II) additional unlimited amounts so long as the Payment Conditions are satisfied at the time of such prepayment, repurchase, renegotiation or defeasance and after giving effect thereto *plus* (2) the Available Equity Amount at the time of such prepayment, repurchase, redemption or other defeasance, (iv) refinance Junior Indebtedness with any Refinancing Indebtedness; (v) convert, exchange, redeem, repay or prepay such Junior Indebtedness into, for or with, as applicable, Stock or Stock Equivalents of any direct or indirect parent of the Parent Borrower (other than Disqualified Stock except as permitted hereunder); (vi) prepay, repurchase, redeem or otherwise defease Junior Indebtedness within 60 days of the applicable Redemption Notice if, at the date of any payment, redemption, repurchase, retirement, termination or cancellation notice in respect thereof (each, a "**Redemption Notice**"), such payment, redemption, repurchase, retirement, termination or cancellation would have complied with another provision of this Section 10.7(a); *provided* that such payment, redemption, repurchase, retirement, termination or cancellation shall reduce capacity under such other provision, (vii) repay or prepay intercompany subordinated Indebtedness (including under the Intercompany Subordinated Note) owed among the Parent

Borrower and/or the Restricted Subsidiaries, in either case unless an Event of Default under Section 11.1 or 11.5 has occurred and is continuing and the Parent Borrower has received a written notice from the Collateral Agent instructing it not to make or permit any such repayment or prepayment and (viii) transfer credit positions in connection with intercompany debt restructurings so long as such Indebtedness is permitted by Section 10.1 after giving effect to such transfer.

(b) The Parent Borrower will not, and will not permit the Restricted Subsidiaries to waive, amend, or modify the definitive documentation in respect of any Junior Indebtedness with a principal amount in excess of $50,000,000, to the extent that any such waiver, amendment or modification, taken as a whole, would be adverse to the Lenders in any material respect; *provided* that this Section 10.7(b) would not prohibit a refinancing or replacement of such Indebtedness with Refinancing Indebtedness so long as (1) such Refinancing Indebtedness is permitted to be incurred under Section 10.1 and (2) the prepayment of such Junior Indebtedness is permitted under Section 10.7(a) above.

10.8 Limitation on Subsidiary Distributions

The Parent Borrower will not, and will not permit any Restricted Subsidiary that is not a Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to (x) (i) pay dividends or make any other distributions to the Parent Borrower or any Restricted Subsidiary that is a Guarantor on its Stock or Stock Equivalents or with respect to any other interest or participation in, or measured by, its profits or (ii) pay any Indebtedness owed to the Parent Borrower or any Restricted Subsidiary that is a Guarantor, (y) make loans or advances to the Parent Borrower or any Restricted Subsidiary that is Guarantor or (z) sell, lease or transfer any of its properties or assets to the Parent Borrower or any Restricted Subsidiary that is a Guarantor, except (in each case) for such encumbrances or restrictions (A) which the Parent Borrower has reasonably determined in good faith will not materially impair the Parent Borrower's ability to make payments under this Agreement when due or (B) existing under or by reason of:

(a) contractual encumbrances or restrictions in effect on the Closing Date, including pursuant to this Agreement, the Term Loan Credit Documents and the related documentation and related Hedging Obligations and Cash Management Obligations;

(b) purchase money obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (x), (y) or (z) above on the property so acquired, any replacements of such property or assets and additions and accessions thereto, after-acquired property subject to such arrangement, the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment (or assets affixed or appurtenant thereto and additions and accessions) provided by any lender, other equipment (or assets affixed or appurtenant thereto and additions and accessions) financed by such lender (it being understood that such restriction shall not be permitted to apply to any property to which such restriction would not have applied but for such acquisition);

(c) Applicable Laws or any applicable rule, regulation or order, or any request of any Governmental Authority having regulatory authority over the Parent Borrower or any of its Subsidiaries;

(d) any agreement or other instrument of a Person acquired by or merged or consolidated with or into the Parent Borrower or any Restricted Subsidiary, or of an Unrestricted Subsidiary that is designated a Restricted Subsidiary, or that is assumed in connection with the acquisition of assets from such Person, in each case that is in existence at the time of such transaction (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired or designated, any replacements of such property or assets and additions and accessions thereto, after-acquired property subject to such agreement or instrument, the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment (or assets affixed or appurtenant thereto and additions and accessions) provided by any lender, other equipment (or assets affixed or appurtenant thereto and additions and accessions) financed by such lender (it being understood that such encumbrance or restriction shall not be permitted to apply to any property to which such encumbrance or restriction would not have applied but for such acquisition);

(e) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Parent Borrower pursuant to an agreement that has been entered into for the sale or Disposition of all or substantially all of the Stock or Stock Equivalents or assets of such Subsidiary and restrictions on transfer of assets subject to Liens permitted hereunder;

(f) (x) secured Indebtedness otherwise permitted to be incurred pursuant to Sections 10.1 and 10.2 that limit the right of the debtor to Dispose of the assets securing such Indebtedness and (y) restrictions or encumbrances on transfers of assets subject to Liens permitted hereunder (but, with respect to any such Lien, only to the extent that such transfer restrictions apply solely to the assets that are the subject of such Lien);

(g) restrictions or encumbrances on cash or other deposits or net worth imposed by customers under, or made necessary or advisable by, contracts entered into in the ordinary course of business;

(h) restrictions or encumbrances imposed by other Indebtedness or Disqualified Stock of Restricted Subsidiaries permitted to be incurred subsequent to the Closing Date pursuant to the provisions of Section 10.1;

(i) customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to such joint venture (including its assets and Subsidiaries) and the Stock or Stock Equivalents issued thereby;

(j) customary provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, in each case, entered into in the ordinary course of business;

(k) restrictions created in connection with any Permitted Receivables Financing or any Qualified Securitization Financing that, in the good faith determination of the Parent Borrower, are necessary or advisable to effect such Permitted Receivables Financing or Qualified Securitization Financing, as the case may be;

(l) customary restrictions on leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to property interest, rights or the assets subject thereto;

(m) customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business;

(n) restrictions contemplated by the Plan or created in connection with the consummation of the Transaction, including restrictions imposed by the PBGC Stipulation of Settlement; or

(o) any encumbrances or restrictions of the type referred to in clauses (x), (y) and (z) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, extensions, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (n) above; *provided* that such amendments, modifications, restatements, renewals, increases, extensions, supplements, refundings, extensions, replacements, restructurings or refinancings (x) are, in the good faith judgment of the Parent Borrower, not materially more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, extension, restructuring, supplement, refunding, replacement or refinancing or (y) do not materially impair the Parent Borrower's ability to pay its obligations under the Credit Documents as and when due (as determined in good faith by the Parent Borrower);

provided that (x) the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the Parent Borrower or any Restricted Subsidiary that is a Guarantor to other Indebtedness incurred by the Parent Borrower or any Restricted Subsidiary that is a Guarantor shall not be deemed to constitute such an encumbrance or restriction.

10.9 Amendment of Organizational Documents

The Borrowers will not, nor will the Borrowers permit any Credit Party to, amend or otherwise modify any of its Organizational Documents in a manner that is materially adverse to the Lenders, except as required by Applicable Laws.

10.10 Permitted Activities

Holdings will not engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its

ownership of the Stock of the Parent Borrower, including receipt and payment of dividends and payments in respect of Indebtedness and other amounts in respect of Stock, (ii) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes relating to such maintenance), (iii) the performance of its obligations with respect to the Transactions, the Credit Documents and any other documents governing Indebtedness permitted hereby, (iv) any public offering of its or its direct or indirect parent entity's common equity or any other issuance or sale of its or its direct or indirect parent entity's Stock, (v) financing activities, including the issuance of securities, incurrence of debt, receipt and payment of dividends and distributions, making contributions to the capital of the Parent Borrower and guaranteeing the obligations of the Parent Borrower and the Subsidiaries, (vi) if applicable, participating in tax, accounting and other administrative matters as a member of the consolidated group and the provision of administrative and advisory services (including treasury and insurance services) to its Subsidiaries of a type customarily provided by a holding company to its Subsidiaries, (vii) holding any cash or other property (but not operate any property), (viii) making and receiving of any dividends, payments in respect of Indebtedness or Investments permitted hereunder, (ix) providing indemnification to officers and directors, (x) activities relating to any Permitted Reorganization, (xi) activities related to the Plan and the consummation of the Transactions and activities contemplated thereby, (xii) merging, amalgamating or consolidating with or into any direct or indirect parent of Holdings (in compliance with the definition of "Holdings" in this Agreement), (xiii) repurchases of Indebtedness through open market purchases and Dutch auctions, (xiv) activities incidental to Permitted Acquisitions or similar Investments consummated by the Parent Borrower and the Restricted Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or Investments incidental to such Permitted Acquisitions or similar Investments, (xv) any transaction with the Parent Borrower or any Restricted Subsidiary to the extent expressly permitted under this Section 10, (xvi) making any AHYDO Catch-Up Payments, (xvii) paying any Taxes it is obligated to pay and (xviii) any activities incidental or reasonably related to the foregoing.

10.11 Financial Covenant

The Parent Borrower shall not permit the Fixed Charge Coverage Ratio for any Test Period to be less than 1.00 to 1.00; *provided* that such Fixed Charge Coverage Ratio will only be tested (i) on the date any Covenant Trigger Period commences (as of the last day of the Test Period ending immediately prior to the date on which such Covenant Trigger Period shall have commenced) and shall continue to be tested as of the last day of each Test Period ended thereafter until such Covenant Trigger Period is no longer continuing.

10.12 Foreign Borrower Transactions

Unless (x) a Foreign Borrower or a Foreign Guarantor ceases to be a party under this Agreement pursuant to Section 4.4 or (y) a Person (other than a Foreign Borrower) ceases to be the direct parent company of any Foreign Borrower, no Foreign Credit Party shall, and the Parent Borrower shall not permit any Foreign Credit Party to, cease to comply with each requirement below:

(a) (i) no Foreign Credit Party shall cease to be a Restricted Subsidiary, (ii) no Foreign Credit Party shall cease to be a direct or indirect Wholly Owned Foreign Subsidiary of the Parent Borrower; and (iii) other than the Canadian Borrower, no Foreign Borrower shall cease to be a direct Wholly Owned Subsidiary of one or more direct or indirect Wholly Owned Foreign Subsidiaries of the Parent Borrower;

(b) (i) no Foreign Borrower shall cease to be established, organized, existing or incorporated in the same jurisdiction as on the Closing Date and (ii) no direct parent of any Foreign Borrower shall cease to be established, organized, existing or incorporated in Canada, Germany, Ireland and the United Kingdom or any other OECD country; and

(c) no Foreign Borrower may merge, amalgamate or consolidate with or into another Person in a transaction in which such Foreign Borrower does not survive such event, or Dispose of all or substantially all of its assets to another Person unless such other Person constitutes a Restricted Subsidiary of the Parent Borrower (such Person, a "**Successor Foreign Borrower**") and (1) the Successor Foreign Borrower shall be an entity organized or incorporated or existing under the same jurisdiction as the Foreign Borrower, (2) the Successor Foreign Borrower shall expressly assume all the obligations of the Foreign Borrower under this Agreement and the other Credit Documents pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (3) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to, or by way of a confirmation agreement in respect of, the applicable Guarantee confirmed that its guarantee thereunder shall apply to the Successor Foreign Borrower's obligations under this Agreement, (4) each grantor, each pledgor and each chargor, unless it is the other party to such merger or consolidation, shall have by a supplement to the applicable Security Document, affirmed that its obligations thereunder shall apply to its Guarantee as reaffirmed pursuant to clause (3), (5) each mortgagor of a U.S. Mortgaged Property, unless it is the other party to such merger or consolidation, shall have affirmed that its obligations under the applicable U.S. Mortgage shall apply to its U.S. Guarantee as reaffirmed pursuant to clause (3) and (6) the Successor Foreign Borrower shall have delivered to the Administrative Agent an officer's certificate stating that such merger or consolidation and such supplements (or confirmation agreements, if applicable) preserve the enforceability of this Agreement and the Guarantees and the perfection and priority of the Liens under the applicable Security Documents (with respect to the Foreign Guarantees and Foreign Security Documents, subject to the applicable Foreign Legal Reservations and Foreign Perfection Requirements).

SECTION 11 Events of Default

Upon the occurrence of any of the following specified events (each an "**Event of Default**"):

11.1 Payments

The Borrowers shall (a) default in the payment when due of any principal of the Loans, (b) default, and such default shall continue for more than five Business Days, in the payment when due of any interest on the Loans or (c) default, and such default shall continue for

more than ten Business Days, in the payment when due of any fees or any other amounts owing hereunder or under any other Credit Document; or

11.2 Representations, Etc.

Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or any certificate delivered or required to be delivered pursuant hereto or thereto shall prove to be materially untrue with respect to the Credit Parties, taken as a whole, on the date as of which made or deemed made, and, to the extent capable of being cured, such incorrect representation and warranty shall remain incorrect in any material respect for a period of thirty days after written notice thereof from the Administrative Agent to the Parent Borrower, except that with respect to any representation, warranty or statement contained in a Borrowing Base Certificate, to the extent capable of being cured, such incorrect representation and warranty shall remain incorrect in any material respect for a period of three Business Days after receipt of written notice by the Parent Borrower from the Administrative Agent; or

11.3 Covenants

Any Credit Party shall:

(a) default in the due performance or observance by it of any term, covenant or agreement contained in Section 9.1(d)(i) (*provided* that notice of such default at any time shall timely cure the failure to provide such notice), Section 9.5 (solely with respect to the Parent Borrower) or Section 10; or

(b) default in the due performance or observance by it of any term, covenant or agreement contained in (i) Section 9.1(i) and such default shall continue unremedied for a period of at least five Business Days after receipt of written notice by the Parent Borrower from the Administrative Agent (or, if such Borrowing Base Certificate is required to be delivered during a Weekly Monitoring Period, at least two Business Days after receipt of written notice by the Parent Borrower from the Administrative Agent) or (ii) Section 9.16 (other than any such failure resulting solely from actions taken by one or more Persons not controlled directly or indirectly by the Parent Borrower or such Person's (or Persons') failure to act in accordance with the instructions of the Parent Borrower or the Administrative Agent) and, unless a Cash Dominion Period is ongoing, such default shall continue unremedied for a period of five Business Days after receipt of written notice by the Borrowers of the Administrative Agent; or

(c) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in Section 11.1 or 11.2 or clause (a) or (b) of this Section 11.3) contained in this Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 calendar days after receipt of written notice by the Parent Borrower from the Administrative Agent; or

11.4 Default Under Other Agreements

(a) The Parent Borrower or any Restricted Subsidiary shall (i) default in any payment with respect to any Indebtedness (other than any Indebtedness described in Section 11.1, Hedging Obligations or Indebtedness under any Permitted Receivables Financing) in excess of $100,000,000 in the aggregate for the Parent Borrower and such Restricted Subsidiaries beyond the period of grace or cure and following all required notices, if any, provided in the instrument or agreement under which such Indebtedness was created or (ii) default in the observance or performance of any agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist (other than any agreement or condition relating to, or provided in any instrument or agreement, under which such Hedging Obligations or such Permitted Receivables Financing was created) beyond the period of grace or cure and following all required notices, if any, provided in the instrument or agreement under which such Indebtedness was created, if 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, any such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its Stated Maturity; or (b) without limiting the provisions of clause (a) above, any such Indebtedness shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment (other than any Hedging Obligations or Indebtedness under any Permitted Receivables Financing) or as a mandatory prepayment, prior to the Stated Maturity thereof; *provided* that clauses (a) and (b) above shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; *provided*, *further*, that this Section 11.4 shall not apply to any Indebtedness if the sole remedy of the holder thereof following such event or condition is to elect to convert such Indebtedness into Stock or Stock Equivalents (other than Disqualified Stock) and cash in lieu of fractional shares or (ii) any such default that is remedied by or waived (including in the form of amendment) by the requisite holders of the applicable item of Indebtedness or contested in good faith by the Parent Borrower or the applicable Restricted Subsidiary in either case, prior to acceleration of all Loans and termination of the Revolving Credit Commitments pursuant to this Section 11; or

11.5 Bankruptcy

Except as otherwise permitted under Section 10.3, (i) any Borrower or any Material Subsidiary shall commence a voluntary case, proceeding or action concerning itself under applicable Debtor Relief Laws; (ii) an involuntary case, proceeding or action is commenced against any Borrower or any Material Subsidiary and the petition is not controverted within 60 days after commencement of the case, proceeding or action; (iii) an involuntary case, proceeding or action is commenced against any Borrower or any Material Subsidiary and the petition is not dismissed or stayed within 60 consecutive days after commencement of the case, proceeding or action; (iv) a custodian (as defined in the Bankruptcy Code), judicial manager, receiver, receiver manager, trustee, administrator, examiner or similar person is appointed for, or

takes charge of, all or substantially all of the property of any Borrower or any Material Subsidiary; (v) any Borrower or any Material Subsidiary commences any other voluntary proceeding or action under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, administration, examinership or liquidation or similar law or other Debtor Relief Laws of any jurisdiction whether now or hereafter in effect relating to any Borrower or any Material Subsidiary; (vi) there is commenced against any Borrower or any Material Subsidiary any such proceeding or action that remains undismissed or unstayed for a period of 60 consecutive days; (vii) any Borrower or any Material Subsidiary is adjudicated insolvent or bankrupt; (viii) any order of relief or other order approving any such case or proceeding or action is entered; (ix) any Borrower or any Material Subsidiary suffers any appointment of any custodian, Receiver, receiver manager, trustee, administrator, examiner or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 consecutive days; (x) any Borrower or any Material Subsidiary makes a general assignment for the benefit of creditors; (xi) any corporate action is taken by any Borrower or any Material Subsidiary for the purpose of authorizing any of the foregoing; (xii) solely in respect of a German Credit Party, is unable to pay its debts as they fall due (*zahlungsunfähig*) within the meaning of section 17 of the German Insolvency Code (*Insolvenzordnung*) or threatened to become unable to pay its debts (*drohend zahlungsunfähig*) within the meaning of section 18 of the German Insolvency Code and based on such projection a German managing director (*geschäftsführer*) has filed for insolvency or is over-indebted within the meaning of section 19 of the German Insolvency Code; or (xiii) solely in respect of a U.K. Credit Party or any Irish Credit Party, is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts, by reason of actual or anticipated financial difficulties, is put into examination (in respect of an Irish Credit Party only), takes any step with a view to a moratorium, suspension of payments, reorganization as a result of actual or anticipated financial difficulties (by way of voluntary arrangement, scheme of arrangement or otherwise) or a composition or similar arrangement with any creditors, or a moratorium or other protection from its creditors is declared or imposed in respect of any of its Indebtedness; or

11.6 ERISA

(a) The occurrence of any ERISA Event; (b) there could result from any event or events set forth in clause (a) of this Section 11.6 the imposition of a Lien, the granting of a security interest, or a liability, or the reasonable likelihood of incurring a Lien, security interest or liability; and (c) such ERISA Event, Lien, security interest or liability will or would be reasonably likely to have a Material Adverse Effect; or

11.7 Guarantee

Any Guarantee provided by Holdings, the Parent Borrower or any Material Subsidiary or any material provision thereof shall cease to be in full force or effect (other than pursuant to the terms hereof or thereof, and subject to the applicable Foreign Legal Reservations) or any such Guarantor thereunder or any other Credit Party shall deny or disaffirm in writing any such Guarantor's obligations under such Guarantee; or

11.8 Security Agreement

The U.S. Security Agreement or any other material Security Document pursuant to which the assets of any Credit Party are pledged as Collateral or any material provision thereof shall cease to be in full force or effect in respect of a material portion of the Collateral (other than pursuant to the terms hereof or thereof or any defect arising as a result of acts or omissions of the Collateral Agent or any Lender which do not result from a material breach by a Credit Party of its obligations under the Credit Documents and with respect to Foreign Security Documents, subject, in all cases, to the applicable Foreign Legal Reservations and Foreign Perfection Requirements) or any grantor thereunder or any other Credit Party shall deny or disaffirm in writing such grantor's obligations under the U.S. Security Agreement or any other such Security Document; or

11.9 Judgments

One or more final judgments or decrees shall be entered against any Borrower or any Restricted Subsidiary involving a liability requiring the payment of $100,000,000 or more in the aggregate for all such final judgments and decrees for the Parent Borrower and the Restricted Subsidiaries (to the extent not paid or covered by indemnity or insurance provided by a carrier that has not denied coverage) and any such final judgments or decrees shall not have been satisfied, vacated, discharged or stayed or bonded pending appeal within 60 consecutive days after the entry thereof; or

11.10 Change of Control

A Change of Control shall occur:

then, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent shall, at the written request of the Required Lenders, by written notice to the Borrowers, take any or all of the following actions, without prejudice to the rights of the Administrative Agent or any Lender to enforce its claims against the Borrowers, except as otherwise specifically provided for in this Agreement (*provided* that, if an Event of Default specified in Section 11.5 shall occur with respect to any Borrower, the result that would occur upon the giving of written notice by the Administrative Agent as specified below shall occur automatically without the giving of any such notice): (i) declare the Revolving Credit Commitments terminated, whereupon the Revolving Credit Commitment, if any, of each Lender shall forthwith terminate immediately and any fees theretofore accrued shall forthwith become due and payable without any other notice of any kind; (ii) declare the principal of and any accrued interest and fees in respect of any or all Loans and any or all Obligations owing hereunder and under any other Credit Document to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers; (iii) terminate any Letter of Credit that may be terminated in accordance with its terms; (iv) direct the Collateral Agent to enforce any and all Liens and security interests created pursuant to the Security Documents and (iii) enforce any and all of the Administrative Agent's rights under the Guarantees.

Notwithstanding anything to the contrary contained herein, any Event of Default under this Agreement or similarly defined term under any other Credit Document, other than any Event of Default which cannot be waived without the written consent of each Lender directly and adversely affected thereby, shall be deemed not to be "continuing" if the events, act or condition that gave rise to such Event of Default have been remedied or cured (including by payment, notice, taking of any action or omitting to take any action) or have ceased to exist and the Borrowers are in compliance with this Agreement and/or such other Credit Document.

11.11 Application of Proceeds

(a) Any amount received by the Administrative Agent or the Collateral Agent from any U.S. Credit Party (or from proceeds of any U.S. Collateral) following any acceleration of the Obligations under this Agreement or any Event of Default under Section 11.5 shall be applied in accordance with any Applicable Intercreditor Agreement. In the event that either (x) any Applicable Intercreditor Agreement directs the application with respect to such amount be made with reference to this Agreement or the other Credit Documents or (y) no Applicable Intercreditor Agreement is then in effect that is applicable to such amount, any amount received by the Administrative Agent or the Collateral Agent from any U.S. Credit Party (or from proceeds of any U.S. Collateral), in each case, following any acceleration of the Obligations under this Agreement or any Event of Default under Section 11.5 shall be applied:

(i) First, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization, including compensation to the Administrative Agent, Collateral Agent and their agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent and Collateral Agent in connection therewith and all amounts for which the Administrative Agent and Collateral Agent is entitled to indemnification pursuant to the provisions of any Credit Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid, in each case constituting U.S. Obligations, until paid in full;

(ii) Second, to the repayment of all U.S. Protective Advances;

(iii) Third, to the payment of all other reasonable costs and expenses of such sale, collection or other realization including all costs, liabilities and advances made or incurred by the other U.S. Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid, in each case constituting U.S. Obligations, until paid in full;

(iv) Fourth, without duplication of amounts applied pursuant to clauses (i) - (iii) above, to the indefeasible payment in full in cash, *pro rata*, of interest and other amounts constituting U.S. Obligations (other than principal or premium or reimbursement obligations in respect of Letters of Credit and obligations to Cash Collateralize Letters of Credit) and any fees, premiums and scheduled periodic payments due under Secured Hedging Agreement and Secured Cash Management Agreements to the extent

constituting U.S. Obligations and any interest accrued thereon (excluding any breakage, termination or other payments thereunder), in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(v) Fifth, to the payment in full in cash, *pro rata*, of principal amount of the U.S. Obligations (including in respect of Secured Hedging Agreements and Secured Cash Management Agreements) and to Cash Collateralize all U.S. L/C Obligations and any premium thereon and any breakage, termination or other payments under Secured Hedging Agreements or Secured Cash Management Agreements, in each case to the extent constituting U.S. Obligations;

(vi) Sixth, without duplication of amounts applied pursuant to clauses (i) - (v) above or Section 11.11(b), to the indefeasible payment in full in cash, *pro rata*, of interest and other amounts constituting Foreign Obligations (other than principal or premium or reimbursement obligations in respect of Letters of Credit and obligations to Cash Collateralize Letters of Credit) and any fees, premiums and scheduled periodic payments due under Secured Hedging Agreement and Secured Cash Management Agreements to the extent constituting Foreign Obligations and any interest accrued thereon (excluding any breakage, termination or other payments thereunder), in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(vii) Seventh, to the payment in full in cash, *pro rata*, of principal amount of the Foreign Obligations (including in respect of Secured Hedging Agreements and Secured Cash Management Agreements) and to Cash Collateralize all Foreign L/C Obligations and any premium thereon and any breakage, termination or other payments under Secured Hedging Agreements or Secured Cash Management Agreements, in each case to the extent constituting Foreign Obligations; and

(viii) Eighth, the balance, if any, to the person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns) or as a court of competent jurisdiction may direct.

Notwithstanding the foregoing, amounts received from any Credit Party shall not be applied to any Excluded Swap Obligation of such Credit Party.

(b) Any amount received by the Administrative Agent or the Collateral Agent from any Foreign Credit Party (or from proceeds of any Foreign Collateral) following any acceleration of the Obligations under this Agreement or any Event of Default under Section 11.5 shall be applied in accordance with any Applicable Intercreditor Agreement. In the event that either (x) any Applicable Intercreditor Agreement directs the application with respect to such amount be made with reference to this Agreement or the other Credit Documents or (y) no Applicable Intercreditor Agreement is then in effect that is applicable to such amount, any amount received by the Administrative Agent or the Collateral Agent from any Foreign Credit Party (or from proceeds of any Foreign Collateral), in each case, following any

acceleration of the Obligations under this Agreement or any Event of Default under Section 11.5 shall be applied, without duplication of amounts applied pursuant to Section 11.11(a):

(i) First, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization, including compensation to the Administrative Agent, Collateral Agent and their agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent and Collateral Agent in connection therewith and all amounts for which the Administrative Agent and Collateral Agent is entitled to indemnification pursuant to the provisions of any Credit Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid, in each case constituting Foreign Obligations, until paid in full;

(ii) Second, to the repayment of all Foreign Protective Advances;

(iii) Third, to the payment of all other reasonable costs and expenses of such sale, collection or other realization including all costs, liabilities and advances made or incurred by the Foreign Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid, in each case constituting Foreign Obligations, until paid in full;

(iv) Fourth, without duplication of amounts applied pursuant to clauses (i) - (iii) above, to the indefeasible payment in full in cash, *pro rata*, of interest and other amounts constituting Foreign Obligations (other than principal or premium or reimbursement obligations in respect of Letters of Credit and obligations to Cash Collateralize Letters of Credit) and any fees, premiums and scheduled periodic payments due under Secured Hedging Agreement and Secured Cash Management Agreements to the extent constituting Foreign Obligations and any interest accrued thereon (excluding any breakage, termination or other payments thereunder), in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(v) Fifth, to the payment in full in cash, *pro rata*, to the principal amount of the Foreign Obligations (including in respect of Secured Hedging Agreements and Secured Cash Management Agreements) and to Cash Collateralize all Foreign L/C Obligations, and to pay any premium thereon and any breakage, termination or other payments under Secured Hedging Agreements or Secured Cash Management Agreements, in each case to the extent constituting Foreign Obligations; and

(vi) Sixth, the balance, if any, to the person lawfully entitled thereto (including the applicable Foreign Credit Party or its successors or assigns) or as a court of competent jurisdiction may direct.

SECTION 12 The Agents

12.1 Appointment

(a) Except with respect to Germany, each Secured Party (other than the Administrative Agent) hereby irrevocably designates and appoints the Administrative Agent as the agent (or in the case of the Foreign Security Documents governed by the laws of Ireland or the U.K. Security Documents, as security trustee) of such Secured Party under this Agreement and the other Credit Documents and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. With respect to Germany, each Secured Party (other than the Collateral Agent) hereby irrevocably designates and appoints the Collateral Agent as the agent of such Secured Party under this Agreement and the other Credit Documents and irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Section 12 (other than this Section 12.1 and Sections 12.2, 12.9, ~~12.12~~12.12 and ~~12.13~~12.13, in each case, with respect to the Borrowers) are solely for the benefit of the Agents and the other Secured Parties, and the Borrowers shall not have any rights as a third party beneficiary of such provision. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein or in any other Credit Document, any fiduciary relationship with any other Secured Party or any agency or trust obligations with respect to any Credit Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Credit Document or otherwise exist against such Agent.

(b) The Secured Parties hereby irrevocably designate and appoint the Collateral Agent as the agent with respect to the Collateral, and each of the Secured Parties hereby irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Collateral Agent shall have no duties or responsibilities except those expressly set forth herein or in any other Credit Document, any fiduciary relationship with any of the other Secured Parties or any agency or trust obligations with respect to any Credit Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Credit Document or otherwise exist against the Collateral Agent.

(c) Each of the Joint Lead Arrangers, in its capacity as such, shall not have any obligations, duties or responsibilities under this Agreement but shall be entitled to all benefits of this Section 12.

12.2 Delegation of Duties

The Administrative Agent and the Collateral Agent may each execute any of its duties under this Agreement and the other Credit Documents by or through agents, sub-agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Neither the Administrative Agent nor the Collateral Agent shall be responsible for the negligence or misconduct of any agents, sub-agents or attorneys-in-fact selected by it in the absence of gross negligence or willful misconduct by such agents, sub-agents or attorneys-in-fact (as determined in the final judgment of a court of competent jurisdiction).

12.3 Exculpatory Provisions

(a) No Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by any of them under or in connection with this Agreement or any other Credit Document (except for its or such Person's own gross negligence or willful misconduct, as determined in the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein) or (b) responsible in any manner to any of the Lenders or any participant for any recitals, statements, representations or warranties made by any of Holdings, the Borrowers, any other Guarantor, any other Credit Party or any officer thereof contained in this Agreement or any other Credit Document or in any certificate, report, statement or other document referred to or provided for in, or received by such Agent under or in connection with, this Agreement or any other Credit Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Credit Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Security Documents, or for any failure of Holdings, the Borrowers, any other Guarantor or any other Credit Party to perform its obligations hereunder or thereunder. No Agent shall be under any obligation to any other Secured Party to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Credit Document, or to inspect the properties, books or records of any Credit Party or any Affiliate thereof.

(b) Each Lender confirms to the Administrative Agent, the Collateral Agent, each other Lender and each of their respective Related Parties that it (i) possesses (individually or through its Related Parties) such knowledge and experience in financial and business matters that it is capable, without reliance on the Administrative Agent, the Collateral Agent, any other Lender or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, credit, accounting and other financial matters) of (x) entering into this Agreement, (y) making Loans and other Credit Extensions hereunder and under the other Credit Documents and (z) in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risks and (iii) has determined that entering into this Agreement and making Loans and other Credit Extensions hereunder and under the other Credit Documents is suitable and appropriate for it.

(c) Each Lender acknowledges that (i) it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Credit Documents, (ii) that it has, independently and without reliance upon the Administrative Agent, the Collateral Agent, any other Lender or any of their respective Related Parties, made its own appraisal and investigation of all risks associated with, and its own credit analysis and decision to enter into, this Agreement based on such documents and information, as it has deemed appropriate and (iii) it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, any other Lender or any of their respective Related Parties, continue to be solely responsible for making its own appraisal and investigation of all risks arising under or in connection with, and its own credit analysis and decision to take or not take action under, this Agreement and the other Credit Documents based on such documents and information as it shall from time to time deem appropriate, which may include, in each case:

(i) the financial condition, status and capitalization of the Borrowers and each other Credit Party;

(ii) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Credit Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Credit Document;

(iii) determining compliance or non-compliance with any condition hereunder to the making of a Loan or the issuance of a Letter of Credit and the form and substance of all evidence delivered in connection with establishing the satisfaction of each such condition; and

(iv) the adequacy, accuracy and/or completeness of any information delivered by the Administrative Agent, the Collateral Agent, any other Lender or by any of their respective Related Parties under or in connection with this Agreement or any other Credit Document, the transactions contemplated hereby and thereby or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Credit Document.

12.4 Reliance by Agents

The Administrative Agent and the Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex, electronic mail, or teletype message, statement, order or other document or instruction believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to Holdings and/or the Borrowers), independent accountants and other experts selected by the Administrative Agent or the Collateral Agent. The Administrative Agent may deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent and the Collateral Agent shall be fully justified in failing or refusing to take any action

under this Agreement or any other Credit Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent and the Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Credit Documents in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans; *provided* that none of the Administrative Agent or the Collateral Agent shall be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Credit Document or Applicable Law.

12.5 Notice of Default

Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent or the Collateral Agent, as applicable, has received written notice from a Lender, Holdings or the Borrowers referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent or the Collateral Agent receives such a notice, it shall give notice thereof to the Lenders, the Administrative Agent or the Collateral Agent, as applicable. The Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; *provided* that unless and until the Administrative Agent or the Collateral Agent, as applicable, shall have received such directions, the Administrative Agent or the Collateral Agent, as applicable, may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as is within its authority to take under this Agreement and otherwise as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement requires that such action be taken only with the approval of the Required Lenders or each of the Lenders, as applicable.

12.6 Non-Reliance on Administrative Agent, Collateral Agent and Other Lenders

Each Lender expressly acknowledges that none of the Administrative Agent, the Collateral Agent, the Joint Lead Arrangers or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent, the Collateral Agent or any of the Joint Lead Arrangers hereinafter taken, including any review of the affairs of Holdings, a Borrower, any other Guarantor or any other Credit Party, shall be deemed to constitute any representation or warranty by the Administrative Agent, the Collateral Agent or any Joint Lead Arranger to any Lender or the L/C Issuer. Each Lender and the L/C Issuer represents to Administrative Agent, the Collateral Agent and the Joint Lead Arrangers that it has, independently and without reliance upon the Administrative Agent, Collateral Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and

investigation into the business, operations, property, financial and other condition and creditworthiness of Holdings, the Borrower, each other Guarantor and each other Credit Party and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, Collateral Agent, any Joint Lead Arranger or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Credit Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of Holdings, the Borrowers, each other Guarantor and each other Credit Party. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, none of the Administrative Agent, the Collateral Agent or any Joint Lead Arranger shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, assets, operations, properties, financial condition, prospects or creditworthiness of Holdings, the Borrowers, any other Guarantor or any other Credit Party that may come into the possession of the Administrative Agent, the Collateral Agent, any Joint Lead Arranger or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

12.7 Indemnification

The Lenders agree to indemnify each Agent, each in its capacity as such (to the extent not reimbursed by the Credit Parties and without limiting the obligation of the Credit Parties to do so), ratably according to their respective portions of the Aggregate Revolving Credit Exposure in effect on the date on which indemnification is sought (or, if indemnification is sought after the date upon which the Aggregate Revolving Credit Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with their respective portions of the Aggregate Revolving Credit Exposure in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur (including at any time following the payment of the Loans) be imposed on, incurred by or asserted against such Agent, including all fees, disbursements and other charges of counsel to the extent required to be reimbursed by the Credit Parties pursuant to Section 13.5, in any way relating to or arising out of the Revolving Credit Commitments, the Loans and Letters of Credit, this Agreement, any of the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing (**SUBJECT TO THE PROVISOS BELOW, WHETHER OR NOT CAUSED BY OR ARISING IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE ORDINARY NEGLIGENCE OF THE INDEMNIFIED PERSON**); *provided* that no Lender shall be liable to any Agent for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction; *provided*, *further*, that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall

be required by the Credit Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 12.7. In the case of any investigation, litigation or proceeding giving rise to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur, be imposed upon, incurred by or asserted against the Administrative Agent or the Collateral Agent in any way relating to or arising out of the Revolving Credit Commitments, the Loans and Letters of Credit, this Agreement, any of the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing (including at any time following the payment of the Loans), this Section 12.7 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse such Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorneys' fees) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice rendered in respect of rights or responsibilities under, this Agreement, any other Credit Document, or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of the Borrowers; *provided* that such reimbursement by the Lenders shall not affect the Borrowers' continuing reimbursement obligations with respect thereto. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; *provided* that in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's *pro rata* portion thereof; and *provided*, *further*, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement resulting from such Agent's gross negligence or willful misconduct (as determined by a final judgment of court of competent jurisdiction). The agreements in this Section 12.7 shall survive the payment of the Loans and all other amounts payable hereunder.

12.8 Agents in their Individual Capacities

Each Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with Holdings, the Borrowers, any other Guarantor, and any other Credit Party as though such Agent were not an Agent hereunder and under the other Credit Documents. With respect to the Loans made by it, each Agent shall have the same rights and powers under this Agreement and the other Credit Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

12.9 Successor Agents

Each of the Administrative Agent and Collateral Agent may resign at any time by notifying the other Agent, the Lenders, the L/C Issuers and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the consent of the Borrowers (not to be unreasonably withheld or delayed) so long as no Event of Default under Section 11.1 or 11.5 (solely with respect to the Parent Borrower) has occurred and is continuing, 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 Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuers, appoint a successor Agent meeting the qualifications set forth above (including receipt of the Borrowers' consent); *provided* that if such Agent shall notify the Borrowers and the Lenders that no qualifying Person (including as a result of the absence of consent of the Borrowers) has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (x) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Secured Parties under any of the Credit Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (y) all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders with (except after the occurrence and during the continuation of an Event of Default under Section 11.1 or 11.5 (solely with respect to the Parent Borrower)) the consent of the Borrowers (not to be unreasonably withheld) appoint successor Agents as provided for above in this paragraph. Upon the acceptance of a successor's appointment as the Administrative Agent or Collateral Agent, as the case may be, hereunder, and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the U.S. Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Security Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers (following the effectiveness of such appointment) to such Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Credit Documents, the provisions of this Section 12 (including Section 12.7) and Section 13.5 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as an Agent.

12.10 Withholding Tax

To the extent required by any Applicable Law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent or of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrowers (solely to the extent required by this Agreement) and without limiting the obligation of the Borrowers to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

12.11 Administrative Agent May File Proofs of Claim

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

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent hereunder) 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 Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 4.1 and 13.5.

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

12.12 Intercreditor Agreements

Each of the Collateral Agent and the Administrative Agent is hereby authorized to enter into any Applicable Intercreditor Agreement contemplated hereby, and the parties hereto acknowledge that any such Applicable Intercreditor Agreement to which the Collateral Agent and/or the Administrative Agent is a party are each binding upon them. Each Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of any such Applicable Intercreditor Agreement and (b) hereby authorizes and instructs the Collateral Agent and the Administrative Agent to enter into any such Applicable Intercreditor Agreement and to subject the Liens on the Collateral securing the Obligations to the provisions thereof. In addition, each Secured Party hereby authorizes the Collateral Agent and the Administrative Agent to enter into any other intercreditor arrangements to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required by Section 10.2 of this Agreement.

12.13 Security Documents and Guarantee; Agents under Security Documents and Guarantee

(a) Each Secured Party hereby further authorizes the Administrative Agent or the Collateral Agent, as applicable, on behalf of and for the benefit of the Secured Parties, to be the agent for and representative of the Secured Parties with respect to the Guarantees, the Collateral and the Security Documents, as applicable. Subject to Section 13.1, without further written consent or authorization from any Secured Party, the Administrative Agent or the Collateral Agent, as applicable, may (or otherwise instruct the Collateral Agent to) execute any documents or instruments necessary to (x) subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Credit Document to the holder of any Lien permitted under clauses (d), (g) and (l) of Section 10.2 or (y) enter into subordination or intercreditor agreements with respect to Indebtedness to the extent the Administrative Agent or the Collateral Agent is otherwise contemplated herein as being a party to such intercreditor or subordination agreement (including the Applicable Intercreditor Agreements). The Secured Parties hereby irrevocably agree that the Liens granted to the Collateral Agent by the Credit Parties on any Collateral shall be automatically released (i) upon the termination of the Aggregate Revolving Credit Commitments and all Letters of Credit (other than Letters of Credit that have been Cash Collateralized, backstopped or otherwise collateralized on terms and conditions reasonably satisfactory to the applicable L/C Issuer) and the repayment in full of the Loans, together with interest, fees and all other Obligations (other than Hedging Obligations under Secured Hedging Agreements, Cash Management Obligations under Secured Cash Management Agreements or Contingent Obligations), (ii) upon the sale or other Disposition of such Collateral (including as part of or in connection with any other sale or

other Disposition permitted hereunder) to any Person other than another Credit Party, to the extent such sale or other Disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Credit Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Credit Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with this Section 13.1), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the applicable Guarantee, (vi) as required to effect any sale or other Disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Security Documents, (vii) if such assets constitute U.S. Excluded Collateral or Foreign Excluded Collateral and (viii) with respect to any direct parent company of any Foreign Borrower, upon such Person ceasing to be the direct parent company of such Foreign Borrower pursuant to transactions permitted hereunder. Any such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Credit Parties in respect of) all interests retained by the Credit Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Credit Documents. Additionally, the Secured Parties hereby irrevocably agree that the Guarantors (other than Holdings) shall be automatically released from the applicable Guarantee upon consummation of any transaction resulting in such Subsidiary ceasing to constitute a Restricted Subsidiary or upon becoming a U.S. Excluded Subsidiary. The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, and the Administrative Agent and the Collateral Agent agree to execute and deliver any instruments, documents, and agreements necessary or desirable or reasonably requested by the Borrowers to evidence and confirm the release of any Guarantor or Collateral and its security interest therein pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender.

(b) *Right to Realize on Collateral and Enforce Guarantee*. Anything contained in any of the Credit Documents to the contrary notwithstanding, Holdings, the Borrowers, the Agents and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee, it being understood and agreed that all powers, rights and remedies hereunder and under any Guarantee may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Collateral Agent on behalf of the Secured Parties, and (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other Disposition, the Collateral Agent or any Secured Party may be the purchaser or licensor of any or all of such Collateral at any such sale or other Disposition and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase

price for any collateral payable by the Collateral Agent at such sale or other Disposition. No holder of Hedging Obligations under Secured Hedging Agreements or Cash Management Obligations under Secured Cash Management Agreements shall have any rights in connection with the management or release of any Collateral or of the obligations of any Credit Party under this Agreement. No holder of Hedging Obligations under Secured Hedging Agreements or Cash Management Obligations under Secured Cash Management Agreements that obtains the benefits of any Guarantee or any Collateral by virtue of the provisions hereof or of any other Credit Document shall have any right to notice of any action or to consent to or vote on, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender, L/C Issuer or Agent and, in such case, only to the extent expressly provided in the Credit Documents. Notwithstanding any other provision of this Agreement to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Hedging Agreements and Secured Cash Management Agreements, unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

SECTION 13 Miscellaneous

13.1 Amendments, Waivers and Releases

Except as otherwise expressly set forth in the Credit Documents (including Section 2.10(e), neither this Agreement nor any other Credit Document, nor any terms hereof or thereof, may be amended, supplemented or modified except in accordance with the provisions of this Section 13.1. The Required Lenders may, or, with the written consent of the Required Lenders, the Administrative Agent and/or the Collateral Agent may, from time to time, (a) enter into with the relevant Credit Party or Credit Parties written amendments, supplements or modifications hereto and to the other Credit Documents for the purpose of adding any provisions to this Agreement or the other Credit Documents or changing in any manner the rights of the Lenders or of the Credit Parties hereunder or thereunder or (b) waive in writing, on such terms and conditions as the Required Lenders or the Administrative Agent and/or Collateral Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Credit Documents or any Default or Event of Default and its consequences; *provided*, *however*, that each such waiver and each such amendment, supplement or modification shall be effective only in the specific instance and for the specific purpose for which given; and *provided*, *further*, that no such waiver and no such amendment, supplement or modification shall:

(i) forgive or reduce any portion of any Loan or fee or extend the final scheduled maturity date of any Loan or reduce the stated rate, or forgive any portion thereof, or extend the date for the payment of any principal, any interest or fee payable hereunder (other than as a result of waiving the applicability of any post-default increase in interest rates), or extend the final expiration date of any Lender's Revolving Credit Commitment or extend the final expiration date of any Letter of Credit beyond the Letter

of Credit Expiration Date, or increase the aggregate amount of the Revolving Credit Commitments of any Lender, or modify clause (i) of the proviso to Section 4.2(a) in a manner that would alter the pro rata allocation to the Appropriate Lenders of any reduction in the Revolving Credit Commitments of any Tranche, in each case without the written consent of each Lender directly and adversely affected thereby; *provided* that, in each case for purposes of this clause (i), a waiver of any condition precedent in Section 7 of this Agreement, the waiver of any Default, Event of Default, default interest, mandatory prepayment or reductions, any modification, waiver or amendment of the Financial Covenant (or any financial definitions or financial ratios or any component thereof), the making of any Protective Advance in accordance herewith or the waiver of any other covenant shall not constitute an increase of any Revolving Credit Commitment of a Lender, a reduction or forgiveness of any portion of any Loan or in the interest rates or the fees or premiums or a postponement of any date scheduled for the payment of principal or interest or an extension of the final maturity of any Loan, or the scheduled termination date of any Revolving Credit Commitment;

(ii) (x) reduce the percentages specified in the definition of the term "Required Lenders" or "Supermajority Lenders" without the consent of each Lender, or (y) amend any other provision of this Section 13.1 that has the effect of decreasing the number of Lenders that are required to approve any amendment, modification or waiver, consent to the assignment or transfer by Holdings or the Parent Borrower of their respective rights and obligations under any Credit Document to which it is a party (except as permitted pursuant to Section 10.3 or as contemplated by the definition of "Holdings"), alter the order of application set forth in Section 5.2(b) during the continuance of an Event of Default or Section 11.11 or change Section 13.8 or any other provision requiring pro rata sharing among the Lenders, in each case of this clause (y) without the written consent of each Lender directly and adversely affected thereby,

(iii) amend, modify or waive any provision of Section 12 without the written consent of the then-current Administrative Agent and Collateral Agent or any other former or current Agent to whom Section 12 then applies in a manner that directly and adversely affects such Person,

(iv) amend, modify or waive any provision of Section 3.1 without the written consent of each L/C Issuer to whom such provision then applies in a manner that directly and adversely affects such Person,

(v) amend, modify or waive any provision of Section 3.2 without the written consent of each Swing Line Lender to whom such provision then applies in a manner that directly and adversely affects such Person,

(vi) release all or substantially all of the value of the Guarantors under the Guarantees (except as expressly permitted by such Guarantees or this Agreement) or release all or substantially all of the Collateral under the Security Documents (except as expressly permitted by the Security Documents or this Agreement), in either case without the prior written consent of each Lender,

(vii) increase the advance rates provided for in each Borrowing Base referenced in the definition thereof or any component definition of any of the foregoing, or modify the definitions of "Eligible Accounts", "Eligible Borrowing Base Cash", "Eligible Credit Card Receivables", "Eligible In-Transit Inventory", "Eligible Investment Grade Accounts", "Eligible Inventory" or the eligibility criteria set forth therein, if as a result thereof the amounts available to be borrowed by the Borrowers would be increased, without the written consent of the Supermajority Lenders; *provided* that any increase to the advance rate in the Borrowing Base of any Foreign Borrower or any modification of the definition of "Eligible Account", "Eligible Inventory" or the eligibility criteria set forth therein, to the extent they are solely relevant to the assets of the Foreign Borrowers (but not the assets of the U.S. Borrower) and as a result thereof the amounts available to be borrowed by the Foreign Borrowers would be increased, such increase or modification shall not be approved without the written consent of the Foreign Lenders that would constitute the "Supermajority Lenders" if the Tranche of the Foreign Revolving Credit Commitments were the only Tranche outstanding; *provided, further*, that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves without the consent of any Lender or

(viii) amend, modify or waive any provision of Section 14 or in any Foreign Guarantee or any Foreign Security Document or waive any condition precedent contained in Section 7 in connection with any such provision without the written consent of the Foreign Lenders that would constitute "Required Lenders" if the Tranche of the Foreign Revolving Credit Commitments were the only Tranche outstanding.

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the affected Lenders and shall be binding upon Holdings, the Borrowers, the applicable Credit Parties, such Lenders, the Administrative Agent and all future holders of the affected Loans. In the case of any waiver, Holdings, the Borrowers, the applicable Credit Parties, the Lenders, the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing, it being understood that no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. In connection with the foregoing provisions, the Administrative Agent may, but shall have no obligations to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, modification, supplement, waiver or consent hereunder, except that the Revolving Credit Commitment of such Lender may not be increased or extended without the consent of such Lender (it being understood that any Revolving Credit Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders, except as expressly provided for by this Agreement).

Notwithstanding anything herein to the contrary, the Credit Documents may be amended to (i) add syndication or documentation agents and make customary changes and references related thereto and (ii) if applicable, add or modify "parallel debt" language in any jurisdiction in favor of the Collateral Agent or add sub-agents, in the case of clause (i), with the consent of only the Borrowers and the Administrative Agent, and in the case of clause (ii), with the consent of only the relevant Borrowers, the Administrative Agent and the Collateral Agent.

Notwithstanding anything in this Agreement (including, without limitation, this Section 13.1) or any other Credit Document to the contrary, (i) this Agreement and the other Credit Documents may be amended to effect any Incremental Commitments pursuant to Section ~~2.14~~2.14 or Extension Amendments pursuant to Section ~~2.15~~2.15 (and the Administrative Agent and the Borrowers may effect such amendments to this Agreement and the other Credit Documents without the consent of any other party as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrowers, to effect the terms of any such incremental facility or extension amendment); (ii) no Lender consent is required to effect any amendment or supplement to any Applicable Intercreditor Agreement permitted under this Agreement that is for the purpose of adding the holders of any Indebtedness as expressly contemplated by the terms of such Applicable Intercreditor Agreement permitted under this Agreement, as applicable; it being understood that any such amendment or supplement may make such other changes to such Applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent and the Borrower, are required to effectuate the foregoing; *provided* that no such agreement shall amend, modify or otherwise directly and adversely affect the rights or duties of the Administrative Agent hereunder or under any other Credit Document without the prior written consent of the Administrative Agent; (iii) any provision of this Agreement or any other Credit Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Credit Document) may be amended by an agreement in writing entered into by the Parent Borrower and the Administrative Agent (A) to cure any ambiguity, omission, mistake, defect or inconsistency (as reasonably determined by the Administrative Agent and the Parent Borrower), (B) to effect administrative changes of a technical or immaterial nature (as reasonably determined by the Administrative Agent and the Parent Borrower), (C) to correct incorrect cross-references or similar inaccuracies or (D) to add benefit to the existing Revolving Credit Commitments if adding such benefit is a condition to the incurrence of any Indebtedness permitted to be incurred under the Credit Documents; *provided* that in the case of clauses (A) and (B) above, the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; (iv) guarantees, collateral documents and related documents executed by the Credit Parties in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with any other Credit Document, entered into, amended, supplemented or waived, without the consent of any other Person, by the applicable Credit Party or Credit Parties and the Administrative Agent or the Collateral Agent in its or their respective sole discretion if applicable, (A) to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the applicable Secured Parties, (B) as required by local law or advice

of counsel to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with the Applicable Law or (C) to cure ambiguities, omissions, mistakes or defects (as reasonably determined by the Administrative Agent and the Parent Borrower) or to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Credit Documents; and (v) the Credit Parties and the Collateral Agent, without the consent of any other Secured Party, shall be permitted to enter into amendments and/or supplements to any Security Documents in order to include customary provisions permitting the Collateral Agent to appoint sub-collateral agents or representatives to act with respect to Collateral matters thereunder in its stead.

Notwithstanding anything in this Agreement or any Security Document to the contrary, the Administrative Agent may, in its sole discretion, grant extensions of time (and direct the Collateral Agent to grant such extensions) for the satisfaction of any of the requirements under Sections 9.11, Section 9.12, Section 9.13 or any Security Documents in respect of any particular Collateral or any particular Subsidiary if it determines that the satisfaction thereof with respect to such Collateral or such Subsidiary cannot be accomplished without undue expense or unreasonable effort or due to factors beyond the control of Holdings, the Borrowers and the Restricted Subsidiaries by the time or times at which it would otherwise be required to be satisfied under this Agreement or any Security Document.

At any time that any Real Estate constitutes U.S. Collateral, no modification of a Credit Document shall add, increase, renew or extend any loan, commitment or credit line hereunder until the completion of flood due diligence, documentation and coverage as required by the Flood Laws or as otherwise satisfactory to all U.S. Lenders.

13.2 Notices

Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Credit Document shall be in writing (including by facsimile or other electronic transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or e-mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the Borrowers, the Administrative Agent, the Collateral Agent, an L/C Issuer, or a Swing Line Lender to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 13.2 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(b) if to any other Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to Holdings, the Borrowers, the Administrative Agent, the Collateral Agent, the relevant L/C Issuer.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, three Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by e-mail, when delivered; *provided* that notices and other communications to the Administrative Agent or the Lenders pursuant to Sections 2.3, 2.9, 4.2 and 5.1 shall not be effective until received.

13.3 No Waiver; Cumulative Remedies

No failure to exercise and no delay in exercising, on the part of the Administrative Agent, the Collateral Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Credit Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

13.4 Survival of Representations and Warranties

All representations and warranties made hereunder, in the other Credit Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Credit Extensions hereunder.

13.5 Payment of Expenses; Indemnification

The Borrowers agree, within thirty (30) days after written demand therefor (including documentation reasonably supporting such request), or, in the case of expenses of the type described in clause (a) below incurred prior to the Closing Date, on the Closing Date, (a) if the Closing Date occurs, to pay or reimburse the Agents and the Joint Lead Arrangers (and, in the case of the following clause (ii), the Lenders) for all their reasonable and documented out-of-pocket costs and expenses incurred (i) in connection with the syndication, preparation, execution, delivery, negotiation and administration of this Agreement and the other Credit Documents and any other documents prepared in connection herewith or therewith (including any amendment or waiver with respect thereto and for reimbursement of reasonable expenses related to appraisals, field examinations and collateral review permitted hereunder), and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable and documented fees, disbursements and other charges of Davis Polk & Wardwell LLP and to the extent reasonably necessary, one local counsel in each relevant material jurisdiction, excluding in each case allocated costs of in-house counsel and fees and solely to the extent the Parent Borrower has consented to the retention of such other Person, expenses with respect to any other advisor or consultant, and (ii) upon the occurrence and during the continuation of an Event of Default, in connection with the enforcement or preservation of any rights under this Agreement, the other Credit Documents and any such other documents, including the reasonable and documented out-of-pocket fees, disbursements and other charges of Advisors (limited, in the

case of Advisors, as set forth in the definition thereof), (b) to pay, indemnify, and hold harmless each Lender, the L/C Issuers and each Agent from, any and all recording and filing fees and (c) to pay, indemnify, and hold harmless each Lender, the L/C Issuers and each Agent and their respective Affiliates, and the directors, officers, partners, employees and agents of any of the foregoing, from and against any and all other liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable and documented out-of-pocket fees, disbursements and other charges of Advisors related to the Transactions or, with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Credit Documents and any such other documents, including, any of the foregoing relating to the violation of, noncompliance with or liability under, any Environmental Law (other than by such indemnified person or any of its Related Parties (other than trustees and advisors)) or to any actual or alleged presence, release or threatened release into the environment of Hazardous Materials attributable to the operations of Holdings, the Borrowers, any of the Borrowers' Subsidiaries or any of the Real Estate (all the foregoing in this clause (c), collectively, the "**indemnified liabilities**") (**SUBJECT TO THE PROVISO BELOW, WHETHER OR NOT CAUSED BY OR ARISING IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE ORDINARY NEGLIGENCE OF THE INDEMNIFIED PERSON**); *provided* that none of the Borrowers nor any other Credit Party shall have any obligation hereunder to any Agent, any L/C Issuer or any Lender or any of their respective Related Parties with respect to indemnified liabilities to the extent they result from (A) the gross negligence, bad faith or willful misconduct of such indemnified Person or any of its Related Parties (acting on behalf of or at such indemnified Person's direction) as determined by a final non-appealable judgment of a court of competent jurisdiction, (B) a material breach of the obligations of such indemnified Person or any of its Related Parties (acting on behalf of or at such indemnified Person's direction) under the Credit Documents as determined by a final non-appealable judgment of a court of competent jurisdiction, (C) disputes not involving an act or omission of Holdings, the Borrowers or any other Credit Party and that is brought by an indemnified Person against any other indemnified Person, other than any claims against any indemnified Person in its capacity or in fulfilling its role as an Agent or any similar role under the Credit Facilities or (D) any settlement effected without the Borrowers' prior written consent, but if settled with the Borrowers' prior written consent (not to be unreasonably withheld, delayed, conditioned or denied) or if there is a final non-appealable judgment in any such proceeding, the Borrowers will indemnify and hold harmless such indemnified Person from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with this Section 13.5. All amounts payable under this Section 13.5 shall be paid within 30 days of receipt by the Borrowers of an invoice relating thereto setting forth such expense in reasonable detail. The agreements in this Section 13.5 shall survive repayment of the Loans and all other amounts payable hereunder.

No Credit Party nor any indemnified Person shall have any liability for any special, punitive, indirect or consequential damages resulting from this Agreement or any other Credit Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (except, in the case of the Borrowers' obligation hereunder to indemnify and hold harmless the indemnified Person, to the extent of any losses, claims,

damages, liabilities and expenses incurred or paid by such indemnified Person to a third party unaffiliated with such indemnified Person). No indemnified Persons shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby, except to the extent that such damages have resulted from the willful misconduct, bad faith or gross negligence of any indemnified Person or any of its Related Parties (acting on behalf of or at such indemnified Person's direction) (as determined by a final non-appealable judgment of a court of competent jurisdiction). This Section 13.5 shall not apply to Taxes.

Each indemnified Person, by its acceptance of the benefits of this Section 13.5, agrees to refund and return any and all amounts paid by the Borrowers (or on their behalf) to it if, pursuant to limitations on indemnification set forth in this Section 13.5, such indemnified Person was not entitled to receipt of such amounts.

13.6 Successors and Assigns; Participations and Assignments

(a) 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 (including any Affiliate of an L/C Issuer that issues any Letter of Credit), except that (i) except as expressly permitted by Section 4.4 or Section 10.3 or Section 10.12, neither Holdings nor the Borrowers may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by Holdings or the Borrowers without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 13.6. 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 (including any Affiliate of a L/C Issuer that issues any Letter of Credit), Participants (to the extent provided in clause (c) of this Section 13.6), to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Collateral Agent, the L/C Issuers and the Lenders and each other Person entitled to indemnification under Section 13.5) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in clause (b)(ii) below, 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 Commitments and the Revolving Credit Loans at the time owing to it) with the prior written consent (in each case, such consent not to be unreasonably withheld, delayed, conditioned or denied) of:

(A) the Parent Borrower; *provided* that no consent of the Parent Borrower shall be required for an assignment of Revolving Credit Loans (1) to a Lender, an Affiliate of a Lender or an Approved Fund or (2) if an Event of Default under Section

11.1 or 11.5 (solely with respect to the Parent Borrower) has occurred and is continuing, to any other assignee; and

(B) the Administrative Agent, each L/C Issuer and each Swing Line Lender; *provided* that no such shall be required for any assignment of any Revolving Credit Commitments or Revolving Credit Loan to a Lender, an Affiliate of a Lender, an Approved Fund.

Notwithstanding the foregoing, no such assignment shall be made to (x) a natural person, (y) any investment vehicle established primarily for the benefit of a natural person or (z) a Disqualified Institution (*provided* that the prohibition in clause (z) shall not apply retroactively to disqualify any entity that has previously acquired an assignment or participation interest in the Revolving Credit Loans to the extent such entity was not a Disqualified Institution at the time of the applicable assignment or participation, as the case may be), and any attempted assignment in violation of clauses (x) - (z) shall be null and void. For the avoidance of doubt, (i) the Administrative Agent shall have no obligation with respect to, and shall bear no responsibility or liability for, the ascertaining, monitoring, inquiring or enforcing of the list of Persons who are Disqualified Institutions (or any provisions relating thereto) at any time, and shall have, and shall have no liability with respect to or arising out of any assignment or participation of any Revolving Credit Commitments or Revolving Credit Loans to any Disqualified Institution and (ii) the Administrative Agent may share a list of Persons who are Disqualified Institutions with any Lender upon request.

(i) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitments or Revolving Credit Loans, the amount of the Revolving Credit Commitments or Revolving Credit 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 $5,000,000, unless each of the Parent Borrower and the Administrative Agent otherwise consents (which consents shall not be unreasonably withheld, delayed, conditioned or denied); *provided* that no such consent of the Parent Borrower shall be required if an Event of Default under Section 11.1 or 11.5 (solely with respect to the Parent Borrower) has occurred and is continuing; *provided*, *further*, that contemporaneous assignments to a single assignee made by Affiliates of Lenders and related Approved Funds shall be aggregated for purposes of meeting the minimum assignment amount requirements stated above;

(B) 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; *provided* that each Lender shall be permitted to assign a proportionate part of all of the assigning Lender's rights and obligations under one Tranche of Revolving Credit Commitments without assigning its rights and obligations under the other Tranche;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and the applicable tax forms as required under Section 5.4 (or the comparable provisions under Section 14); and

(E) the assignee shall not be Holdings, the Parent Borrower or any of its Subsidiaries.

(ii) Subject to acceptance and recording thereof pursuant to clause (b)(iv) of this Section 13.6, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.10, ~~2.11~~2.11, 5.4 (and the comparable provisions under Section 14) and 13.5). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 13.6 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 clause (c) of this Section 13.6 (other than attempted assignments or transfers in violation of the last paragraph of Section 13.6(b)(i) above, which shall be null and void as provided above).

(iii) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at the Administrative Agent's Office in the United States 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 Revolving Credit Commitments of, and principal amount of the Loans and any payment made by any L/C Issuer under any Letter of Credit, Revolving Credit Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Further, each Register shall contain the name and address of the Administrative Agent and the Lending Office through which each such Person acts under this Agreement. The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Administrative Agent, the Collateral 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, notwithstanding notice to the contrary. The Register shall be available for inspection by Holdings, the Borrowers, the Collateral Agent, the L/C Issuers and any Lender (solely with respect to its own outstanding Loans and Revolving Credit

Commitments), at any reasonable time and from time to time upon reasonable prior notice.

(iv) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b) of this Section 13.6 (unless waived) and any written consent to such assignment required by clause (b) of this Section 13.6, the Administrative Agent shall promptly accept such Assignment and Assumption and record the information contained therein in the Register.

(c) (i) Any Lender may, without the consent of Holdings, the Borrowers, the Administrative Agent or any L/C Issuer, sell participations to one or more banks or other entities that are not (x) a natural person, (y) any investment vehicle established primarily for the benefit of a natural person or (z) a Disqualified Institution (*provided* that the prohibition in clause (z) shall not apply retroactively to disqualify any entity that has previously acquired an assignment or participation interest in the Revolving Credit Loans to the extent such entity was not a Disqualified Institution at the time of the applicable assignment or participation, as the case may be) (each, a "**Participant**") (and any such attempted sales to the Persons identified in clauses (x) - (z) above shall be null and void) (*provided* that the last sentence of Section 13.6(b)(i) shall apply) in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitments and the Revolving Credit Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) Holdings, the Borrowers, the Administrative Agent, the L/C Issuers 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, the Administrative Agent shall have no obligation with respect to, and shall bear no responsibility or liability for, the monitoring or enforcing of the list of Disqualified Institutions with respect to the sales of participations at any time. 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 or any other Credit Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any consent, amendment, modification, supplement or waiver described in clause (i) or (iv) of the second proviso of the first paragraph of Section 13.1 that directly and adversely affects such Participant. Subject to clause (c)(ii) of this Section 13.6, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.10, ~~2.11~~2.11 and 5.4 (and the comparable provisions of Section 14) to the same extent as if it were a Lender, and *provided* that such Participant agrees to be subject to the requirements and limitations of those Sections and Sections ~~2.12~~2.12 and 13.7(a) as though it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 13.6. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 13.8(b) as though it were a Lender; *provided* that such Participant agrees to be subject to Section 13.8(a) as though it were a Lender. Each Lender that sells a participation agrees, at the Parent Borrower's request and

expense, to use reasonable efforts to cooperate with the Parent Borrower to effectuate the provisions of Section 13.7 with respect to any Participant.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.10, ~~2.11~~2.11 or 5.4 (or the comparable provisions under Section 14) than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Parent Borrower's prior written consent.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each Participant's interest in the Revolving Credit Loans (or other rights or obligations) held by it (the "**Participant Register**"). 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. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(d) Any Lender may, without the consent of Holdings, the Borrowers or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 13.6 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Subject to Section 13.16, the Borrowers authorize each Lender to disclose (other than to any Disqualified Institutions) to any Participant, secured creditor of such Lender or assignee (each, a "**Transferee**"), any prospective Transferee and any prospective direct or indirect contractual counterparties to any swap or derivative transactions to be entered into in connection with or relating to Revolving Credit Loans made hereunder any and all financial information in such Lender's possession concerning the Borrowers and their Affiliates that has been delivered to such Lender by or on behalf of the Borrowers and their Affiliates pursuant to this Agreement or that has been delivered to such Lender by or on behalf of the Borrowers and their Affiliates in connection with such Lender's credit evaluation of the Borrowers and their Affiliates prior to becoming a party to this Agreement.

(f) SPV Lender. Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an

"**SPV**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrowers, the option to provide to the Borrowers all or any part of any Revolving Credit Loan that such Granting Lender would otherwise be obligated to make the Borrowers pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Revolving Credit Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Revolving Credit Loan, the Granting Lender shall be obligated to make such Revolving Credit Loan pursuant to the terms hereof. The making of a Revolving Credit Loan by an SPV hereunder shall utilize the Revolving Credit Commitment of the Granting Lender to the same extent, and as if, such Revolving Credit Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, it shall not institute against, or join any other Person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 13.6, any SPV may (i) with notice to, but without the prior written consent of, the Parent Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Revolving Credit Loans to the Granting Lender or to any financial institutions (consented to by the Parent Borrower and the Administrative Agent) other than a Disqualified Institution providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Revolving Credit Loans and (ii) disclose on a confidential basis any non-public information relating to its Revolving Credit Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV. This Section 13.6(f) may not be amended without the written consent of the SPV. Notwithstanding anything to the contrary in this Agreement, (x) no SPV shall be entitled to any greater rights under Sections 2.10, ~~2.11~~2.11, and 5.4 (and the comparable provisions under Section 14) than its Granting Lender would have been entitled to absent the use of such SPV and (y) each SPV agrees to be subject to the requirements of Sections 2.10, ~~2.11~~2.11, and 5.4 (and the comparable provisions under Section 14) as though it were a Lender and has acquired its interest by assignment pursuant to clause (b) of this Section 13.6.

This Section 13.6 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations.

13.7 Replacements of Lenders under Certain Circumstances

(a) The Borrowers shall be permitted (x) to replace any Lender with a replacement bank or institution or (y) terminate the Revolving Credit Commitment of such Lender, as the case may be, and repay all Obligations of the Borrowers due and owing to such Lender relating to the Revolving Credit Loans and participations held by such Lender as of such termination date that (a) requests reimbursement for amounts owing pursuant to Section 2.10, Section 5.4 (or the comparable provisions under Section 14) (or any Borrower is required to pay

any Indemnified Taxes or additional amounts to any Agent or Lender or to any Governmental Authority on account of any Agent or Lender pursuant to Section 5.4 (or the comparable provisions under Section 14)), (b) is affected in the manner described in Section 2.10(a)(iii) and as a result thereof any of the actions described in such Section is required to be taken, (c) becomes a Defaulting Lender or (d) refuses to make an Extension Election pursuant to Section ~~2.15~~2.15; *provided* that, solely in the case of the foregoing clause (x), (i) no Event of Default under Section 11.1 or 11.5 shall have occurred and be continuing at the time of such replacement, (ii) the Borrowers shall repay (or the replacement bank or institution shall purchase, at par) all Revolving Credit Loans and other amounts (other than any disputed amounts), pursuant to Section 2.10, ~~2.11~~2.11 or 5.4 (or the comparable provisions under Section 14), as the case may be, owing to such replaced Lender prior to the date of replacement, (iii) the replacement bank or institution, if not already a Lender, an Affiliate of a Lender or an Approved Fund, and the terms and conditions of such replacement, shall be reasonably satisfactory to the Administrative Agent (solely to the extent such consent would be required under Section 13.6), (iv) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 13.6 (*provided* that the Borrowers shall be obligated to pay the registration and processing fee referred to therein unless otherwise agreed) and (v) any such replacement shall not be deemed to be a waiver of any rights that the Borrowers, the Administrative Agent or any other Lender shall have against the replaced Lender.

(b) If any Lender (such Lender, a "**Non-Consenting Lender**") has failed to consent to a proposed amendment, modification, supplement, waiver, discharge or termination that pursuant to the terms of Section 13.1 requires the consent of either (i) all of the Lenders directly and adversely affected or (ii) all of the Lenders, and, in each case, with respect to which the Required Lenders or a majority (in principal amount) of the directly and adversely affected Lenders shall, in each such case, have granted their consent, then so long as no Event of Default then exists, the Borrowers shall have the right (unless such Non-Consenting Lender grants such consent) to (x) replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign its Revolving Credit Loans and its Revolving Credit Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent (to the extent such consent would be required under Section 13.6) or (y) terminate the Revolving Credit Commitment of such Lender, repay all Obligations of the Borrowers due and owing to such Lender relating to the Revolving Credit Loans and participations held by such Lender as of such termination date; *provided* that: (a) all Obligations of the Borrowers hereunder owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment, and (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof *plus* accrued and unpaid interest thereon. In connection with any such assignment, the Borrowers, Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 13.6.

(c) Nothing in this Section 13.7 shall be deemed to prejudice any right or remedy that Holdings or the Borrowers may otherwise have at law or at equity.

13.8 Adjustments; Set-off

(a) Except as contemplated in Section 13.6 or elsewhere herein or in any other Credit Document, if any Lender (a "**Benefited Lender**") shall (i) in its capacity as a U.S. Revolving Credit Lender, at any time receive any payment of all or part of its U.S. Revolving Credit Loans, or interest thereon, or the participations in U.S. L/C Obligations and U.S. Swing Line Loans held by it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 11.5, or otherwise), in a greater proportion than its Pro Rata Share (or other applicable share contemplated hereunder) compared to any such payment to or collateral received by any other U.S. Revolving Credit Lender, if any, in respect of such other U.S. Revolving Credit Lender's U.S. Revolving Credit Loans, or interest thereon or the participations in the U.S. L/C Obligations and U.S. Swing Line Loans or (ii) in its capacity as a Foreign Revolving Credit Lender, at any time receive any payment of all or part of its Foreign Revolving Credit Loans, or interest thereon, or the participations in Foreign L/C Obligations and Foreign Swing Line Loans held by it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 11.5, or otherwise), in a greater proportion than its Pro Rata Share (or other applicable share contemplated hereunder) compared to any such payment to or collateral received by any other Foreign Revolving Credit Lender, if any, in respect of such other Foreign Revolving Credit Lender's Foreign Revolving Credit Loans, or interest thereon or the participations in the Foreign L/C Obligations and Foreign Swing Line Loans, in each case of clauses (i) and (ii), such Benefited Lender shall purchase for cash from the other applicable Lenders a participating interest in such portion of each such other Lender's applicable Revolving Credit Loans, applicable participations in L/C Obligations and Swing Line Loans, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the applicable Lenders; *provided*, *however*, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) After the occurrence and during the continuance of an Event of Default, in addition to any rights and remedies of the Lenders provided by Applicable Law, each Lender shall have the right, without prior notice to Holdings, the Borrowers, any such notice being expressly waived by Holdings, the Borrowers to the extent permitted by Applicable Law but with the prior written consent of the Administrative Agent, upon any amount becoming due and payable by the Borrowers hereunder (whether at the Stated Maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final) (other than any Excluded Account of the type described in clause (i), (ii), (vi), (vii) and (viii) of the definition thereof), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the applicable Borrower. Each Lender agrees promptly to notify the Borrowers and the Administrative Agent after any such set-

off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such set-off and application.

13.9 Counterparts; Electronic Execution

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrowers and the Administrative Agent. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or any other Credit Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature 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.

13.10 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13.11 INTEGRATION

THIS WRITTEN AGREEMENT AND THE OTHER CREDIT DOCUMENTS REPRESENT THE FINAL AGREEMENT OF PARENT BORROWER, HOLDINGS, THE OTHER BORROWERS, THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT, THE L/C ISSUERS AND THE LENDERS WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND (1) THERE ARE NO PROMISES, UNDERTAKINGS, REPRESENTATIONS OR WARRANTIES BY HOLDINGS, THE BORROWERS, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, THE L/C ISSUERS OR ANY LENDER RELATIVE TO SUBJECT MATTER HEREOF NOT EXPRESSLY SET FORTH OR REFERRED TO HEREIN OR IN THE OTHER CREDIT DOCUMENTS, (2) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES AND (3) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES; *PROVIDED* THAT THE SYNDICATION PROVISIONS AND THE PARENT BORROWER'S AND HOLDINGS' CONFIDENTIALITY OBLIGATIONS IN THE COMMITMENT LETTER SHALL REMAIN IN FULL FORCE AND EFFECT PURSUANT TO THE TERMS THEREOF.

13.12 GOVERNING LAW

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

13.13 Submission to Jurisdiction; Waivers

Each party hereto irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Credit Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, in each case sitting in New York City in the Borough of Manhattan, and appellate courts from any thereof;

(b) consents that any such action or proceeding shall be brought in such courts and waives (to the extent permitted by Applicable Law) any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Person at its address set forth on Schedule 13.2 or at such other address of which the Administrative Agent shall have been notified pursuant to Section 13.2;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or, in the case of the Administrative Agent, the Collateral Agent, the Lenders, the L/C Issuers and the Swing Line Lenders, shall limit the right to sue in any other jurisdiction;

(e) subject to the last paragraph of Section 13.5, waives, to the maximum extent not prohibited by Applicable Law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 13.13 any special, exemplary, punitive or consequential damages; and

(f) agrees that a final judgment in any action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

EACH FOREIGN CREDIT PARTY HEREBY IRREVOCABLY DESIGNATES, APPOINTS AND EMPOWERS CT CORPORATION SYSTEM, 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011 (TELEPHONE: 212-590-9330; FACSIMILE: 212-894-8581;

EMAIL: NYTEAM1@WOLTERKLUWER.COM) (THE "**PROCESS AGENT**"), IN THE CASE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT IN THE UNITED STATES AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, ACCEPT AND ACKNOWLEDGE FOR AND ON ITS BEHALF, AND IN RESPECT OF ITS PROPERTY, SERVICE OF ANY AND ALL LEGAL PROCESS, SUMMONS, NOTICES AND DOCUMENTS THAT MAY BE SERVED IN ANY ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY CREDIT DOCUMENT (AND THE PARENT BORROWER SHALL DELIVER TO THE ADMINISTRATIVE AGENT EVIDENCE OF ACCEPTANCE BY THE PROCESS AGENT OF SUCH APPOINTMENT). NOTHING IN THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

13.14 Acknowledgments

Each of Holdings and the Borrowers hereby acknowledge that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Credit Documents;

(b) (i) the credit 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 Credit Document) are an arm's-length commercial transaction between Holdings and the Borrowers, on the one hand, and the Administrative Agent, the L/C Issuer, the Lenders and the other Agents on the other hand, and Holdings, the Borrowers and the other Credit Parties are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Credit 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 and the other Agents, is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary for any of Holdings, the Borrowers, any other Credit Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) neither the Administrative Agent nor any other Agent has assumed or will assume an advisory, agency or fiduciary responsibility in favor of Holdings, the Borrowers or any other Credit Party 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 Credit Document (irrespective of whether the Administrative Agent or any other Agent has advised or is currently advising Holdings, the Borrowers, the other Credit Parties or their respective Affiliates on other matters) and neither the Administrative Agent or other Agent has any obligation to Holdings, the Borrowers, the other Credit Parties or their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; (iv) the Administrative Agent, each other Agent and each Affiliate of the foregoing may be engaged in a broad range of transactions that involve interests that differ from those of Holdings, the Borrowers and their respective Affiliates, and neither the Administrative Agent nor any other Agent has any obligation to disclose any of

such interests by virtue of any advisory, agency or fiduciary relationship; and (v) neither the Administrative Agent nor any other Agent has provided and none will 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 Credit Document) and Holdings and the Borrowers has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Holdings and the Borrowers agree not to claim that the Administrative Agent or any other Agent has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to Holdings, the Borrowers or any other Affiliates, in connection with the transactions contemplated hereby or the process leading hereto.

(c) no joint venture is created hereby or by the other Credit Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among Holdings and the Borrower, on the one hand, and any Lender, on the other hand.

13.15 WAIVERS OF JURY TRIAL

HOLDINGS, THE BORROWERS, EACH AGENT AND EACH LENDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE (TO THE EXTENT PERMITTED BY APPLICABLE LAW) TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

13.16 Confidentiality

The Administrative Agent, each L/C Issuer, each other Agent and each Lender shall hold all non-public information furnished by or on behalf of Holdings, the Borrowers or any Subsidiary of the Borrowers in connection with such Person's evaluation of whether to become an Agent or Lender hereunder or obtained by such Lender, the Administrative Agent, L/C Issuer or such other Agent pursuant to the requirements of this Agreement or in connection with any amendment, supplement, modification or waiver or proposed amendment, supplement, modification or waiver hereto (including any Incremental Amendment or Extension Amendment) or the other Credit Documents ("**Confidential Information**"), confidential; *provided* that the Administrative Agent, each L/C Issuer, each other Agent and each Lender may make disclosure (a) as required by the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by Applicable Law, regulation or compulsory legal process (in which case such Lender, the Administrative Agent, L/C Issuer or such other Agent shall use commercially reasonable efforts to inform the Borrowers promptly thereof to the extent lawfully permitted to do so (except with respect to any audit or examination conducted by bank accountants or any self-regulatory authority or governmental or regulatory authority exercising examination or regulatory authority)), (b) to such Lender's or the Administrative Agent's or such L/C Issuer's or such other Agent's attorneys, professional advisors, independent auditors, trustees or Affiliates involved in the Transactions on a "need to know" basis and who are made aware of and agree to comply with the provisions of this Section 13.16, in each case on a confidential basis (with such Lender, the Administrative Agent, L/C Issuer or such other Agent responsible for such persons' compliance with this Section 13.16), (c)

on a confidential basis to any bona fide prospective Lender, prospective participant or swap counterparty (in each case, other than a Disqualified Institution or a Person who the Parent Borrower has affirmatively denied assignment thereto in accordance with Section 13.6), (d) to the extent requested by any bank regulatory authority having jurisdiction over a Lender or its Affiliates (including in any audit or examination conducted by bank accountants or any self-regulatory authority or governmental or regulatory authority exercising examination or regulatory authority), (e) to the extent such information: (i) becomes publicly available other than as a result of a breach of this Section 13.16 or other confidential or fiduciary obligation owed by the Administrative Agent, such other Agent or such Lender to the Parent Borrower or its Affiliates or (ii) becomes available to the Administrative Agent, such other Agent or such Lender on a non-confidential basis from a source other than Holdings, the Parent Borrower or any Subsidiary or on behalf of Holdings, the Parent Borrower or any Subsidiary that, to the knowledge (after due inquiry) the Administrative Agent, such other Agent or such Lender, is not in violation of any confidentiality obligation owed to the Parent Borrower or its Affiliates, (f) to the extent the Parent Borrower shall have consented to such disclosure in writing (which may include through electronic means), (g) as is necessary in protecting and enforcing the rights of the Administrative Agent, such other Agent or such Lender with respect to this Agreement or any other Credit Document, (h) for purposes of establishing any defense available under Applicable Laws, including, without limitation, establishing a "due diligence" defense, (i) to the extent independently developed by the Administrative Agent, such other Agent or such Lender or any Affiliates thereof without reliance on confidential information, (j) on a confidential basis, to the rating agencies in consultation with the Parent Borrower, (k) on a confidential basis, to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facilities or market data collectors, similar services providers to the lending industry and service providers to the Administrative Agent in connection with the administration and management of this Agreement and the Credit Documents and (l) to ClearPar® or any other pricing settlement provider. Each Lender, the Administrative Agent and each other Agent agrees that it will not provide to prospective Transferees or to any pledgee referred to in Section 13.6 or to prospective direct or indirect contractual counterparties to any swap or derivative transactions to be entered into in connection with or relating to Loans made hereunder any of the Confidential Information unless such Person is advised of and agrees to be bound by the provisions of this Section 13.16 or confidentiality provisions at least as restrictive as those set forth in this Section 13.16.

13.17 Direct Website Communications

(a) Holdings and the Borrowers may, at their option, provide to the Administrative Agent any information, documents and other materials that they are obligated to furnish to the Administrative Agent pursuant to the Credit Documents, including, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication (*provided* that such communications described in clauses (A) - (D) will be delivered pursuant to Section 13.2, including by e-mail) that (A) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or Interest Period relating thereto), (B) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled

date therefor, (C) provides notice of any Default or Event of Default under this Agreement, or (D) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing or other extension of credit thereunder (all such non-excluded communications being referred to herein collectively as "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent at an email address separately identified by the Administrative Agent; *provided* that: (i) upon written request by the Administrative Agent, Holdings or the Parent Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) Holdings or the Parent Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. Nothing in this Section 13.17 shall prejudice the right of Holdings, the Borrowers, the Administrative Agent, any other Agent or any Lender to give any notice or other communication pursuant to any Credit Document in any other manner specified in such Credit Document.

(b) The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Credit Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents. Each Lender agrees (A) to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and (B) that the foregoing notice may be sent to such e-mail address.

(c) Holdings and the Borrowers further agree that the Agents may make the Communications available to the Lenders by posting the Communications on Debtdomain or a substantially similar electronic transmission system (the "**Platform**"), so long as the access to such Platform is limited (i) to the Agents, the L/C Issuers, the Lenders or any bona fide potential Transferee and (ii) remains subject the confidentiality requirements set forth in Section 13.16.

(d) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE

DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. In no event shall any Agent or their Related Parties (collectively, the "**Agent Parties**" and each an "**Agent Party**") have any liability to Holdings, the Borrowers, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Holdings', the Borrowers' or any Agent's transmission of Communications through the internet, except to the extent the liability of any Agent Party resulted from such Agent Party's (or any of its Related Parties' (other than trustees or advisors)) gross negligence, bad faith or willful misconduct or material breach of the Credit Documents (as determined in a final non-appealable judgment of a court of competent jurisdiction).

(e) The Borrowers and each Lender acknowledge that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive material non-public information with respect to Holdings, the Parent Borrower, the Subsidiaries of the Parent Borrower or their securities) and, if documents or notices required to be delivered pursuant to the Credit Documents or otherwise are being distributed through the Platform, any document or notice that Holdings or the Parent Borrower has indicated contains only publicly available information with respect to Holdings, the Parent Borrower and the Subsidiaries of the Parent Borrower and their securities may be posted on that portion of the Platform designated for such public-side Lenders. If Holdings or the Parent Borrower has not indicated whether a document or notice delivered contains only publicly available information, the Administrative Agent shall post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to Holdings, the Parent Borrower, the Subsidiaries of the Parent Borrower and their securities. Notwithstanding the foregoing, Holdings and the Parent Borrower shall use commercially reasonable efforts to indicate whether any document or notice contains only publicly available information.

13.18 USA PATRIOT Act

Each Lender hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies 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~~.~~, including, without limitation, with respect to the Borrowers only, as applicable, the Beneficial Ownership Regulation (including, for the avoidance of doubt, any information that would result in a change to the list of beneficial owners identified in a Beneficial Ownership Certification).

13.19 Payments Set Aside

To the extent that any payment by or on behalf of the Borrowers is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other

party, in connection with any proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

13.20 Judgment Currency

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Credit Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of any Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Credit Documents shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "**Agreement Currency**"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrowers in the Agreement Currency, the Borrowers agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrowers (or to any other Person who may be entitled thereto under Applicable Law).

13.21 Cashless Rollovers

Notwithstanding anything to the contrary contained in this Agreement or in any other Credit Document, to the extent that any Lender extends the maturity date of, or replaces, renews or refinances, any of its then-existing Revolving Credit Loans by way of an Incremental Amendment or Extension Amendment or any other amendment to this Agreement, in each case, to the extent such extension, replacement, renewal or refinancing is effected by means of a "cashless roll" by such Lender, such extension, replacement, renewal or refinancing shall be deemed to comply with any requirement hereunder or any other Credit Document that such payment be made "in Dollars", "in immediately available funds", "in Same Day Funds", "in cash" or any other similar requirement.

13.22 Acknowledgement and Consent to Bail-In of ~~EEA~~Affected Financial Institutions

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

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

13.23 Acknowledgement Regarding Any Supported QFCs

To the extent that the Credit 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 Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(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 Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 13.23, 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).

13.24 ~~13.23~~ Limitations on Sanctions Provisions

Notwithstanding anything set forth herein or in any other Credit Document, Section 8.19 and any other provision in the Credit Documents relating to Sanctions shall not be interpreted or applied to the extent that such obligations and /or representations would violate or expose Holdings, the Parent Borrower or any Subsidiary of the Parent Borrower or any directors, officer or employee thereof to any liability under any anti-boycott or blocking law, regulation or

statute that is in force from time to time in the European Union (and/or any of its member states) that are applicable to such Person (including EU Regulation (EC) 2271/96 and § 7 of the German Foreign Trade Ordinance (Verordnung zur Durchführung des Außenwirtschaftsgesetzes (Außenwirtschaftsverordnung – AWV)). The representations given and undertakings assumed by any Credit Party to any other party resident in Germany (gebietsansässig) are made only to the extent that any party resident in Germany (gebietsansässig) would be permitted to receive such representations and undertakings pursuant to §7 of the AWV or any other Applicable Law applicable to such Credit Party resident in Germany.

13.25 ~~13.24~~ Joinder of German Borrowers

Notwithstanding anything set forth herein or in any other Credit Document, it is understood and agreed that neither German Borrower is a party to this Agreement on the Closing Date and no German Security Document or U.K. Security Document to which any German Credit Party is required to be a party has been entered into on the Closing Date. After the Closing Date, by (i) one or more joinder, accession and/or confirmation agreements to this Agreement executed by the applicable German Borrower, (ii) the execution of the German Security Documents and any U.K. Security Document to which the applicable German Credit Party is required to be a party, in each case as listed on Schedule 1.1(g) and (iii) the delivery of customary legal opinions, certificates and other documents that would have been required to be delivered by the German Credit Parties if the applicable German Borrower became a party to this Agreement on the Closing Date, in each case of clauses (i) - (iii), in form and substance reasonably satisfactory to the Collateral Agent, the applicable German Borrower shall become a party hereto and the applicable provisions under this Agreement and the other Credit Documents shall become effective with respect to such German Borrower.

13.26 Lender ERISA Representations

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) 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 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 and this Agreement,

(iii) 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 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 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.

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 and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

SECTION 14 Foreign Credit Party Provisions

The provisions set forth in Sections 14.1 - 14.4 shall only apply to the extent the applicable Foreign Borrower is a Borrower under this Agreement.

14.1 Canadian Credit Parties

(a) Additional Representations. The Canadian Borrower makes the following representations and warranties:

(i) Each Canadian Credit Party (a) is a duly organized and validly existing corporation or other entity in good standing (as applicable) under the laws of the jurisdiction of its organization and has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is

engaged, except as would not reasonably be expected to result in a Material Adverse Effect, (b) has duly qualified and is authorized to do business and is in good standing (if applicable) in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect and (c) is in compliance with all Applicable Laws, except to the extent that the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect.

(ii) Each Canadian Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is a party. Each Canadian Credit Party has duly executed and delivered each Credit Document to which it is a party and each such Credit Document constitutes the legal, valid and binding obligation of such Canadian Credit Party enforceable in accordance with its terms, subject to the applicable Foreign Legal Reservations and Foreign Perfection Requirements and the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

(iii) Neither the execution, delivery or performance by any Canadian Credit Party of the Credit Documents to which it is a party nor the compliance with the terms and provisions thereof nor the consummation of the financing transactions contemplated hereby and thereby will violate any provision of the Organizational Documents of such Canadian Credit Party.

(iv) For the purposes of the Insolvency Regulation, except as set forth on Schedule 14.1, no Canadian Credit Party (to the extent such Canadian Credit Party is subject to the Insolvency Regulation) has a centre of main interest other than as situated in its jurisdiction of incorporation.

(v) Subject to the qualifications set forth in Section 6.2, with respect to each Canadian Credit Party, the Canadian Security Documents, taken as a whole, are effective to create in favor of the Collateral Agent, for the benefit of the Foreign Secured Parties, a legal, valid and enforceable first priority security interest (subject to Liens permitted hereunder) in the Collateral described therein, in each case, to the extent required under the Canadian Security Documents, the enforceability of which is subject to the applicable Foreign Legal Reservations and Foreign Perfection Requirements and the applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. In the case of (i) the Stock described in the Canadian Security Agreement that is in the form of securities represented by stock certificates or otherwise constituting certificated securities (as defined in the PPSA), when certificates representing such Stock are delivered to the Collateral Agent

along with instruments of transfer in blank or endorsed to the Collateral Agent, and (ii) all other Collateral constituting personal property described in the Canadian Security Agreement, when financing statements, intellectual property security agreements and other required filings, recordings, agreements and actions in appropriate form are executed and delivered, performed, recorded or filed in the appropriate offices, as the case may be, the Collateral Agent, for the benefit of the applicable Foreign Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Canadian Credit Parties in all Collateral that may be perfected by filing, recording or registering a financing statement, an intellectual property security agreement or analogous document (to the extent such Liens may be perfected by possession of the certificated securities (as defined in the PPSA) by the Collateral Agent or such filings, agreements or other actions or perfection is otherwise required by the terms of any Credit Document), in each case, to the extent required under the Canadian Security Documents, as security for the Foreign Obligations, in each case prior and superior in right to any other Lien (except, in the case of Liens permitted hereunder).

(vi) As of the Closing Date, (x) Schedule 14.1(a) lists all of the Canadian Pension Plans and (y) none of the Canadian Pension Plans is a Canadian Defined Benefit Plan. Except where the non-registration, non-payment or termination would not reasonably be expected to have a Material Adverse Effect, (i) the Canadian Pension Plans are duly registered under the Income Tax Act (Canada), as amended from time to time and all other Applicable Laws which require registration, (ii) all employer and employee payments, contributions or premiums to be remitted, paid to or in respect of each Canadian Pension Plan have been paid in a timely fashion in accordance with the terms thereof, any funding agreement and all Applicable Laws and (iii) there has been no termination of any Canadian Pension Plan, and to the knowledge of the Canadian Credit Parties, no facts or circumstances have occurred or existed that would result, or be reasonably anticipated to result, in the declaration of a termination of any Canadian Pension Plan by any Governmental Authority under Applicable Law.

(vii) As used herein, the following capitalized terms shall have the meanings set forth below:

"**Canadian Defined Benefit Plan**" shall mean any Canadian Pension Plan which contains a "defined benefit provision" as defined in subsection 147.1(l) of the Income Tax Act (Canada), as amended from time to time.

"**Canadian Pension Plan**" shall mean each pension plan required to be registered under Canadian federal or provincial law which is maintained or contributed to by, or to which there is or may be an obligation to contribute, in each case by any Canadian Credit Party in respect of its employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, or any other pension plan maintained by any government of any other province or territory of Canada, respectively.

(b) Net Payments in Respect of Credit Extensions to the Canadian Borrower

(i) In this provision "**Canadian Indemnified Taxes**" shall mean Indemnified Taxes; provided, for this purpose, that paragraph (c) of the definition of "Excluded Taxes" shall be replaced with the following:

> "(c) any Canadian federal withholding Tax that is imposed on amounts payable to or for the account of any Agent or Lender: (i) under the law in effect at the time such Agent or Lender becomes a party to this Agreement (or designates a new Lending Office other than a new Lending Office designated at the request of the Canadian Borrower pursuant to Section 13.7(a)); *provided* that this clause (c)(i) shall not apply to the extent that the indemnity payments or additional amounts any Lender would be entitled to receive (without regard to this clause (c)(i)) do not exceed the indemnity payment or additional amounts that the person making the assignment, participation or transfer to such Lender (or designation of a new Lending Office by such Lender) would have been entitled to receive pursuant to Section 5.4 immediately before such assignment, participation, transfer or change in Lending Office in the absence of such assignment, participation, transfer or change in Lending Office (it being understood and agreed, for the avoidance of doubt, that any withholding Tax imposed on a Lender as a result of a Change in Law occurring after the time such Lender became a party to this Agreement (or designates a new Lending Office) shall not be an Excluded Tax under this clause (c)(i); and (ii) as a consequence of such Agent or Lender not dealing at arm's length (within the meaning of the Income Tax Act (Canada)) with a Credit Party at the time of such amount is paid."

(ii) The provisions of Section 5.4 are hereby incorporated by reference and shall apply with respect to any payments in connection with any Loan or other Credit Extension to the Canadian Borrower, and all payments by any Canadian Guarantor; *provided* that, for purposes of this provision (ii): (x) all references in Section 5.4 to the Parent Borrower shall be deemed to refer to the Canadian Borrower, (y) all references in Section 5.4 to U.S. Guarantors shall be deemed to refer to Canadian Guarantors, and (z) all references in Section 5.4 to Indemnified Taxes shall be deemed to refer to Canadian Indemnified Taxes.

(c) Additional Agreements

(i) Quebec Security. Each of the parties hereto (including each Lender, acting for itself and on behalf of each of its Affiliates that are or become Foreign Secured Parties from time to time) confirms the appointment and designation of the Administrative Agent as the hypothecary representative for the present and future Foreign Secured Parties (in such capacity, the "**Representative**"), as contemplated by Article 2692 of the Civil Code of Québec, for the purposes of holding any security granted by the

Foreign Credit Parties or any one of them pursuant to the laws of the Province of Quebec. The execution by the Representative prior to the date hereof of any document creating or evidencing any such security for the benefit of any of the Foreign Secured Parties is hereby ratified and confirmed. Each future Foreign Secured Party, whether a Lender or a holder of any Foreign Obligation, shall be deemed to have ratified and confirmed (for itself and on behalf of each of its Affiliates that are or become Foreign Secured Parties from time to time) the appointment of the Administrative Agent as the Representative. The Representative shall (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted hereunder, all rights and remedies given to the Representative pursuant to any hypothec, pledge, applicable law or otherwise, (b) benefit from and be subject to all provisions hereof with respect to the Administrative Agent, mutatis mutandis, including all such provisions with respect to the liability or responsibility to an indemnification by the Foreign Secured Parties, and (c) be entitled to delegate from time to time any of its powers or duties under any hypothec or pledge on such terms and conditions as it may determine from time to time. The substitution or replacement of the Administrative Agent pursuant to the provisions hereof shall also constitute the substitution or replacement of the Representative. The new Representative, without further act, shall then be vested and have all the rights, powers and authorities granted to the Representative hereunder and shall be subject in all respects to the terms, conditions and provisions hereof, to the same extent as if originally acting as Representative hereunder. Notwithstanding the provisions of Section 32 of An Act respecting the special powers of legal persons (Quebec), the Administrative Agent may acquire and be the holder of any bond or debenture issued by any Foreign Credit Party.

(ii) For purposes of any assets, liabilities or entities located in the Province of Quebec and for all other purposes pursuant to which the interpretation or construction of this Agreement and the other Credit Documents may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (a) "personal property" shall be deemed to include "movable property", (b) "real property" shall be deemed to include "immovable property", (c) "tangible property" shall be deemed to include "corporeal property", (d) "intangible property" shall be deemed to include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", "prior claim", "reservation of ownership" and a "resolutory clause", (f) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (g) all references to "perfection" of or "perfected" liens or security interest shall be deemed to include a reference to an "opposable" or "set up" hypothec as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall be deemed to include a "mandatary", (k) "construction liens" shall be deemed to include "legal hypothecs in favor of persons having taken part in the construction or renovation of an immovable", (l) "joint and several" shall be deemed to include "solidary", (m) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross

fault", (n) "beneficial ownership" shall be deemed to include "ownership", (o) "legal title" shall be deemed to include "holding title on behalf of an owner as mandatary or prête-nom", (p) "easement" shall be deemed to include "servitude", (q) "priority" shall be deemed to include "rank" or "prior claim", as applicable, (r) "survey" shall be deemed to include "certificate of location and plan", (s) "state" shall be deemed to include "province", (t) "fee simple title" shall be deemed to include "ownership" (including ownership under a right of superficies), (u) "ground lease" shall be deemed to include "emphyteusis" or a "lease with a right of superficies", as applicable, (v) "leasehold interest" shall be deemed to include "a valid lease", and (w) "lease" shall be deemed to include a "leasing contract".

(iii) Notwithstanding anything to the contrary contained in this Agreement or in any other Credit Document, solely to the extent that a court of competent jurisdiction finally determines that the calculation or determination of interest or any fee payable by any Canadian Credit Party in respect of the Foreign Obligations pursuant to this Agreement and the other Credit Documents shall be governed by the laws of any province or territory of Canada or the federal laws of Canada, in no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code (Canada), R.S.C. 1985, c. C-46, as the same shall be amended, replaced or re-enacted from time to time, "**Section 347**") payable by the Canadian Credit Parties to the Agents or any Lender under this Agreement or any other Credit Document exceed the effective annual rate of interest on the "credit advanced" (as defined in Section 347) under this Agreement or such other Credit Document lawfully permitted under Section 347 and, if any payment, collection or demand pursuant to this Agreement or any other Credit Document in respect of "interest" (as defined in Section 347) is determined to be contrary to the provisions of Section 347, such payment, collection or demand shall be deemed to have been made by mutual mistake of the Agents, the Lenders and the Canadian Credit Parties and the amount of such payment or collection shall be refunded by the relevant Agents and Lenders to the applicable Canadian Credit Parties. For the purposes of this Agreement and each other Credit Document to which the Canadian Credit Parties are a party, the effective annual rate of interest payable by the Canadian Credit Parties shall be determined in accordance with generally accepted actuarial practices and principles over the term of the loans on the basis of annual compounding for the lawfully permitted rate of interest and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Administrative Agent for the account of the Canadian Credit Parties will be conclusive for the purpose of such determination in the absence of evidence to the contrary.

(iv) For the purposes of the Interest Act (Canada) and with respect to Canadian Credit Parties only:

(A) whenever any interest or fee payable by the Canadian Credit Parties is calculated using a rate based on a year of 360 days or 365 days, as the case may be, the rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on a year of 360 days or 365 days, as the case

may be, (y) multiplied by the actual number of days in the calendar year in which such rate is to be ascertained and (z) divided by 360 or 365, as the case may be; and

(B) all calculations of interest payable by the Canadian Credit Parties under this Agreement or any other Credit Document are to be made on the basis of the nominal interest rate described herein and therein and not on the basis of effective yearly rates or on any other basis which gives effect to the principle of deemed reinvestment of interest.

(C) The parties hereto acknowledge that there is a material difference between the stated nominal interest rates and the effective yearly rates of interest and that they are capable of making the calculations required to determine such effective yearly rates of interest.

(v) The Canadian Borrower shall, and shall cause the other Canadian Credit Parties:

(A) Promptly after an Authorized Officer of any Canadian Credit Party obtains knowledge thereof, furnish the Administrative Agent written notice of any litigation or proceeding commenced against any such Canadian Credit Party or of any governmental investigation that is instituted against such Canadian Credit Party, in each case, in respect of any Canadian Pension Plan, its fiduciaries or its assets, which litigation, proceeding or investigation would reasonably be expected to have a Material Adverse Effect.

(B) Remit or pay all employer or employee payments, contributions or premiums required to be remitted, paid to or in respect of each Canadian Pension Plan by each such Canadian Credit Party and each Subsidiary of each such Canadian Credit Party in a timely fashion in accordance with the terms thereof, any funding agreements and all Applicable Laws, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(C) Deliver to the Administrative Agent, (i) if requested by the Administrative Agent in writing copies of each annual and other return, report or valuation with respect to each Canadian Pension Plan as filed with any applicable Governmental Authority and (ii) notification within 30 days of commencement of participation in a Canadian Pension Plan and notification of any voluntary or involuntary termination of a Canadian Pension Plan within 30 days of the later of the effective date of termination or date on which termination is declared, except where in this clause (ii) such commencement or termination would not reasonably be expected to have a Material Adverse Effect.

(vi) No Canadian Credit Party shall, directly or indirectly, (a) in each case, other than by virtue of a transaction permitted by clause (b) below, establish, contribute to or assume an obligation with respect to any Canadian Defined Benefit Plan, or (b)(i) acquire an interest in any Person if such Person sponsors, maintains or

contributes to, or at any time in the five-year period preceding such acquisition has sponsored, maintained or contributed to a Canadian Defined Benefit Plan, in each case if such acquisition would reasonably be expected to result in a Material Adverse Effect or (ii) without the consent of the Administrative Agent (which shall not be unreasonably withheld or delayed), cause or allow any Person described in clause (b)(i) above to become, or to merge, amalgamate, or consolidate with, a Credit Party.

(vii) Canadian AML.

(A) Each Canadian Credit Party acknowledges that, pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), the Criminal Code (Canada) and the United Nations Act (Canada), including the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (Canada) and the United Nations Al-Qaida and Taliban Regulations (Canada) promulgated under the United Nations Act (Canada), and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws, whether within Canada or elsewhere (collectively, including any rules, regulations, directives, guidelines or orders thereunder, "**CAML**"), the Lenders and the Administrative Agent may be required to obtain, verify and record information regarding each Canadian Credit Party, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of each Canadian Credit Party, and the transactions contemplated hereby. Each Canadian Credit Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Administrative Agent, or any prospective assign or participant of a Lender or the Administrative Agent, in order to comply with any applicable CAML, whether now or hereafter in existence.

(B) If the Administrative Agent has ascertained the identity of each Canadian Credit Party or any authorized signatories of each Canadian Credit Party for the purposes of applicable CAML, then the Administrative Agent:

i. shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Administrative Agent within the meaning of applicable CAML legislation; and

ii. shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

(C) Notwithstanding clause (B) and except as may otherwise be agreed in writing, each of the Lenders agrees that the Administrative Agent has no obligation to ascertain the identity of each Canadian Credit Party or any authorized signatories of each Canadian Credit Party on behalf of any Lender, or to confirm the

completeness or accuracy of any information it obtains from each Canadian Credit Party or any such authorized signatory in doing so.

14.2 German Credit Parties

(a) Additional Representations. Each German Borrower makes the following representations and warranties:

(i) Each German Credit Party (a) is a duly organized and validly existing corporation or other entity under the laws of the jurisdiction of its organization and has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is engaged, except as would not reasonably be expected to result in a Material Adverse Effect, (b) has duly qualified and is authorized to do business in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect and (c) is in compliance with all Applicable Laws, except to the extent that the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect.

(ii) Each German Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is a party. Each German Credit Party has duly executed and delivered each Credit Document to which it is a party and each such Credit Document constitutes the legal, valid and binding obligation of such German Credit Party enforceable in accordance with its terms, subject in each case to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law) and any applicable Foreign Legal Reservations and Foreign Perfection Requirements.

(iii) Neither the execution, delivery or performance by any German Credit Party of the Credit Documents to which it is a party nor the compliance with the terms and provisions thereof nor the consummation of the financing transactions contemplated hereby and thereby will violate any provision of the Organizational Documents of such German Credit Party.

(iv) For the purposes of the Insolvency Regulation, except as set forth on Schedule 14.1, the centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) of each German Credit Party is situated in Germany, and it has no "establishment" (as that term is used in Article 2(10) of the Insolvency Regulation) in any other jurisdiction.

(v) With respect to each German Credit Party, the German Security Documents, are effective to create in favor of the Collateral Agent, for the benefit of the

Secured Parties, a legal, valid and enforceable first priority security interest (subject to Liens permitted hereunder) in the German Security (as defined below) described therein, the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of law, any legal reservations and perfection requirements.

(b) Net Payments in Respect of Credit Extensions to the German Borrowers

(i) Tax gross-up

(A) Any German Borrower or any other German Credit Party shall make all payments to be made by it without any Tax Deduction unless required by law. Any German Borrower shall promptly upon becoming aware that a German Credit Party must make a Tax Deduction, notify the Administrative Agent accordingly.

(B) If a Tax Deduction is required by law to be made by a German Credit Party, the amount of the payment due from that German Credit Party shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(C) A payment shall not be increased under paragraph (b)(i)(B) above by reason of a Tax Deduction on account of Taxes imposed by Germany, (x) if on the date on which the payment falls due, the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a German Qualifying Lender, but on that date that Lender is not or has ceased to be a German Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or German Treaty or any published practice or published concession of any relevant taxing authority, or (ii) the relevant Lender is a German Qualifying Lender and the relevant German Credit Party making the payment is able to demonstrate that the payment could have been made to the Lender without a Tax Deduction had that Lender complied with its obligations under paragraph b)(i)(D).

(D) A Lender and each German Credit Party which makes a payment to which that Lender is entitled, shall cooperate in completing or assisting with the completion of any procedural formalities necessary for that German Credit Party to obtain authorization to make that payment without a Tax Deduction and maintain that authorization where an authorization expires or otherwise ceases to have effect.

(E) If a German Credit Party is required to make a Tax Deduction, that German Credit Party shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(F) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, a German Credit Party making that Tax Deduction shall deliver to the Administrative Agent for the benefit of the Lender entitled to the payment evidence reasonably satisfactory to that Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(G) If a German Credit Party makes a Tax Payment and the relevant Lender determines, acting reasonably and in good faith, that it has obtained and utilized a Tax Credit or other similar Tax benefit which is attributable to that Tax Payment (or an increased payment of which that Tax Payment forms part), that Lender shall pay to the relevant German Credit Party such amount as that Lender determines, acting reasonably and in good faith, will leave that Lender (after that payment) in the same after-Tax position as it would have been in if the Tax Payment had not been made by that German Credit Party.

(H) Each Lender which becomes a party to this Agreement after the date of this Agreement as a Lender under a Loan made available to a German Borrower shall indicate in the relevant Assignment and Assumption or other document executed in connection with becoming a Lender whether it is (x) not a German Qualifying Lender, (y) a German Qualifying Lender (other than a German Treaty Lender), or (z) a German Treaty Lender. If a Lender which becomes a party to this Agreement after the date of this Agreement fails to indicate its status in accordance with this Section 14.2(b)(i)(H) then such Lender shall be treated for the purposes of this Agreement as if it is not a German Qualifying Lender until such time as it notifies the Administrative Agent which category applies.

(I) As used herein, the following capitalized terms shall have the meanings set forth below:

"**German Qualifying Lender**" means, in respect of a payment by or in respect of a German Borrower, a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under an Agreement or any payment under a Credit Document and is: (x) a lending through a Facility Office in Germany; or (y) a German Treaty Lender.

"**Facility Office**" means: (x) in respect of a Lender, the office or offices notified by that Lender to the Administrative Agent in writing on or before the date it becomes a Lender or the (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or (y) in respect of any other party to this Agreement which is not a Credit Party, the office in the jurisdiction in which it is resident for tax purposes.

"**German Treaty Lender**" means, in relation to a payment of interest by or in respect of a German Borrower under a Credit Document, a Lender which (x) is treated as a resident of a Treaty State for the purposes of the Treaty, and (y) does not carry on a business in Germany through a permanent establishment with which that Lender's participation in a Loan is effectively connected; and (z) fulfils any other conditions which must be fulfilled under the Treaty and the laws of Germany by residents of that Treaty State for such residents to obtain full exemption from taxation on interest in Germany (including the completion of any necessary procedural formalities.

"**Tax Credit**" means a credit against, relief or remission for, or repayment of, any Taxes.

"**Tax Deduction**" means a deduction or withholding from a payment under any Credit Document for and on account of any Taxes.

"**Tax Payment**" means in relation to any German Credit Party, either the increase in a payment made by that German Credit Party to a Lender under Section 14.2(b)(i) or a payment under Section 14.2(b)(ii).

"**Treaty State**" means a jurisdiction having a double taxation agreement (a "**Treaty**") with Germany which makes provision for full exemption from tax imposed by Germany on interest.

(ii) Tax indemnity

(A) Each German Borrower shall (within three Business Days of demand by the Administrative Agent) pay to a Lender an amount equal to the loss, liability or cost which that Lender determines will be or has been (directly or indirectly) suffered for or on account of Taxes by that Lender in respect of any payment by or on account of any obligation of any German Credit Party under any Credit Document.

(B) Paragraph (ii)(A) above shall not apply:

(x) with respect to any Taxes assessed on a Lender

(aa) under the law of the jurisdiction in which such Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Lender is treated as resident for tax purposes; or

(bb) under the law of the jurisdiction in which such Lender is located in respect of amounts received or receivable in that jurisdiction

if such Taxes are imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by such Lender; or

(y) to the extent a loss, liability or cost:

(aa) is compensated for by an increased payment under Section 14.2(b)(i) (Tax gross-up); or

(bb) would have been compensated for by an increased payment under Section 14.2(b)(i) (Tax gross-up) but was not so compensated solely because one of the exclusions in Section 14.2(b)(i) (Tax gross-up) applied.

(C) A Lender making, or intending to make a claim under this Section 14.2(b)(ii)(A) above shall promptly notify the Administrative Agent of the event which will give, or has given, rise to the claim, following which the Administrative Agent shall notify the relevant German Borrower. A Lender shall, on receiving a payment from a German Borrower under this clause 14.2(b)(ii), notify the Administrative Agent.

(c) Additional Agreements

(i) For the purposes of the Insolvency Regulation, except as set forth on Schedule 14.1, (i) the centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) of each German Credit Party is situated in Germany, and it has no "establishment" (as that term is used in Article 2(10) of the Insolvency Regulation) in any other jurisdiction and (ii) no Foreign Credit Party (to the extent such Foreign Credit Party is subject to the Insolvency Regulation) has a centre of main interest other than as situated in its jurisdiction of incorporation.

(ii) For the purposes of any Collateral that is governed by German law (the "**German Security**"), the following additional provisions shall apply, in addition to the provisions otherwise set out hereunder or in any other Credit Document:

(A) Each Foreign Secured Party appoints the Collateral Agent as its agent and attorney (*Stellvertreter*) under or in connection with any German Security Document. The Collateral Agent accepts its appointment. Without limiting any other authorization granted hereunder or under any other provision set out in any Credit Document or otherwise, the Collateral Agent shall in particular be entitled to enter into any German law governed pledge agreement in its own name as well as in the name of each Foreign Secured Party. For such purposes, each of the other Foreign Secured Parties releases the Collateral Agent from the restrictions imposed by Section 181 of the

German Civil Code (*Bürgerliches Gesetzbuch*) and any corresponding restriction set forth in other applicable jurisdictions, in each case, to the extent legally possible. Each Foreign Secured Party which is barred by its constitutional documents or by-laws from granting such relief shall notify the Collateral Agent accordingly.

(B) The Collateral Agent shall in case of German Security which is assigned (*Sicherungsabtretung*) or transferred as security (*Sicherungsübereignung*) or otherwise transferred under a non-accessory security right (*nichtakzessorische Sicherheit*) to it, hold, administer and, as the case may be, enforce or release such German Security in its own name, but for the account of the Foreign Secured Parties.

(C) In the case of German Security constituted by accessory security interest (*akzessorische Sicherheit*) created by way of pledge or other accessory instruments, the Collateral Agent shall hold (with regard to its own rights under the Section 14.2), administer and, as the case may be, enforce or release such German Security in its own name and, subject to the exercise of the authority conferred to pursuant to (A) above, on behalf of the Foreign Secured Parties.

(D) Each Foreign Secured Party hereby authorizes and instructs the Collateral Agent (with the right of sub delegation) to enter into any documents evidencing German Security and to make and accept all declarations and take all actions as it considers necessary or useful in connection with any German Security on behalf of the Foreign Secured Parties (other than the Collateral Agent). The Collateral Agent shall further be entitled to rescind, release, amend and/or execute new and different documents securing the German Security.

(E) Each Foreign Secured Party (other than the Collateral Agent) authorizes the Collateral Agent (whether or not by or through employees or agents) (i) to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Collateral Agent under the Credit Documents relating the German Security together with such powers and discretions as are reasonably incidental thereto; and (ii) to take such action on its behalf as may from time to time be authorized under or in accordance with the Credit Documents relating to the German Security.

(F) The Foreign Secured Parties and the Collateral Agent agree that all rights and claims constituted by the abstract acknowledgment of indebtedness pursuant to Section 14.5 (Parallel Debt) and all proceeds held by the Collateral Agent pursuant to or in connection with such Parallel Debt are held by the Collateral Agent with effect from the date of such Parallel Debt for the benefit of the Foreign Secured Parties and will be administered in accordance with the Credit Documents relating to any Foreign Obligations.

(G) Each Foreign Secured Party hereby ratifies and approves all acts and declarations previously done by the Collateral Agent on such Foreign Secured Party's behalf (including, for the avoidance of doubt the declarations made by the Collateral Agent as representative without power of attorney (*Vertreter ohne*

Vertretungsmacht) in relation to the creation of any pledge (*Pfandrecht*) on behalf and for the benefit of any Foreign Secured Party as future pledgee or otherwise).

(d) German Limitation Language

(i) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, if and to the extent that any managing director (*Geschäftsführer*) of a German Security Provider (or, in case of a GmbH & Co. KG, of its general partner) demonstrates in writing to the Administrative Agent by way of providing a certificate accompanied with background information satisfactory to the Administrative Agent acting reasonably that payment under a Cross- and Upstream Liability Obligation were to cause personal liability of such managing director based on mandatory restrictions imposed by German law relating to up-stream and cross-stream guarantees and/or collateral and/or payment, the Administrative Agent shall only be entitled to demand payment under the Cross- and Upstream Liability Obligation from the relevant German Security Provider up to the amount at which no such personal liability (as demonstrated by the managing director) would occur. In the event that the Administrative Agent is so restricted in demanding payment pursuant to this section, the relevant German Security Provider shall take all reasonable measures to mitigate the effect of such limitation and inform the Administrative Agent of any such measures accordingly. The German Security Provider shall at any time, upon the Administrative Agent's reasonable request, provide the Administrative Agent with further and updated evidence showing whether and to which extent its financial condition has improved. The Administrative Agent shall at all times remain entitled acting reasonably to make further demands under the Cross- and Upstream Liability Obligation as and when the financial condition of the relevant German Security Provider improves. The Foreign Secured Parties hereby authorize the Administrative Agent to rely on the information provided by the relevant German Security Provider.

(ii) Any evidence relating to financial information delivered by the relevant German Security Provider in connection with clause (i) above shall be prepared in accordance with the provisions of the German Commercial Code (*Handelsgesetzbuch*, "**HGB**") consistently applied by the relevant German Security Provider (or in case of a GmbH & Co. KG, by its general partner) in preparing its unconsolidated balance sheets (*Jahresabschluss*) according to Section 42 of the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), Sections 242, 264 HGB in the previous years, save that

(A) loans provided to the relevant German Security Provider by the Parent Borrower or any of its Subsidiaries shall be disregarded, if and to the extent that such loans are subordinated or are considered subordinated by law or by contract at least to the rank pursuant to section 39 (1) No. 5 InsO; *provided* in each case that either

a. the German Security Provider (x) has, as consequence of enforcement of the Guarantee Obligations of that German Security Provider, a

reimbursement claim against the relevant lender which can be set off and (y) is entitled to set off this reimbursement claim with the repayment claim under such loan, or

b. a waiver (*Erlass*) of such loans granted to the relevant German Security Provider (x) would be permitted under the Credit Documents and (y) would not result in personal liability of the directors of that lender or of any other affiliated company in case of a breach of capital maintenance rules under Section 30 GmbHG or any similar provision of any other jurisdiction applicable to it,

and further provided that in the case of clause a. and/or clause b. above such set-off or waiver (*Erlass*) is (factually) possible and achievable and permissible under Applicable Law (e.g. the relevant lender is itself in administration or cannot dispose of the relevant receivable because it is subject to security); and

(B) loans or other contractual liabilities incurred by the relevant German Security Provider in breach of this Agreement or any other Credit Document shall not be taken into account as liabilities.

(iii) The parties acknowledge and agree that the management of the relevant German Security Provider must at all times remain protected from personal liability, in particular based on breach of mandatory restrictions imposed by German law relating to up-stream and cross-stream guarantees and/or collateral and/or payments. Therefore, the parties agree, in particular with a view to uncertainty as regards the point in time which is relevant for the determination of free assets and therefore, whether such personal liability may be inferred, based on recent decisions of the German Supreme Court, to amend, re-negotiate (but also including potential deletion if no longer required) and / or adjust the foregoing paragraphs (i) and (ii) as appropriate for such purpose.

(iv) In addition to the above, it is agreed and acknowledged that payments and enforcement steps (each a "**Payment**") in respect of the intra-group liabilities may be made, accepted and/or taken with respect to intra-group liabilities owed to an intra-group lender incorporated in Germany as a limited liability company or a limited partnership (in each case a "**German Intra-Group Lender**") if and to the extent that such Payment is required for the avoidance of personal (criminal or civil) liability of the managing directors (*Geschäftsführer*) of the relevant German Intra -Group Lender (or its general partner, as the case may be) in connection with any breach of obligations under section 30 GmbHG.

(v) Definitions:

(A) "**German Security Provider**" shall mean any Credit Party incorporated under the laws of Germany in the legal form of a limited liability company (*Gesellschaft mit beschränkter Haftung*) or a limited partnership with a limited liability company as its general partner ("**GmbH & Co. KG**").

(B) "**Cross- and Upstream Liability Obligations**" shall mean any guarantee, security interest and indemnity or joint and several liability which secures any obligations owed by any other Credit Party who is an affiliated company (*verbundenes Unternehmen*) within the meaning of Section 15 German Stock Corporation Act (*Aktiengesetz*) (in each case other than a direct or indirect Subsidiary of such German Security Provider). For the avoidance of doubt, any guarantee and indemnity or joint and several liability which secures any obligations owed in respect of (x) loans to the extent they are on-lent to the relevant German Security Provider or any of its direct or indirect Subsidiaries and such amount is not repaid or (y) bank guarantees, letters of credit or any other financial or monetary instrument issued for the benefit of any of the creditors of the relevant German Security Provider or any of its direct or indirect Subsidiaries shall not constitute Cross- and Upstream Liability Obligations.

14.3 Irish Credit Parties

(a) Additional Representations. The Irish Borrower makes the following representations and warranties:

(i) Each Irish Credit Party (a) is a duly incorporated and validly existing corporation or other entity in good standing (as applicable) under the laws of the jurisdiction of its incorporation and has the corporate or other power and authority to own its property and assets and to transact the business in which it is engaged, except as would not reasonably be expected to result in a Material Adverse Effect, (b) has duly qualified and is authorized to do business and is in good standing (if applicable) in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect and (c) is in compliance with all Applicable Laws, except to the extent that the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect.

(ii) Each Irish Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is a party and has taken all necessary corporate or shareholder or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is a party. Each Irish Credit Party has duly executed and delivered each Credit Document to which it is a party and each such Credit Document constitutes the legal, valid and binding obligation of such Irish Credit Party enforceable in accordance with its terms, subject to the applicable Foreign Legal Reservations and Foreign Perfection Requirements and the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

(iii) Neither the execution, delivery or performance by any Irish Credit Party of the Credit Documents to which it is a party nor the compliance with the terms and provisions thereof nor the consummation of the financing transactions contemplated

hereby and thereby will violate any provision of the Organizational Documents of such Irish Credit Party.

(iv) For the purposes of the Insolvency Regulation, except as set forth on Schedule 14.1, the centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) of each Irish Credit Party is situated in Ireland, and it has no "establishment" (as that term is used in Article 2(10) of the Insolvency Regulation) in any other jurisdiction.

(v) Each Foreign Credit Party is a member of the same group of companies consisting of a holding company and its subsidiaries (each within the meaning of Section 8 of the Companies Act 2014 of Ireland) for the purposes of section 243 of the Companies Act 2014 of Ireland.

(vi) No Foreign Credit Party which is a party to an Irish Security Document or has otherwise created a Lien over any asset situate in Ireland pursuant to an Irish Security Document is a "relevant external company" within the meaning of the Companies Act 2014 of Ireland.

(b) Net Payments in Respect of Credit Extensions to the Irish Borrower

(i) The Irish Borrower shall make all payments to be made by it without any deduction or withholding of any taxes unless required by law. The Irish Borrower shall promptly upon becoming aware that it must make a deduction or withholding of any taxes, notify the Administrative Agent accordingly.

(ii) If a deduction or withholding of any taxes is required by law to be made by the Irish Borrower, the amount of the payment due from the Irish Borrower shall be increased to an amount which (after making a deduction or withholding of any taxes) leaves an amount equal to the payment which would have been due if no deduction or withholding of any taxes, had been required.

(iii) A payment shall not be increased under paragraph (ii) above by reason of a deduction or withholding of any taxes imposed by Ireland, if on the date on which the payment falls due, the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been an Irish Qualifying Lender, but on that date that Lender is not or has ceased to be an Irish Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Irish Treaty or any published practice or published concession of any relevant taxing authority; or (B) the relevant Lender is an Irish Qualifying Lender solely on account of being an Irish Treaty Lender and the Irish Borrower making the payment is able to demonstrate that the payment could have been made to the Lender without deduction or withholding had that Lender complied with is obligations under Section 14.3(b)(vi)(D) below.

(iv) If the Irish Borrower is required to make a deduction or withholding of any taxes, that Irish Borrower shall make that deduction or withholding of any taxes and any payment required in connection with that deduction or withholding of any taxes within the time allowed and in the minimum amount required by law.

(v) Within thirty days of making either a deduction or withholding of any taxes or any payment required in connection with a deduction or withholding of any taxes, the Irish Borrower making that deduction or withholding of any taxes shall deliver to the Administrative Agent entitled to the payment evidence reasonably satisfactory to the Administrative Agent that a deduction or withholding of any taxes has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(vi) (A) Each Lender on or prior to the date it becomes a party hereto, shall inform the Administrative Agent whether it is an Irish Qualifying Lender by completing and providing to the Administrative Agent an Irish Qualifying Lender Confirmation. Each Lender shall upon reasonable written request from the Irish Borrower or the Administrative Agent, provide an updated Irish Qualifying Lender Confirmation.

(A) If a Lender fails to provide an Irish Qualifying Lender Confirmation in accordance with Section 14.3(b)(vi)(A) above then that Lender shall be treated for the purposes of the Agreement (including by the Irish Borrower) as if it is not an Irish Qualifying Lender until such time as it notifies the Irish Borrower which category applies.

(B) Each Lender upon reasonable written request from the Irish Borrower from time to time shall, if applicable, provide such information as may be required to enable the Irish Borrower to comply with the provision of Sections 891A, 891E, 891F and 891G of the Taxes Act (and any regulations made thereunder).

(C) A Lender that is an Irish Qualifying Lender ~~solely~~ on account of being an Irish Treaty Lender and the Irish Borrower which makes a payment to which that Irish Treaty Lender is entitled, shall co-operate in completing any procedural formalities necessary for that Lender obtain authorization to make that payment without any deduction or withholding of any Tax imposed by Ireland.

As used herein, the following capitalized terms shall have the meanings set forth below:

"**Irish Qualifying Lender**" means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under an Agreement or any Credit Document and is:

(a) a bank within the meaning of section 246 of the Irish Taxes Act which is carrying on a bona fide banking business in Ireland for the purposes of section 246(3)(a) of the Irish Taxes Act and whose Lending Office is located in Ireland; or

(b) (i) a body corporate that is resident for the purposes of tax in a member state of the European Communities (other than Ireland) or in a territory with which Ireland has an Irish Treaty that is in effect by virtue of section 826(1) of the Irish Taxes Act or in a territory with which Ireland has signed an Irish Treaty which will come into effect once all the ratification procedures set out in section 826(1) of the Irish Taxes Act have been completed (residence for these purposes to be determined in accordance with the laws of the territory of which the Lender claims to be resident) where that member state or territory imposes a tax that generally applies to interest receivable in that member state or territory by companies from sources outside that member state or territory; or (ii) a company where interest payable in respect of an advance: (A) is exempted from the charge to income tax under a double taxation agreement having force of law under the procedures set out in section 826(1) of the Irish Taxes Act; or (B) would be exempted from the charge to Irish income tax under a an Irish Treaty entered into on or before the payment date of that interest if that Irish Treaty had the force of law under the provisions set out in section 826(1) of the Irish Taxes Act at that date; (iii) a United States of America ("**U.S.**") company, provided the U.S. company is incorporated in the U.S. and taxed in the U.S. on its worldwide income; or (iv) or a U.S. Limited Liability Company ("**LLC**"), provided the ultimate recipients of the interest would, if they were themselves lenders, be Irish Qualifying Lenders within paragraph (b)(i) or (b)(ii) or (b)(iii) of this definition and the business conducted through the LLC is so structured for market reasons and not for tax avoidance purposes; provided in each case at (i), (ii), (iii) or (iv) the Lender is not carrying on a trade or business in Ireland through an agency or branch with which the interest payment is connected; or

(c) an Irish Treaty Lender; or

(d) a body corporate: (a) which advances money in the ordinary course of a trade which includes the lending of money; and (b) in whose hands any interest payable in respect of monies so advanced is taken into account in computing the trading income of that company; and (c) which has complied with all of the provisions of section 246(5)(a) of the Irish Taxes Act, including making the appropriate notifications thereunder and (d) whose Lending Office is located in Ireland; or

(e) a qualifying company within the meaning of section 110 of the Taxes Act and whose Lending Office is located in Ireland; or

(f) an investment undertaking within the meaning of section 739B of the Taxes Act and whose Lending Office is located in Ireland.

"**Irish Qualifying Lender Confirmation**" means a certificate in the form set out in Exhibit G (*Form of Irish Qualifying Lender Confirmation*).

"**Irish Taxes Act**" means the Taxes Consolidation Act 1997 of Ireland (as amended).

"**Irish Treaty Lender**" means, a Lender (other than a Lender falling within paragraph (b) of the definition of Irish Qualifying Lender) which, subject to the completion of procedural formalities, ~~a Lender which~~ is treated as a resident of an Irish Treaty State for the purposes of a double taxation agreement and does not carry on a business in Ireland through a permanent establishment with which that Lender's participation in the Agreement or a Credit Document is effectively connected and fulfils any other conditions which must be fulfilled under an Irish Tax Treaty by residents of that Irish Treaty State for such residents to obtain full exemption from Tax imposed by Ireland on interest payable under an Agreement or any Credit Document except for this purpose it is assumed that there are fulfilled:

(i) any condition contained in the Irish Treaty which relates to the amount or terms of the Loan/or to there being or not being a special relationship between the Irish Borrower and a Lender or between both of them and another person by reason of which the amount of interest paid exceeds the amount which would have been paid in the absence of such relationship or to any other matter that is outside the control of the Lender; and

(ii) any necessary procedural formalities.

"**Irish Treaty State**" means a jurisdiction which has a double taxation agreement with Ireland (an "Irish Treaty") which is in effect and makes provision for full exemption from tax imposed by Ireland on interest.

(c) Additional Agreements

(i) For the purposes of the Insolvency Regulation, except as set forth on Schedule 14.1, (i) the centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) of each Irish Credit Party is situated in Ireland, and it has no "establishment" (as that term is used in Article 2(10) of the Insolvency Regulation) in any other jurisdiction and (ii) no Foreign Credit Party (to the extent such Foreign Credit Party is subject to the Insolvency Regulation) has a centre of main interest other than as situated in its jurisdiction of incorporation.

14.4 U.K. Credit Parties

(a) Additional Representations. The U.K. Borrower makes the following representations and warranties:

(i) Each U.K. Credit Party (a) is a duly incorporated and validly existing corporation or other entity in good standing (as applicable) under the laws of the jurisdiction of its incorporation and has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is

engaged, except as would not reasonably be expected to result in a Material Adverse Effect, (b) has duly qualified and is authorized to do business and is in good standing (if applicable) in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect and (c) is in compliance with all Applicable Laws, except to the extent that the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect.

(ii) Each U.K. Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is a party. Each U.K. Credit Party has duly executed and delivered each Credit Document to which it is a party and each such Credit Document constitutes the legal, valid and binding obligation of such U.K. Credit Party enforceable in accordance with its terms, subject to the applicable Foreign Legal Reservations and Foreign Perfection Requirements and the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

(iii) Neither the execution, delivery or performance by any U.K. Credit Party of the Credit Documents to which it is a party nor the compliance with the terms and provisions thereof nor the consummation of the financing transactions contemplated hereby and thereby will violate any provision of the Organizational Documents of such U.K. Credit Party.

(iv) For the purposes of the Insolvency Regulation, except as set forth on Schedule 14.1, the centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) of each U.K. Credit Party is situated in England and Wales, and it has no "establishment" (as that term is used in Article 2(10) of the Insolvency Regulation) in any other jurisdiction.

(v) No U.K. Credit Party is: (A) an employer (for the purposes of sections 38 to 51 of the *Pensions Act 2004* (UK)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the *Pensions Schemes Act 1993* (UK)); or (B)"connected" with or an "associate" (as those terms are used in sections 38 and 43 of the *Pensions Act 2004* (UK)) of such an employer. No U.K. Borrower or U.K. Guarantor has been issued with Financial Support Direction or Contribution Notice in respect of any pension scheme.

(vi) Subject to Liens permitted under Section 10.2 and the applicable Foreign Legal Reservations and Foreign Perfection Requirements, each Foreign Security Document entered into by a U.K. Credit Party has or will have the ranking in priority which it is expressed to have in such Foreign Security Document and it is not subject to any prior ranking or pari passu ranking Liens.

(vii) As used herein, the following capitalized terms shall have the meanings set forth below:

"**Contribution Notice**" means a contribution notice issued by the Pensions Regulator under section 38 or section 47 of the Pensions Act 2004 (UK).

"**Financial Support Direction**" shall mean a financial support direction issued by the Pensions Regulator under section 43 of the Pensions Act 2004 (UK).

"**Pensions Regulator**" means the body corporate called the Pensions Regulator established under Part I of the Pensions Act 2004 (UK).

(b) Additional Agreements.

(i) With respect to any U.K. Credit Party, all pension schemes operated by or maintained for its benefit and/or any of its employees are fully funded based on the statutory funding objective under sections 221 and 222 of the *Pensions Act 2004 (UK)* where those requirements apply and that no action or omission is taken by any U.K. Credit Party in relation to such pension scheme which has or is reasonably likely to have a Material Adverse Effect (including the termination or commencement of winding-up proceedings of any such pension scheme or a U.K. Credit Party ceasing to employ any member of such a pension scheme).

(ii) Other than (i) by virtue of the acquisition of a Person or interest in a Person (the "Acquired Person/Interest") that is an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004 (UK)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993 (UK)) or "connected" with or an "associate" of (as those terms are used in sections 38 or 43 of the Pensions Act 2004 (UK)) such an employer, in each case if such acquisition would not be expected to result in a Material Adverse Effect or (ii) by way of causing or allowing any such Acquired Person/Interest to become, or to merge, amalgamate, or consolidate with, a Credit Party provided that such action is consented to by the Administrative Agent (such consent not to be unreasonably withheld or delayed), each U.K. Credit Party shall ensure that it will not become an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004 (UK)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993 (UK)) or "connected" with or an "associate" of (as those terms are defined in sections 38 or 43 of the Pensions Act 2004 (UK)) such an employer.

(iii) U.K. "Know Your Customer" Checks. If (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Closing Date; (ii) any change in the status of a U.K. Credit Party after the Closing Date; or (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer, obliges the Administrative Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your

customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each U.K. Credit Party shall promptly upon the request of the Administrative Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Administrative Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Credit Documents. Each Lender shall promptly upon the request of the supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself) in order for the Administrative Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Credit Documents.

(c) Net Payments in Respect of Credit Extensions to the U.K. Borrower

(i) Definitions:

(A) "**CTA**" means the United Kingdom Corporation Tax Act 2009 (UK).

(B) **"Non-Bank Lender**" means:

(i) a Lender that falls within clause (i)2 of the definition of U.K. Qualifying Lender that is a party to this Agreement on the Closing Date (and has given a Tax Confirmation by entering into this Agreement on such date); and

(ii) a Lender which becomes a Lender after the date of this Agreement that gives a Tax Confirmation in the Assignment and Assumption which it executes on becoming a Lender.

(C) "**Tax Confirmation**" means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance to the U.K. Borrower is either:

i. a company resident in the United Kingdom for United Kingdom tax purposes; or

ii. a partnership each member of which is:

a) a company so resident in the United Kingdom; or

b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

(D) "**Tax Credit**" means a credit against, relief or remission for, or repayment of, any Taxes.

(E) "**Tax Deduction**" means a deduction or withholding from a payment under any Credit Document for and on account of any Taxes imposed by any taxing authority of the United Kingdom or any political subdivision thereof, other than any deduction or withholding pursuant to FATCA.

(F) "**Tax Payment**" means, in relation to the U.K. Borrower, either the increase in a payment made by the U.K. Borrower to a Lender under Section 14.4(c).

(G) "**U.K. Borrower DTTP Filing**" means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant U.K. Credit Party, which (a) where it relates to a U.K. Treaty Lender that is a Lender on the Closing Date, contains the scheme reference number and the jurisdiction of tax residence which is provided pursuant to Section 14.4(c)(ii)(B)(viii) and is filed with HM Revenue & Customs within thirty (30) days after the Closing Date; or (b) relates to a U.K. Treaty Lender that becomes a Lender after the Closing Date, contains the scheme reference number and the jurisdiction of tax residence in the Assignment and Assumption which that Lender executes, and is filed with HM Revenue & Customs within thirty (30) days after the date on which that Lender becomes a party to this Agreement.

(H) "**U.K. ITA**" means the United Kingdom Income Tax Act 2007 (UK).

(I) "**U.K. Qualifying Lender**" means:

i. a Lender (other than a Lender within clause (b) below) which is beneficially entitled to interest payable to that Lender in respect of an advance to the U.K. Borrower and is:

1) a Lender:

a) that is a bank (as defined for the purpose of section 879 of the U.K. ITA) making an advance; or

b) in respect of an advance by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that such advance was made,

and, in each case, which is within the charge to United Kingdom corporation tax with respect to any payments of interest made in respect of that advance; or

2) a Lender which is:

a) company resident in the United Kingdom for United Kingdom tax purposes;

b) a partnership, each member of which is:

c) a company so resident in the United Kingdom; or

d) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

e) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent

establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

f) a U.K. Treaty Lender; or

ii. a building society (as defined for the purposes of section 880 of the ITA) making an advance.

(J) "**U.K. Treaty Lender**" means a Lender which:

i. is treated as a resident of a U.K. Treaty State for the purposes of the relevant U.K. Treaty;

ii. does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in any advance is effectively connected; and

iii. fulfills any conditions which must be fulfilled under the U.K. Treaty for residents of that U.K. Treaty State to obtain a full exemption from United Kingdom taxation on interest payable to that Lender by the Relevant Borrower subject to the completion of any necessary procedural formalities.

(K) "**U.K. Treaty State**" means a jurisdiction having a double taxation agreement (a "**U.K. Treaty**") with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

(ii) United Kingdom Tax Matters

(A) The provisions of this Section 14.4(c) shall only apply in respect of the U.K. Borrower under any Credit Document (a "**Relevant Borrower**") to any Lender.

(B) Tax gross-up

i. Each Relevant Borrower shall make all payments to be made by it under any Credit Extension without any Tax Deduction unless a Tax Deduction is required by law.

ii. A Relevant Borrower shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax

Deduction) notify the Administrative Agent accordingly. Similarly, a Lender shall promptly notify the Administrative Agent on becoming so aware in respect of a payment payable to that Lender. If the Administrative Agent receives such notification from a Lender it shall notify the Relevant Borrower.

iii. If a Tax Deduction is required by law to be made by a Relevant Borrower, the amount of the payment due from that Relevant Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

iv. A payment shall not be increased under clause (iii) above by reason of a Tax Deduction on account of Taxes imposed by the United Kingdom if, on the date on which the payment falls due:

1) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a U.K. Qualifying Lender, but on that date that Lender is not or has ceased to be a U.K. Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority;

2) the relevant Lender is a U.K. Qualifying Lender solely by virtue of clause (i)2 of the definition of the U.K. Qualifying Lender, and an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the U.K. ITA which relates to the payment and that Lender has received from the Relevant Borrower making the payment a certified copy of that Direction; or

3) the relevant Lender is a U.K. Qualifying Lender solely by virtue of clause (i)2 of the definition of U.K. Qualifying Lender and the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Relevant Borrower, on

the basis that the Tax Confirmation would have enabled the Relevant Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA.

v. If a Relevant Borrower is required to make a Tax Deduction, that Relevant Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

vi. Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Relevant Borrower making that Tax Deduction shall deliver to Administrative Agent for the benefit of the Lender entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

vii. Subject to clause (c)viii below, a U.K. Treaty Lender and the U.K. Borrower which makes a payment to which that U.K. Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that U.K. Borrower to obtain authorization to make that payment without a Tax Deduction.

viii.

1) A U.K. Treaty Lender which becomes a party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Administrative Agent and without liability to any Relevant Borrower) by notifying the U.K. Borrower of its scheme reference number and its jurisdiction of tax residence; and

2) a Lender which acquires an interest in a Credit Extension to the U.K. Borrower after the Closing Date which is a U.K. Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme and which wishes that scheme to

apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Assignment and Assumption which it executes or otherwise notify the U.K. Borrower thereof,

and having done so, that Lender shall be under no obligation pursuant to this clause (c)viii.

ix. Nothing in clause (c)viii above shall require a U.K. Treaty Lender to: (A) register under the HMRC DT Treaty Passport scheme; or (B) apply the HMRC DT Treaty Passport scheme to any Credit Extension if it has so registered,

x. Where a Lender notifies the U.K. Borrower as described in clause (c)viii above and

1) the U.K. Borrower making a payment to that Lender has not made a U.K. Borrower DTTP Filing in respect of that Lender; or

2) the U.K. Borrower making a payment to that Lender has made a U.K. Borrower DTTP Filing in respect of that Lender but:

a) that U.K. Borrower DTTP Filing has been rejected by H.M. Revenue & Customs; or

b) H.M. Revenue & Customs has not given the U.K. Borrower authority to make payments to that Lender without a U.K. Tax Deduction within sixty (60) days after the date of the U.K. Borrower DTTP Filing,

c) H.M. Revenue & Customs gave but subsequently withdrew authority for the U.K. Borrower to make payments to that Lender without a U.K. Tax Deduction or such authority has otherwise terminated or expired or is due to otherwise terminate or expire within the next three months,

and in each case, the U.K. Borrower has notified the Lender in writing, that Lender and the U.K. Borrower shall co-operate in

completing any additional procedural formalities necessary for the U.K. Borrower to obtain authorization to make that payment without a U.K. Tax Deduction.

xi. If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with Section (c)viii above, no U.K. Borrower shall make a U.K. Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment or its participation in any Credit Extension unless the Lender otherwise agrees.

xii. A U.K. Borrower shall, promptly on making a U.K. Borrower DTTP Filing, deliver a copy of the U.K. Borrower DTTP Filing to the Administrative Agent for delivery to the relevant Lender.

xiii. A U.K. Non-Bank Lender which becomes a Lender on the date of this Agreement is entered into gives a U.K. Tax Confirmation to the U.K. Borrower by entering into this Agreement.

xiv. A U.K. Non-Bank Lender shall promptly notify any relevant U.K. Borrower and the Administrative Agent if there is any change in the position from that set out in the Tax Confirmation.

xv. Each Lender which is a party to this Agreement as of the Closing Date confirms that it is a U.K. Qualifying Lender. Each Lender which acquires an interest in a Credit Extension to the U.K. Borrower after the Closing Date shall indicate, in the Assignment and Assumption which it executes on becoming a party, or otherwise notify the Administrative Borrower, and for the benefit of the Administrative Agent and without liability to the U.K. Borrower, which of the following categories it falls in:

1) not a Qualifying Lender;

2) a Qualifying Lender (other than a U.K. Treaty Lender); or

3) a U.K. Treaty Lender.

If a Lender which acquires an interest in a Credit Extension to the U.K. Borrower after the Closing Date fails to indicate

its status in accordance with this (c)xv then such Lender shall be treated for the purposes of this Agreement (including by the U.K. Borrower) as if it is not a U.K. Qualifying Lender until such time as it notifies the Administrative Agent which category applies (and the Administrative Agent, upon receipt of such notification, shall inform the U.K. Borrower). For the avoidance of doubt, an Assignment and Assumption shall not be invalidated by any failure of a Lender to comply with this clause (c)xv.

xvi. Nothing in this clause (B) shall require a U.K. Treaty Lender to:

1) register under the HMRC DT Treaty Passport scheme; or

2) apply the HMRC DT Treaty Passport scheme to any advance if it has so registered.

(C) Tax indemnity

i. The Parent Borrower or any U.K. Credit Party shall indemnify and hold harmless the Administrative Agent, the Collateral Agent and each Lender within fifteen Business Days after written demand therefor, for the full amount of any Indemnified Taxes imposed on the Administrative Agent, the Collateral Agent or such Lender as the case may be, on or with respect to any payment by or on account of any obligation of any U.K. Credit Party party hereunder or under any other Credit Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 14.4 payable or paid by such Agent or Lender and any reasonable out-of-pocket 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 setting forth reasonable detail as to the amount of such payment or liability delivered to the Parent Borrower or any U.K. Credit Party by a Lender (with a copy to the Administrative Agent), the Administrative Agent or the Collateral Agent (as applicable) on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(D) Tax Credit. If a Relevant Borrower makes a Tax Payment and the relevant Lender determines that:

i. a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

ii. such Lender has obtained and utilized that Tax Credit,

the relevant Lender shall pay an amount to the Relevant Borrower which that Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Relevant Borrower.

(E) Lender Status Confirmation. Each Lender which becomes a party to this Agreement after the date of this Agreement ("**New Lender**") shall indicate, in the Assignment and Acceptance Agreement which it executes on becoming a party, and for the benefit of the Administrative Agent and without liability to any Relevant Borrower, which of the following categories it falls within:

i. not a U.K. Qualifying Lender;

ii. a U.K. Qualifying Lender (other than a U.K. Treaty Lender); or

iii. a U.K. Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Section 14.4(c)(ii)(E), then such New Lender or Lenders (as appropriate) shall be treated for the purposes of this Agreement (including by each Relevant Borrower) as if it is not a U.K. Qualifying Lender until such time as it notifies the Administrative Agent which category of Qualifying Lender applies (and the Administrative Agent, upon receipt of such notification, shall inform the Relevant Borrower). For the avoidance of doubt, an Assignment and Acceptance shall not be invalidated by any failure of a New Lender to comply with this Section 14.4(c)(ii)(E).

(F) Value Added Tax

i. All amounts set out or expressed in a Credit Document to be payable by any party to any Lender which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply

or supplies, and accordingly, subject to clause ii below, if VAT is or becomes chargeable on any supply made by any Lender to any party under a Credit Document, and the Lender or an Agent is required to account to the relevant authority for the VAT that party shall pay to that Agent or the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (and the Agent or the Lender concerned shall promptly provide an appropriate VAT invoice to such party). If VAT is or becomes chargeable on any supply made by any Agent or a Lender (the "**Supplier**") to any Agent or any other Lender (the "**Recipient**") under a Credit Document, and any party other than the Recipient (the "**Subject Party**") is required by the terms of any Credit Document to pay an amount equal to the consideration for such supply to the Supplier (rather than being required to reimburse the Recipient in respect of that consideration), such Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT. The Recipient will promptly pay to the Subject Party an amount equal to any credit or repayment obtained by the Recipient from the relevant tax authority which the Recipient reasonably determines is in respect of such VAT.

ii. Where a Credit Document requires any party to reimburse or indemnify an Agent or a Lender for any cost or expense, that party shall reimburse or indemnify (as the case may be) that Agent or such Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Agent or such Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

iii. Any reference in this Section 14.4(c)(ii)(F) to any party shall, at any time when such party is treated as a member of a group (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group or unity of which that party is a member for VAT purposes at the relevant time (the term "representative member" to have the same meaning as in the United Kingdom Value Added Tax Act 1994 or any other similar concept in any other jurisdiction).

iv. Except as otherwise expressly provided in Section 14.4(c)(ii)(F), a reference to "determines" or "determined" in connection with tax provisions contained in Section 1.2(h) means a determination made in the absolute discretion of the person making the determination.

(d) Appointment of Collateral Agent as Security Trustee.

(i) For the purposes of any Liens or Collateral created under any Foreign Security Documents governed by English law or by Irish law (the "**Relevant Security Documents**"), the following additional provisions shall apply.

(ii) The following expressions have the following meanings:

a. "**Appointee**" means any receiver, receiver and manager, administrator or other insolvency officer appointed in respect of any Foreign Credit Party or its assets.

b. "**Charged Property**" means the assets of the Foreign Credit Parties subject to a security interest under the Relevant Security Documents.

c. "**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Collateral Agent (in its capacity as security trustee).

(iii) The Foreign Secured Parties appoint the Collateral Agent to hold the security interests constituted by the Relevant Security Documents on trust for the Foreign Secured Parties on the terms of the Credit Documents and the Collateral Agent accepts that appointment.

(iv) The Collateral Agent, its subsidiaries and associated companies may each retain for its own account and benefit any fee, remuneration and profits paid to it in connection with (i) its activities under the Credit Documents; and (ii) its engagement in any kind of banking or other business with any Foreign Credit Party.

(v) Nothing in this Agreement constitutes the Collateral Agent as a trustee or fiduciary of, nor shall the Collateral Agent have any duty or responsibility to, any Foreign Credit Party.

(vi) The Collateral Agent shall have no duties or obligations to any other person except for those which are expressly specified in the Credit Documents or mandatorily required by applicable law.

(vii) The Collateral Agent may, so long as an Event of Default has occurred and is continuing, appoint one or more Delegates on such terms (which may include the power to sub-delegate) and subject to such conditions as it thinks fit, to exercise and perform all or any of the duties, rights, powers and discretions vested in it by the Relevant Security Documents and shall not be obliged to supervise any Delegate or

be responsible to any person for any loss incurred by reason of any act, omission, misconduct or default on the part of any Delegate, other than any loss arising from its gross negligence, willful misconduct or its breach of any Credit Document.

(viii) The Collateral Agent may (whether for the purpose of complying with any law or regulation of any overseas jurisdiction, or for any other reason) appoint (and subsequently remove) any person to act jointly with the Collateral Agent either as a separate trustee or as a co-trustee on such terms and subject to such conditions as the Collateral Agent thinks fit and with such of the duties, rights, powers and discretions vested in the Collateral Agent by the Relevant Security Documents as may be conferred by the instrument of appointment of that person.

(ix) The Collateral Agent shall notify the Lenders of the appointment of each Appointee (other than a Delegate).

(x) The Collateral Agent may pay reasonable remuneration to any Delegate or Appointee, together with any costs and expenses (including legal fees) reasonably incurred by the Delegate or Appointee in connection with its appointment. All such remuneration, costs and expenses shall be treated, for the purposes of this Agreement, as paid or incurred by the Collateral Agent.

(xi) Each Delegate and each Appointee shall have every benefit, right, power and discretion and the benefit of every exculpation (together "**Rights**") of the Collateral Agent (in its capacity as security trustee) under the Relevant Security Documents, and each reference to the Collateral Agent (where the context requires that such reference is to the Collateral Agent in its capacity as security trustee) in the provisions of the Relevant Security Documents which confer Rights shall be deemed to include a reference to each Delegate and each Appointee.

(xii) Each Foreign Secured Party confirms its approval of the Relevant Security Documents and authorizes and instructs the Collateral Agent: (i) to execute and deliver the Relevant Security Documents; (ii) to exercise the rights, powers and discretions given to the Collateral Agent (in its capacity as security trustee) under or in connection with the Relevant Security Documents together with any other incidental rights, powers and discretions; and (iii) to give any authorizations and confirmations to be given by the Collateral Agent (in its capacity as security trustee) on behalf of the Foreign Secured Parties under the Relevant Security Documents.

(xiii) The Collateral Agent may accept without inquiry the title (if any) which any person may have to the Charged Property.

(xiv) Each other Foreign Secured Party confirms that it does not wish to be registered as a joint proprietor of any security interest constituted by a Relevant Security Document and accordingly authorizes: (a) the Collateral Agent to hold such security interest in its sole name (or in the name of any Delegate) as trustee for the Foreign Secured Parties; and (b) the Land Registry (or other relevant registry) to register

the Collateral Agent (or any Delegate or Appointee) as a sole proprietor of such security interest.

(xv) Except to the extent that a Relevant Security Document otherwise requires, any moneys which the Collateral Agent receives under or pursuant to a Relevant Security Document may be: (a) invested in any investments which the Collateral Agent selects and which are authorized by applicable law; or (b) placed on deposit at any bank or institution (including the Collateral Agent) on terms that the Collateral Agent thinks fit, in each case in the name or under the control of the Collateral Agent, and the Collateral Agent shall hold those moneys, together with any accrued income (net of any applicable Tax) to the order of the Lenders, and shall pay them to the Lenders on demand.

(xvi) On a disposal of any of the Charged Property which is permitted under the Credit Documents, the Collateral Agent shall (at the cost of the Foreign Credit Parties) execute any release of the Relevant Security Documents or other claim over that Charged Property and issue any certificates of non-crystallization of floating charges that may be required or take any other action that the Collateral Agent considers desirable.

(xvii) The Collateral Agent shall not be liable for:

a. any defect in or failure of the title (if any) which any person may have to any assets over which security is intended to be created by a Relevant Security Document;

b. any loss resulting from the investment or deposit at any bank of moneys which it invests or deposits in a manner permitted by a Relevant Security Document;

c. the exercise of, or the failure to exercise, any right, power or discretion given to it by or in connection with any Credit Document or any other agreement, arrangement or document entered into, or executed in anticipation of, under or in connection with, any Credit Document; or

d. any shortfall which arises on enforcing a Relevant Security Document.

(xviii) The Collateral Agent shall not be obligated to:

a. obtain any authorization or environmental permit in respect of any of the Charged Property or a Relevant Security Document;

b. hold in its own possession a Relevant Security Document, title deed or other document relating to the Charged Property or a Relevant Security Document;

c. perfect, protect, register, make any filing or give any notice in respect of a Relevant Security Document (or the order of ranking of a Relevant Security Document), unless that failure arises directly from its own gross negligence or willful misconduct; or

d. require any further assurances in relation to a Relevant Security Document.

(xix) In respect of any Relevant Security Document, the Collateral Agent shall not be obligated to: (i) insure, or require any other person to insure, the Charged Property; or (ii) make any enquiry or conduct any investigation into the legality, validity, effectiveness, adequacy or enforceability of any insurance existing over such Charged Property.

(xx) In respect of any Relevant Security Document, the Collateral Agent shall not have any obligation or duty to any person for any loss suffered as a result of: (i) the lack or inadequacy of any insurance; or (ii) the failure of the Collateral Agent to notify the insurers of any material fact relating to the risk assumed by them, or of any other information of any kind, unless Required Lenders have requested it to do so in writing and the Collateral Agent has failed to do so within fourteen (14) days after receipt of that request.

(xxi) Every appointment of a successor Collateral Agent under a Relevant Security Document shall be by deed.

(xxii) Section 1 of the Trustee Act 2000 (UK) shall not apply to the duty of the Collateral Agent in relation to the trusts constituted by this Agreement.

(xxiii) In the case of any conflict between the provisions of this Agreement and those of the Trustee Act 1925 (UK) or the Trustee Act 2000 (UK), the provisions of this Agreement shall prevail to the extent allowed by law, and shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000 (UK).

(xxiv) The perpetuity period under the rule against perpetuities if applicable to this Agreement and any Relevant Security Document shall be 80 years from the Closing Date.

14.5 Parallel Debt

As used herein, (i) the term "**Corresponding Debt**" shall mean all Foreign Obligations, to the extent concerning an obligation to pay a sum of money, which any Foreign Credit Party owes to any Foreign Secured Party under the Credit Documents, the Secured Cash Management Agreements and the Secured Hedging Agreements and (ii) the term "**Parallel Debt**" shall mean any amount which a Foreign Credit Party owes to the Collateral Agent as a creditor in its own right and not as a representative of the other Foreign Secured Parties under this Section 14.5.

(a) Each Foreign Credit Party irrevocably and unconditionally undertakes to pay to the Collateral Agent amounts equal to, and in the currency or currencies of, its Corresponding Debt.

(b) The Parallel Debt of each Foreign Credit Party (i) shall become due and payable at the same time as its Corresponding Debt and (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.

(c) For purposes of this Section 14.5, the Collateral Agent: (i) is the sole, independent and separate creditor of each Parallel Debt, (ii) acts in its own name and not as agent, representative or trustee of the Foreign Secured Parties and its claims in respect of each Parallel Debt shall not be held in trust and (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).

(d) The Parallel Debt of a Foreign Credit Party shall be (i) decreased to the extent that its Corresponding Debt has been decreased in accordance with this Agreement, and (ii) increased to the extent that its Corresponding Debt has been increased in accordance with this Agreement, and the Corresponding Debt of a Foreign Credit Party shall be (i) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged, and (ii) increased to the extent that its Parallel Debt has increased, in each case provided that the Parallel Debt of a Foreign Credit Party shall never exceed its Corresponding Debt.

(e) Without limiting or affecting the Collateral Agent's rights against any Foreign Borrower (whether under this Agreement or any other Credit Document, Secured Cash Management Agreement or a Secured Hedging Agreement), each Foreign Borrower acknowledges that (i) nothing in the Agreement or any Credit Document, Secured Cash Management Agreement or a Secured Hedging Agreement shall impose any obligation of the Collateral Agent (other than in its capacity as a Lender) to advance any sum to any Foreign Borrower and (ii) for the purpose of any vote taken under any Credit Document, the Collateral Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender.

(f) Without limiting the generality of any provision of this Agreement, this Section 14.5 shall be binding on the successors and assigns of each Foreign Credit Party.

(g) This Section 14.5 applies for the purpose of determining the secured obligations under the Dutch Security Documents and the German Security Documents and shall, without prejudice to Section 13.12, be governed by Dutch law in relation to the Dutch Security Documents and German law in relation to the German Security Documents.

Exhibit B

Form of Solvency Certificate

SOLVENCY CERTIFICATE

OF

HOLDINGS

AND ITS SUBSIDIARIES

[DATE]

Pursuant to Section 5 of Amendment No. 1, dated as of the date hereof (the "***Amendment No. 1***"), in respect of that certain ABL Credit Agreement, dated as of December 15, 2017 (as the same may be amended, restated, supplemented or otherwise modified, refinanced or replaced from time to time, the "***Credit Agreement***") among AVAYA INC., a Delaware corporation (the "***Parent Borrower***"), AVAYA HOLDINGS, CORP., a Delaware corporation ("***Holdings***"), AVAYA CANADA CORP., an unlimited liability company organized under the laws of the province of Nova Scotia, AVAYA UK, a company incorporated in England and Wales with company number 03049861, AVAYA INTERNATIONAL SALES LIMITED, a private company limited by shares incorporated under the laws of Ireland with registered number 342279, AVAYA DEUTSCHLAND GMBH, a limited liability company (*Gesellschaft mit beschränkter Haftung*) existing under the laws of Germany, AVAYA GMBH & CO. KG, a limited partnership (*GmbH & Co. KG*) existing under the laws of Germany, the lending institutions from time to time parties thereto (the "**Lenders**"), Citibank, N.A., as Administrative Agent and as Collateral Agent, and the other agents and entities from time to time party thereto, the undersigned hereby certifies to the Administrative Agent, solely in such undersigned's capacity as chief financial officer of Holdings, and not individually (and without personal liability), as follows:

As of the date hereof, on a *pro forma* basis after giving effect to the consummation of the transactions contemplated by the Amendment No. 1:

(1) the fair value of the assets (on a going concern basis) of Holdings and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise;

(2) the present fair saleable value of the property (on a going concern basis) of Holdings and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business;

(3) Holdings and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured in the ordinary course of business; and

(4) Holdings and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business contemplated as of the date hereof for which they have unreasonably small capital.

For purposes of this Solvency Certificate, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability. Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to them in the Credit Agreement.

The undersigned is familiar with the business and financial position of Holdings and their Subsidiaries (taken as a whole). In reaching the conclusions set forth in this Solvency Certificate, the undersigned has made such other investigations and inquiries as the undersigned has deemed appropriate, having taken into account the nature of the particular business anticipated to be conducted by Holdings and its Subsidiaries (taken as a whole) after consummation of the transactions contemplated by the Amendment No. 1.

[*Signature Page Follows.*]

Schedule 1.1(a)

Commitments of Lenders

Lender	**Double Tax Treaty Passport Scheme Reference Number and Jurisdiction of Tax Residence (if applicable)**	**Initial U.S. Revolving Commitment**	**Initial Foreign Revolving Commitment**	**Letter of Credit Commitment**
Citibank, N.A.	13/C/62301/DTTP (USA)	$28,125,000	$9,375,000	$40,000,000
J.P. Morgan Chase, N.A.	013/M/0268710/DTTP (USA)	$28,125,000	$9,375,000	$36,666,667
Bank of America, N.A.	N/A	$28,125,000	$9,375,000	$36,666,667
Goldman Sachs Bank USA	3/G/0351779/DTTP (USA)	$28,125,000	$9,375,000	$36,666,667
Deutsche Bank AG New York Branch	07/D/70006/DTTP (USA)	$18,750,000	$6,250,000	N/A
Barclays Bank PLC	N/A	$18,750,000	$6,250,000	N/A
TOTAL		**$150,000,000**	**$50,000,000**	**$150,000,000**

EXHIBIT 10.29
FY21 Form of RSU Award Agreement
2019 Equity Incentive Plan

RESTRICTED STOCK UNIT AWARD AGREEMENT

PURSUANT TO THE
AVAYA HOLDINGS CORP. 2019 EQUITY INCENTIVE PLAN
* * *

Participant: [Participant Name]

"Grant Date": [Grant Date]

Grant Number: [Client Grant ID]

Number of Restricted Stock Units ("RSUs") Granted: [RSUs Granted]

* * *

This RESTRICTED STOCK UNIT AWARD AGREEMENT (this "Agreement"), dated as of the Grant Date specified above, is entered into by and between Avaya Holdings Corp., a corporation organized in the State of Delaware (the "Company"), and the Participant specified above, pursuant to the Avaya Holdings Corp. 2019 Equity Incentive Plan, as in effect and as amended from time to time (the "Plan"), which is administered by the Committee;

WHEREAS, the Committee has determined that it would be in the best interests of the Company to grant the Participant an Other Stock-Based Award in the form of the RSUs provided herein, each of which represents the right to receive one share of Common Stock upon vesting of such RSU, subject to the terms and conditions contained herein and in the Plan.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the parties hereto hereby mutually covenant and agree as follows:

1. Incorporation by Reference; Plan Document Receipt. This Agreement is subject in all respects to the terms, conditions and provisions of the Plan (including, without limitation, any amendments thereto adopted at any time and from time to time unless such amendments are expressly intended not to apply to the Award provided hereunder), all of which terms, conditions and provisions are made a part of and incorporated into this Agreement as if they were each expressly set forth herein. Except as provided otherwise herein, any capitalized term not defined in this Agreement shall have the same meaning as is ascribed thereto in the Plan. The Participant hereby acknowledges receipt of a true copy of the Plan and that the Participant has read the Plan carefully and fully understands its content and agrees to be bound thereby and hereby. In the event of any conflict between the terms of this Agreement and the terms of the Plan, the terms of the Plan shall control.

2. Grant of RSUs. The Company hereby grants to the Participant, as of the Grant Date specified above, the number of RSUs specified above, subject to adjustment as provided for in the Plan, on the terms and conditions set forth in this Agreement, including, without

limitation, in Appendix I and II attached hereto, and otherwise provided for in the Plan. Except as otherwise provided by the Plan, the Participant agrees and understands that nothing contained in this Agreement provides, or is intended to provide, the Participant with any protection against potential future dilution of the Participant's interest in the Company for any reason, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of the shares of Common Stock underlying the RSUs, except as otherwise specifically provided for in the Plan or this Agreement. The RSUs shall be credited to a separate book-entry account maintained for the Participant on the books of the Company. The Participant's interest in the book-entry account shall be that of a general, unsecured creditor of the Company.

3. Vesting.

(a) General. Except as set forth in Section 3(b), Section 3(c), [or Section 3(d)], as applicable, the RSUs subject to this Award shall vest as follows, provided that the Participant has not incurred a Termination of Employment prior to each such vesting date, and provided, further, that there shall be no proportionate or partial vesting in the periods prior to each such vesting date.

Vesting Dates	Percentage of RSUs
On the first anniversary of the Grant Date	33.34%
Quarterly on each February 15, May 15, August 15 and November 15 commencing with the first such date in the fiscal quarter following the first anniversary of the Grant Date	8.33%

Notwithstanding the foregoing, if the number of RSUs is not evenly divisible, then no fractional RSUs shall vest and the smaller installments shall vest first, and upon vesting of the last installment in accordance with the terms and conditions hereof, 100% of the RSUs subject to this Award shall be fully vested.

(b) Accelerated Vesting Upon a Qualifying Termination (Change in Control). In the event the Participant incurs a Termination of Employment prior to the last vesting date provided for in Section 3(a) as a result of the Participant's Termination of Employment by the Company or the Company Entity that is the Participant's actual employing entity without Cause [(other than a Board Qualified Retirement)], by the Participant for Good Reason, or due to the Participant's death or Disability (any such Termination of Employment, a "Qualifying Termination"), and such Qualifying Termination occurs (i) only to the extent the Participant is also a participant in the Avaya Inc. Change in Control Severance Plan, during a Potential Change in Control Period, as such term is defined in the Avaya Inc. Change in Control Severance Plan or (ii) within the twenty-four (24) month period immediately following a Change in Control, subject to the Participant's (or the Participant's estate's, if applicable) execution, delivery and non-revocation of a customary release of claims in favor of the Company and its subsidiaries and affiliates within sixty (60) days of such Termination of Employment and, except in the event of a Termination of Employment due to death, continued compliance with Appendix I to this Agreement, all outstanding and unvested RSUs shall fully vest effective as of the date of such Termination of Employment.

(c) [Retirement. Notwithstanding Section 3(d), in connection with a "Board Qualified Retirement", any RSUs that are unvested as of the date of the Participant's Termination of Employment as a result of such Board Qualified Retirement shall be treated as follows:

(i) If the date of such Termination of Employment occurs during a fiscal year following the fiscal year in which the Grant Date occurs, then any such unvested RSUs shall remain outstanding and shall continue to be settled in accordance with the other terms of this Agreement and the Plan.

(ii) If the date of such Termination of Employment occurs during the fiscal year in which the Grant Date occurs, then such unvested RSUs shall be pro-rated as described below, and such pro-rated unvested RSUs shall remain outstanding and shall continue to be settled in accordance with the other terms of this Agreement and the Plan.

(iii) The "pro-rated" portion eligible for continued settlement under Section 3(c)(ii) shall be equal to the total number of unvested RSUs multiplied by a fraction, the numerator of which is the number of days that the Participant was employed by the Company during the fiscal year in which the Termination of Employment occurs, and the denominator of which is 365. For the avoidance of doubt, any portion of the Participant's unvested RSUs that do not become eligible for continued settlement as a result of this Section 3(c) shall be immediately forfeited upon the Participant's Termination of Employment.

(iv) Any continued vesting/settlement provided for under this Section 3 shall be subject to the Participant's execution, delivery and non-revocation of a customary release of claims in favor of the Company and its subsidiaries and affiliates within sixty (60) days following the Termination of Employment and subject to continued compliance with Appendix I to this Agreement.

(v) "Board Qualified Retirement" means a Participant's voluntary retirement from all employment positions with the Company that is determined by the Board to constitute a qualified retirement for purposes of receiving the benefits set forth in this Section 3.][1]

(d) Forfeiture. Except as otherwise expressly provided for in Section 3(b), [Section 3(c)] or as otherwise determined by the Committee or its designee, all outstanding and unvested RSUs shall be immediately forfeited upon the Participant's Termination of Employment for any reason. For the avoidance of doubt, in the event that the Participant fails to execute, deliver and not revoke the release of claims provided for in Section 3(b) [or 3(c)], any RSUs that remain outstanding and unvested as of the sixtieth (60^{th}) day following the date on which the Qualifying Termination [or termination pursuant to Section 3(c)] occurs shall be forfeited and cancelled as of such sixtieth (60^{th}) day without consideration therefor.

[1] Include if applicable.

Additionally, in the event of the Participant's Termination of Employment by the Company or the Company Entity that is the Participant's actual employing entity for Cause, all of the Participant's outstanding RSUs, whether or not vested, shall be forfeited and cancelled without consideration therefor effective as of the date of such Termination of Employment.

4. [Delivery of Shares that Vest Pursuant to Section 3(a) or 3(b). [Except as otherwise expressly provided for in Section 23,] promptly following the vesting of the RSUs that vest pursuant to Section 3(a) (but in no event more than sixty (60) days thereafter) or, in the event of a Qualifying Termination pursuant to Section 3(b) above, on the sixtieth (60th) day following the date on which the Participant's Termination of Employment occurs, provided the conditions set forth in Section 3(b) above have been met, the Participant shall receive the number of shares of Common Stock (or any consideration paid in respect of such Common Stock in connection with a Change in Control) that correspond to the number of RSUs that have become vested on the applicable vesting date, less any shares of Common Stock withheld by the Company pursuant to Section 13.6 of the Plan, and such vested RSUs shall be cancelled upon receipt of the shares of Common Stock (or any consideration paid in respect of such Common Stock in connection with a Change in Control).

5. Delivery of Shares Pursuant to Section 3(c). Promptly following the originally-scheduled vesting dates set forth in Section 3(a) (but in no event more than sixty (60) days thereafter), the Participant shall receive the number of shares of Common Stock that correspond to the number of RSUs applicable to such date, less any shares of Common Stock withheld by the Company pursuant to Section 13.6 of the Plan, and such RSUs shall be cancelled upon receipt of the shares of Common Stock.][2]

6. Non-Transferability. No portion of the RSUs may be sold, assigned, transferred, encumbered, hypothecated or pledged by the Participant, other than to the Company as a result of forfeiture of the RSUs as provided herein.

7. Governing Law. All questions concerning the construction, validity and interpretation of this Agreement, including but not limited to Appendix I and II hereto, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the choice of law principles thereof. Any suit, action or proceeding with respect to this Agreement shall be governed by Section 13.11 of the Plan.

8. Legend. The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates, if any, representing shares of Common Stock issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates, if any, representing shares of Common Stock acquired pursuant to this Agreement in the possession of the Participant in order to carry out the provisions of this Section 8.

[2] Conform if retirement provision is not included.

9. Securities Representations. This Agreement is being entered into by the Company in reliance upon the following express representations and warranties of the Participant. The Participant hereby acknowledges, represents and warrants that:

(a) The Participant has been advised that the Participant may be an "affiliate" within the meaning of Rule 144 under the Securities Act and in this connection the Company is relying in part on the Participant's representations set forth in this Section 9.

(b) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the shares of Common Stock issuable hereunder must be held indefinitely unless an exemption from any applicable resale restrictions is available or the Company files an additional registration statement (or a "re-offer prospectus") with regard to such shares of Common Stock and the Company is under no obligation to register such shares of Common Stock (or to file a "re-offer prospectus").

(c) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the Participant understands that (i) the exemption from registration under Rule 144 shall not be available unless (A) a public trading market then exists for the Common Stock, (B) adequate information concerning the Company is then available to the public, and (C) other terms and conditions of Rule 144 or any exemption therefrom are complied with, and (ii) any sale of the shares of Common Stock issuable hereunder may be made only in limited amounts in accordance with the terms and conditions of Rule 144 or any exemption therefrom.

10. Entire Agreement; Amendment. This Agreement, together with the Plan, contains the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements or prior understandings, whether written or oral, between the parties relating to such subject matter; provided however, that the restrictive covenants contained in Appendix I hereto are in addition to and not in lieu of any other restrictive covenants by which the Participant may be bound. The Committee shall have the right, in its sole discretion, to modify or amend this Agreement from time to time in accordance with and as provided in the Plan. The Company shall give written notice to the Participant of any such modification or amendment of this Agreement as soon as practicable after the adoption thereof.

11. Notices; Electronic Delivery and Acceptance. Any notice hereunder by the Participant shall be given to the Company in writing and such notice shall be deemed duly given only upon receipt thereof by the General Counsel of the Company. Any notice hereunder by the Company shall be given to the Participant in writing and such notice shall be deemed duly given only upon receipt thereof at such address as the Participant may have on file with the Company. The Company may, in its sole discretion, decide to deliver any documents related to RSUs awarded under the Plan or future RSUs that may be awarded under the Plan by electronic means or request the Participant's consent to participate in the Plan by electronic means. By accepting this RSU Award, the Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

12. No Right to Employment or Service. Any questions as to whether and when there has been a Termination of Employment and the cause of such Termination of Employment shall be determined in the sole discretion of the Committee. Nothing in this Agreement shall interfere with or limit in any way the right of the Company, its Subsidiaries or its Affiliates to terminate the Participant's employment or service at any time, for any reason and with or without Cause, and shall not guarantee any right to future employment.

13. Transfer of Personal Data. The Participant authorizes, agrees and unambiguously consents to the transmission by the Company (or any Subsidiary) of any personal data information related to the RSUs awarded under this Agreement for legitimate business purposes (including, without limitation, the administration of the Plan), to the extent permitted by applicable law. This authorization and consent is freely given by the Participant.

14. Compliance with Laws. The grant of RSUs and the issuance of shares of Common Stock hereunder shall be subject to, and shall comply with, any applicable requirements of any foreign and U.S. federal and state securities laws, rules and regulations (including, without limitation, the provisions of the Securities Act, the Exchange Act and in each case any respective rules and regulations promulgated thereunder) and any other law, rule regulation or exchange requirement applicable thereto. The Company shall not be obligated to issue the RSUs or any shares of Common Stock pursuant to this Agreement if any such issuance would violate any such requirements. As a condition to the settlement of the RSUs, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate to evidence compliance with any applicable law or regulation.

15. Binding Agreement. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Company and its successors and assigns.

16. Headings. The titles and headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

18. Further Assurances. Each party hereto shall do and perform (or shall cause to be done and performed) all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as either party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan and the consummation of the transactions contemplated thereunder.

19. Severability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

20. Acquired Rights. The Participant acknowledges and agrees that: (a) the Company may terminate or amend the Plan at any time; (b) the award of RSUs made under this Agreement is completely independent of any other award or grant and is made at the sole discretion of the Company; (c) no past grants or awards (including, without limitation, the RSUs awarded hereunder) give the Participant any right to any grants or awards in the future whatsoever; and (d) any benefits granted under this Agreement are not part of the Participant's ordinary compensation and shall not be considered as part of such compensation in the event of severance, redundancy or resignation.

21. Acceptance of Agreement. Notwithstanding anything herein to the contrary, in order for this Award to become effective, the Participant must acknowledge acceptance of this Agreement no later than the sixtieth (60^{th}) day following the Grant Date (the "Final Acceptance Date"). If the Participant's acceptance of this Agreement does not occur by the Final Acceptance Date, then the entire Award will be forfeited and cancelled without any consideration therefor, except as otherwise determined in the Committee's sole and absolute discretion.

22. No Waiver. No waiver or non-action by either party hereto with respect to any breach by the other party of any provision of this Agreement shall be deemed or construed to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

23. No Rights as a Stockholder. The Participant's interest in the RSUs shall not entitle the Participant to any rights as a stockholder of the Company. The Participant shall not be deemed to be the holder of, or have any of the rights and privileges of a stockholder of the Company in respect of, the shares of Common Stock unless and until such shares have been issued to the Participant in accordance with this Agreement and the Plan.

24. [Withholding. Notwithstanding the withholding provision in the Plan or anything else in this Agreement:

(a) If in the tax jurisdiction in which the Participant resides, a tax withholding obligation arises upon vesting of the RSUs (regardless of when the Common Stock underlying the RSUs are delivered to the Participant), on each date that all or a portion of the RSUs actually vests, if (1) the Company does not have in place an effective registration statement under the Securities Act and there is not a Securities Act exemption available under which the Participant may sell Common Stock or (2) the Participant is subject to a Company-imposed trading blackout, then unless the Participant has made other arrangements satisfactory to the Company, the Company will withhold from the shares of Common Stock to be delivered to the Participant such number of shares of Common Stock as are sufficient in value (as determined by the Company in its sole discretion) to cover the amount of the tax withholding obligation.

(b) If in the tax jurisdiction in which the Participant resides, a tax withholding obligation arises upon delivery of the Common Stock underlying the RSUs (regardless of when vesting occurs), then following each date that all or a portion of the RSUs actually vests, the Company will defer the delivery of the Common Stock otherwise deliverable to the Participant until the earliest of: (1) the date of the Participant's Termination of Employment, (2) the date that the short-term deferral period under Section 409A of the Code expires with respect to such

vested RSUs, or (3) the date on which the Company has in place an effective registration statement under the Securities Act or there is a Securities Act exemption available under which the Participant may sell Common Stock and on which the Participant is not subject to a Company-imposed trading blackout (the earliest of such dates, the "Delivery Date"). If on the Delivery Date (x) the Company does not have in place an effective registration statement under the Securities Act and there is not a Securities Act exemption available under which the Participant may sell shares of Common Stock or (y) the Participant is subject to a Company-imposed trading blackout, then unless the Participant has made other arrangements satisfactory to the Company, the Company will withhold from the shares of Common Stock to be delivered to the Participant such number of shares of Common Stock as are sufficient in value (as determined by the Company in its sole discretion) to cover the amount of the tax withholding obligation.][3]

25. Section 409A. Notwithstanding anything herein or in the Plan to the contrary, the RSUs are intended to be exempt from, or comply with, the applicable requirements of Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent. The RSUs shall be subject to the terms of Section 13.8 of the Plan. Notwithstanding any contrary provision in the Plan or this Agreement, any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code) that are otherwise required to be made under the Plan or this Agreement to a "specified employee" (as defined under Section 409A of the Code) as a result of such employee's separation from service (other than a payment that is not subject to Section 409A of the Code) shall be delayed for the first six (6) months following such separation from service and shall instead be paid upon expiration of such delay period (or, if earlier, upon the date of death of the specified employee). Furthermore, notwithstanding any contrary provision of the Plan or this Agreement, any payment of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code) under this Agreement shall be treated as a right to receive a series of separate and distinct payments. With respect to any RSUs under this Agreement that are characterized as "nonqualified deferred compensation" within the meaning of Section 409A of the Code, an event shall not be considered to be a Change in Control under the Plan for purposes of payment of such RSUs unless such event is also a "change in ownership," a "change in effective control" or a "change in the ownership of a substantial portion of the assets" of the Company within the meaning of Section 409A of the Code.

26. Non-U.S. Provisions. The Award and the shares of Common Stock subject to the Award and payable pursuant to Section 4 of this Agreement shall be subject to any special terms and conditions for the Participant's country set forth in Appendix II attached hereto (the "Country Addendum"). Moreover, if the Participant relocates to one of the countries included in the Country Addendum, the special terms and conditions for such country will apply to the Participant, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Country Addendum constitutes part of this Agreement.

[Remainder of Page Intentionally Left Blank]

[3] Remove if Retirement provision included.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of [●].

AVAYA HOLDINGS CORP.

By:
Name:
Title:

PARTICIPANT
[To be executed electronically.]

Appendix I

NON-DISCLOSURE, IP ASSIGNMENT, NON-COMPETITION AND NON-SOLICITATION

By executing the Award Agreement, the Participant acknowledges the importance to Avaya Holdings Corp. and its Affiliates existing now or in the future (hereinafter referred to collectively as the "Company" or "Avaya"), of protecting its confidential information and other legitimate business interests, including, without limitation, the valuable trade secrets and good will that it develops or acquires. The Participant further acknowledges that the Company is engaged in a highly competitive business, that its success in the marketplace depends upon the preservation of its confidential information and industry reputation, and that obtaining agreements such as this one from its employees is reasonable and necessary. The Participant undertakes the obligations in this Appendix I in consideration of the Participant's initial and/or ongoing relationship with the Company, this Award, the Participant's being granted access to trade secrets and other confidential information of the Company, and for other good and valuable consideration, the receipt and sufficiency of which the Participant acknowledges. As used in this Appendix I, "relationship" refers to a Participant's employment or association as an advisor, consultant or contractor, with the Company, as applicable.

1. Loyalty and Conflicts of Interest

1.1 Exclusive Duty. During the Participant's relationship with the Company, the Participant will not engage in any other business activity that creates a conflict of interest except as permitted by the Company's Code of Conduct, as in effect from time to time.

1.2 Compliance with Company Policy. The Participant will comply with all lawful policies, practices and procedures of the Company, as these may be implemented and/or changed by the Company from time to time. Without limiting the generality of the foregoing, the Participant acknowledges that the Company may from time to time have agreements with other Persons which impose obligations or restrictions on the Company regarding Intellectual Property, as defined below, created during the course of work under such agreements and/or regarding the confidential nature of such work. The Participant will comply with and be bound by all such obligations and restrictions which the Company conveys to the Participant and will take all actions necessary (to the extent within Participant's power and authority) to discharge the obligations of the Company under such agreements.

2. Confidentiality

2.1 Nondisclosure and Nonuse of Confidential Information. All Confidential Information, as defined below, which the Participant creates or has access to as a result of the Participant's relationship with the Company, is and shall remain the sole and exclusive property of the Company. The Participant will never, directly or indirectly,

use or disclose any Confidential Information, except (a) as required for the proper performance of the Participant's regular duties for the Company, (b) as expressly authorized in writing in advance by the Company's General Counsel, (c) as required by applicable law or regulation, or (d) as may be reasonably determined by the Participant to be necessary in connection with the enforcement of Participant's rights in connection with this Appendix I. This restriction shall continue to apply after the termination of the Participant's relationship with the Company or any restriction time period set forth in this Appendix I, howsoever caused. The Participant shall furnish prompt notice to the Company's General Counsel of any required disclosure of Confidential Information sought pursuant to subpoena, court order or any other legal process or requirement, and shall provide the Company a reasonable opportunity to seek protection of the Confidential Information prior to any such disclosure, to the greatest extent time and circumstances permit.

2.2 Permissible Disclosure. Nothing in the Award Agreement or this Appendix I shall prohibit or restrict the Company, the Participant or their respective attorneys from: (i) making any disclosure of relevant and necessary information or documents in any action, investigation, or proceeding relating to the Award Agreement, including without limitation, this Appendix I, or the Plan, or as required by law or legal process, including with respect to possible violations of law; (ii) participating, cooperating, or testifying in any action, investigation, or proceeding with, or providing information to, any governmental agency or legislative body, any self-regulatory organization, and/or pursuant to the Sarbanes-Oxley Act; or (iii) accepting any U.S. Securities and Exchange Commission awards. In addition, nothing in this Agreement or the Plan prohibits or restricts Avaya or the Participant from initiating communications with, or responding to any inquiry from, any regulatory or supervisory authority regarding any good faith concerns about possible violations of law or regulation.

2.3 Trade Secrets. Pursuant to 18 U.S.C. § 1833(b), the Participant will not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret of Avaya that (i) is made (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to the Participant's attorney and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If the Participant files a lawsuit for retaliation by Avaya for reporting a suspected violation of law, the Participant may disclose the trade secret to the Participant's attorney and use the trade secret information in the court proceeding, so long as the Participant files any document containing the trade secret under seal and does not disclose the trade secret except under court order. Nothing in this Agreement or the Plan is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such section.

2.4 Use and Return of Documents. All documents, records, and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company, and any copies (including, without limitation, electronic), in whole or in part, thereof (the "Documents" and each individually, a "Document"), whether or not prepared by the Participant, shall be the sole and exclusive property of the Company. Except as required for

the proper performance of the Participant's regular duties for the Company or as expressly authorized in writing in advance by the Company, the Participant will not copy any Documents or remove any Documents or copies or derivatives thereof from the premises of the Company. The Participant will safeguard, and return to the Company immediately upon termination of the Participant's relationship with the Company, and at such other times as may be specified by the Company, all Documents and other property of the Company, and all documents, records and files of its customers, subcontractors, vendors, and suppliers ("Third-Party Documents" and each individually a "Third-Party Document"), as well as all other property of such customers, subcontractors, vendors and suppliers, then in the Participant's possession or control. Provided, however, if a Document or Third-Party Document is on electronic media, the Participant may, in lieu of surrender of the Document or Third-Party Document, provide a copy on electronic media to the Company and delete and overwrite all other electronic media copies thereof. Upon request of any duly authorized officer of the Company, the Participant will disclose all passwords necessary or desirable to enable the Company to obtain access to the Documents and Third-Party Documents. Notwithstanding any provision of this Section 2.4 to the contrary, the Participant shall be permitted to retain copies of all Documents evidencing Participant's hire, equity, compensation rate and benefits, this Appendix I, and any other agreements between the Participant and the Company that the Participant has signed or electronically accepted.

3. Non-Competition, Non-Solicitation, and Other Restricted Activity

3.1 Non-Competition. This paragraph is applicable to Participants who hold Senior Director and higher positions as of the date this Award is accepted. During the Participant's relationship with the Company and for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, directly or indirectly, whether paid or not, (a) serve as a partner, principal, licensor, licensee, employee, consultant, officer, director, manager, agent, affiliate, representative, advisor, promoter, associate, investor, or otherwise for, (b) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of, or (c) build, design, finance, acquire, lease, operate, manage, control, invest in, work or consult for or otherwise join, participate in or affiliate him or herself with, any business whose business, product(s) or operations are in any respect competitive with or otherwise similar to the Company's business. The foregoing covenant shall cover the Participant's activities in every part of the Territory. "Territory" shall mean (a) all states of the United States of America from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of the Participant's relationship with the Company; and (b) all other countries from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of the Participant's relationship with the Company. The foregoing shall not prevent: (a) passive ownership by the Participant of no more than two percent (2%) of the equity securities of any publicly traded company; or (b) the Participant's providing services to a division or subsidiary of a multi-division entity or holding company, so long as (i) no division or subsidiary to which the Participant provides services is in any way competitive with or similar to the business of the Company, and (ii) the Participant is not

involved in, and does not otherwise engage in competition on behalf of, the multi-division entity or any competing division or subsidiary thereof.

3.2 Good Will. Any and all good will which the Participant develops during his or her relationship with the Company with any of the customers, prospective customers, subcontractors or suppliers of the Company shall be the sole, exclusive and permanent property of the Company, and shall continue to be such after termination of the Participant's relationship with the Company, howsoever caused.

3.3 Non-Solicitation of Customers. During the Participant's relationship with the Company and for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, directly or indirectly, contact, or cause to be contacted, directly or indirectly, or engage in any form of oral, verbal, written, recorded, transcribed, or electronic communication with any customer of the Company for the purposes of conducting business that is competitive with or similar to that of the Company or for the purpose of disadvantaging the Company's business in any way; provided that this restriction applies (i) only with respect to those customers who are or have been a customer of the Company at any time within the immediately preceding one-year period or whose business has been solicited on behalf of the Company by any of its officers, employees or agents within said one-year period, other than by form letter, blanket mailing or published advertisement, and (ii) only if the Participant has performed work for such customer during his or her relationship with the Company, has been introduced to, or otherwise had contact with, such customer as a result of his or her relationship with the Company, or has had access to Confidential Information which would assist in the solicitation of such customer. The foregoing restrictions shall not apply to general solicitation or advertising, including through media and trade publications.

3.4 Non-Solicitation/Non-Hiring of Employees and Independent Contractors. During his or her relationship with the Company and for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, and will not assist anyone else to, (a) hire or solicit for hiring any employee of the Company or seek to persuade or induce any employee of the Company to discontinue employment with the Company, or (b) hire or engage any independent contractor providing services to the Company, or solicit, encourage or induce any independent contractor providing services to the Company to terminate or diminish in any substantial respect its relationship with the Company. For the purposes of this Appendix I, an "employee" or "independent contractor" of the Company is any person who is or was such at any time within the preceding six-month period. The foregoing restrictions shall not apply to general solicitation or advertising, including through media, trade publications and general job postings.

3.5 Non-Solicitation of Others. The Participant agrees that for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company, for any reason, whether voluntary or involuntary, the Participant will not

solicit, encourage, or induce, or cause to be solicited, encouraged or induced, directly or indirectly, any franchisee, joint venture, supplier, vendor or contractor who conducted business with the Company at any time during the two year period preceding the termination of his or her relationship with the Company, to terminate or adversely modify any business relationship with the Company, or not to proceed with, or enter into, any business relationship with the Company, nor shall the Participant otherwise interfere with any business relationship between the Company and any such franchisee, joint venture, supplier, vendor or contractor.

3.6 Notice of New Address and Employment. During the twelve (12)-month period immediately following the termination of Participant's relationship with the Company, for any reason, whether voluntary or involuntary, the Participant will promptly provide the Company with pertinent information concerning each new job or other business activity in which the Participant engages or plans to engage during such twelve (12)-month period as the Company may reasonably request in order to determine the Participant's continued compliance with his or her obligations under this Appendix I. The Participant shall notify any new employer(s) of the Participant's obligations under this Appendix I, and hereby consents to notification by the Company to such employer(s) concerning his or her obligations under this Appendix I. The Company shall treat any such notice and information as confidential, and will not use or disclose the information contained therein except to enforce its rights hereunder. Any breach of this Section 3.6 shall constitute a material breach of this agreement.

3.7 Acknowledgement of Reasonableness; Remedies. In signing or electronically accepting the Award Agreement, the Participant gives the Company assurance that the Participant has carefully read and considered all the terms and conditions hereof. The Participant acknowledges without reservation that each of the restraints contained herein is necessary for the reasonable and proper protection of the good will, Confidential Information and other legitimate business interests of the Company, that each and every one of those restraints is reasonable in respect to subject matter, length of time, and geographic area; and that these restraints will not prevent the Participant from obtaining other suitable employment during the period in which Participant is bound by them. The Participant will never assert, or permit to be asserted on the Participant's behalf, in any forum, any position contrary to the foregoing. Were the Participant to breach any of the provisions of this Appendix I, the harm to the Company would be irreparable. Therefore, in the event of such a breach or threatened breach, the Company shall, in addition to any other remedies available to it, have the right to obtain preliminary and permanent injunctive relief against any such breach or threatened breach without having to post bond, and the Participant agrees that injunctive relief is an appropriate remedy to address any such breach. Without limiting the generality of the foregoing, or other forms of relief available to the Company, in the event of the Participant's breach of any of the provisions of this Appendix I, the Participant will forfeit any award or payment made pursuant to any applicable severance or other incentive plan or program, or if a payment has already been made, the Participant will be obligated to return the proceeds to the Company.

3.8 Unenforceability. In the event that any provision of this Appendix I shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law. The 12-month period of restriction set forth in Sections 3.1, 3.3, 3.4 and 3.5 hereof and the 12-month period of obligation set forth in Section 3.6 hereof shall be tolled, and shall not run, during any period of time in which the Participant is in violation of the terms thereof, in order that the Company shall have the agreed- upon temporal protection recited herein.

3.9 Limited Exception for Attorneys. Insofar as the restrictions set forth in this Section 3 prohibit the solicitation, inducement or attempt to hire a licensed attorney who is employed at the Company, they shall not apply if the Participant is a licensed attorney and the restrictions contained herein are illegal, unethical or unenforceable under the laws, rules and regulations of the jurisdiction in which the Participant is licensed as an attorney.

3.10 Attorneys' Fees and Costs. Except as prohibited by law, the Participant shall indemnify the Company from any and all costs and fees, including attorneys' fees, incurred by the Company in successfully enforcing the terms of this Award Agreement against the Participant, (including, but not limited to, a court partially or fully granting any application, motion, or petition by the Company for a temporary restraining order, preliminary injunction, or permanent injunction), as a result of the Participant's breach or threatened breach of any provision contained herein. Upon successful enforcement, the Company shall be entitled to recover from the Participant its costs and fees incurred to date at any time during the course of a dispute (i.e., final resolution of such dispute is not a prerequisite) upon written demand to the Participant.

3.11 Enforcement. The Company agrees that it will not enforce Sections 3.1, 3.3, 3.5 or the portion of Section 3.4 that prohibits Participant from hiring Company employees and independent contractors to restrict Participant's employment in any jurisdiction in which such enforcement is contrary to law or regulation to the extent that Participant is a resident of such jurisdiction at the time Participant's relationship with the Company terminates and does not otherwise change residency during the restriction period.

4. Intellectual Property

4.1 In signing or electronically accepting the Award Agreement, the Participant hereby assigns and shall assign to the Company all of his or her rights, title and interest in and to all inventions, discoveries, improvements, ideas, mask works, computer or other apparatus programs and related documentation, and other works of authorship (hereinafter each designated "Intellectual Property"), whether or not patentable, copyrightable or subject to other forms of protection, made, created, developed, written or conceived by the Participant during the period of his or her relationship with the Company, whether during or outside of regular working hours, either solely or jointly with another, in

whole or in part, either: (a) in the course of such relationship, (b) relating to the actual or anticipated business or research development of the Company, or (c) with the use of Company time, material, private or proprietary information, or facilities, except as provided in Section 4.5 below.

4.2 The Participant will, without charge to the Company, but at its expense, execute a specific assignment of title to the Company and do anything else reasonably necessary, including but not limited to providing or signing additional documentation that is reasonably necessary to the Company or its designee, to enable the Company to secure, maintain and/or perfect a patent, copyright or other form of protection for said Intellectual Property anywhere in the world. Participant agrees that this obligation shall continue after Participant's relationship with the Company terminates. If the Company is unable because of Participant's mental or physical incapacity or for any other reason to secure Participant's signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Intellectual Property assigned to the Company as above, then Participant hereby irrevocably designates and appoints the Company or its designee and its duly authorized officers and agents as Participant's agent and attorney in fact, to act for and on Participant's behalf and instead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by Participant.

4.3 The Participant acknowledges that the copyrights in Intellectual Property created with the scope of his or her relationship with the Company belong to the Company by operation of law. Participant further acknowledges and agrees that the decision whether or not to commercialize or market any Intellectual Property developed by Participant solely or jointly with others is within the Company's sole benefit and discretion and that no payment will be due to Participant as a result of the Company's efforts to commercialize or market such Intellectual Property.

4.4 The Participant has previously provided to the Company a list (the "Prior Invention List") describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by the Participant prior to his or her relationship with the Company, which belong to the Participant and which are not assigned to the Company hereunder (collectively referred to as "Prior Inventions"); and, if no Prior Invention List was previously provided, the Participant represents and warrants that there are no such Prior Inventions. Participant will not incorporate, or permit to be incorporated, any Prior Invention into an Avaya product, process, machine, solution or system without the Company's prior written consent. Notwithstanding the foregoing sentence, if, in the course of Participant's relationship with the Company, Participant incorporates into an Avaya product, process, machine, solution or system a Prior Invention owned by Participant or in which Participant has an interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, use, sell, offer for sale and import, such Prior Invention as part of or in connection with such product, process, machine, solution or system.

4.5 Exception to Assignments. **THE PARTICIPANT UNDERSTANDS THAT THE PROVISIONS OF THIS AWARD AGREEMENT REQUIRING ASSIGNMENT OF INTELLECTUAL PROPERTY (AS DEFINED ABOVE) TO THE COMPANY DO NOT APPLY TO ANY INTELLECTUAL PROPERTY FOR WHICH NO EQUIPMENT, SUPPLIES, FACILITY, OR TRADE SECRET INFORMATION OF THE COMPANY WAS USED AND WHICH WAS DEVELOPED ENTIRELY ON PARTICIPANT'S OWN TIME, UNLESS (A) THE INVENTION RELATES (i) DIRECTLY TO THE BUSINESS OF THE COMPANY, OR (ii) TO THE COMPANY'S ACTUAL OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT; (B) THE INVENTION RESULTS FROM ANY WORK PERFORMED BY PARTICIPANT FOR THE COMPANY; OR (C) THE INTELLECTUAL PROPERTY OTHERWISE QUALIFIES FULLY UNDER THE PROVISIONS OF CALIFORNIA LABOR CODE SECTION 2870 (ATTACHED HERETO AS EXHIBIT A). THE PARTICIPANT WILL ADVISE THE COMPANY PROMPTLY IN WRITING OF ANY INVENTIONS THAT PARTICIPANT BELIEVES MEET THE CRITERIA FOR THIS SECTION 4.5 EXCEPTION TO ASSIGNMENTS AND WHICH WERE NOT OTHERWISE DISCLOSED ON THE PRIOR INVENTION LIST PREVIOUSLY DELIVERED TO THE COMPANY TO PERMIT A DETERMINATION OF OWNERSHIP BY THE COMPANY. ANY SUCH DISCLOSURE WILL BE RECEIVED IN CONFIDENCE.**

5. Definitions

Words or phrases which are initially capitalized or are within quotation marks shall have the meanings provided in this Section 5 and as provided elsewhere in this Appendix I. For purposes of this Appendix I, the following definitions apply:

"Affiliates" means all persons and entities directly or indirectly controlling, controlled by or under common control with the Company, where control may be by management authority, contract or equity interest.

"Confidential Information" means any and all information of the Company, whether or not in writing, that is not generally known by others with whom the Company competes or does business, or with whom it plans to compete or do business, and any and all information, which, if disclosed, would assist in competition against the Company, including but not limited to (a) all proprietary information of the Company, including but not limited to the products and services, technical data, methods, processes, know-how, developments, inventions, and formulae of the Company, (b) the development, research, testing, marketing and financial activities and strategic plans of the Company, (c) the manner in which the Company operates, (d) its costs and sources of supply, (e) the identity and special needs of the customers, prospective customers and subcontractors of the Company, and (f) the people and organizations with whom the Company has business relationships and the substance of those relationships. Without limiting the generality of the foregoing, Confidential Information shall specifically include: (i) any and all product testing methodologies, product test results, research and development plans and initiatives, marketing research, plans and

analyses, strategic business plans and budgets, and technology grids; (ii) any and all vendor, supplier and purchase records, including without limitation the identity of contacts at any vendor, any list of vendors or suppliers, any lists of purchase transactions and/or prices paid; and (iii) any and all customer lists and customer and sales records, including without limitation the identity of contacts at purchasers, any list of purchasers, and any list of sales transactions and/or prices charged by the Company. Confidential Information also includes any information that the Company may receive or has received from customers, subcontractors, suppliers or others, with any understanding, express or implied, that the information would not be disclosed. Notwithstanding the foregoing, Confidential Information does not include information that (A) is known or becomes known to the public in general (other than as a result of a breach of Section 2 hereof by the Participant), (B) is or has been independently developed or conceived by the Participant without use of the Company's Confidential Information or (C) is or has been made known or disclosed to the Participant by a third party without a breach of any obligation of confidentiality such third party may have to the Company of which the Participant is aware.

"Person" means an individual, a corporation, a limited liability company, an association, a partnership, an estate, a trust and any other entity or organization, other than the Company.

6. Compliance with Other Agreements and Obligations

The Participant represents and warrants that his or her employment or other relationship with the Company and execution and performance of the Award Agreement, including this Appendix I, will not breach or be in conflict with any other agreement to which the Participant is a party or is bound, and that the Participant is not now subject to any covenants against competition or similar covenants or other obligations to third parties or to any court order, judgment or decree that would affect the performance of the Participant's obligations hereunder or the Participant's duties and responsibilities to the Company, except as disclosed in writing to the Company's General Counsel no later than the time an executed copy of the Award Agreement, including this Appendix I, is returned by the Participant. The Participant will not disclose to or use on behalf of the Company, or induce the Company to use, any proprietary information of any previous employer or other third party without that party's consent. Participant agrees that if in the course of his or her relationship with the Company, Participant is asked for information relating to Participant's former employers' business that would require Participant to reveal information that is not publicly available, Participant will refrain from using and providing such information.

7. Entire Agreement; Severability; Modification

With respect to the subject matter hereof, this Appendix I sets forth the entire agreement between the Participant and the Company, and, except as otherwise expressly set forth herein, supersedes all prior and contemporaneous communications, agreements and understandings, written or oral, regarding the same. If the Participant previously executed an Award Agreement with an Appendix I or other schedule containing similar provisions, this

Appendix I shall supersede such agreement. In the event of conflict between this Appendix I and any prior agreement between the Participant and the Company with respect to the subject matter hereof, this Appendix I shall govern. The provisions of this Appendix I are severable, and no breach of any provision of this Appendix I by the Company, or any other claimed breach of contract or violation of law, shall operate to excuse the Participant's obligation to fulfill the requirements of Sections 2, 3 and 4 hereof. No deletion, addition, marking, notation or other change to the body of this Appendix I shall be of any force or effect, and this Appendix I shall be interpreted as if such change had not been made. This Appendix I may not be modified or amended, and no breach shall be deemed to be waived, unless agreed to in writing by the Participant and the Company's General Counsel. If any provision of this Appendix I should, for any reason, be held invalid or unenforceable in any respect, it shall not affect any other provisions, and shall be construed by limiting it so as to be enforceable to the maximum extent permissible by law. Provisions of this Appendix I shall survive any termination if so provided in this Appendix I or if necessary or desirable to accomplish the purpose of other surviving provisions. It is agreed and understood that no changes to the nature or scope of the Participant's relationship with the Company shall operate to extinguish the Participant's obligations hereunder or require that a new agreement concerning the subject matter of this Appendix I be executed.

8. Assignment

Neither the Company nor the Participant may make any assignment of this Appendix I or any interest in it, by operation of law or otherwise, without the prior written consent of the other; provided, however, the Company may assign its rights and obligations under this Appendix I without the Participant's consent (a) in the event that the Participant is transferred to a position with one of the Company's Affiliates or (b) in the event that the Company shall hereafter effect a reorganization, consolidate with, or merge into any company or entity or transfer to any company or entity all or substantially all of the business, properties or assets of the Company or any division or line of business of the Company with which the Participant is at any time associated. This Appendix I shall inure to the benefit of and be binding upon the Participant and the Company, and each of their respective successors, executors, administrators, heirs, representatives and permitted assigns.

9. Successors

The Participant consents to be bound by the provisions of this Appendix I for the benefit of the Company, and any successor or permitted assign to whose employ the Participant may be transferred, without the necessity that a new agreement concerning the subject matter or this Appendix I be re-signed at the time of such transfer.

10. Acknowledgement of Understanding

In signing or electronically accepting the Award Agreement, the Participant gives the Company assurance that the Participant has read and understood all of its terms; that the Participant has had a full and reasonable opportunity to consider its terms and to consult with

any person of his or her choosing before signing or electronically accepting; that the Participant has not relied on any agreements or representations, express or implied, that are not set forth expressly in the Award Agreement, including this Appendix I; and that the Participant has signed the Award Agreement knowingly and voluntarily.

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EXHIBIT A

CALIFORNIA LABOR CODE SECTION 2870

INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

Appendix II

Country Addendum

Special Terms and Conditions Applicable in Countries Outside the United States

Except as provided otherwise herein, any capitalized term not defined in this Country Addendum shall have the same meaning as is ascribed thereto in the Plan or the Agreement, as applicable. This Country Addendum includes additional (or, if indicated, different) terms and conditions that govern the Award granted to the Participant under the Plan if the Participant works and/or resides in one of the countries listed below. If the Participant is a citizen or resident of a country other than that in which he or she is currently working and/or residing (or is considered as such for local law purposes) or if the Participant transfers his or her service relationship and/or residence to another country after the Award is granted, the Company shall, in its discretion, determine to what extent the terms and conditions contained herein shall be applicable to the Participant.

ALL COUNTRIES OUTSIDE THE UNITED STATES

Responsibility for Taxes.

The Participant acknowledges that, regardless of any action taken by the Company or, if different, the Participant's employer (the "Employer"), the ultimate liability for all income tax, social insurance, payroll tax, payment on account or other tax-related items related to the Participant's participation in the Plan and legally applicable to the Participant ("Tax-Related Items") is and remains the Participant's responsibility and may exceed the amount, if any, actually withheld by the Company or the Employer. The Participant further acknowledges that the Company and/or the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Plan, including, but not limited to, the grant, vesting or exercise (if applicable) of the Award, the delivery of shares of Common Stock, the subsequent sale of any shares of Common Stock acquired pursuant to the Award and the receipt of any dividends, dividend equivalents or other distributions with respect to the shares of Common Stock; and (b) do not commit to and are under no obligation to structure the terms of the Award or any aspect of the Award to reduce or eliminate the Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if the Participant is subject to Tax-Related Items in more than one jurisdiction, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, the Participant agrees to make arrangements acceptable to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, Participant authorizes the Company and/or the Employer, or their respective agents, at their sole discretion, to satisfy any withholding obligation for Tax-Related Items by one or a combination of the following: (i) withholding from the Participant's wages or other cash compensation payable to the Participant by the Company and/or the Employer; (ii) withholding from the proceeds of the sale of any shares of Common Stock acquired pursuant to

the Award either through a voluntary sale or through a mandatory sale arranged by the Company (on the Participant's behalf pursuant to this authorization without further consent); (iii) withholding from any shares of Common Stock to be delivered to the Participant pursuant to the Award; and/or (iv) any other method approved by the Company and, to the extent required by applicable law or the Plan, approved by the Committee.

Depending on the withholding method, the Company and/or the Employer may withhold for Tax-Related Items by considering statutory or other withholding rates, including minimum or maximum rates in the jurisdiction(s) applicable to the Participant. In the event of any over-withholding, the Participant may receive a refund of any over-withheld amount in cash (without interest and without entitlement to the equivalent amount in shares of Common Stock). If the obligation for Tax-Related Items is satisfied by withholding shares of Common Stock, for tax purposes, the Participant will be deemed to have been issued the full number of shares of Common Stock to which he or she is entitled pursuant to the Award, notwithstanding that a number of shares of Common Stock are withheld to satisfy the obligation for Tax-Related Items.

The Participant agrees to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of the Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue the shares of Common Stock or the proceeds of the sale of shares of Common Stock, if the Participant fails to comply with the Participant's obligations in connection with the Tax-Related Items.

Nature of Grant. In accepting the Award, the Participant acknowledges, understands and agrees that:

a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

b) the grant of the Award is exceptional, voluntary and occasional and does not create any contractual or other right to receive future Awards, or benefits in lieu of Awards, even if Awards have been granted in the past;

c) all decisions with respect to future awards, if any, will be at the sole discretion of the Company;

d) the Award and the Participant's participation in the Plan shall not create or amend a right to employment or be interpreted as forming an employment or service contract with the Company or any Subsidiary (including the Employer);

e) the Participant is voluntarily participating in the Plan;

f) the future value of the underlying shares of Common Stock is unknown, indeterminable and cannot be predicted with certainty;

g) if the Participant acquires shares of Common Stock, the value of such shares of Common Stock may increase or decrease in value, even below the per share exercise price;

h) unless otherwise agreed with the Company, the Award is not granted as consideration for, or in connection with, any service the Participant may provide as a director of a Subsidiary;

i) no claim or entitlement to compensation or damages shall arise from forfeiture of the Award resulting from the Participant's Termination of Employment (for any reason whatsoever whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any);

j) unless otherwise provided in the Plan or by the Company in its discretion, the Award and any benefit that may be received pursuant to this Agreement do not create any entitlement to have the Award or any such benefit transferred to, or assumed by, another company nor be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the shares of Common Stock underlying the Award; and

k) neither the Company nor any Subsidiary (including the Employer) shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the United States Dollar that may affect the value of the Award or of any amounts due to the Participant pursuant to the Award or the subsequent sale of any shares of Common Stock acquired pursuant to the Award.

No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Participant's participation in the Plan or the Participant's acquisition or sale of the underlying shares of Common Stock. The Participant should consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

Language. The Participant acknowledges and represents that he or she is proficient in the English language or has consulted with an advisor who is sufficiently proficient in English so as to allow the Participant to understand the terms and conditions of this Agreement or any other document related to the Award and/or the Plan. Furthermore, if the Participant has received this Agreement, or any other document related to the Award and/or the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

Imposition of Other Requirements. The Company reserves the right to impose other requirements on participation in the Plan or on the Award or shares of Common Stock acquired pursuant to the Award, to the extent the Company determines it is necessary or advisable for

legal or administrative reasons, and to require the undersigned to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

Choice of Venue. Participant agrees to the exclusive venue and jurisdiction of the State and Federal Courts located in the state of Delaware and waives any objection based on lack of jurisdiction or inconvenient forum. Any action relating to or arising out of this Plan must be commenced within one year after the cause of action accrued.

Insider Trading / Market Abuse Restrictions. The Participant may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions including, but not limited to, the United States ("U.S.") and the Participant's country of residence, which may affect the Participant's ability to accept, acquire, sell or otherwise dispose of shares of Common Stock or Awards, or rights linked to the value of shares of Common Stock during such times as the Participant is considered to have "inside information" regarding the Company (as defined by the laws or regulations in the applicable jurisdictions). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under the Company's insider trading policy as set forth in the "Avaya Holdings Corp. Insider Trading and Disclosure of Confidential Information Policy for Directors, Officers and Employees." The Participant is responsible for ensuring compliance with any applicable restrictions.

Exchange Control, Tax and/or Foreign Asset / Account Reporting. Certain foreign asset and/or foreign account reporting requirements and exchange controls may affect the Participant's ability to purchase or hold shares of Common Stock under the Plan or funds received from participating in the Plan in a brokerage or bank account outside of the Participant's country. The Participant may be required to report such accounts, assets or transactions to the tax or other authorities in the Participant's country. The Participant may also be required to repatriate sale proceeds or other funds received as a result of his or her participation in the Plan to the Participant's country through a designated bank or broker and/or within a certain time after receipt. The Participant is responsible for complying with any applicable regulations and should consult with his or her personal legal and tax advisors for any details.

Data Privacy. This provision replaces Section 12 (Transfer of Personal Data) of the Agreement:

If the Participant would like to participate in the Plan, the Participant will need to review the information provided in this Agreement and, where applicable, declare consent to the processing and/or transfer of personal data as described below.

a) ***EEA+ Controller and Representative. If the Participant is based in the European Union ("EU"), the European Economic Area, Switzerland or, if and when the United Kingdom leaves the EU, the United Kingdom (collectively "EEA+"), the Participant should note that the Company, with its address at 350 Mt. Kemble Avenue, Morristown, NJ 07960, United States of America, is the controller responsible for the processing of the Participant's personal data in connection with the Agreement and the Plan. The Company's representative in the EU is Avaya Deutschland GmbH, Theodor-Heuss Allee 112, Frankfurt, Germany 60486.***

b) ***Data Collection and Usage.*** ***The Company collects, uses and otherwise processes certain personal data about the Participant, including, but not limited to, the Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport or other identification number (e.g., resident registration number), salary, nationality, job title, any shares of stock or directorships held in the Company, details of all Awards or any other entitlement to shares of Common Stock awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor, which the Company receives from the Participant, the Employer or otherwise in connection with this Agreement or the Plan ("Data"), for the purposes of implementing, administering and managing the Plan and allocating the cash payment or shares of Common Stock pursuant to the Plan.***

If the Participant is based in the EEA+, the legal basis, where required, for the processing of Data by the Company is the necessity of the data processing for the Company to (i) perform its contractual obligations under this Agreement, (ii) comply with legal obligations established in the EEA+, or (iii) pursue the legitimate interest of complying with legal obligations established outside of the EEA+.

If the Participant is based outside of the EEA+, the legal basis, where required, for the processing of Data by the Company is the Participant's consent, as further described below.

c) ***Stock Plan Administration Service Providers.*** ***The Company transfers Data to Fidelity Stock Plan Services, LLC, an independent service provider (the "Service Provider"), which is assisting the Company by performing recordkeeping and administration services for the Plan. In the future, the Company may select a different service provider and share Data with such other provider serving in a similar manner. The Service Provider will open an account for the Participant to receive and trade shares of Common Stock acquired under the Plan. The Participant may be asked to agree on separate terms and data processing practices with the Service Provider, with such agreement being a condition to the ability to participate in the Plan.***

d) ***International Data Transfers.*** ***In the event the Participant resides, works or is otherwise located outside of the U.S., Data will be transferred from the Participant's country to the U.S., where the Company and its service providers are based. The Participant understands and acknowledges that the U.S. is not subject to an unlimited adequacy finding by the European Commission and might not provide a level of protection of personal data equivalent to the level of protection in the Participant's country. As a result, in the absence of a selfcertification of the data recipient in the U.S. under the EU/U.S. or Swiss/U.S. Privacy Shield Framework or the implementation of appropriate safeguards such as the Standard***

Contractual Clauses adopted by the EU Commission or binding corporate rules approved by the competent EU data protection authority, the processing of personal data might not be subject to substantive data processing principles or supervision by data protection authorities. In addition, data subjects might have no or less enforceable rights regarding the processing of their personal data.

Neither the Company nor the Service Provider is currently self-certified under the EU/U.S. or Swiss/U.S. Privacy Shield Framework but the Company has implemented binding corporate rules, among others, with its subsidiaries in the EEA+. If the Participant is based in the EEA+, Data will be transferred from the EEA+ to the Company based on the binding corporate rules. The Participant may view a copy of such appropriate safeguards at https://www.avaya.com/en/privacy/bcr/. The onward transfer of Data from the Company to the Service Provider or, as the case may be, a different service provider of the Company is based solely on the Participant's consent, as further described below.

If the Participant is based outside of the EEA+, the Company's legal basis, where required, for the transfer of Data from the Participant's country to the Company and from the Company onward to the Service Provider or, as the case may be, a different service provider of the Company is the Participant's consent, as further described below.

e) Data Retention. The Company will hold and use the Data only as long as is necessary to implement, administer and manage the Participant's participation in the Plan, or as required to comply with legal or regulatory obligations, including under tax and security laws.

f) Data Subject Rights. The Participant may have a number of rights under data privacy laws in his or her jurisdiction. Depending on where the Participant is based, such rights may include the right to (i) request access or copies of Data the Company processes, (ii) the rectification or amendment of incorrect or incomplete Data, (iii) the deletion of Data, (iv) request restrictions on the processing of Data, (v) object to the processing of Data for legitimate interests, (vi) the portability of Data, (vi) lodge complaints with competent authorities in the Participant's jurisdiction, and/or to (viii) receive a list with the names and addresses of any potential recipients of Data. To receive additional information regarding these rights or to exercise these rights, the Participant can contact the Company's data privacy office at dataprivacy@avaya.com or, for the Participants in the EEA+, view the Company's binding corporate rules at https://www.avaya.com/en/privacy/bcr/.

g) Necessary Disclosure of Personal Data. The Participant understands that providing the Company with Data is necessary for the performance of the Agreement and that the Participant's refusal to provide Data would make it impossible for the Company to perform its contractual obligations and may affect the Participant's ability to participate in the Plan.

h) ***Voluntariness and Consequences of Consent Denial or Withdrawal. Participation in the Plan is voluntary and the Participant is providing any consents referred to herein on a purely voluntary basis. The Participant understands that he or she may withdraw any such consent at any time with future effect for any or no reason. If the Participant does not consent, or if the Participant later seeks to withdraw the Participant's consent, the Participant's salary from or employment and career with the Employer will not be affected; the only consequence of refusing or withdrawing the Participant's consent is that the Company would not be able to grant Awards to the Participant or administer or maintain the Awards. For more information on the consequences of refusal to consent or withdrawal of consent, the Participant should contact the Company's data privacy office at dataprivacy@avaya.com.***

Declaration of Consent. If the Participant is based in the EEA+, by accepting the Award and indicating consent via the Company's online acceptance procedure, the Participant explicitly declares his or her consent to the onward transfer of Data by the Company to the Service Provider or, as the case may be, a different service provider of the Company in the U.S. as described above.

If the Participant is based outside of the EEA+, by accepting the Awards and indicating consent via the Company's online acceptance procedure, Participant explicitly declares his or her consent to the entirety of the Data processing operations described in this Agreement including, without limitation, the onward transfer of Data by the Company to the Service Provider or, as the case may be, a different service provider of the Company in the U.S.

BELGIUM

Acceptance of Agreement. If the Award is an Option, the Participant should refer to the separate Belgium Option Package for information about the tax impact of the acceptance of the Award and consult his or her personal tax advisor for further information.

CANADA

Method of Exercise and Payment. If this Award is an Option, due to tax considerations in Canada and notwithstanding the provisions of Section 6.4(d) of the Plan, the Participant may not pay the Per Share Exercise Price by having the Company withhold shares of Common Stock issuable upon exercise of the Option or in the form of Common Stock owned by the Participant. The Company reserves the right to allow these forms of payment of the Per Share Exercise Price for legal or administrative reasons.

Delivery of Shares / Settlement. The Award will be settled by the delivery of shares of Common Stock and not by the delivery of cash or a combination of cash and shares of Common Stock.

Securities Law Notification. The Participant is permitted to sell any shares of Common Stock acquired under the Plan through the Service Provider or other such stock plan service provider as may be selected by the Company in the future, provided the sale of shares takes place outside Canada through facilities of a stock exchange on which the Common Stock is listed. The Common Stock is currently listed on the New York Stock Exchange.

The following provisions will apply to individuals who are residents of Quebec:

Language Consent. The parties acknowledge that it is their express wish that this Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or directly hereto, be drawn up in English.

Consentement à la Langue Utilisée. Les parties reconnaissent avoir exigé la rédaction en anglais de cette convention, ainsi que de tous documents, avis et procédures judiciaires, exécutés, donnés ou intentés en vertu de, ou liés directement ou indirectement à, la présente convention.

Data Privacy. This provision supplements the above Data Privacy section of this Country Addendum:

The Participant hereby authorizes the Company and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. The Participant further authorizes the Company and its Subsidiaries (including the Employer) to disclose and discuss the Plan with their advisors. The Participant further authorizes the Company and the Employer to record and keep such information in Participant's employment file.

GERMANY

No country specific terms and conditions.

INDIA

Method of Exercise and Payment. If this Award is an Option, due to exchange control considerations in India and notwithstanding the provisions of Section 6.4(d) of the Plan, the Participant may not pay the Per Share Exercise Price through a procedure whereby the Participant delivers irrevocable instructions to a broker acceptable to the Committee to sell a number of shares of Common Stock with an aggregate value equal to the Per Share Exercise Price and deliver the proceeds of such sale to the Company, unless all of the shares of Common Stock subject to the exercised portion of the Option are sold at such time (i.e., a "sell-to-cover" method of exercise and payment is not permitted but a "sell-all" method of exercise and payment is permitted). The Company reserves the right to allow this form of payment of the Per Share Exercise Price for legal or administrative reasons.

IRELAND

No country specific terms and conditions.

ITALY

Method of Exercise and Payment. If this Award is an Option, due to regulatory considerations in Italy and notwithstanding the provisions of Section 6.4(d) of the Plan, the Participant must pay the Per Share Exercise Price through a procedure whereby the Participant delivers irrevocable instructions to a broker acceptable to the Committee to sell a number of shares of Common Stock with an aggregate value equal to the Per Share Exercise Price and deliver the proceeds of such sale to the Company, provided that all of the shares of Common Stock subject to the exercised portion of the Option must be sold at such time (i.e., a "sell-all" method of exercise and payment is required). The Company reserves the right to allow other forms of payment of the Per Share Exercise Price for legal or administrative reasons.

Plan Document Acknowledgment. In accepting the Award, the Participant acknowledges that the Participant has received a copy of the Plan and the Agreement and has reviewed the Plan and the Agreement in their entirety and fully understands and accepts all provisions of the Plan and the Agreement. The Participant further acknowledges that the Participant has read and specifically and expressly approves the following sections of the Agreement and the Country Addendum: Vesting (for RSUs and PRSUs); Vesting and Exercisability (for Options); Exercise Following Termination (for Options); Securities Representation (for RSUs and PRSUs); Compliance with Laws; Further Assurances; Acceptance of Agreement; Withholding and Responsibility for Taxes; Language; Imposition of Other Requirements; Governing Law; Choice of Venue.

MEXICO

Plan Document Acknowledgment. By accepting the Award, the Participant acknowledges that he or she has received a copy of the Plan and the Agreement, which the Participant has reviewed. The Participant acknowledges further that he or she accepts all the provisions of the Plan and the Agreement. The Participant also acknowledges that he or she has read and specifically and expressly approves the terms and conditions set forth in the Nature of Grant section, which clearly provide as follows: (i) the Participant's participation in the Plan does not constitute an acquired right; (ii) the Plan and the Participant's participation in it are offered by the Company on a wholly discretionary basis; (iii) the Participant's participation in the Plan is voluntary; and (iv) none of the Company or its Subsidiaries (including the Employer) are responsible for any decrease in the value of any shares of Common Stock (or the amount of any cash payment) that may be acquired under the Plan.

Labor Law Policy and Acknowledgment. In accepting the Award, the Participant expressly recognizes that Avaya Holdings Corp., with offices at 350 Mt. Kemble Avenue, Morristown, NJ

07960, United States of America, is solely responsible for the administration of the Plan and that the Participant's participation in the Plan does not constitute an employment relationship between the Participant and the Company since the Participant is participating in the Plan on a wholly commercial basis and the Participant's sole Employer is a Subsidiary in Mexico ("Avaya-Mexico"). Based on the foregoing, the Participant expressly recognizes that the Plan and the benefits that the Participant may derive from his or her participation in the Plan do not establish any rights between the Participant and Avaya-Mexico, and do not form part of the employment conditions and/or benefits provided by Avaya-Mexico and any modification of the Plan or its termination shall not constitute a change or impairment of the terms and conditions of the Participant's employment.

The Participant further understands that his or her participation in the Plan is a result of a unilateral and discretionary decision of the Company; therefore, the Company reserves the absolute right to amend and/or discontinue the Participant's participation at any time without any liability to the Participant.

Finally, the Participant hereby declares that he or she does not reserve any action or right to bring any claim against the Company for any compensation or damages regarding any provision of the Plan or the benefits derived under the Plan, and Participant therefore grants a full and broad release to the Company and its Subsidiaries, branches, representation offices, shareholders, officers, agents or legal representatives with respect to any claim that may arise.

Reconocimiento del Plan. Al aceptar este premio ("Award"), el Participante reconoce que él o ella ha recibido una copia del plan y del Contrato y que lo ha revisado. El Participante reconoce además que acepta todas las disposiciones del Plan y del Contrato. El Participante de igual forma reconoce que acepta los términos y condiciones establecidos en la sección Naturaleza del Otorgamiento ("Nature of Grant"), que estipula claramente lo siguiente: (i) la participación del Participante en el Plan no constituye un derecho adquirido; (ii) la Compañía ofrece el plan y la Participación del Participante en él de manera totalmente discrecional; (iii) la participación del Participante en el Plan es voluntaria; y (iv) ninguna de las Compañías o Subsidiarias (incluido el Patrón) son responsables de cualquier disminución en el valor de las Acciones (o el monto de cualquier pago en efectivo) que pueda adquirirse en virtud del Plan

Política de la Ley Laboral y Reconocimiento. Al aceptar este Premio ("Award"), el Participante reconoce expresamente que Avaya Holdings Corp., con oficinas ubicadas en 350 Mt. Kemble Avenue, Morristown, New Jersey 07960, U.S.A.., es el único responsable de la administración del Plan y que la participación del Participante en el mismo, el pago del premio o la adquisición de Acciones no constituye de ninguna manera una relación laboral entre el Participante y la Compañía, debido a que la participación de esa persona en el Plan deriva únicamente de una relación comercial y el único Patrón del participante es un Afiliada Mexicana de la Compañía ("Avaya-México"). Derivado de lo anterior, el Participante reconoce expresamente que el Plan y los beneficios que pudieran derivar para el Participante por su participación en el mismo, no establecen ningún derecho entre el Participante e Avaya-México, y no forman parte de las condiciones laborales y/o prestaciones otorgadas por Avaya-México, y cualquier modificación

al Plan o la terminación del mismo de ninguna manera podrá ser interpretada como una modificación o desmejora de los términos y condiciones de trabajo del Participante.

Asimismo, el Participante reconoce que su participación en el Plan es resultado de la decisión unilateral y discrecional de la Compañía, por lo tanto, la Compañía se reserva el derecho absoluto para modificar y/o discontinuar la participación del Participante en cualquier momento, sin ninguna responsabilidad hacia el Participante.

Finalmente el Participante manifiesta que no se reserva ninguna acción o derecho que ejercitar en contra dela Compañía, por cualquier compensación o daños en relación con cualquier disposición del Plan o de los beneficios derivados del mismo, y en consecuencia exime amplia y completamente a la Compañía, sus Afiliadas, sucursales, oficinas de representación, sus accionistas, administradores, agentes y representantes legales con respecto a cualquier reclamo que pudiera surgir.

NETHERLANDS

No country specific terms and conditions.

SINGAPORE

Securities Law Notification. The grant of the Award is being made pursuant to the "Qualifying Person" exemption under section 273(1)(f) of the SFA under which it is exempt from the prospectus and registration requirements and is not made with a view to the underlying shares of Common Stock being subsequently offered for sale to any other party. The Plan has not been and will not be lodged or registered as a prospectus with the Monetary Authority of Singapore. Any shares of Common Stock acquired pursuant to the Award cannot be offered for sale in Singapore prior to the six-month anniversary of the Grant Date, unless such offer or sale is made pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the Securities and Futures Act (Chapter 289, 2006 Ed.) ("SFA").

SPAIN

Labor Law Acknowledgement. By accepting the Award, the Participant consents to participation in the Plan and acknowledges that the Participant has received a copy of the Plan.

The Participant understands that the Company has unilaterally, gratuitously and in its sole discretion decided to grant the Award under the Plan to individuals who may be employees of the Company or its Subsidiaries throughout the world. The decision is limited and entered into based upon the express assumption and condition that any grant will not economically or otherwise bind the Company or any Subsidiary on an ongoing basis, other than as expressly set forth in the Agreement. Consequently, the Participant understands that the Award is granted on the assumption and condition that the Award and any shares of Common Stock acquired

pursuant to the Award shall not become part of any employment or service contract (whether with the Company or any Subsidiary) and shall not be considered a mandatory benefit, salary for any purpose (including severance compensation) or any other right whatsoever. Furthermore, the Participant understands and freely accepts that there is no guarantee that any benefit whatsoever shall arise from the grant of the Award, which is gratuitous and discretionary, since the future value of the Award and the underlying shares of Common Stock is unknown and unpredictable.

In addition, the Participant understands that the grant of the Award would not be made but for the assumptions and conditions set forth hereinabove; thus, the Participant understands, acknowledges and freely accepts that, should any or all of the assumptions be mistaken or any of the conditions not be met for any reason, the Award and any right to a cash payment or shares of Common Stock shall be null and void.

Further, the Participant understands and agrees that upon Termination of Employment, unless otherwise specifically provided in the Agreement or determined by the Committee or its designee, any unvested portion of the Award will be immediately forfeited and, if the Award is an Option, any vested portion of the Option shall remain exercisable only for the period described in Section 4 of the Agreement and shall be subject to the terms of the Plan and, thereafter, any unexercised portion of the Option will be forfeited.

In particular, the Participant understands and agrees that, unless otherwise expressly provided in the Agreement or determined by the Committee or its designee, the unvested portion of the Award, and any vested portion of an Option that is not exercised within any post-termination exercise period described in the Agreement, will be cancelled without entitlement to any shares of Common Stock or to any amount as indemnification if the Participant terminates employment by reason of, but not limited to, resignation; disciplinary dismissal adjudged to be with cause; disciplinary dismissal adjudged or recognized to be without good cause (i.e., subject to a "*despido improcedente*"); individual or collective layoff on objective grounds, whether adjudged to be with cause or adjudged or recognized to be without cause; material modification of the terms of employment under Article 41 of the Workers' Statute; relocation under Article 40 of the Workers' Statute; Article 50 of the Workers' Statute; unilateral withdrawal by the Participant's employer; and under Article 10.3 of Royal Decree 1382/1985.

Securities Law Notification. No "offer of securities to the public," as defined under Spanish law, has taken place or will take place in the Spanish territory in connection with the grant of the Award. The Agreement has not been, nor will it be, registered with the *Comisión Nacional del Mercado de Valores*, and does not constitute a public offering prospectus.

SWEDEN

Withholding. This provision supplements the Withholding section of the Agreement (if applicable) and the Responsibility for Taxes section of this Country Addendum:

Without limitation to the Withholding section of the Agreement (if applicable) and the Responsibility for Taxes section of this Country Addendum, by accepting the Award, the

Participant authorizes the Company and/or the Employer to withhold shares of Common Stock or to sell shares of Common Stock otherwise deliverable to the Participant upon vesting or exercise (as applicable) to satisfy any Tax-Related Items, regardless of whether the Company and/or the Employer have an obligation to withhold such Tax-Related Items.

UNITED ARAB EMIRATES

Securities Law Notification. The Award is being offered only to qualified employees of the Company and its Subsidiaries and is in the nature of providing equity incentives to such employees in the United Arab Emirates. Any documents related to the Plan, including the Plan and the Agreement, are intended for distribution only to such employees and must not be delivered to, or relied on by, any other person. Prospective acquirers of any securities offered pursuant to the Award should conduct their own due diligence on securities. If the Participant does not understand the contents of the Plan or the Agreement, the Participant should consult an authorized financial adviser.

UNITED KINGDOM ("U.K.")

Withholding. This provision supplements the Withholding section of the Agreement (if applicable) and the Responsibility for Taxes section of this Country Addendum:

Without limitation to the Withholding section of the Agreement (if applicable) and the Responsibility for Taxes section of this Country Addendum, the Participant hereby agrees that the Participant is liable for all Tax-Related Items and hereby covenants to pay all such Tax- Related Items, as and when requested by the Company or the Employer, as applicable, or by Her Majesty's Revenue and Customs ("HMRC") (or any other tax or relevant authority). The Participant also hereby agrees to indemnify and keep indemnified the Company and the Employer, as applicable, against any Tax-Related Items that they are required to pay or withhold or have paid or will pay to HMRC (or any other tax or relevant authority) on the Participant's behalf.

Notwithstanding the foregoing, if the Participant is a director or executive officer of the Company (within the meaning of Section 13(k) of the Exchange Act), the terms of the immediately foregoing provision will not apply. In the event that the Participant is such a director or executive officer of the Company and the U.K. income tax liability arising as a result of participation in the Plan is not collected from or paid by the Participant within ninety (90) days of the end of the U.K. tax year in which an event giving rise to the indemnification described above occurs, the amount of any uncollected income tax may constitute a benefit to the Participant on which additional income tax and national insurance contributions may be payable. The Participant acknowledges that he or she will be responsible for reporting and paying any income tax due on this additional benefit directly to the HMRC under the self-assessment regime and for paying the Company or the Employer, as applicable, for the value of any employee national insurance contributions due on this additional benefit.

PERFORMANCE RESTRICTED STOCK UNIT AWARD AGREEMENT
PURSUANT TO THE
AVAYA HOLDINGS CORP. 2019 EQUITY INCENTIVE PLAN

* * *

Participant: [#ParticipantName#]

Grant Date: [#GrantDate#]

Grant Number: [#ClientGrantID#]

Number of Performance Restricted Stock Units ("PRSUs") Granted: [#QuantityGranted#]

* * *

This PERFORMANCE RESTRICTED STOCK UNIT AWARD AGREEMENT (together with all appendices attached hereto, this "Agreement"), dated as of the Grant Date specified above, is entered into by and between Avaya Holdings Corp., a corporation organized in the State of Delaware (the "Company"), and the Participant specified above, pursuant to the Avaya Holdings Corp. 2019 Equity Incentive Plan, as in effect and as amended from time to time (the "Plan"), which is administered by the Committee; and

WHEREAS, the Committee has determined under the Plan that it would be in the best interests of the Company to grant the Participant a Performance Award in the form of the PRSUs provided herein, each of which represents the right to receive one share of Common Stock upon vesting of such PRSU, subject to the terms and conditions contained in this Agreement and in the Plan.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the parties hereto hereby mutually covenant and agree as follows:

1. Incorporation by Reference; Plan Document Receipt. This Agreement is subject in all respects to the terms, conditions and provisions of the Plan (including, without limitation, any amendments thereto adopted at any time and from time to time unless such amendments are expressly intended not to apply to the Award provided hereunder), all of which terms, conditions and provisions are made a part of and incorporated into this Agreement as if they were each expressly set forth herein. Except as provided otherwise herein, any capitalized term not defined in this Agreement shall have the same meaning as is ascribed thereto in the Plan. The Participant hereby acknowledges receipt of a true copy of the Plan and that the Participant has read the Plan carefully and fully understands its content and agrees to be bound thereby and hereby. In the event of any conflict between the terms of this Agreement and the terms of the Plan, the terms of the Plan shall control.

2. Grant of PRSUs. The Company hereby grants to the Participant, as of the Grant Date specified above, the number of PRSUs specified above, subject to adjustment as provided

for in the Plan, on the terms and conditions set forth in this Agreement, including, without limitation, in Appendix I, II, III and IV attached hereto, and the Plan. The number of PRSUs granted under this Agreement represents the target number of PRSUs that can be earned by the Participant under this Agreement. Except as otherwise provided by the Plan, the Participant agrees and understands that nothing contained in this Agreement provides, or is intended to provide, the Participant with any protection against potential future dilution of the Participant's interest in the Company for any reason, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of the shares of Common Stock, if any, which may be issued pursuant to this Agreement, except as otherwise specifically provided for in the Plan or this Agreement. The PRSUs shall be credited to a separate book-entry account maintained for the Participant on the books of the Company. The Participant's interest in the book-entry account shall be that of a general, unsecured creditor of the Company.

3. Vesting. Subject to the Plan and the other terms of this Agreement, the PRSUs subject to this Agreement shall vest in accordance with the performance matrix set forth on Appendix I (the "Performance Matrix").

4. Settlement. Any PRSUs subject to this Award that vest in accordance with the terms of this Agreement and the Performance Matrix shall be settled in the manner set forth in the Performance Matrix.

5. Non-Transferability. No portion of the PRSUs may be sold, assigned, transferred, encumbered, hypothecated or pledged by the Participant, other than to the Company as a result of forfeiture of the PRSUs as provided herein.

6. Governing Law. All questions concerning the construction, validity and interpretation of this Agreement, including but not limited to Appendix I, II, III and/or IV hereto, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the choice of law principles thereof. Any suit, action or proceeding with respect to this Agreement shall be governed by Section 13.11 of the Plan.

7. Legend. The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates, if any, representing shares of Common Stock issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates, if any, representing shares of Common Stock acquired pursuant to this Agreement in the possession of the Participant in order to carry out the provisions of this Section 7.

8. Securities Representations. This Agreement is being entered into by the Company in reliance upon the following express representations and warranties of the Participant. The Participant hereby acknowledges, represents and warrants that:

(a) The Participant has been advised that the Participant may be an "affiliate" within the meaning of Rule 144 under the Securities Act and in this connection the Company is relying in part on the Participant's representations set forth in this Section 8.

(b) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, then any shares of Common Stock issued hereunder must be held indefinitely unless an exemption from any applicable resale restrictions is available or the Company files an additional registration statement (or a "re-offer prospectus") with regard to such shares of Common Stock and the Company is under no obligation to register any such shares of Common Stock (or to file a "re-offer prospectus").

(c) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the Participant understands that (i) the exemption from registration under Rule 144 shall not be available unless (A) a public trading market then exists for the Common Stock, (B) adequate information concerning the Company is then available to the public, and (C) other terms and conditions of Rule 144 or any exemption therefrom are complied with, and (ii) any sale of shares of Common Stock issued hereunder may be made only in limited amounts in accordance with the terms and conditions of Rule 144 or any exemption therefrom.

9. Entire Agreement; Amendment. Except as expressly set forth herein, this Agreement, together with the Plan, contains the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements or prior understandings, whether written or oral, between the parties relating to such subject matter; provided however, that the restrictive covenants contained in Appendix III hereto are in addition to and not in lieu of any other restrictive covenants by which the Participant may be bound. The Committee shall have the right, in its sole discretion, to modify or amend this Agreement from time to time in accordance with and as provided in the Plan. The Company shall give written notice to the Participant of any such modification or amendment of this Agreement as soon as practicable after the adoption thereof.

10. Notices; Electronic Delivery and Acceptance. Any notice hereunder by the Participant shall be given to the Company in writing and such notice shall be deemed duly given only upon receipt thereof by the General Counsel of the Company. Any notice hereunder by the Company shall be given to the Participant in writing and such notice shall be deemed duly given only upon receipt thereof at such address as the Participant may have on file with the Company. The Company may, in its sole discretion, decide to deliver any documents related to PRSUs awarded under the Plan or future PRSUs that may be awarded under the Plan by electronic means or request the Participant's consent to participate in the Plan by electronic means. By accepting this Award, the Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

11. No Right to Employment or Service. Any questions as to whether and when there has been a Termination of Employment and the cause of such Termination of Employment shall be determined in the sole discretion of the Committee. Nothing in this Agreement shall interfere with or limit in any way the right of the Company, its Subsidiaries or its Affiliates to terminate the Participant's employment or service at any time, for any reason and with or without Cause, and shall not guarantee any right to future employment.

12. Transfer of Personal Data. The Participant authorizes, agrees and unambiguously consents to the transmission by the Company (or any Subsidiary) of any personal data information related to the PRSUs awarded under this Agreement for legitimate business purposes (including, without limitation, the administration of the Plan), to the extent permitted by applicable law. This authorization and consent is freely given by the Participant.

13. Compliance with Laws. Notwithstanding anything in this Agreement to the contrary, the grant of PRSUs and any issuance of shares of Common Stock hereunder shall be subject to, and shall comply with, any applicable requirements of any foreign and U.S. federal and state securities laws, rules and regulations (including, without limitation, the provisions of the Securities Act, the Exchange Act and in each case any respective rules and regulations promulgated thereunder) and any other law, rule regulation or exchange requirement applicable thereto. The Company shall not be obligated to issue the PRSUs or any shares of Common Stock or other property pursuant to this Agreement if any such issuance would violate any such requirements or laws. As a condition to the settlement of the PRSUs, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate to evidence compliance with any applicable law or regulation.

14. Binding Agreement. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Company and its successors and assigns.

15. Headings. The titles and headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

17. Further Assurances. Each party hereto shall do and perform (or shall cause to be done and performed) all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as either party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan and the consummation of the transactions contemplated thereunder.

18. Severability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

19. Acquired Rights. The Participant acknowledges and agrees that: (a) the Company may terminate or amend the Plan at any time; (b) the award of PRSUs made under this Agreement is completely independent of any other award or grant and is made at the sole discretion of the Company; (c) no past grants or awards (including, without limitation, the PRSUs awarded hereunder) give the Participant any right to any grants or awards in the future

whatsoever; and (d) any benefits granted under this Agreement are not part of the Participant's ordinary compensation and shall not be considered as part of such compensation in the event of severance, redundancy or resignation.

20. Acceptance of Agreement. Notwithstanding anything herein to the contrary, in order for this Award to become effective, the Participant must acknowledge acceptance of this Agreement no later than the sixtieth (60^{th}) day following the Grant Date (the "Final Acceptance Date"). If the Participant's acceptance of this Agreement does not occur by the Final Acceptance Date, then the entire Award will be forfeited and cancelled without any consideration therefor, except as otherwise determined in the Committee's sole and absolute discretion.

21. No Waiver. No waiver or non-action by either party hereto with respect to any breach by the other party of any provision of this Agreement shall be deemed or construed to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

22. No Rights as a Stockholder. The Participant's interest in the PRSUs shall not entitle the Participant to any rights as a stockholder of the Company. The Participant shall not be deemed to be the holder of, or have any of the rights and privileges of a stockholder of the Company in respect of, the shares of Common Stock unless and until shares of Common Stock have been issued to the Participant in accordance with this Agreement and the Plan.

23. [Withholding. Notwithstanding the withholding provision in the Plan or anything else in this Agreement:

(a) If in the tax jurisdiction in which the Participant resides, a tax withholding obligation arises upon vesting of the PRSUs (regardless of when the Common Stock underlying the PRSUs are delivered to the Participant), on each date that all or a portion of the PRSUs actually vests, if (1) the Company does not have in place an effective registration statement under the Securities Act and there is not a Securities Act exemption available under which the Participant may sell Common Stock or (2) the Participant is subject to a Company-imposed trading blackout, then unless the Participant has made other arrangements satisfactory to the Company, the Company will withhold from the shares of Common Stock to be delivered to the Participant such number of shares of Common Stock as are sufficient in value (as determined by the Company in its sole discretion) to cover the amount of the tax withholding obligation.

(b) If in the tax jurisdiction in which the Participant resides, a tax withholding obligation arises upon delivery of the Common Stock underlying the PRSUs (regardless of when vesting occurs), then following each date that all or a portion of the PRSUs actually vests, the Company will defer the delivery of the Common Stock otherwise deliverable to the Participant until the earliest of: (1) the date of the Participant's Termination of Employment, (2) the date that the short-term deferral period under Section 409A of the Code expires with respect to such vested RSUs, or (3) the date on which the Company has in place an effective registration statement under the Securities Act or there is a Securities Act exemption available under which the Participant may sell Common Stock and on which the Participant is not subject to a Company-imposed trading blackout (the earliest of such dates, the "Delivery Date"). If on the Delivery Date (x) the Company does not have in place an effective registration statement under

the Securities Act and there is not a Securities Act exemption available under which the Participant may sell shares of Common Stock or (y) the Participant is subject to a Company-imposed trading blackout, then unless the Participant has made other arrangements satisfactory to the Company, the Company will withhold from the shares of Common Stock to be delivered to the Participant such number of shares of Common Stock as are sufficient in value (as determined by the Company in its sole discretion) to cover the amount of the tax withholding obligation.][1]

24. Section 409A. Notwithstanding anything herein or in the Plan to the contrary, the PRSUs are intended to be exempt from, or comply with, the applicable requirements of Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent. The PRSUs shall be subject to the terms of Section 13.8 of the Plan. Notwithstanding any contrary provision in the Plan or this Agreement, any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code) that are otherwise required to be made under the Plan or this Agreement to a "specified employee" (as defined under Section 409A of the Code) as a result of such employee's separation from service (other than a payment that is not subject to Section 409A of the Code) shall be delayed for the first six (6) months following such separation from service and shall instead be paid upon expiration of such delay period (or, if earlier, upon the date of death of the specified employee). Furthermore, notwithstanding any contrary provision of the Plan or this Agreement, any payment of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code) under this Agreement shall be treated as a right to receive a series of separate and distinct payments. With respect to any PRSUs under this Agreement that are characterized as "nonqualified deferred compensation" within the meaning of Section 409A of the Code, an event shall not be considered to be a Change in Control under the Plan for purposes of payment of such RSUs unless such event is also a "change in ownership," a "change in effective control" or a "change in the ownership of a substantial portion of the assets" of the Company within the meaning of Section 409A of the Code.

25. Non-U.S. Provisions. The Award and the shares of Common Stock subject to the Award and payable pursuant to Section 4 of this Agreement shall be subject to any special terms and conditions for the Participant's country set forth in Appendix IV attached hereto (the "Country Addendum"). Moreover, if the Participant relocates to one of the countries included in the Country Addendum, the special terms and conditions for such country will apply to the Participant, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Country Addendum constitutes part of this Agreement.

[Remainder of Page Intentionally Left Blank]

[1] Remove if Retirement provision is included.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of [●].

AVAYA HOLDINGS CORP.

By:
Name:
Title:

PARTICIPANT

[To be executed electronically.]

Appendix I

PRSUs Performance Matrix

The "target" number of PRSUs eligible to vest and be earned under this Agreement in accordance with this Performance Matrix is [#QuantityGranted#] (the "Target PRSUs"). However, the Participant is eligible to earn between 0%-150% of the Target PRSUs based on the Company's level of achievement of the performance factors described below. In no event shall the Participant be eligible to earn more than 150% of the Target PRSUs (the "Maximum PRSUs").

This performance award consists of three, separately measured fiscal year performance periods, each from October 1 of each of 2020, 2021, and 2022 through September 30 of each of 2021, 2022, and 2023, respectively (each, a "Performance Year", and collectively, the "Performance Period").

The "Performance Factor" shall be (1) 70% Adjusted EBITDA and (2) 30% ARR OneCloud, in each case, as separately measured for each applicable Performance Year, and then taken, together on a weighted basis, to result in one metric.

"Adjusted EBITDA" shall mean EBITDA as reported in the Company's Form 10-K for the applicable Performance Year, excluding the impact of: adjustments for fresh start accounting; restructuring costs; advisory fees; investment banking, legal fees, integration costs and accelerated compensation expense relating to actual or potential acquisitions or divestitures; non-cash share-based compensation; asset impairment charges; gain or loss on sale/disposal of long-lived assets; gain or loss on the sale of a business; gain or loss on extinguishment or modification of debt; gain or loss on equity investment; resolution of legal matters (including reserves, settlements, and certain legal costs); changes in fair value of derivatives and Emergence Date Warrants as defined within Form 10-K; securities registration fees; gain or loss on foreign currency transactions; and pension/OPEB/nonretirement post-employment retirement benefits and long-term disability costs. In addition, the Compensation Committee shall equitably adjust (1) Adjusted EBITDA for any Performance Year to reflect the impact of other special or non-recurring events not known as of the grant date of the Award if it determines such adjustment is necessary in order to prevent the enlargement or dilution of any benefits with respect to the Award; except that, any adjustment for the results of operations of acquired businesses shall be excluded for the Performance Year in which such acquisition occurs; and (2) the Maximum Adjusted EBITDA target for any Performance Year if the aggregate incremental expense under such Performance Year's Annual Incentive Plan associated with above-target attainment of the applicable profitability metric for such Performance Year is materially different from $17 million (i.e., if such incremental expense exceeds $17 million for any Performance Year, the Maximum Adjusted EBITDA target for such Performance Year will be reduced for the amount of such excess and if $17 million exceeds such incremental expense, the Maximum Adjusted EBITDA for such Performance Year will be increased by the amount of such excess) and if the Compensation Committee determines such adjustment is necessary in order to prevent the enlargement or dilution of any benefits with respect to the Award.

"ARR OneCloud" shall mean total Annualized Recurring Revenue as reported in the Company's Form 8-K which reports full fiscal year financial results for the applicable Performance Year.

For each Performance Year, up to 1/3rd of the Maximum PRSUs shall become eligible to vest (subject to the other terms and conditions set forth herein) based on the Company's actual level of achievement of the Performance Factor, taken together, as compared to the threshold, target and maximum levels set forth on Appendix II, as illustrated in the table below:

Performance Year	Level of Achievement	Percentage of PRSUs Eligible to be Earned *(as a percentage of 1/3 of the Target PRSUs)*
Fiscal 2021 October 1, 2020 – September 30, 2021	Below Threshold	0%
	Threshold	50%
	Target	100%
	Maximum	150%
Fiscal 2022: October 1, 2021-September 30, 2022	Below Threshold	0%
	Threshold	50%
	Target	100%
	Maximum	150%
Fiscal 2023: October 1, 2022-September 30, 2023	Below Threshold	0%
	Threshold	50%
	Target	100%
	Maximum	150%

If, upon conclusion of the applicable Performance Year, achievement of the Performance Factor, taken together, exceeds a specified level for such Performance Factor, but is below the next specified level, the percentage of PRSUs earned and eligible to vest shall be linearly interpolated on a straight-line basis. No PRSUs shall be earned in respect of the Performance Factor for any Performance Year for which achievement of the Performance Factor falls below the "Threshold" level established for that Performance Year.

1. Determination of Eligible Units.

Within 60 days following the Company's delivery of audited financial statements in respect of the applicable Performance Year, the Committee will determine (i) whether and to what extent the Performance Factor, taken together, has been achieved, and (ii) the number of PRSUs that are deemed earned in respect of such Performance Year (such units, the "Eligible Units"), which Eligible Units shall remain eligible to vest on December 10, 2023 (such date, the "Vesting Date"), so long as (subject to the other terms set forth herein) the Participant has not incurred a Termination of Employment prior to such date. The number of Eligible Units (if any) will be further adjusted following the end of the Performance Period (but prior to the

Vesting Date) based on the TSR Modifier described below. Following the end of the Performance Period, any PRSUs that do not constitute Eligible Units following the Committee's determination thereof will be automatically forfeited by the Participant without consideration. Except as otherwise set forth herein, if the Participant incurs a Termination of Employment prior to the Vesting Date, all PRSUs granted under this Agreement shall be forfeited.

2. Modifier Based on TSR (the "TSR Modifier").

Notwithstanding the foregoing, following the end of the Performance Period, the Company will measure its total shareholder return ("TSR") relative to the other entities in the TSR Index (as defined below), as measured from the grant date through the last day of the Performance Period, in order to determine whether a performance modifier equal to +/- 25% will be applied to the number of Eligible Units certified by the Compensation Committee as "earned" as a result of achievement of the Performance Factor for the Performance Period.

If, following the end of the Performance Period, the Company's Percentile is above 75%, then an additional number of PRSUs granted under this Agreement shall constitute Eligible Units, with such additional number to be calculated by multiplying (i) the number of Eligible Units earned in respect of the Performance Factor during the Performance Period by (ii) 1.25; provided, that in no event shall more than the Maximum PRSUs vest under this Agreement and, provided, further that if the Company's absolute TSR is negative for the Performance Period, that in no event shall more than the Target PRSUs vest under this Agreement.

If, following the end of the Performance Period, the Company's Percentile is at or below 25%, then the number of Eligible Units earned in respect of the Performance Factor during the Performance Period and that are eligible to vest shall be reduced to a number of PRSUs to be calculated by multiplying (i) the number of Eligible Units earned in respect of the Performance Factor during the Performance Period by (ii) 0.75.

Determination of TSR: TSR for the Company and each other entity in the TSR Index shall be determined in accordance with the following formula. TSR shall be equal to (a) divided by (b), expressed as a percentage, where:

(a) is equal to the sum of (i) and (ii), where (i) is the difference determined by the Ending Price minus the Starting Price (each as defined below); and (ii) is the sum of all dividends paid on common stock during the Performance Period, provided that all dividends are treated as reinvested in the Company's common stock on the ex-dividend date; and

(b) is equal to the Starting Price.

For purposes of determining TSR:

"Starting Price" means, with respect to the Company, the average closing price of one share of the Company's common stock on the applicable stock exchange during the 30 days immediately preceding and including the grant date, and, for each other entity in the TSR Index, means such entity's closing price on the grant date.

"Ending Price" means, with respect to the Company, the average closing price of one share of the Company's common stock on the applicable stock exchange during the 30 days immediately preceding and including the last day of the Performance Period, and, for each other entity in the TSR Index, means such entity's closing price on the last trading day included in the Performance Period.
The Company's "Percentile" shall be equal to the absolute value of the difference obtained by 100% minus the quotient of (A) the Rank (as defined below), divided by (B) the total number of entities in the TSR Index (including the Company, but after removal of any entities in accordance with calculation of the Rank), expressed as a percentage.

The Company's "Rank" shall be determined by the Company's position within the ranking of each entity in the TSR Index (as defined below, which includes the Company) in descending order based on their respective TSRs (with the highest TSR having a Rank of one). For purposes of developing the ordering provided in the immediately-preceding sentence, (A) any entity that filed for bankruptcy protection under the United States Bankruptcy Code during the Performance Period shall be assigned the lowest order of any entity in the TSR Index, and (B) any entity that is acquired during the Performance Period, or otherwise no longer listed on a national securities exchange at the end of the Performance Period (other than the Company), shall be removed from the TSR Index and shall be excluded for purposes of ordering the entities in the TSR Index (and for purposes of calculating the Company's Percentile).

In addition to the Company, the "TSR Index" shall be comprised of the Russell 2000 Index as in effect on the grant date, subject to adjustment at end of the Performance Period as set forth in the definition of Rank above.

3. Treatment upon a Change in Control; Qualifying Terminations.

The provisions of Section 10.1 of the Plan shall govern the treatment of the PRSUs upon the occurrence of a Change in Control; provided, that if the Committee determines to treat the PRSUs in accordance with Section 10(1)(a) of the Plan (i.e., if the PRSUs are continued, assumed or substituted in connection with such Change in Control), the following provisions shall apply: in the event the Participant incurs a Termination of Employment prior to the Vesting Date as a result of the Participant's Termination of Employment without Cause (other than death, Disability [or a Board Qualified Retirement]), or by the Participant for Good Reason (any such Termination of Employment, a "Qualifying Termination"), and such Qualifying Termination occurs (i) only to the extent the Participant is also a participant in the Avaya Inc. Change in Control Severance Plan, during a Potential Change in Control Period, as such term is defined in the Avaya Inc. Change in Control Severance Plan or (ii) within the twelve (12) month period immediately following a Change in Control, subject to the Participant's execution, delivery and

non-revocation of a customary release of claims in favor of the Company and its subsidiaries and affiliates within sixty (60) days of such Termination of Employment and continued compliance with Appendix I to this Agreement,
(1) any Eligible Units attributable to a Performance Year ending prior to the date of such Termination of Employment shall immediately vest and be settled, and

(2) any PRSUs eligible to be earned based upon achievement of the Performance Factor for (i) the Performance Year in which such Termination of Employment occurs and (ii) any Performance Year commencing following the date of such Termination of Employment, shall immediately vest and be settled at "target" level achievement. Any PRSUs that do not vest as a result of the foregoing sentence shall immediately be cancelled and forfeited for no consideration.

Upon a Change in Control, the Compensation Committee will apply the TSR Modifier to the number of Eligible Units attributable to any Performance Year that has elapsed as of the Change in Control date, with the last day of the Performance Period being deemed to be the effective date of the Change in Control for purposes of applying the TSR Modifier.

4. [Retirement.

Notwithstanding Section 1 of this Performance Matrix, in connection with a "Board Qualified Retirement", any PRSUs that are unvested as of the date of the Participant's Termination of Employment as a result of such Board Qualified Retirement shall be treated as follows:

(i) If the date of such Termination of Employment occurs during a fiscal year following the fiscal year in which the Grant Date occurs, then any such unvested PRSUs shall remain outstanding and shall continue to vest and be settled in accordance with the other terms of this Agreement and the Plan (including with respect to both the time and performance-based conditions).

(ii) If the date of such Termination of Employment occurs during the fiscal year in which the Grant Date occurs, then such unvested PRSUs shall be pro-rated as described below, and such pro-rated unvested PRSUs shall remain outstanding and shall continue to vest and be settled in accordance with the other terms of this Agreement and the Plan (including with respect to both the time and performance-based conditions).

(iii) The "pro-rated" portion eligible for continued vesting under Section 4(ii) shall be equal to the total number of unvested PRSUs multiplied by a fraction, the numerator of which is the number of days that the Participant was employed by the Company during the fiscal year in which the Termination of Employment occurs, and the denominator of which is 365. For the avoidance of doubt, any portion of the Participant's unvested PRSUs that do not become eligible for continued vesting as a result of this Section 4 of this Performance

Matrix shall be immediately forfeited upon the Participant's Termination of Employment.

(iv) Any continued vesting provided for under this Section 4 of this Performance Matrix shall be subject to the Participant's execution, delivery and non-revocation of a customary release of claims in favor of the Company and its subsidiaries and affiliates within sixty (60) days following the Termination of Employment and subject to continued compliance with Appendix I to this Agreement.

(v) "Board Qualified Retirement" means a Participant's voluntary retirement from all employment positions with the Company that is determined by the Board to constitute a qualified retirement for purposes of receiving the benefits set forth in this Section 4.][2]

5. Settlement of Eligible Units. PRSUs will be settled within 10 business days following the Vesting Date; except that any PRSUs that vest pursuant to Section 3 of this Performance Matrix will be settled within 60 days following the date on which the PRSUs become vested.

[2] Include if applicable.

Appendix II

Threshold, Target and Maximum Levels Applicable to the Performance Factor

Adjusted EBITDA (in millions) – 70%

Performance Year	Threshold	Target	Maximum
Fiscal 2021 October 1, 2020 - September 30, 2021			
Fiscal 2022 October 1, 2021 - September 30, 2022			
Fiscal 2023 October 1, 2022 - September 30, 2023			

ARR OneCloud (in millions) – 30%

Performance Year	Threshold	Target	Maximum
Fiscal 2021 October 1, 2020 - September 30, 2021			
Fiscal 2022 October 1, 2021 - September 30, 2022			
Fiscal 2023 October 1, 2022 - September 30, 2023			

Levels shown above are subject to any applicable adjustments permitted under the Plan.

Appendix III

NON-DISCLOSURE, IP ASSIGNMENT, NON-COMPETITION AND NON-SOLICITATION

By executing the Award Agreement, the Participant acknowledges the importance to Avaya Holdings Corp. and its Affiliates existing now or in the future (hereinafter referred to collectively as the "Company" or "Avaya"), of protecting its confidential information and other legitimate business interests, including, without limitation, the valuable trade secrets and good will that it develops or acquires. The Participant further acknowledges that the Company is engaged in a highly competitive business, that its success in the marketplace depends upon the preservation of its confidential information and industry reputation, and that obtaining agreements such as this one from its employees is reasonable and necessary. The Participant undertakes the obligations in this Appendix III in consideration of the Participant's initial and/or ongoing relationship with the Company, this Award, the Participant's being granted access to trade secrets and other confidential information of the Company, and for other good and valuable consideration, the receipt and sufficiency of which the Participant acknowledges. As used in this Appendix III, "relationship" refers to a Participant's employment or association as an advisor, consultant or contractor, with the Company, as applicable.

1. Loyalty and Conflicts of Interest

1.1 Exclusive Duty. During the Participant's relationship with the Company, the Participant will not engage in any other business activity that creates a conflict of interest except as permitted by the Company's Code of Conduct, as in effect from time to time.

1.2 Compliance with Company Policy. The Participant will comply with all lawful policies, practices and procedures of the Company, as these may be implemented and/or changed by the Company from time to time. Without limiting the generality of the foregoing, the Participant acknowledges that the Company may from time to time have agreements with other Persons which impose obligations or restrictions on the Company regarding Intellectual Property, as defined below, created during the course of work under such agreements and/or regarding the confidential nature of such work. The Participant will comply with and be bound by all such obligations and restrictions which the Company conveys to the Participant and will take all actions necessary (to the extent within Participant's power and authority) to discharge the obligations of the Company under such agreements.

2. Confidentiality

2.1 Nondisclosure and Nonuse of Confidential Information. All Confidential Information, as defined below, which the Participant creates or has access to as a result of the Participant's relationship with the Company, is and shall remain the sole and exclusive property of the Company. The Participant will never, directly or indirectly, use or disclose any Confidential Information, except (a) as required for the proper performance of the Participant's regular duties for the Company, (b) as expressly authorized in writing in advance by the

Company's General Counsel, (c) as required by applicable law or regulation, or (d) as may be reasonably determined by the Participant to be necessary in connection with the enforcement of Participant's rights in connection with this Appendix III. This restriction shall continue to apply after the termination of the Participant's relationship with the Company or any restriction time period set forth in this Appendix III, howsoever caused. The Participant shall furnish prompt notice to the Company's General Counsel of any required disclosure of Confidential Information sought pursuant to subpoena, court order or any other legal process or requirement, and shall provide the Company a reasonable opportunity to seek protection of the Confidential Information prior to any such disclosure, to the greatest extent time and circumstances permit.

2.2 Permissible Disclosure. Nothing in the Award Agreement or this Appendix III shall prohibit or restrict the Company, the Participant or their respective attorneys from: (i) making any disclosure of relevant and necessary information or documents in any action, investigation, or proceeding relating to the Award Agreement, including without limitation, this Appendix III, or the Plan, or as required by law or legal process, including with respect to possible violations of law; (ii) participating, cooperating, or testifying in any action, investigation, or proceeding with, or providing information to, any governmental agency or legislative body, any self-regulatory organization, and/or pursuant to the Sarbanes-Oxley Act; or (iii) accepting any U.S. Securities and Exchange Commission awards. In addition, nothing in this Agreement or the Plan prohibits or restricts Avaya or the Participant from initiating communications with, or responding to any inquiry from, any regulatory or supervisory authority regarding any good faith concerns about possible violations of law or regulation.

2.3 Trade Secrets. Pursuant to 18 U.S.C. § 1833(b), the Participant will not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret of Avaya that (i) is made (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to the Participant's attorney and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If the Participant files a lawsuit for retaliation by Avaya for reporting a suspected violation of law, the Participant may disclose the trade secret to the Participant's attorney and use the trade secret information in the court proceeding, so long as the Participant files any document containing the trade secret under seal and does not disclose the trade secret except under court order. Nothing in this Agreement or the Plan is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such section.

2.4 Use and Return of Documents. All documents, records, and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company, and any copies (including, without limitation, electronic), in whole or in part, thereof (the "Documents" and each individually, a "Document"), whether or not prepared by the Participant, shall be the sole and exclusive property of the Company. Except as required for the proper performance of the Participant's regular duties for the Company or as expressly authorized in writing in advance by the Company, the Participant will not copy any Documents or remove any Documents or copies or derivatives thereof from the premises of the Company. The Participant will safeguard, and return to the Company immediately upon termination of the

Participant's relationship with the Company, and at such other times as may be specified by the Company, all Documents and other property of the Company, and all documents, records and files of its customers, subcontractors, vendors, and suppliers ("Third-Party Documents" and each individually a "Third-Party Document"), as well as all other property of such customers, subcontractors, vendors and suppliers, then in the Participant's possession or control. Provided, however, if a Document or Third-Party Document is on electronic media, the Participant may, in lieu of surrender of the Document or Third-Party Document, provide a copy on electronic media to the Company and delete and overwrite all other electronic media copies thereof. Upon request of any duly authorized officer of the Company, the Participant will disclose all passwords necessary or desirable to enable the Company to obtain access to the Documents and Third-Party Documents. Notwithstanding any provision of this Section 2.4 to the contrary, the Participant shall be permitted to retain copies of all Documents evidencing Participant's hire, equity, compensation rate and benefits, this Appendix III, and any other agreements between the Participant and the Company that the Participant has signed or electronically accepted.

3. Non-Competition, Non-Solicitation, and Other Restricted Activity

3.1 Non-Competition. This paragraph is applicable to Participants who hold Senior Director and higher positions as of the date this Award is accepted. During the Participant's relationship with the Company and for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, directly or indirectly, whether paid or not, (a) serve as a partner, principal, licensor, licensee, employee, consultant, officer, director, manager, agent, affiliate, representative, advisor, promoter, associate, investor, or otherwise for, (b) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of, or (c) build, design, finance, acquire, lease, operate, manage, control, invest in, work or consult for or otherwise join, participate in or affiliate him or herself with, any business whose business, product(s) or operations are in any respect competitive with or otherwise similar to the Company's business. The foregoing covenant shall cover the Participant's activities in every part of the Territory. "Territory" shall mean (a) all states of the United States of America from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of the Participant's relationship with the Company; and (b) all other countries from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of the Participant's relationship with the Company. The foregoing shall not prevent: (a) passive ownership by the Participant of no more than two percent (2%) of the equity securities of any publicly traded company; or (b) the Participant's providing services to a division or subsidiary of a multi-division entity or holding company, so long as (i) no division or subsidiary to which the Participant provides services is in any way competitive with or similar to the business of the Company, and (ii) the Participant is not involved in, and does not otherwise engage in competition on behalf of, the multi-division entity or any competing division or subsidiary thereof.

3.2 Good Will. Any and all good will which the Participant develops during his or her relationship with the Company with any of the customers, prospective customers,

subcontractors or suppliers of the Company shall be the sole, exclusive and permanent property of the Company, and shall continue to be such after termination of the Participant's relationship with the Company, howsoever caused.

3.3 Non-Solicitation of Customers. During the Participant's relationship with the Company and for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, directly or indirectly, contact, or cause to be contacted, directly or indirectly, or engage in any form of oral, verbal, written, recorded, transcribed, or electronic communication with any customer of the Company for the purposes of conducting business that is competitive with or similar to that of the Company or for the purpose of disadvantaging the Company's business in any way; provided that this restriction applies (i) only with respect to those customers who are or have been a customer of the Company at any time within the immediately preceding one-year period or whose business has been solicited on behalf of the Company by any of its officers, employees or agents within said one-year period, other than by form letter, blanket mailing or published advertisement, and (ii) only if the Participant has performed work for such customer during his or her relationship with the Company, has been introduced to, or otherwise had contact with, such customer as a result of his or her relationship with the Company, or has had access to Confidential Information which would assist in the solicitation of such customer. The foregoing restrictions shall not apply to general solicitation or advertising, including through media and trade publications.

3.4 Non-Solicitation/Non-Hiring of Employees and Independent Contractors. During his or her relationship with the Company and for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, and will not assist anyone else to, (a) hire or solicit for hiring any employee of the Company or seek to persuade or induce any employee of the Company to discontinue employment with the Company, or (b) hire or engage any independent contractor providing services to the Company, or solicit, encourage or induce any independent contractor providing services to the Company to terminate or diminish in any substantial respect its relationship with the Company. For the purposes of this Appendix III, an "employee" or "independent contractor" of the Company is any person who is or was such at any time within the preceding six-month period. The foregoing restrictions shall not apply to general solicitation or advertising, including through media, trade publications and general job postings.

3.5 Non-Solicitation of Others. The Participant agrees that for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company, for any reason, whether voluntary or involuntary, the Participant will not solicit, encourage, or induce, or cause to be solicited, encouraged or induced, directly or indirectly, any franchisee, joint venture, supplier, vendor or contractor who conducted business with the Company at any time during the two year period preceding the termination of his or her relationship with the Company, to terminate or adversely modify any business relationship with the Company, or not to proceed with, or enter into, any business relationship with the Company,

nor shall the Participant otherwise interfere with any business relationship between the Company and any such franchisee, joint venture, supplier, vendor or contractor.

3.6 Notice of New Address and Employment. During the twelve (12)-month period immediately following the termination of Participant's relationship with the Company, for any reason, whether voluntary or involuntary, the Participant will promptly provide the Company with pertinent information concerning each new job or other business activity in which the Participant engages or plans to engage during such twelve (12)-month period as the Company may reasonably request in order to determine the Participant's continued compliance with his or her obligations under this Appendix III. The Participant shall notify any new employer(s) of the Participant's obligations under this Appendix III, and hereby consents to notification by the Company to such employer(s) concerning his or her obligations under this Appendix III. The Company shall treat any such notice and information as confidential, and will not use or disclose the information contained therein except to enforce its rights hereunder. Any breach of this Section 3.6 shall constitute a material breach of this agreement.

3.7 Acknowledgement of Reasonableness; Remedies. In signing or electronically accepting the Award Agreement, the Participant gives the Company assurance that the Participant has carefully read and considered all the terms and conditions hereof. The Participant acknowledges without reservation that each of the restraints contained herein is necessary for the reasonable and proper protection of the good will, Confidential Information and other legitimate business interests of the Company, that each and every one of those restraints is reasonable in respect to subject matter, length of time, and geographic area; and that these restraints will not prevent the Participant from obtaining other suitable employment during the period in which Participant is bound by them. The Participant will never assert, or permit to be asserted on the Participant's behalf, in any forum, any position contrary to the foregoing. Were the Participant to breach any of the provisions of this Appendix III, the harm to the Company would be irreparable. Therefore, in the event of such a breach or threatened breach, the Company shall, in addition to any other remedies available to it, have the right to obtain preliminary and permanent injunctive relief against any such breach or threatened breach without having to post bond, and the Participant agrees that injunctive relief is an appropriate remedy to address any such breach. Without limiting the generality of the foregoing, or other forms of relief available to the Company, in the event of the Participant's breach of any of the provisions of this Appendix III, the Participant will forfeit any award or payment made pursuant to any applicable severance or other incentive plan or program, or if a payment has already been made, the Participant will be obligated to return the proceeds to the Company.

3.8 Unenforceability. In the event that any provision of this Appendix III shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law. The 12-month period of restriction set forth in Sections 3.1, 3.3, 3.4 and 3.5 hereof and the 12-month period of obligation set forth in Section 3.6 hereof shall be tolled, and shall not run, during any period of time in which the Participant is in

violation of the terms thereof, in order that the Company shall have the agreed- upon temporal protection recited herein.

3.9 Limited Exception for Attorneys. Insofar as the restrictions set forth in this Section 3 prohibit the solicitation, inducement or attempt to hire a licensed attorney who is employed at the Company, they shall not apply if the Participant is a licensed attorney and the restrictions contained herein are illegal, unethical or unenforceable under the laws, rules and regulations of the jurisdiction in which the Participant is licensed as an attorney.

3.10 Attorneys' Fees and Costs. Except as prohibited by law, the Participant shall indemnify the Company from any and all costs and fees, including attorneys' fees, incurred by the Company in successfully enforcing the terms of this Award Agreement against the Participant, (including, but not limited to, a court partially or fully granting any application, motion, or petition by the Company for a temporary restraining order, preliminary injunction, or permanent injunction), as a result of the Participant's breach or threatened breach of any provision contained herein. Upon successful enforcement, the Company shall be entitled to recover from the Participant its costs and fees incurred to date at any time during the course of a dispute (i.e., final resolution of such dispute is not a prerequisite) upon written demand to the Participant.

3.11 Enforcement. The Company agrees that it will not enforce Sections 3.1, 3.3, 3.5 or the portion of Section 3.4 that prohibits Participant from hiring Company employees and independent contractors to restrict Participant's employment in any jurisdiction in which such enforcement is contrary to law or regulation to the extent that Participant is a resident of such jurisdiction at the time Participant's relationship with the Company terminates and does not otherwise change residency during the restriction period.

4. Intellectual Property

4.1 In signing or electronically accepting the Award Agreement, the Participant hereby assigns and shall assign to the Company all of his or her rights, title and interest in and to all inventions, discoveries, improvements, ideas, mask works, computer or other apparatus programs and related documentation, and other works of authorship (hereinafter each designated "Intellectual Property"), whether or not patentable, copyrightable or subject to other forms of protection, made, created, developed, written or conceived by the Participant during the period of his or her relationship with the Company, whether during or outside of regular working hours, either solely or jointly with another, in whole or in part, either: (a) in the course of such relationship, (b) relating to the actual or anticipated business or research development of the Company, or (c) with the use of Company time, material, private or proprietary information, or facilities, except as provided in Section 4.5 below.

4.2 The Participant will, without charge to the Company, but at its expense, execute a specific assignment of title to the Company and do anything else reasonably necessary, including but not limited to providing or signing additional documentation that is reasonably necessary to the Company or its designee, to enable the Company to secure,

maintain and/or perfect a patent, copyright or other form of protection for said Intellectual Property anywhere in the world. Participant agrees that this obligation shall continue after Participant's relationship with the Company terminates. If the Company is unable because of Participant's mental or physical incapacity or for any other reason to secure Participant's signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Intellectual Property assigned to the Company as above, then Participant hereby irrevocably designates and appoints the Company or its designee and its duly authorized officers and agents as Participant's agent and attorney in fact, to act for and on Participant's behalf and instead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by Participant.

4.3 The Participant acknowledges that the copyrights in Intellectual Property created with the scope of his or her relationship with the Company belong to the Company by operation of law. Participant further acknowledges and agrees that the decision whether or not to commercialize or market any Intellectual Property developed by Participant solely or jointly with others is within the Company's sole benefit and discretion and that no payment will be due to Participant as a result of the Company's efforts to commercialize or market such Intellectual Property.

4.4 The Participant has previously provided to the Company a list (the "Prior Invention List") describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by the Participant prior to his or her relationship with the Company, which belong to the Participant and which are not assigned to the Company hereunder (collectively referred to as "Prior Inventions"); and, if no Prior Invention List was previously provided, the Participant represents and warrants that there are no such Prior Inventions. Participant will not incorporate, or permit to be incorporated, any Prior Invention into an Avaya product, process, machine, solution or system without the Company's prior written consent. Notwithstanding the foregoing sentence, if, in the course of Participant's relationship with the Company, Participant incorporates into an Avaya product, process, machine, solution or system a Prior Invention owned by Participant or in which Participant has an interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, use, sell, offer for sale and import, such Prior Invention as part of or in connection with such product, process, machine, solution or system.

4.5 Exception to Assignments. **THE PARTICIPANT UNDERSTANDS THAT THE PROVISIONS OF THIS AWARD AGREEMENT REQUIRING ASSIGNMENT OF INTELLECTUAL PROPERTY (AS DEFINED ABOVE) TO THE COMPANY DO NOT APPLY TO ANY INTELLECTUAL PROPERTY FOR WHICH NO EQUIPMENT, SUPPLIES, FACILITY, OR TRADE SECRET INFORMATION OF THE COMPANY WAS USED AND WHICH WAS DEVELOPED ENTIRELY ON PARTICIPANT'S OWN TIME, UNLESS (A) THE INVENTION RELATES (i) DIRECTLY TO THE BUSINESS OF THE COMPANY, OR (ii) TO THE COMPANY'S ACTUAL OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT;**

(B) THE INVENTION RESULTS FROM ANY WORK PERFORMED BY PARTICIPANT FOR THE COMPANY; OR (C) THE INTELLECTUAL PROPERTY OTHERWISE QUALIFIES FULLY UNDER THE PROVISIONS OF CALIFORNIA LABOR CODE SECTION 2870 (ATTACHED HERETO AS EXHIBIT A). THE PARTICIPANT WILL ADVISE THE COMPANY PROMPTLY IN WRITING OF ANY INVENTIONS THAT PARTICIPANT BELIEVES MEET THE CRITERIA FOR THIS SECTION 4.5 EXCEPTION TO ASSIGNMENTS AND WHICH WERE NOT OTHERWISE DISCLOSED ON THE PRIOR INVENTION LIST PREVIOUSLY DELIVERED TO THE COMPANY TO PERMIT A DETERMINATION OF OWNERSHIP BY THE COMPANY. ANY SUCH DISCLOSURE WILL BE RECEIVED IN CONFIDENCE.

5. Definitions

Words or phrases which are initially capitalized or are within quotation marks shall have the meanings provided in this Section 5 and as provided elsewhere in this Appendix III. For purposes of this Appendix III, the following definitions apply:

"Affiliates" means all persons and entities directly or indirectly controlling, controlled by or under common control with the Company, where control may be by management authority, contract or equity interest.

"Confidential Information" means any and all information of the Company, whether or not in writing, that is not generally known by others with whom the Company competes or does business, or with whom it plans to compete or do business, and any and all information, which, if disclosed, would assist in competition against the Company, including but not limited to (a) all proprietary information of the Company, including but not limited to the products and services, technical data, methods, processes, know-how, developments, inventions, and formulae of the Company, (b) the development, research, testing, marketing and financial activities and strategic plans of the Company, (c) the manner in which the Company operates, (d) its costs and sources of supply, (e) the identity and special needs of the customers, prospective customers and subcontractors of the Company, and (f) the people and organizations with whom the Company has business relationships and the substance of those relationships. Without limiting the generality of the foregoing, Confidential Information shall specifically include: (i) any and all product testing methodologies, product test results, research and development plans and initiatives, marketing research, plans and analyses, strategic business plans and budgets, and technology grids; (ii) any and all vendor, supplier and purchase records, including without limitation the identity of contacts at any vendor, any list of vendors or suppliers, any lists of purchase transactions and/or prices paid; and (iii) any and all customer lists and customer and sales records, including without limitation the identity of contacts at purchasers, any list of purchasers, and any list of sales transactions and/or prices charged by the Company. Confidential Information also includes any information that the Company may receive or has received from customers, subcontractors, suppliers or others, with any understanding, express or implied, that the information would not be disclosed. Notwithstanding the foregoing, Confidential Information does not include information that (A)

is known or becomes known to the public in general (other than as a result of a breach of Section 2 hereof by the Participant), (B) is or has been independently developed or conceived by the Participant without use of the Company's Confidential Information or (C) is or has been made known or disclosed to the Participant by a third party without a breach of any obligation of confidentiality such third party may have to the Company of which the Participant is aware.

"Person" means an individual, a corporation, a limited liability company, an association, a partnership, an estate, a trust and any other entity or organization, other than the Company.

6. Compliance with Other Agreements and Obligations

The Participant represents and warrants that his or her employment or other relationship with the Company and execution and performance of the Award Agreement, including this Appendix III, will not breach or be in conflict with any other agreement to which the Participant is a party or is bound, and that the Participant is not now subject to any covenants against competition or similar covenants or other obligations to third parties or to any court order, judgment or decree that would affect the performance of the Participant's obligations hereunder or the Participant's duties and responsibilities to the Company, except as disclosed in writing to the Company's General Counsel no later than the time an executed copy of the Award Agreement, including this Appendix III, is returned by the Participant. The Participant will not disclose to or use on behalf of the Company, or induce the Company to use, any proprietary information of any previous employer or other third party without that party's consent. Participant agrees that if in the course of his or her relationship with the Company, Participant is asked for information relating to Participant's former employers' business that would require Participant to reveal information that is not publicly available, Participant will refrain from using and providing such information.

7. Entire Agreement; Severability; Modification

With respect to the subject matter hereof, this Appendix III sets forth the entire agreement between the Participant and the Company, and, except as otherwise expressly set forth herein, supersedes all prior and contemporaneous communications, agreements and understandings, written or oral, regarding the same. If the Participant previously executed an Award Agreement with an Appendix III or other schedule containing similar provisions, this Appendix III shall supersede such agreement. In the event of conflict between this Appendix III and any prior agreement between the Participant and the Company with respect to the subject matter hereof, this Appendix III shall govern. The provisions of this Appendix III are severable, and no breach of any provision of this Appendix III by the Company, or any other claimed breach of contract or violation of law, shall operate to excuse the Participant's obligation to fulfill the requirements of Sections 2, 3 and 4 hereof. No deletion, addition, marking, notation or other change to the body of this Appendix III shall be of any force or effect, and this Appendix III shall be interpreted as if such change had not been made. This Appendix III may not be modified or amended, and no breach shall be deemed to be waived, unless agreed to in writing by the Participant and the Company's General Counsel. If any provision of this Appendix III should, for any reason, be held invalid or unenforceable in any respect, it shall not

affect any other provisions, and shall be construed by limiting it so as to be enforceable to the maximum extent permissible by law. Provisions of this Appendix III shall survive any termination if so provided in this Appendix III or if necessary or desirable to accomplish the purpose of other surviving provisions. It is agreed and understood that no changes to the nature or scope of the Participant's relationship with the Company shall operate to extinguish the Participant's obligations hereunder or require that a new agreement concerning the subject matter of this Appendix III be executed.

8. Assignment

Neither the Company nor the Participant may make any assignment of this Appendix III or any interest in it, by operation of law or otherwise, without the prior written consent of the other; provided, however, the Company may assign its rights and obligations under this Appendix III without the Participant's consent (a) in the event that the Participant is transferred to a position with one of the Company's Affiliates or (b) in the event that the Company shall hereafter effect a reorganization, consolidate with, or merge into any company or entity or transfer to any company or entity all or substantially all of the business, properties or assets of the Company or any division or line of business of the Company with which the Participant is at any time associated. This Appendix III shall inure to the benefit of and be binding upon the Participant and the Company, and each of their respective successors, executors, administrators, heirs, representatives and permitted assigns.

9. Successors

The Participant consents to be bound by the provisions of this Appendix III for the benefit of the Company, and any successor or permitted assign to whose employ the Participant may be transferred, without the necessity that a new agreement concerning the subject matter or this Appendix III be re-signed at the time of such transfer.

10. Acknowledgement of Understanding

In signing or electronically accepting the Award Agreement, the Participant gives the Company assurance that the Participant has read and understood all of its terms; that the Participant has had a full and reasonable opportunity to consider its terms and to consult with any person of his or her choosing before signing or electronically accepting; that the Participant has not relied on any agreements or representations, express or implied, that are not set forth expressly in the Award Agreement, including this Appendix III; and that the Participant has signed the Award Agreement knowingly and voluntarily.

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EXHIBIT A

CALIFORNIA LABOR CODE SECTION 2870

INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

Appendix IV

Country Addendum

Special Terms and Conditions Applicable in Countries Outside the United States

Except as provided otherwise herein, any capitalized term not defined in this Country Addendum shall have the same meaning as is ascribed thereto in the Plan or the Agreement, as applicable. This Country Addendum includes additional (or, if indicated, different) terms and conditions that govern the Award granted to the Participant under the Plan if the Participant works and/or resides in one of the countries listed below. If the Participant is a citizen or resident of a country other than that in which he or she is currently working and/or residing (or is considered as such for local law purposes) or if the Participant transfers his or her service relationship and/or residence to another country after the Award is granted, the Company shall, in its discretion, determine to what extent the terms and conditions contained herein shall be applicable to the Participant.

ALL COUNTRIES OUTSIDE THE UNITED STATES

Responsibility for Taxes.

The Participant acknowledges that, regardless of any action taken by the Company or, if different, the Participant's employer (the "Employer"), the ultimate liability for all income tax, social insurance, payroll tax, payment on account or other tax-related items related to the Participant's participation in the Plan and legally applicable to the Participant ("Tax-Related Items") is and remains the Participant's responsibility and may exceed the amount, if any, actually withheld by the Company or the Employer. The Participant further acknowledges that the Company and/or the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Plan, including, but not limited to, the grant, vesting or exercise (if applicable) of the Award, the delivery of shares of Common Stock, the subsequent sale of any shares of Common Stock acquired pursuant to the Award and the receipt of any dividends, dividend equivalents or other distributions with respect to the shares of Common Stock; and (b) do not commit to and are under no obligation to structure the terms of the Award or any aspect of the Award to reduce or eliminate the Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if the Participant is subject to Tax-Related Items in more than one jurisdiction, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, the Participant agrees to make arrangements acceptable to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, Participant authorizes the Company and/or the Employer, or their respective agents, at their sole discretion, to satisfy any withholding obligation for Tax-Related Items by one or a combination of the following: (i) withholding from the Participant's wages or other cash compensation payable to the Participant by the Company and/or the Employer; (ii) withholding from the proceeds of the sale of any shares of Common Stock acquired pursuant to

the Award either through a voluntary sale or through a mandatory sale arranged by the Company (on the Participant's behalf pursuant to this authorization without further consent); (iii) withholding from any shares of Common Stock to be delivered to the Participant pursuant to the Award; and/or (iv) any other method approved by the Company and, to the extent required by applicable law or the Plan, approved by the Committee.

Depending on the withholding method, the Company and/or the Employer may withhold for Tax-Related Items by considering statutory or other withholding rates, including minimum or maximum rates in the jurisdiction(s) applicable to the Participant. In the event of any over-withholding, the Participant may receive a refund of any over-withheld amount in cash (without interest and without entitlement to the equivalent amount in shares of Common Stock). If the obligation for Tax-Related Items is satisfied by withholding shares of Common Stock, for tax purposes, the Participant will be deemed to have been issued the full number of shares of Common Stock to which he or she is entitled pursuant to the Award, notwithstanding that a number of shares of Common Stock are withheld to satisfy the obligation for Tax-Related Items.

The Participant agrees to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of the Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue the shares of Common Stock or the proceeds of the sale of shares of Common Stock, if the Participant fails to comply with the Participant's obligations in connection with the Tax-Related Items.

Nature of Grant. In accepting the Award, the Participant acknowledges, understands and agrees that:

a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

b) the grant of the Award is exceptional, voluntary and occasional and does not create any contractual or other right to receive future Awards, or benefits in lieu of Awards, even if Awards have been granted in the past;

c) all decisions with respect to future awards, if any, will be at the sole discretion of the Company;

d) the Award and the Participant's participation in the Plan shall not create or amend a right to employment or be interpreted as forming an employment or service contract with the Company or any Subsidiary (including the Employer);

e) the Participant is voluntarily participating in the Plan;

f) the future value of the underlying shares of Common Stock is unknown, indeterminable and cannot be predicted with certainty;

g) if the Participant acquires shares of Common Stock, the value of such shares of Common Stock may increase or decrease in value, even below the per share exercise price;

h) unless otherwise agreed with the Company, the Award is not granted as consideration for, or in connection with, any service the Participant may provide as a director of a Subsidiary;

i) no claim or entitlement to compensation or damages shall arise from forfeiture of the Award resulting from the Participant's Termination of Employment (for any reason whatsoever whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any);

j) unless otherwise provided in the Plan or by the Company in its discretion, the Award and any benefit that may be received pursuant to this Agreement do not create any entitlement to have the Award or any such benefit transferred to, or assumed by, another company nor be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the shares of Common Stock underlying the Award; and

k) neither the Company nor any Subsidiary (including the Employer) shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the United States Dollar that may affect the value of the Award or of any amounts due to the Participant pursuant to the Award or the subsequent sale of any shares of Common Stock acquired pursuant to the Award.

No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Participant's participation in the Plan or the Participant's acquisition or sale of the underlying shares of Common Stock. The Participant should consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

Language. The Participant acknowledges and represents that he or she is proficient in the English language or has consulted with an advisor who is sufficiently proficient in English so as to allow the Participant to understand the terms and conditions of this Agreement or any other document related to the Award and/or the Plan. Furthermore, if the Participant has received this Agreement, or any other document related to the Award and/or the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

Imposition of Other Requirements. The Company reserves the right to impose other requirements on participation in the Plan or on the Award or shares of Common Stock acquired pursuant to the Award, to the extent the Company determines it is necessary or advisable for

legal or administrative reasons, and to require the undersigned to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

Choice of Venue. Participant agrees to the exclusive venue and jurisdiction of the State and Federal Courts located in the state of Delaware and waives any objection based on lack of jurisdiction or inconvenient forum. Any action relating to or arising out of this Plan must be commenced within one year after the cause of action accrued.

Insider Trading / Market Abuse Restrictions. The Participant may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions including, but not limited to, the United States ("U.S.") and the Participant's country of residence, which may affect the Participant's ability to accept, acquire, sell or otherwise dispose of shares of Common Stock or Awards, or rights linked to the value of shares of Common Stock during such times as the Participant is considered to have "inside information" regarding the Company (as defined by the laws or regulations in the applicable jurisdictions). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under the Company's insider trading policy as set forth in the "Avaya Holdings Corp. Insider Trading and Disclosure of Confidential Information Policy for Directors, Officers and Employees." The Participant is responsible for ensuring compliance with any applicable restrictions.

Exchange Control, Tax and/or Foreign Asset / Account Reporting. Certain foreign asset and/or foreign account reporting requirements and exchange controls may affect the Participant's ability to purchase or hold shares of Common Stock under the Plan or funds received from participating in the Plan in a brokerage or bank account outside of the Participant's country. The Participant may be required to report such accounts, assets or transactions to the tax or other authorities in the Participant's country. The Participant may also be required to repatriate sale proceeds or other funds received as a result of his or her participation in the Plan to the Participant's country through a designated bank or broker and/or within a certain time after receipt. The Participant is responsible for complying with any applicable regulations and should consult with his or her personal legal and tax advisors for any details.

Data Privacy. This provision replaces Section 12 (Transfer of Personal Data) of the Agreement:

If the Participant would like to participate in the Plan, the Participant will need to review the information provided in this Agreement and, where applicable, declare consent to the processing and/or transfer of personal data as described below.

a) ***EEA+ Controller and Representative. If the Participant is based in the European Union ("EU"), the European Economic Area, Switzerland or, if and when the United Kingdom leaves the EU, the United Kingdom (collectively "EEA+"), the Participant should note that the Company, with its address at 350 Mt. Kemble Avenue, Morristown, NJ 07960, United States of America, is the controller responsible for the processing of the Participant's personal data in connection with the Agreement and the Plan. The Company's representative in the EU is Avaya Deutschland GmbH, Theodor-Heuss Allee 112, Frankfurt, Germany 60486.***

b) ***Data Collection and Usage.*** ***The Company collects, uses and otherwise processes certain personal data about the Participant, including, but not limited to, the Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport or other identification number (e.g., resident registration number), salary, nationality, job title, any shares of stock or directorships held in the Company, details of all Awards or any other entitlement to shares of Common Stock awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor, which the Company receives from the Participant, the Employer or otherwise in connection with this Agreement or the Plan ("Data"), for the purposes of implementing, administering and managing the Plan and allocating the cash payment or shares of Common Stock pursuant to the Plan.***

If the Participant is based in the EEA+, the legal basis, where required, for the processing of Data by the Company is the necessity of the data processing for the Company to (i) perform its contractual obligations under this Agreement, (ii) comply with legal obligations established in the EEA+, or (iii) pursue the legitimate interest of complying with legal obligations established outside of the EEA+.

If the Participant is based outside of the EEA+, the legal basis, where required, for the processing of Data by the Company is the Participant's consent, as further described below.

c) ***Stock Plan Administration Service Providers.*** ***The Company transfers Data to Fidelity Stock Plan Services, LLC, an independent service provider (the "Service Provider"), which is assisting the Company by performing recordkeeping and administration services for the Plan. In the future, the Company may select a different service provider and share Data with such other provider serving in a similar manner. The Service Provider will open an account for the Participant to receive and trade shares of Common Stock acquired under the Plan. The Participant may be asked to agree on separate terms and data processing practices with the Service Provider, with such agreement being a condition to the ability to participate in the Plan.***

d) ***International Data Transfers.*** ***In the event the Participant resides, works or is otherwise located outside of the U.S., Data will be transferred from the Participant's country to the U.S., where the Company and its service providers are based. The Participant understands and acknowledges that the U.S. is not subject to an unlimited adequacy finding by the European Commission and might not provide a level of protection of personal data equivalent to the level of protection in the Participant's country. As a result, in the absence of a self-certification of the data recipient in the U.S. under the EU/U.S. or Swiss/U.S. Privacy Shield Framework or the implementation of appropriate safeguards such as the Standard***

Contractual Clauses adopted by the EU Commission or binding corporate rules approved by the competent EU data protection authority, the processing of personal data might not be subject to substantive data processing principles or supervision by data protection authorities. In addition, data subjects might have no or less enforceable rights regarding the processing of their personal data.

Neither the Company nor the Service Provider is currently self-certified under the EU/U.S. or Swiss/U.S. Privacy Shield Framework but the Company has implemented binding corporate rules, among others, with its subsidiaries in the EEA+. If the Participant is based in the EEA+, Data will be transferred from the EEA+ to the Company based on the binding corporate rules. The Participant may view a copy of such appropriate safeguards at https://www.avaya.com/en/privacy/bcr/. The onward transfer of Data from the Company to the Service Provider or, as the case may be, a different service provider of the Company is based solely on the Participant's consent, as further described below.

If the Participant is based outside of the EEA+, the Company's legal basis, where required, for the transfer of Data from the Participant's country to the Company and from the Company onward to the Service Provider or, as the case may be, a different service provider of the Company is the Participant's consent, as further described below.

e) Data Retention. The Company will hold and use the Data only as long as is necessary to implement, administer and manage the Participant's participation in the Plan, or as required to comply with legal or regulatory obligations, including under tax and security laws.

f) Data Subject Rights. The Participant may have a number of rights under data privacy laws in his or her jurisdiction. Depending on where the Participant is based, such rights may include the right to (i) request access or copies of Data the Company processes, (ii) the rectification or amendment of incorrect or incomplete Data, (iii) the deletion of Data, (iv) request restrictions on the processing of Data, (v) object to the processing of Data for legitimate interests, (vi) the portability of Data, (vi) lodge complaints with competent authorities in the Participant's jurisdiction, and/or to (viii) receive a list with the names and addresses of any potential recipients of Data. To receive additional information regarding these rights or to exercise these rights, the Participant can contact the Company's data privacy office at dataprivacy@avaya.com or, for the Participants in the EEA+, view the Company's binding corporate rules at https://www.avaya.com/en/privacy/bcr/.

g) Necessary Disclosure of Personal Data. The Participant understands that providing the Company with Data is necessary for the performance of the Agreement and that the Participant's refusal to provide Data would make it impossible for the Company to perform its contractual obligations and may affect the Participant's ability to participate in the Plan.

h) ***Voluntariness and Consequences of Consent Denial or Withdrawal. Participation in the Plan is voluntary and the Participant is providing any consents referred to herein on a purely voluntary basis. The Participant understands that he or she may withdraw any such consent at any time with future effect for any or no reason. If the Participant does not consent, or if the Participant later seeks to withdraw the Participant's consent, the Participant's salary from or employment and career with the Employer will not be affected; the only consequence of refusing or withdrawing the Participant's consent is that the Company would not be able to grant Awards to the Participant or administer or maintain the Awards. For more information on the consequences of refusal to consent or withdrawal of consent, the Participant should contact the Company's data privacy office at dataprivacy@avaya.com.***

Declaration of Consent. If the Participant is based in the EEA+, by accepting the Award and indicating consent via the Company's online acceptance procedure, the Participant explicitly declares his or her consent to the onward transfer of Data by the Company to the Service Provider or, as the case may be, a different service provider of the Company in the U.S. as described above.

If the Participant is based outside of the EEA+, by accepting the Awards and indicating consent via the Company's online acceptance procedure, Participant explicitly declares his or her consent to the entirety of the Data processing operations described in this Agreement including, without limitation, the onward transfer of Data by the Company to the Service Provider or, as the case may be, a different service provider of the Company in the U.S.

BELGIUM

Acceptance of Agreement. If the Award is an Option, the Participant should refer to the separate Belgium Option Package for information about the tax impact of the acceptance of the Award and consult his or her personal tax advisor for further information.

CANADA

Method of Exercise and Payment. If this Award is an Option, due to tax considerations in Canada and notwithstanding the provisions of Section 6.4(d) of the Plan, the Participant may not pay the Per Share Exercise Price by having the Company withhold shares of Common Stock issuable upon exercise of the Option or in the form of Common Stock owned by the Participant. The Company reserves the right to allow these forms of payment of the Per Share Exercise Price for legal or administrative reasons.

Delivery of Shares / Settlement. The Award will be settled by the delivery of shares of Common Stock and not by the delivery of cash or a combination of cash and shares of Common Stock.

Securities Law Notification. The Participant is permitted to sell any shares of Common Stock acquired under the Plan through the Service Provider or other such stock plan service provider as may be selected by the Company in the future, provided the sale of shares takes place outside Canada through facilities of a stock exchange on which the Common Stock is listed. The Common Stock is currently listed on the New York Stock Exchange.

The following provisions will apply to individuals who are residents of Quebec:

Language Consent. The parties acknowledge that it is their express wish that this Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or directly hereto, be drawn up in English.

Consentement à la Langue Utilisée. Les parties reconnaissent avoir exigé la rédaction en anglais de cette convention, ainsi que de tous documents, avis et procédures judiciaires, exécutés, donnés ou intentés en vertu de, ou liés directement ou indirectement à, la présente convention.

Data Privacy. This provision supplements the above Data Privacy section of this Country Addendum:

The Participant hereby authorizes the Company and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. The Participant further authorizes the Company and its Subsidiaries (including the Employer) to disclose and discuss the Plan with their advisors. The Participant further authorizes the Company and the Employer to record and keep such information in Participant's employment file.

GERMANY

No country specific terms and conditions.

INDIA

Method of Exercise and Payment. If this Award is an Option, due to exchange control considerations in India and notwithstanding the provisions of Section 6.4(d) of the Plan, the Participant may not pay the Per Share Exercise Price through a procedure whereby the Participant delivers irrevocable instructions to a broker acceptable to the Committee to sell a number of shares of Common Stock with an aggregate value equal to the Per Share Exercise Price and deliver the proceeds of such sale to the Company, unless all of the shares of Common Stock subject to the exercised portion of the Option are sold at such time (i.e., a "sell-to-cover" method of exercise and payment is not permitted but a "sell-all" method of exercise and payment is permitted). The Company reserves the right to allow this form of payment of the Per Share Exercise Price for legal or administrative reasons.

IRELAND

No country specific terms and conditions.

ITALY

Method of Exercise and Payment. If this Award is an Option, due to regulatory considerations in Italy and notwithstanding the provisions of Section 6.4(d) of the Plan, the Participant must pay the Per Share Exercise Price through a procedure whereby the Participant delivers irrevocable instructions to a broker acceptable to the Committee to sell a number of shares of Common Stock with an aggregate value equal to the Per Share Exercise Price and deliver the proceeds of such sale to the Company, provided that all of the shares of Common Stock subject to the exercised portion of the Option must be sold at such time (i.e., a "sell-all" method of exercise and payment is required). The Company reserves the right to allow other forms of payment of the Per Share Exercise Price for legal or administrative reasons.

Plan Document Acknowledgment. In accepting the Award, the Participant acknowledges that the Participant has received a copy of the Plan and the Agreement and has reviewed the Plan and the Agreement in their entirety and fully understands and accepts all provisions of the Plan and the Agreement. The Participant further acknowledges that the Participant has read and specifically and expressly approves the following sections of the Agreement and the Country Addendum: Vesting (for RSUs and PRSUs); Vesting and Exercisability (for Options); Exercise Following Termination (for Options); Securities Representation (for RSUs and PRSUs); Compliance with Laws; Further Assurances; Acceptance of Agreement; Withholding and Responsibility for Taxes; Language; Imposition of Other Requirements; Governing Law; Choice of Venue.

MEXICO

Plan Document Acknowledgment. By accepting the Award, the Participant acknowledges that he or she has received a copy of the Plan and the Agreement, which the Participant has reviewed. The Participant acknowledges further that he or she accepts all the provisions of the Plan and the Agreement. The Participant also acknowledges that he or she has read and specifically and expressly approves the terms and conditions set forth in the Nature of Grant section, which clearly provide as follows: (i) the Participant's participation in the Plan does not constitute an acquired right; (ii) the Plan and the Participant's participation in it are offered by the Company on a wholly discretionary basis; (iii) the Participant's participation in the Plan is voluntary; and (iv) none of the Company or its Subsidiaries (including the Employer) are responsible for any decrease in the value of any shares of Common Stock (or the amount of any cash payment) that may be acquired under the Plan.

Labor Law Policy and Acknowledgment. In accepting the Award, the Participant expressly recognizes that Avaya Holdings Corp., with offices at 350 Mt. Kemble Avenue, Morristown, NJ

07960, United States of America, is solely responsible for the administration of the Plan and that the Participant's participation in the Plan does not constitute an employment relationship between the Participant and the Company since the Participant is participating in the Plan on a wholly commercial basis and the Participant's sole Employer is a Subsidiary in Mexico ("Avaya-Mexico"). Based on the foregoing, the Participant expressly recognizes that the Plan and the benefits that the Participant may derive from his or her participation in the Plan do not establish any rights between the Participant and Avaya-Mexico, and do not form part of the employment conditions and/or benefits provided by Avaya-Mexico and any modification of the Plan or its termination shall not constitute a change or impairment of the terms and conditions of the Participant's employment.

The Participant further understands that his or her participation in the Plan is a result of a unilateral and discretionary decision of the Company; therefore, the Company reserves the absolute right to amend and/or discontinue the Participant's participation at any time without any liability to the Participant.

Finally, the Participant hereby declares that he or she does not reserve any action or right to bring any claim against the Company for any compensation or damages regarding any provision of the Plan or the benefits derived under the Plan, and Participant therefore grants a full and broad release to the Company and its Subsidiaries, branches, representation offices, shareholders, officers, agents or legal representatives with respect to any claim that may arise.

Reconocimiento del Plan. Al aceptar este premio ("Award"), el Participante reconoce que él o ella ha recibido una copia del plan y del Contrato y que lo ha revisado. El Participante reconoce además que acepta todas las disposiciones del Plan y del Contrato. El Participante de igual forma reconoce que acepta los términos y condiciones establecidos en la sección Naturaleza del Otorgamiento ("Nature of Grant"), que estipula claramente lo siguiente: (i) la participación del Participante en el Plan no constituye un derecho adquirido; (ii) la Compañía ofrece el plan y la Participación del Participante en él de manera totalmente discrecional; (iii) la participación del Participante en el Plan es voluntaria; y (iv) ninguna de las Compañías o Subsidiarias (incluido el Patrón) son responsables de cualquier disminución en el valor de las Acciones (o el monto de cualquier pago en efectivo) que pueda adquirirse en virtud del Plan

Política de la Ley Laboral y Reconocimiento. Al aceptar este Premio ("Award"), el Participante reconoce expresamente que Avaya Holdings Corp., con oficinas ubicadas en 350 Mt. Kemble Avenue, Morristown, New Jersey 07960, U.S.A.., es el único responsable de la administración del Plan y que la participación del Participante en el mismo, el pago del premio o la adquisición de Acciones no constituye de ninguna manera una relación laboral entre el Participante y la Compañía, debido a que la participación de esa persona en el Plan deriva únicamente de una relación comercial y el único Patrón del participante es un Afiliada Mexicana de la Compañía ("Avaya-México"). Derivado de lo anterior, el Participante reconoce expresamente que el Plan y los beneficios que pudieran derivar para el Participante por su participación en el mismo, no establecen ningún derecho entre el Participante e Avaya-México, y no forman parte de las condiciones laborales y/o prestaciones otorgadas por Avaya-México, y cualquier modificación

al Plan o la terminación del mismo de ninguna manera podrá ser interpretada como una modificación o desmejora de los términos y condiciones de trabajo del Participante.

Asimismo, el Participante reconoce que su participación en el Plan es resultado de la decisión unilateral y discrecional de la Compañía, por lo tanto, la Compañía se reserva el derecho absoluto para modificar y/o discontinuar la participación del Participante en cualquier momento, sin ninguna responsabilidad hacia el Participante.

Finalmente el Participante manifiesta que no se reserva ninguna acción o derecho que ejercitar en contra dela Compañía, por cualquier compensación o daños en relación con cualquier disposición del Plan o de los beneficios derivados del mismo, y en consecuencia exime amplia y completamente a la Compañía, sus Afiliadas, sucursales, oficinas de representación, sus accionistas, administradores, agentes y representantes legales con respecto a cualquier reclamo que pudiera surgir.

NETHERLANDS

No country specific terms and conditions.

SINGAPORE

Securities Law Notification. The grant of the Award is being made pursuant to the "Qualifying Person" exemption under section 273(1)(f) of the SFA under which it is exempt from the prospectus and registration requirements and is not made with a view to the underlying shares of Common Stock being subsequently offered for sale to any other party. The Plan has not been and will not be lodged or registered as a prospectus with the Monetary Authority of Singapore. Any shares of Common Stock acquired pursuant to the Award cannot be offered for sale in Singapore prior to the six-month anniversary of the Grant Date, unless such offer or sale is made pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the Securities and Futures Act (Chapter 289, 2006 Ed.) ("SFA").

SPAIN

Labor Law Acknowledgement. By accepting the Award, the Participant consents to participation in the Plan and acknowledges that the Participant has received a copy of the Plan.

The Participant understands that the Company has unilaterally, gratuitously and in its sole discretion decided to grant the Award under the Plan to individuals who may be employees of the Company or its Subsidiaries throughout the world. The decision is limited and entered into based upon the express assumption and condition that any grant will not economically or otherwise bind the Company or any Subsidiary on an ongoing basis, other than as expressly set forth in the Agreement. Consequently, the Participant understands that the Award is granted on the assumption and condition that the Award and any shares of Common Stock acquired pursuant to the Award shall not become part of any employment or service contract (whether

with the Company or any Subsidiary) and shall not be considered a mandatory benefit, salary for any purpose (including severance compensation) or any other right whatsoever. Furthermore, the Participant understands and freely accepts that there is no guarantee that any benefit whatsoever shall arise from the grant of the Award, which is gratuitous and discretionary, since the future value of the Award and the underlying shares of Common Stock is unknown and unpredictable.

In addition, the Participant understands that the grant of the Award would not be made but for the assumptions and conditions set forth hereinabove; thus, the Participant understands, acknowledges and freely accepts that, should any or all of the assumptions be mistaken or any of the conditions not be met for any reason, the Award and any right to a cash payment or shares of Common Stock shall be null and void.

Further, the Participant understands and agrees that upon Termination of Employment, unless otherwise specifically provided in the Agreement or determined by the Committee or its designee, any unvested portion of the Award will be immediately forfeited and, if the Award is an Option, any vested portion of the Option shall remain exercisable only for the period described in Section 4 of the Agreement and shall be subject to the terms of the Plan and, thereafter, any unexercised portion of the Option will be forfeited.

In particular, the Participant understands and agrees that, unless otherwise expressly provided in the Agreement or determined by the Committee or its designee, the unvested portion of the Award, and any vested portion of an Option that is not exercised within any post-termination exercise period described in the Agreement, will be cancelled without entitlement to any shares of Common Stock or to any amount as indemnification if the Participant terminates employment by reason of, but not limited to, resignation; disciplinary dismissal adjudged to be with cause; disciplinary dismissal adjudged or recognized to be without good cause (i.e., subject to a "*despido improcedente*"); individual or collective layoff on objective grounds, whether adjudged to be with cause or adjudged or recognized to be without cause; material modification of the terms of employment under Article 41 of the Workers' Statute; relocation under Article 40 of the Workers' Statute; Article 50 of the Workers' Statute; unilateral withdrawal by the Participant's employer; and under Article 10.3 of Royal Decree 1382/1985.

Securities Law Notification. No "offer of securities to the public," as defined under Spanish law, has taken place or will take place in the Spanish territory in connection with the grant of the Award. The Agreement has not been, nor will it be, registered with the *Comisión Nacional del Mercado de Valores*, and does not constitute a public offering prospectus.

SWEDEN

Withholding. This provision supplements the Withholding section of the Agreement (if applicable) and the Responsibility for Taxes section of this Country Addendum:

Without limitation to the Withholding section of the Agreement (if applicable) and the Responsibility for Taxes section of this Country Addendum, by accepting the Award, the Participant authorizes the Company and/or the Employer to withhold shares of Common Stock or

to sell shares of Common Stock otherwise deliverable to the Participant upon vesting or exercise (as applicable) to satisfy any Tax-Related Items, regardless of whether the Company and/or the Employer have an obligation to withhold such Tax-Related Items.

UNITED ARAB EMIRATES

Securities Law Notification. The Award is being offered only to qualified employees of the Company and its Subsidiaries and is in the nature of providing equity incentives to such employees in the United Arab Emirates. Any documents related to the Plan, including the Plan and the Agreement, are intended for distribution only to such employees and must not be delivered to, or relied on by, any other person. Prospective acquirers of any securities offered pursuant to the Award should conduct their own due diligence on securities. If the Participant does not understand the contents of the Plan or the Agreement, the Participant should consult an authorized financial adviser.

UNITED KINGDOM ("U.K.")

Withholding. This provision supplements the Withholding section of the Agreement (if applicable) and the Responsibility for Taxes section of this Country Addendum:

Without limitation to the Withholding section of the Agreement (if applicable) and the Responsibility for Taxes section of this Country Addendum, the Participant hereby agrees that the Participant is liable for all Tax-Related Items and hereby covenants to pay all such Tax- Related Items, as and when requested by the Company or the Employer, as applicable, or by Her Majesty's Revenue and Customs ("HMRC") (or any other tax or relevant authority). The Participant also hereby agrees to indemnify and keep indemnified the Company and the Employer, as applicable, against any Tax-Related Items that they are required to pay or withhold or have paid or will pay to HMRC (or any other tax or relevant authority) on the Participant's behalf.

Notwithstanding the foregoing, if the Participant is a director or executive officer of the Company (within the meaning of Section 13(k) of the Exchange Act), the terms of the immediately foregoing provision will not apply. In the event that the Participant is such a director or executive officer of the Company and the U.K. income tax liability arising as a result of participation in the Plan is not collected from or paid by the Participant within ninety (90) days of the end of the U.K. tax year in which an event giving rise to the indemnification described above occurs, the amount of any uncollected income tax may constitute a benefit to the Participant on which additional income tax and national insurance contributions may be payable. The Participant acknowledges that he or she will be responsible for reporting and paying any income tax due on this additional benefit directly to the HMRC under the self-assessment regime and for paying the Company or the Employer, as applicable, for the value of any employee national insurance contributions due on this additional benefit.

EXHIBIT 10.53

Avaya Inc.
4655 Great America Parkway
Santa Clara, CA 95054 USA

November 1st, 2019

BY EMAIL

Mr. Anthony Bartolo

Dear Anthony,

It gives me great pleasure to offer you a Executive Vice President position in Avaya Inc. ("Avaya"). In addition to confirming my offer, this letter sets out the terms and conditions of your employment and outlines the current major features of Avaya's compensation and benefit plans, programs and practices under which you will be covered.

Assumption of Duties: Effective on or about **December 9, 2019,** you will assume the role of Senior Vice President and Chief Product Officer reporting to me. Your office will be based in Raleigh, North Carolina.

Cash Compensation:

Annual Base Salary: Your annual base salary will be **$650,000** paid monthly. Based on your hire date of December 9, 2019 you will receive your first paycheck on December 31st and monthly after that.

Sign-On Bonus: We will pay you a cash sign-on bonus in the amount of **$650,000** less applicable taxes, to be paid in the pay period following one (1) month of completed service, but no later than December 31, 2019 should you commence employment on December 9, 2019. If you terminate your employment voluntarily or if Avaya terminates your employment involuntarily for cause prior to the first anniversary of your hire date, you will be obligated to return a pro-rated portion of this sign-on bonus based on the completed months of employment (based on the completed months). If your employment is terminated involuntarily for any other reason, you will not be obligated to return any portion of this sign-on bonus.

Avaya Annual Incentive Plan (AIP): Avaya offers an annual incentive plan that provides an opportunity for payment for Vice Presidents and above, following the end of the fiscal year (Avaya's fiscal year is October 1 through September 30). Each eligible employee's Incentive Plan payment is based on several factors, including individual contribution and company performance. Your opportunity is **100%** of your Base Salary ("Opportunity"). Your actual payout could be anywhere between 0%-200% of the Opportunity based on individual and company performance, as Avaya may further specify from time to time. Our incentive programs are reviewed annually and subject to change. More specific information about

Avaya's incentive plan design, metrics, and targets is typically communicated to employees during the first quarter of each fiscal year and will be viewable on the Company intranet after your hire date.
Long Term Incentives: Subject to approval by our Board of Directors or the Compensation Committee, you will be awarded equity grants as follows:

1) **Inducement Awards: Restricted Stock Units (RSUs) & Stock Options**

- As a material inducement to your joining Avaya, you will be granted RSUs that represent the contractual right to receive one share of common stock of Avaya Holdings Corp. upon vesting. The number of RSUs to be awarded to you will be determined by dividing the value of **USD $1,000,000** by the fair market value of Avaya Holdings common stock on the grant date.

- As a material inducement to your joining Avaya, you will be granted Stock Options that represent the contractual right to acquire at the Per Share Exercise Price specified on the grant date one share of common stock of Avaya Holdings Corp. upon vesting. The number of Stock Options to be awarded to you will be determined by dividing the value of **USD $1,000,000** by the Black-Scholes value of each Stock Option.

- Generally, the RSUs and Stock Options will vest and become non-forfeitable over a three (3) year period, according to the following schedule: 1/3 on the closest date of February 15, May 15, August 15, or November 15 after the first anniversary of the grant date, and quarterly thereafter. You must be an employee of Avaya on each vesting date in order for each respective portion of your award to vest.

2) Annual Awards: Restricted Stock Units (RSUs) & Performance Restricted Stock Units (PRSUs)

- The annual award will consist of a combination of RSUs and performance-based vesting restricted stock units (PRSUs) representing the right to receive shares of common stock of Avaya Holdings Corp. upon vesting. The aggregate number of RSUs and PRSUs to be awarded to you will be determined by dividing the value of **USD $2,000,000** by the fair market value of Avaya Holdings common stock on the grant date. The mix of RSUs and PRSUs will be consistent with the allocations in the annual equity awards to other similarly-situated senior vice presidents at Avaya. The RSUs will have the terms described above and the PRSUs will vest on the on the 3rd anniversary of the date of grant with respect to a number of shares determined based on Avaya's annual Adjusted EBITDA over the performance period and Avaya's total shareholder return over such period.

- The annual awards are subject to the terms and conditions of the Avaya Holdings Corp. 2017 Equity Incentive Plan (Plan) under which they were

made and the award agreements. Information regarding your equity awards will be visible and the related documentation will be accessible on the Fidelity website within a week of Board of Director or Committee approval. You will be required to review and accept the Plan and the individual agreements within sixty (60) days from the grant date or the grant will be cancelled per the terms of the Plan. You will receive an email from Fidelity with instructions for accepting your equity awards shortly after your awards are accessible. If there is any conflict between this award notification and the award agreements, the terms of the award agreements and the Plan govern.

Employee Benefit Plans: Attachment A is a summary of benefits available to you under Avaya's Executive and general employee benefit plans. For most plans, you will be covered immediately from date of hire.

Executive Programs and Benefits: You will be eligible for the Avaya Executive Health Program and an annual Financial Counseling Allowance. Information on these programs will be provided upon your date of hire

Contingency of Offer: This offer of employment is contingent upon the successful completion of reference checks and is also contingent upon your execution of the Employee Agreement Regarding Non-Disclosure, IP Assignment, Non-Competition and Non-Solicitation, attached as **Attachment B.**

Executive Relocation Plan: You will be eligible for the Avaya Executive Relocation Plan for you and your family to relocate from Singapore to North Carolina, USA. **Attachment C** is a summary of the plan highlights for which you will be eligible. Also attached is a Repayment Agreement confirming that you must remain an Avaya employee for 12 months from the start of your relocation or you will have to repay the relocation costs in full. Please sign and return this Agreement with your offer letter.

Benefit and Incentive Plan Terms: The benefit and incentive plans, programs and practices briefly outlined in this letter, reflect their current provisions. Payments and benefits under these plans, programs and practices, as well as other payments referred to in this letter are subject to IRS rules and regulations with respect to withholding, reporting, and taxation, and will not be grossed-up unless specifically stated. The Company reserves the right to discontinue or modify any compensation, incentive, benefit, perquisite plan, program or practice at its sole discretion and without prior notice. Moreover, the very brief summaries contained herein are subject to the written terms of such plans, programs and practices, which supersede any other written or oral representations concerning such plans, programs and practices, including this letter.

For purposes of the Executive and employee benefits plans, the definition of includable compensation is set forth in the respective plans, and may be amended or modified at any time and without prior notice. No other compensation and payments reflected in this offer are included in the calculation of any employee or Executive benefits. You may consult with the respective summary plan descriptions, which are available on request, for specific plan information.

There may be other benefits at Avaya that include certain non-solicitation obligations, e.g. equity grants, that are not meant to conflict with this offer letter. In case of any conflict between the provisions of this letter and the provisions of any other applicable benefit plan,

program or agreement in which you participate, the obligations set forth in such benefit plan, program or agreement shall govern.

Employment At-Will: This letter is neither an express nor implied contract for continued employment or employment for a specific length of time. Your employment with Avaya will be "At-Will." This means that you have the right to terminate your employment at any time and for any reason. Likewise, Avaya may terminate your employment at any time and for any reason.

Prior Representation: By acceptance of this offer you further agree that this offer supersedes and completely replaces any prior oral or written communications or representations concerning or relating to your employment with Avaya.

If you agree to the foregoing terms and conditions of employment, and affirm that there are no agreements or other impediments that would prevent you from providing exclusive service to Avaya, **please sign this letter by November 8th, 2019** in the space provided below.

Please scan and email the signed letter, as well as the signed Employee Agreement Regarding Non-Disclosure, IP Assignment, Non-Competition and Non-Solicitation (Attachment B), to Mary-Jo Trimmer of our Executive Staffing group at mjtrimmer@avaya.com.

Anthony, I feel the package we have developed for you is attractive and anticipates that you will make a critical contribution to Avaya. As a Company, we have never been better positioned to take full advantage of the opportunities for growth and success in the marketplace. I look forward to having you join us. If you have any questions, please do not hesitate to call me or Faye Tylee at (908) 953-2090.

Sincerely,

James Chirico
President and Chief Executive Officer

_/s/ Anthony Bartolo_____ ____11/3/19_____
Acknowledged and Agreed to: Date
Anthony Bartolo

EXHIBIT 10.54

Avaya Inc.
4655 Great America Parkway
Santa Clara, CA 95054 USA

July 30, 2020

BY EMAIL

Mr. Stephen Spears

Dear Stephen,

It gives me great pleasure to offer you an Executive Vice President position in Avaya Inc. ("Avaya"). In addition to confirming my offer, this letter sets out the terms and conditions of your employment and outlines the current major features of Avaya's compensation and benefit plans, programs and practices under which you will be covered.

Assumption of Duties: Effective on or about **September 15, 2020,** you will assume the role of Executive Vice President and Chief Revenue Officer reporting to me. Your office will be virtual based in Paconian Springs, Virginia.

Cash Compensation:

Annual Base Salary: Your annual base salary will be **$600,000** paid monthly. Based on your hire date of September 15, 2020 you will receive your first paycheck on September 30 and monthly after that.

Sign-On Bonus: We will pay you a cash sign-on bonus in the amount of **$750,000** less applicable taxes, to be paid in the pay period following one (1) month of completed service, but no later than October 31, 2020 should you commence employment on September 15, 2020. If you terminate your employment voluntarily or if Avaya terminates your employment involuntarily for cause prior to the first anniversary of your hire date, you will be obligated to return a pro-rated portion of this sign-on bonus based on the completed months of employment (based on the completed months). If your employment is terminated involuntarily for any other reason, you will not be obligated to return any portion of this sign-on bonus.

Avaya Annual Incentive Plan (AIP): Avaya offers an annual incentive plan that provides an opportunity for payment following the end of the fiscal year (Avaya's fiscal year is October 1 through September 30). Each eligible employee's Incentive Plan payment is based on several factors, including individual contribution and company performance. Your opportunity is **100%** of your Base Salary ("Opportunity"). Your actual payout could be anywhere between 0%-200% of the Opportunity based on individual and company performance, as Avaya may further specify from time to time. Our incentive programs are reviewed annually and subject to change. More specific information about Avaya's incentive plan design, metrics, and

targets is typically communicated to employees during the first quarter of each fiscal year and will be viewable on the Company intranet after your hire date.

I am pleased to confirm that your Opportunity under the AIP will be guaranteed at 125% of your target for fiscal 2021, with a guaranteed award of at least **$750,000** to be paid on or about December 31, 2021.

Payment is conditioned upon your continued employment through the date the payment is due. If your employment is terminated voluntarily or involuntarily for gross misconduct prior to the payment date, you will be ineligible to receive any portion of this bonus.

Long Term Incentives: Subject to approval by our Board of Directors or the Compensation Committee, you will be awarded equity grants as follows:

1) **New Hire Award: Restricted Stock Units (RSUs) to be Granted on Your Hire Date**

Subject to approval by our Board of Directors or its delegate, you will be awarded a grant of Restricted Stock Units (RSUs). Each RSU represents the contractual right to receive one share of common stock of Avaya Holdings Corp. upon vesting on the terms and conditions of the Avaya Holdings Corp. 2019 Equity Incentive Plan and your individual RSU Award Agreement. The number of RSUs to be awarded to you will be determined by dividing the value of USD **$2,800,000** by the fair market value of Avaya Holdings common stock on the grant date.

Generally, the RSUs will vest and become non-forfeitable over a three (3) year period, according to the following schedule: 1/3 after the first anniversary of the grant date and quarterly thereafter. You must be an employee of Avaya on each vesting date in order for each respective portion of your award to vest.

2) **Annual Awards: Restricted Stock Units (RSUs) & Performance Restricted Stock Units (PRSUs) to be Granted in November/ December 2020**

Restricted Stock Units (RSUs): Subject to approval by our Board of Directors or its delegate, you will be awarded a grant of Restricted Stock Units (RSUs). Each RSU represents the contractual right to receive one share of common stock of Avaya Holdings Corp. upon vesting on the terms and conditions of the Avaya Holdings Corp. 2019 Equity Incentive Plan and your individual RSU Award Agreement. The number of RSUs to be awarded to you will be determined by dividing the value of USD **$1,000,000** by the fair market value of Avaya Holdings common stock on the grant date.

Generally, the RSUs will vest and become non-forfeitable over a three (3) year period, according to the following schedule: 1/3 after the first anniversary of the grant date and quarterly thereafter. You must be an employee of Avaya on each vesting date in order for each respective portion of your award to vest.

Performance Restricted Stock Units (PRSUs): Subject to approval by our Board of Directors or its delegate, you will be awarded a grant of Performance Restricted Stock Units (PRSUs). This award consists of performance-based vesting restricted stock units (PRSUs) representing the right to receive shares of common stock of Avaya Holdings Corp. upon vesting. The number of PRSUs to be awarded to you will be determined by dividing the value of USD **$1,000,000** by the fair market value of Avaya Holdings common stock on the grant date and will vest on the on the 3rd anniversary of the date of grant with respect to a number of shares determined based on Avaya's annual Adjusted EBITDA over the performance period and Avaya's total shareholder return over such period. This award is subject to the terms and conditions of the Avaya Holdings Corp. 2019 Equity Incentive Plan (Plan) under which it is made and the award agreement.

Information regarding your equity awards will be visible and the related documentation will be accessible on the Fidelity website within a week of Board of Director or Committee approval. You will be required to review and accept the Plan and the individual agreements within sixty (60) days from the grant date or the grant will be cancelled per the terms of the Plan. You will receive an email from Fidelity with instructions for accepting your equity awards shortly after your awards are accessible. If there is any conflict between this award notification and the award agreements, the terms of the award agreements and the Plan govern.

Employee Benefit Plans: Attachment A is a summary of benefits available to you under Avaya's Executive and general employee benefit plans. For most plans, you will be covered immediately from date of hire.

Executive Programs and Benefits: You will be eligible for an annual Financial Counseling Allowance to be paid each year at the end of December. Information on this program will be provided upon your date of hire.

Contingency of Offer: This offer of employment is contingent upon the successful completion of reference checks and is also contingent upon your execution of the Employee Agreement Regarding Non-Disclosure, IP Assignment, Non-Competition and Non-Solicitation, attached as **Attachment B.**

Benefit and Incentive Plan Terms: The benefit and incentive plans, programs and practices briefly outlined in this letter, reflect their current provisions. Payments and benefits under these plans, programs and practices, as well as other payments referred to in this letter are subject to IRS rules and regulations with respect to withholding, reporting, and taxation, and will not be grossed-up unless specifically stated. The Company reserves the right to discontinue or modify any compensation, incentive, benefit, perquisite plan, program or practice at its sole discretion and without prior notice. Moreover, the very brief summaries contained herein are subject to the written terms of such plans, programs and practices, which supersede any other written or oral representations concerning such plans, programs and practices, including this letter.

For purposes of the Executive and employee benefits plans, the definition of includable compensation is set forth in the respective plans, and may be amended or modified at any time and without prior notice. No other compensation and payments reflected in this offer are included in the calculation of any employee or Executive benefits. You may consult with the respective summary plan descriptions, which are available on request, for specific plan information.

There may be other benefits at Avaya that include certain non-solicitation obligations, e.g. equity grants, that are not meant to conflict with this offer letter. In case of any conflict between the provisions of this letter and the provisions of any other applicable benefit plan, program or agreement in which you participate, the obligations set forth in such benefit plan, program or agreement shall govern.

Employment At-Will: This letter is neither an express nor implied contract for continued employment or employment for a specific length of time. Your employment with Avaya will be "At-Will." This means that you have the right to terminate your employment at any time and for any reason. Likewise, Avaya may terminate your employment at any time and for any reason.

Prior Representation: By acceptance of this offer you further agree that this offer supersedes and completely replaces any prior oral or written communications or representations concerning or relating to your employment with Avaya.

If you agree to the foregoing terms and conditions of employment, and affirm that there are no agreements or other impediments that would prevent you from providing exclusive service to Avaya, **please sign this letter by August 12, 2020** in the space provided below.

Please scan and email the signed letter, as well as the signed Employee Agreement Regarding Non-Disclosure, IP Assignment, Non-Competition and Non-Solicitation (Attachment B), to Faye Tylee, Global Head of Human Resources at fayetylee@avaya.com.

Stephen, I feel the package we have developed for you is attractive and anticipates that you will make a critical contribution to Avaya. As a Company, we have never been better positioned to take full advantage of the opportunities for growth and success in the marketplace. I look forward to having you join us. If you have any questions, please do not hesitate to call me or Faye Tylee at (908) 953-2090.

Sincerely,

James Chirico
President and Chief Executive Officer

___/s/ Stephen D. Spears____ __8/7/2020_____
Acknowledged and Agreed to: Date
Stephen Spears

EXHIBIT 21.1

Subsidiaries of Avaya Holdings Corp.

Company Name	State or Other Jurisdiction of Incorporation or Organization
3102455 Nova Scotia Company	Nova Scotia
Aurix Limited	England & Wales
Avaya (China) Communication Co. Ltd.	China
Avaya (Dalian) Intelligent Communications Co., Ltd.	China
Avaya (Gibraltar) Investments Limited	Gibraltar
Avaya (Malaysia) Sdn. Bhd.	Malaysia
Avaya (Shanghai) Enterprise Management Co., Ltd.	China
Avaya Argentina S.R.L.	Argentina
Avaya Australia Pty Ltd	Australia
Avaya Austria GmbH	Austria
Avaya Belgium SPRL	Belgium
Avaya Beteiligungs GmbH	Germany
Avaya Brasil LTDA.	Brazil
Avaya CALA Inc.	Delaware
Avaya Canada Corp.	Nova Scotia
Avaya Capital Ireland	England & Wales
Avaya Capital Ireland Unlimited Company	Ireland
Avaya Chile Limitada	Chile
Avaya CIS LLC	Russian Federation
Avaya Cloud Canada Inc.	Ontario
Avaya Cloud Inc.	Delaware
Avaya Cloud Limited	Ireland
Avaya Cloud Services Private Limited	India
Avaya Communication de Colombia S.A.	Colombia
Avaya Communication de Mexico, S.A. de C.V.	Mexico
Avaya Communication Israel Ltd.	Israel
Avaya Comunicación España S.L.U.	Spain
Avaya Cyprus Investments Limited	Cyprus
Avaya Czech Republic s.r.o.	Czech Republic
Avaya d.o.o.	Croatia
Avaya Denmark ApS	Denmark
Avaya Deutschland GmbH	Germany

Avaya Dutch Holdco B.V.	Netherlands
Avaya ECS Limited	England & Wales
Avaya Egypt LLC	Egypt
Avaya EMEA Ltd.	Delaware
Avaya Enterprises S.R.L.	Romania
Avaya Federal Solutions, Inc.	Delaware
Avaya Finland Oy	Finland
Avaya France SAS	France
Avaya GCM Sales Unlimited Company	Ireland
Avaya German Holdco GmbH	Germany
Avaya Germany GmbH	Germany
Avaya GmbH & Co. KG	Germany
Avaya Holding EMEA BV	Netherlands
Avaya Holdings LLC	Delaware
Avaya Hong Kong Company Limited	Hong Kong
Avaya Hungary Ltd./Avaya Hungary Communication Limited Liability Company	Hungary
Avaya Iletisim Sistemleri Ticaret Anonim Sirketi (Turkey JSC)	Turkey
Avaya Inc.	Delaware
Avaya India (SEZ) Private Limited	India
Avaya India Private Limited	India
Avaya Integrated Cabinet Solutions LLC	Delaware
Avaya International Enterprises Ltd.	Ireland
Avaya International Holdings Limited	England & Wales
Avaya International Sales Limited	Ireland
Avaya Ireland Unlimited Company	Ireland
Avaya Italia S.p.A.	Italy
Avaya Japan Ltd.	Japan
Avaya Korea Ltd.	Korea, Republic Of
Avaya Luxembourg Investments S.a.r.l.	Luxembourg
Avaya Luxembourg Sarl	Luxembourg
Avaya Macau Limitada	China
Avaya Management L.P.	Delaware
Avaya Management Services Inc.	Delaware
Avaya Mauritius Ltd	Mauritius
Avaya Nederland B.V.	Netherlands
Avaya New Zealand Limited	New Zealand
Avaya Nigeria Limited	Nigeria
Avaya Norway AS	Norway
Avaya Panama Ltda.	Panama
Avaya Peru S.R.L.	Peru

Avaya Philippines, Inc.	Philippines
Avaya Poland Sp. z.o.o.	Poland
Avaya Puerto Rico, Inc.	Puerto Rico
Avaya Singapore Pte Ltd	Singapore
Avaya Sweden AB	Sweden
Avaya Switzerland GmbH	Switzerland
Avaya Training and Service Centre FZE	United Arab Emirates
Avaya UK	England & Wales
Avaya UK Holdings Limited	England & Wales
Avaya Verwaltungs GmbH	Germany
Avaya World Services Inc.	Delaware
CAAS Technologies, LLC	Nevada
Esna Technologies Ltd	England & Wales
Global Horizon Holdings Ltd	Israel
Harmatis Ltd.	Israel
Hyper Quality (India) Private Limited	India
HyperQuality II, LLC	Washington
HyperQuality, Inc.	Delaware
Intellisist, Inc.	Washington
KnoahSoft Technologies Private Limited	India
KnoahSoft, Inc.	Delaware
Konftel AB	Sweden
Nimcat Networks General Partnership	Ontario
PT Sierra Communication Indonesia	Indonesia
Radvision Communication Development Beijing Co. Ltd. (RCD)	Bejing
Sierra Asia Pacific Inc.	Delaware
Sierra Communication International LLC	Delaware
Tenovis Direct GmbH	Germany
Tenovis Telecom Frankfurt GmbH & Co. KG	Germany
Ubiquity Software Corporation	Delaware
Ubiquity Software Corporation Limited	England & Wales
VPNet Technologies, Inc.	Delaware

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-222647, 333-234716 and 333-236930) and Form S-3 (No. 333-248478) of Avaya Holdings Corp. of our report dated November 25, 2020 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
San Jose, California

November 25, 2020

EXHIBIT 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-222647, 333-234716 and 333-236930) and Form S-3 (No. 333-248478) of Avaya Holdings Corp. of our report dated December 21, 2018 relating to the financial statements, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
San Jose, California

November 25, 2020

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, James M. Chirico, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K of Avaya Holdings Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 25, 2020

/s/ JAMES M. CHIRICO, JR.

James M. Chirico, Jr.
Director, President and Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Kieran J. McGrath, certify that:

1. I have reviewed this Annual Report on Form 10-K of Avaya Holdings Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 25, 2020

/s/ KIERAN J. MCGRATH

Kieran J. McGrath
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Avaya Holdings Corp. (the "Company") on Form 10-K for the period ending September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James M. Chirico, Jr., Director, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ JAMES M. CHIRICO, JR.

James M. Chirico, Jr.
Director, President and Chief Executive Officer
(Principal Executive Officer)

Date: November 25, 2020

EXHIBIT 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Avaya Holdings Corp. (the "Company") on Form 10-K for the period ending September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kieran J. McGrath, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ KIERAN J. MCGRATH

Kieran J. McGrath
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: November 25, 2020