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

FORM 8-K

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

Date of report (Date of earliest event reported): December 10, 2015

Fitbit, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-37444
(Commission
File Number)

20-8920744
(IRS Employer
Identification No.)

405 Howard Street
San Francisco, California
(Address of Principal Executive Offices)

94105
(Zip Code)

(415) 513-1000
(Registrant's Telephone Number, Including Area Code)

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

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

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

Item 1.01. Entry into a Material Definitive Agreement.

On December 10, 2015, Fitbit, Inc., or the Company, entered into a second amended and restated credit agreement, or Revolving Credit Facility, with Silicon Valley Bank, or SVB, as administrative agent and lender, and several other lenders, including SunTrust Bank, Deutsche Bank AG, Morgan Stanley Bank, N.A., Bank of America, N.A., Barclays Bank Plc, Citibank, N.A. and City National Bank. Among other things, the Revolving Credit Facility increased the Company's borrowing capacity from \$180.0 million or a lesser amount based on borrowing base calculations under the prior asset-based credit facility to \$250.0 million. In connection with the entry into the Revolving Credit Facility, the Company terminated its revolving credit and guarantee agreement, or the Cash Flow Facility, by and among the Company, the guarantors party thereto, the lenders party thereto, Morgan Stanley Bank N.A. and Morgan Stanley Senior Funding, Inc., dated August 13, 2014, which Cash Flow Facility had a borrowing capacity of \$50.0 million, and the loan documents relating thereto. All commitments in respect of the Cash Flow Facility were terminated as of December 10, 2015, all liens in respect thereof were released and all interest and fees accrued thereunder were repaid. No amounts of principal were outstanding under the Cash Flow Facility at the time of termination.

The Revolving Credit Facility allows the Company to borrow up to \$250.0 million, with up to \$50.0 million for the issuance of letters of credit and up to \$25.0 million for swing line loans. The Company may also, subject to the agreement of the applicable lenders, increase the commitments under the Revolving Credit Facility by up to \$100.0 million. Borrowings under the Revolving Credit Facility may be drawn as Alternate Base Rate, or ABR, loans or Eurodollar loans, and matures in December 2020. ABR loans bear interest at a variable rate equal to the applicable margin based on the Company's consolidated leverage ratio and ranging from 0.00% to 0.75%, plus the highest of (i) the prime rate, (ii) the federal funds effective rate plus 0.5%, and (iii) the Eurodollar rate plus 1.0%, but in any case at a minimum rate of 3.25% per annum. Eurodollar loans bear interest at a variable rate based on the LIBOR rate and Eurocurrency reserve requirements, plus an applicable margin based on the Company's consolidated leverage ratio and ranging from 1.00% to 1.75%. We are also required to pay an annual commitment fee on the average daily unused portion of the facility of 0.10%, 0.20%, or 0.30%, based on the Company's consolidated leverage ratio.

The Company's obligations under the Revolving Credit Facility and certain of its hedging or cash management obligations are secured by substantially all of the assets (other than intellectual property) of the Company and its current and future domestic subsidiaries, subject to certain customary exceptions.

We have the option to repay our borrowings under the Revolving Credit Facility without penalty prior to maturity. The Revolving Credit Facility requires us to comply with certain financial covenants, including maintaining a consolidated fixed charge coverage ratio of at least 1.15:1 and a consolidated leverage ratio of less than 3:1 as at the last day of any period of four consecutive fiscal quarters. The Revolving Credit Facility also requires us to comply with certain non-financial covenants.

As of December 10, 2015, we had no outstanding borrowings under the Revolving Credit Facility.

The foregoing description of the Revolving Credit Facility does not purport to be complete and is qualified in its entirety by reference to the Revolving Credit Facility, a copy of which is attached as Exhibit 10.1 and is incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement.

The information set forth above in Item 1.01 of this Current Report on Form 8-K regarding the entry into the Revolving Credit Facility and the termination of the Cash Flow Facility is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Second Amended and Restated Credit Agreement, by and among Fitbit, Inc., the lenders party thereto and Silicon Valley Bank, as administrative agent, dated December 10, 2015.

SIGNATURES

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

FITBIT, INC.

Date: December 15, 2015

By: /s/ William Zerella
Name: William Zerella
Title: Chief Financial Officer

EXHIBIT INDEX

**Exhibit
No.**

Description

10.1	Second Amended and Restated Credit Agreement, by and among Fitbit, Inc., the lenders party thereto and Silicon Valley Bank, as administrative agent, dated December 10, 2015.
------	---

\$250,000,000 SENIOR SECURED CREDIT FACILITIES

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

dated as of December 10, 2015

among

FITBIT, INC.,

as the Borrower,

THE SEVERAL LENDERS FROM TIME TO TIME PARTIES HERETO,

SILICON VALLEY BANK,

as Administrative Agent, Issuing Lender and Swingline Lender,

SUNTRUST BANK ,

as Syndication Agent,

and

SILICON VALLEY BANK AND SUNTRUST ROBINSON HUMPHREY, INC. ,

as Lead Arrangers and Joint Bookrunners

Table of Contents

	Page
SECTION 1 DEFINITIONS	1
1.1 Defined Terms	1
1.2 Other Definitional Provisions.	33
1.3 Currency Translations.	33
SECTION 2 AMOUNT AND TERMS OF REVOLVING COMMITMENTS	34
2.1 [Reserved.]	34
2.2 [Reserved.]	34
2.3 [Reserved.]	34
2.4 Revolving Commitments.	34
2.5 Procedure for Revolving Loan Borrowing	35
2.6 Swingline Commitment	35
2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.	36
2.8 Overadvances	37
2.9 Fees.	38
2.10 Termination or Reduction of Total Revolving Commitments; Total L/C Commitments.	38
2.11 Optional Loan Prepayments.	39
2.12 Incremental Facility.	39
2.13 Conversion and Continuation Options.	40
2.14 Limitations on Eurocurrency Tranches	41
2.15 Interest Rates and Payment Dates.	41
2.16 Computation of Interest and Fees.	42
2.17 Inability to Determine Interest Rate	42
2.18 Pro Rata Treatment and Payments.	42
2.19 Illegality; Requirements of Law.	45
2.20 Taxes	47
2.21 Indemnity	50
2.22 Change of Lending Office	51
2.23 Substitution of Lenders	51
2.24 Defaulting Lenders.	52
2.25 [Reserved].	54
2.26 Notes	54
SECTION 3 LETTERS OF CREDIT	55
3.1 L/C Commitment.	55
3.2 Procedure for Issuance of Letters of Credit	56
3.3 Fees and Other Charges.	56
3.4 L/C Participations; Existing Letters of Credit.	57
3.5 Reimbursement.	57
3.6 Obligations Absolute	58
3.7 Letter of Credit Payments	59
3.8 Applications	59
3.9 Interim Interest	59
3.10 Cash Collateral.	59
3.11 [Reserved.]	60
3.12 Resignation of the Issuing Lender	60
3.13 Applicability of ISP	60

Table of Contents
(continued)

	Page
SECTION 4 REPRESENTATIONS AND WARRANTIES	61
4.1 Financial Condition.	61
4.2 No Change	61
4.3 Existence; Compliance with Law	61
4.4 Power, Authorization; Enforceable Obligations	62
4.5 No Legal Bar	62
4.6 Litigation	62
4.7 No Default	62
4.8 Ownership of Property; Liens; Investments	62
4.9 Intellectual Property	63
4.10 Taxes	63
4.11 Federal Regulations	63
4.12 Labor Matters	63
4.13 ERISA	63
4.14 Investment Company Act; Other Regulations	64
4.15 Subsidiaries	64
4.16 Use of Proceeds	64
4.17 Environmental Matters	65
4.18 Accuracy of Information, Etc.	65
4.19 Security Documents.	66
4.20 Solvency; Fraudulent Transfer	66
4.21 Regulation H	66
4.22 Designated Senior Indebtedness	66
4.23 [Reserved.]	66
4.24 Insurance.	66
4.25 [Reserved].	67
4.26 [Reserved].	67
4.27 Capitalization	67
4.28 Patriot Act; Anti-Corruption	67
4.29 OFAC	67
SECTION 5 CONDITIONS PRECEDENT	67
5.1 Conditions to Initial Extension of Credit	67
5.2 Conditions to Each Extension of Credit	71
5.3 Post-Closing Conditions Subsequent.	72
SECTION 6 AFFIRMATIVE COVENANTS	72
6.1 Financial Statements	72
6.2 Certificates; Reports; Other Information	73
6.3 [Reserved].	74
6.4 Payment of Obligations	74
6.5 Maintenance of Existence; Compliance	74
6.6 Maintenance of Property; Insurance	75
6.7 Inspection of Property; Books and Records; Discussions	75
6.8 Notices	75
6.9 Environmental Laws.	76

Table of Contents
(continued)

	Page	
6.10	[Reserved]	76
6.11	[Reserved]	76
6.12	Additional Collateral, Etc.	76
6.13	[Reserved.]	78
6.14	Insider Subordinated Indebtedness	78
6.15	Use of Proceeds	78
6.16	Designated Senior Indebtedness	79
6.17	Further Assurances	79
SECTION 7 NEGATIVE COVENANTS		79
7.1	Financial Condition Covenants.	79
7.2	Indebtedness	79
7.3	Liens	81
7.4	Fundamental Changes	83
7.5	Disposition of Property	83
7.6	Restricted Payments	84
7.7	[Reserved.]	85
7.8	Investments	85
7.9	ERISA	87
7.10	Modifications of Preferred Stock and Debt Instruments	87
7.11	Transactions with Affiliates	88
7.12	Sale Leaseback Transactions	88
7.13	Swap Agreements	88
7.14	Accounting Changes	88
7.15	Negative Pledge Clauses	88
7.16	Clauses Restricting Subsidiary Distributions	88
7.17	Lines of Business	89
7.18	Designation of other Indebtedness	89
7.19	Certification of Certain Capital Stock	89
7.20	Amendments to Organizational Agreements and Material Contracts	89
7.21	Use of Proceeds	89
7.22	Subordinated Debt.	89
7.23	[Reserved.]	89
7.24	Anti-Terrorism Laws; OFAC; Anti-Corruption	89
SECTION 8 EVENTS OF DEFAULT		90
8.1	Events of Default	90
8.2	Remedies upon Event of Default	92
8.3	Application of Funds	93
SECTION 9 THE ADMINISTRATIVE AGENT		94
9.1	Appointment and Authority.	94
9.2	Delegation of Duties	95
9.3	Exculpatory Provisions	95
9.4	Reliance by Administrative Agent	96
9.5	Notice of Default	97
9.6	Non-Reliance on Administrative Agent and Other Lenders	97
9.7	Indemnification	97

Table of Contents
(continued)

	Page	
9.8	Agent in Its Individual Capacity	98
9.9	Successor Agent.	98
9.10	Collateral and Guaranty Matters	99
9.11	Administrative Agent May File Proofs of Claim	99
9.12	No Other Duties, Etc.	100
9.13	Reports and Financial Statements.	100
9.14	Survival.	101
SECTION 10 MISCELLANEOUS		101
10.1	Amendments and Waivers.	101
10.2	Notices.	102
10.3	No Waiver; Cumulative Remedies	104
10.4	Survival of Representations and Warranties	104
10.5	Expenses; Indemnity; Damage Waiver.	104
10.6	Successors and Assigns; Participations and Assignments.	106
10.7	Adjustments; Set-off.	110
10.8	Payments Set Aside	111
10.9	Interest Rate Limitation	111
10.10	Counterparts; Electronic Execution of Assignments.	111
10.11	Severability	112
10.12	Integration	112
10.13	GOVERNING LAW	112
10.14	Submission to Jurisdiction; Waivers	112
10.15	Acknowledgements	114
10.16	[Reserved.]	114
10.17	Treatment of Certain Information; Confidentiality	114
10.18	Automatic Debits	115
10.19	Judgment Currency	116
10.20	Patriot Act	116
10.21	Acknowledgment of Prior Obligations and Continuation Thereof	117
10.22	No Novation	117
10.23	Market Disruption.	117
10.24	Currency Conversion.	118

Table of Contents

(continued)

SCHEDULES

Schedule 1.1A:	Commitments
Schedule 1.1B:	Existing Letters of Credit
Schedule 4.4:	Governmental Approvals, Consents, Authorizations, Filings and Notices
Schedule 4.5:	Requirements of Law
Schedule 4.15:	Subsidiaries
Schedule 4.17:	Environmental Matters
Schedule 4.19(a):	Financing Statements and Other Filings
Schedule 4.27:	Capitalization
Schedule 7.2(b):	Existing Indebtedness
Schedule 7.3(b):	Existing Liens
Schedule 7.8(a):	Existing Investments

EXHIBITS

Exhibit A:	Form of Amended and Restated Guarantee and Collateral Agreement
Exhibit B:	Form of Compliance Certificate
Exhibit C:	Form of Secretary's/Managing Member's Certificate
Exhibit D:	Form of Solvency Certificate
Exhibit E:	Form of Assignment and Assumption
Exhibits F-1 – F-4:	Forms of U.S. Tax Compliance Certificate
Exhibit G:	[Reserved]
Exhibit H-1:	Form of Revolving Loan Note
Exhibit H-2:	Form of Swingline Loan Note
Exhibit I:	[Reserved]
Exhibit J:	Form of Collateral Information Certificate
Exhibit K:	Form of Notice of Borrowing
Exhibit L:	Form of Notice of Conversion/Continuation

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

THIS SECOND AMENDED AND RESTATED CREDIT AGREEMENT (this “*Agreement*”), dated as of December 10, 2015, is entered into by and among (a) **FITBIT, INC.**, a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement, (c) **SILICON VALLEY BANK (“SVB”)**, as the Issuing Lender and the Swingline Lender, (d) **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, the “*Administrative Agent*”), (e) **SUNTRUST BANK**, as syndication agent for the Lenders (in such capacity, the “*Syndication Agent*”), and (f) **SVB and SUNTRUST ROBINSON HUMPHREY, INC.**, as co-lead arrangers and joint bookrunners (in such capacities, collectively, the “*Arrangers*”).

RECITALS:

WHEREAS, the Borrower, the Existing Lenders (as hereinafter defined), the Administrative Agent, the Issuing Lender and the Swingline Lender are parties to that certain Credit Agreement, dated as of August 13, 2014 (as the same has been amended, restated, supplemented or otherwise modified from time to time prior to the Closing Date, the “*Existing Credit Agreement*”);

WHEREAS, the Borrower desires to obtain financing to refinance the indebtedness under the Cash Flow Credit Agreement (as hereinafter defined), as well as for working capital financing and letter of credit facilities;

WHEREAS, the Lenders have agreed to extend a revolving loan facility to the Borrower, upon the terms and conditions specified in this Agreement, in an aggregate amount not to exceed \$250,000,000, with a letter of credit sub-facility in the aggregate availability amount of \$50,000,000 (as a sublimit of the revolving loan facility) and a swingline sub-facility in the aggregate availability amount of \$25,000,000 (as a sublimit of the revolving loan facility);

WHEREAS, each of the Guarantors has agreed to guarantee the Obligations of the Borrower, and each Borrower and each Guarantor has agreed to secure its respective Secured Obligations by granting to the Administrative Agent, for the ratable benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) in substantially all of such Guarantor’s personal property assets (other than any Excluded Assets) pursuant to the terms of the Guarantee and Collateral Agreement and the other Security Documents; and

WHEREAS, upon the effectiveness hereof, (i) the Revolving Commitments (as defined in the Existing Credit Agreement) of certain lenders under the Existing Credit Agreement electing not to participate in this Agreement (each, an “*Exiting Lender*”) will be terminated, (ii) each such Exiting Lender’s Loans and Revolving Commitments (in each case as defined in the Existing Credit Agreement) will be assumed and/or replaced in connection with this Agreement without additional action required on the part of any Person, and (iii) each Exiting Lender will receive payment of all interest, fees and other obligations payable or accrued in favor of it under the Existing Credit Agreement on the Closing Date.

NOW, THEREFORE, the parties hereto hereby agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as follows (it being agreed that this Agreement shall not be deemed to evidence or result in a novation or repayment and reborrowing of the Obligations under, and as defined in, the Existing Credit Agreement):

SECTION 1 DEFINITIONS

1.1 Defined Terms. As used in this Agreement (including the recitals hereof), the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“**ABR**”: for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect for such day plus 0.50%, and (c) the Eurocurrency Base Rate for a Eurocurrency Loan denominated in Dollars having an Interest Period of one (1) month plus 1.00%; provided that in no event shall the ABR be deemed to be less than 3.25%. Any change in the ABR due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate.

“**ABR Loans**”: Loans, the rate of interest applicable to which is based upon the ABR.

“**Accounts**”: all “accounts” (as defined in Article 9 of the UCC) of a Person, including, without limitation, accounts, accounts receivable, monies due or to become due and obligations in any form (whether arising in connection with contracts, contract rights, instruments, general intangibles, or chattel paper), in each case whether arising out of goods sold or services rendered or from any other transaction and whether or not earned by performance, now or hereafter in existence, and all documents of title or other documents representing any of the foregoing, and all collateral security and guaranties of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing. Unless otherwise stated, the term “Account,” when used herein, shall mean an Account of a Loan Party.

“**Additional Lender**”: as defined in Section 2.12.

“**Administrative Agent**”: SVB, as the administrative agent under this Agreement and the other Loan Documents, together with any of its successors in such capacity.

“**Affected Lender**”: as defined in Section 2.23.

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

“**Agent Parties**”: as defined in Section 10.2(d)(ii).

“**Agreed Currencies**”: (a) Dollars, (b) Euro, (c) Sterling, (d) Australian Dollars, (e) Canadian Dollars and (f) any other currency that is acceptable to the Administrative Agent, the Issuing Lender and each Lender.

“**Aggregate Exposure**”: with respect to any Lender at any time, an amount equal to the sum of (a) the amount of such Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the Dollar Equivalent of the amount of such Lender’s Revolving Extensions of Credit then outstanding, and (b) without duplication of clause (a), the L/C Commitment of such Lender then in effect (as a sublimit of the Revolving Commitment of such Lender).

“**Aggregate Exposure Percentage**”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“**Agreement**”: as defined in the preamble hereto.

“**Agreement Currency**”: as defined in Section 10.19.

“**Applicable Margin**”: commencing on the date on which the Administrative Agent receives copies of the consolidated financial statements of the Borrower and its Subsidiaries in respect of the first fiscal quarter of the Borrower ending after the Closing Date, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), the rate per annum set forth under the relevant column heading below for the applicable Consolidated Leverage Ratio (measured on a trailing four quarter basis) as of the end of the most recently ended fiscal quarter:

Level	Consolidated Leverage Ratio	Applicable Margin for Eurocurrency Loans	Applicable Margin for ABR Loans	Commitment Fee Rate
I	≥ 2.00:1.00	1.75%	0.75%	0.30%
II	< 2.00:1.00 > 1.00:1.00	1.375%	0.375%	0.20%
III	≤ 1.00:1.00	1.00%	0.00%	0.10%

Notwithstanding the foregoing, (a) until the delivery of the first Compliance Certificate required to be delivered after the Closing Date pursuant to Section 6.2(b) in connection with the delivery by the Borrower of the consolidated financial statements required to be delivered to the Administrative Agent pursuant to Sections 6.1(c), the Applicable Margin shall be the rates corresponding to Level III in the foregoing table, (b) if the Borrower fails to deliver the financial statements required by Section 6.1(c) and the related Compliance Certificate required by Section 6.2(b), by the respective date required thereunder after the end of any related fiscal quarter of the Borrower, the Applicable Margin shall be the rates corresponding to Level I in the foregoing table until such financial statements and Compliance Certificate are delivered, and (c) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines that (x) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Consolidated Leverage Ratio would have resulted in different pricing for any period, then: (i) if the proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Consolidated Leverage Ratio would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower. If the Administrative Agent makes a determination that the proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for any period, then the Administrative Agent will endeavor to provide the Borrower with written notice promptly following such determination, provided that failure to provide such written notice shall not relieve the Borrower of any obligation to pay any amounts due hereunder.

“**Application**”: an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to issue a Letter of Credit.

“**Application Event**”: the occurrence of (a) a failure by Borrower to repay all of the Obligations in full on the Revolving Termination Date, or (b) an Event of Default and the election by Administrative Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 8.3.

“**Approved Fund**”: 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.

“**Arrangers**”: as defined in the preamble hereto.

“**Assignment and Assumption**”: an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.6), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form (including electronic documentation generated by an electronic platform) approved by the Administrative Agent.

“**Australian Dollar**”: the lawful currency of Australia.

“**Available Revolving Commitment**”: at any time, an amount equal to (a) the Total Revolving Commitments in effect at such time minus (b) the sum of (i) the aggregate undrawn amount of all outstanding Letters of Credit at such time, (ii) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, and (iii) the aggregate principal balance of any Loans outstanding at such time; provided that for purposes of calculating any Lender’s Revolving Extensions of Credit for the purpose of determining such Lender’s available Revolving Commitment pursuant to Section 2.9(b), the aggregate principal amount of Swingline Loans then outstanding shall be deemed to be zero.

“**Available Revolving Increase Amount**”: as of any date of determination, an amount equal to the result of (a) \$100,000,000 minus (b) the aggregate principal amount of Increases to the Revolving Commitments previously made pursuant to Section 2.12.

“**Bankruptcy Code**”: Title 11 of the United States Code entitled “Bankruptcy.”

“**Bank Services**”: any one or more of the following financial products or accommodations extended to any Group Member or any of its Subsidiaries by any Bank Services Provider: (a) credit cards (including commercial cards (including so-called “purchase cards”, “procurement cards” or “p-cards”)), (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) cash management services (such as treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including ACH) and (f) other cash management arrangements, in each case as any such products or services may be identified in any Bank Services Provider’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Bank Services Agreement**”: as defined in the definition of “Bank Services.”

“**Bank Services Provider**”: the Administrative Agent, any Lender, or any Affiliate of the foregoing who provides Bank Services to any Group Member, including any Person that was a Lender at the time the Bank Services were provided to any Group Member.

“**Benefitted Lender**”: as defined in Section 10.7(a).

“**Board**”: the Board of Governors of the Federal Reserve System of the United States (or any successor).

“**Borrower**”: as defined in the preamble hereto.

“ **Borrowing Date** ”: any Business Day specified by the Borrower in a Notice of Borrowing as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

“ **Business** ”: as defined in Section 4.17(b).

“ **Business Day** ”: a day other than a Saturday, Sunday or other day on which commercial banks in the State of California or the State of New York are authorized or required by law to close; provided that, when used in connection with a Eurocurrency Loan, the term “Business Day” shall also exclude (a) with respect to a Eurocurrency Loan denominated in an Agreed Currency, any day on which banks are not open for dealings in deposits in such Agreed Currency in London, England and in the applicable interbank or other market used to determine the interest rate thereon and (b) with respect to all Eurocurrency Loans denominated in Euro, on which TARGET is not open for the settlement of payments in Euro.

“ **Calculation Date** ”: the last Business Day of each calendar quarter.

“ **Canadian Dollars** ”: the lawful currency of Canada.

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

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

“ **Cash Collateralize** ”: to pledge and deposit with or deliver to (a) with respect to Obligations in respect of Letters of Credit, the Administrative Agent, for the benefit of the Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or Deposit Account balances having an aggregate value of at least 105% of the L/C Exposure or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, a standby letter of credit, in form and substance reasonably satisfactory to the Administrative Agent and the Issuing Lender, from a commercial bank acceptable to the Administrative Agent and the Issuing Lender (in their sole discretion) in an amount equal to 105% of the then existing L/C Exposure (it being understood that the L/C Fee and all fronting fees set forth in this Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit), in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Lender; (b) with respect to Obligations arising under any Bank Services Agreement in connection with Bank Services, the Administrative Agent, for its own or any applicable Bank Services Provider’s benefit, as provider of such Bank Services, cash or Deposit Account balances having an aggregate value of at least 105% of the aggregate amount of the Obligations of the Group Members arising under all such Bank Services Agreements evidencing such Bank Services; or (c) with respect to Obligations in respect of any Specified Swap Agreements, the applicable Qualified Counterparty, as Collateral for such Obligations, cash or Deposit Account balances or, if such Qualified Counterparty shall agree in its sole

discretion, other credit support, in each case in amounts and pursuant to documentation in form and substance satisfactory to such Qualified Counterparty. “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**Cash Equivalents**”: (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurocurrency time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$250,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; or (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody’s and (iii) have portfolio assets of at least \$5,000,000,000.

“**Cash Flow Agent**”: Morgan Stanley Senior Funding, Inc., in its capacity as administrative agent for the Cash Flow Lenders under the Cash Flow Credit Agreement.

“**Cash Flow Credit Agreement**”: the Revolving Credit and Guaranty Agreement, dated as of August 13, 2014, by and among the Borrower, the Cash Flow Lenders and the Cash Flow Agent, as such agreement may have been amended, supplemented, restated or otherwise modified prior to the Closing Date.

“**Cash Flow Lenders**”: the financial institutions and other entities party from time to time to the Cash Flow Credit Agreement, together with their respective successors, assigns and transferees.

“**Casualty Event**”: any damage to or any destruction of, or any condemnation or other taking by any Governmental Authority of any property of the Loan Parties.

“**Certificated Securities**”: as defined in Section 4.19(a).

“**CFC**”: a “controlled foreign corporation” as defined in Section 957 of the Code.

“**Change of Control**”: (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d) 5 under the Exchange Act), directly or indirectly, of 50% or more of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis); or (b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (disregarding individuals who cease to serve due to death or disability and who are

not replaced) (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

“**Closing Date**”: the date on which all of the conditions precedent set forth in Section 5.1 are satisfied or waived by the Administrative Agent and, as applicable, the Lenders, Arrangers or the Required Lenders.

“**Code**”: the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document. For the avoidance of doubt, no Excluded Asset (as such term is defined in the Guarantee and Collateral Agreement) shall constitute “Collateral.”

“**Collateral Information Certificate**”: the Collateral Information Certificate to be executed and delivered by the Loan Parties pursuant to Section 5.1, substantially in the form of Exhibit J.

“**Collateral-Related Expenses**”: all costs and expenses of the Administrative Agent paid or incurred in connection with any sale, collection or other realization on the Collateral, including reasonable compensation to the Administrative Agent and its agents and counsel, and reimbursement for all other costs, expenses and liabilities and advances made or incurred by the Administrative Agent in connection therewith (including as described in Section 6.6 of the Guarantee and Collateral Agreement), and all amounts for which the Administrative Agent is entitled to indemnification under the Security Documents and all advances made by the Administrative Agent under the Security Documents for the account of any Loan Party.

“**Commitment Fee**”: as defined in Section 2.9(b).

“**Commitment Fee Rate**”: the rate per annum set forth under the relevant column heading under the definition of “Applicable Margin”.

“**Communications**”: as defined in Section 10.2(d)(ii).

“**Compliance Certificate**”: a certificate duly executed by a Responsible Officer of the Borrower substantially in the form of Exhibit B.

“**Connection Income Taxes**”: Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Capital Expenditures**”: for any period, with respect to the Borrower and its consolidated Subsidiaries, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Lease Obligations which is capitalized on the consolidated balance sheet of the Borrower) by such Group Members during such period for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that, in conformity with GAAP, are included in “additions to property, plant or equipment” or comparable items reflected in the consolidated statement of cash flows of the Borrower excluding any such expenditures financed by insurance proceeds, condemnation proceeds or damage recovery proceeds to restore assets to the condition of such assets immediately prior to any Casualty Event.

“**Consolidated EBITDA**”: with respect to the Borrower and its consolidated Subsidiaries for any period, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) to the extent deducted in the calculation of Consolidated Net Income, the sum of (A) Consolidated Interest Expense, plus (B) provisions for taxes based on income, plus (C) total depreciation expense, plus (D) total amortization expense, plus (E) (x) \$5,100,000, representing the reasonable costs, fees and expenses in connection with the Borrower’s initial public offering of its Capital Stock and (y) reasonable costs, fees and expenses in connection with the Borrower’s equity offerings of its Capital Stock (whether or not consummated) that are permitted by the Loan Documents, plus (F) non-cash stock compensation expenses, plus (G) non-cash exchange, translation or performance losses relating to any foreign currency hedging transactions or currency fluctuations, plus (H) costs, fees and expenses (1) in connection with the execution and delivery of this Agreement and the other Loan Documents, (2) incurred in connection with the establishment, repayment and termination of the Cash Flow Credit Agreement, or (3) paid by any Group Member after the Closing Date in connection with its obligations under the Loan Documents which are incurred not later than six (6) months after the Closing Date, plus (I) one-time costs, fees, and expenses in connection with Permitted Acquisitions or other transactions that if closed, would have constituted a Permitted Acquisition, plus (J) non-cash purchase accounting adjustments (including, but not limited to deferred revenue write down) and any adjustments as required or permitted by the application of FASB 141 (requiring the use of purchase method of accounting for acquisitions and consolidations), FASB 142 (relating to changes in accounting for the amortization of good will and certain other intangibles) and FASB 144 (relating to the write downs of long-lived assets), in each case, in connection with Permitted Acquisitions, plus (K) non-cash charges for goodwill and other intangible write-offs and write-downs in connection with Permitted Acquisitions or otherwise, plus (L) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), plus (M) other non-recurring items reducing Consolidated Net Income in an amount not to exceed 5% of Consolidated EBITDA for such period (calculated before giving effect to such ‘add back’ for such non-recurring items) or such greater amount approved by the Administrative Agent and the Required Lenders in writing as an ‘add back’ to Consolidated EBITDA, minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income; provided that Consolidated EBITDA for any period shall be determined on a Pro Forma Basis.

“**Consolidated Fixed Charge Coverage Ratio**”: with respect to the Borrower and its consolidated Subsidiaries for any period, the ratio of (a) the result of (i) Consolidated EBITDA for such period minus (ii) the sum of (x) the amount of taxes based on income actually paid in cash or required to be paid (net of any cash refunds received, but only to extent such adjustment would not result in a negative number) during such period, (y) cash dividends and distributions paid to any Person that is not a Loan Party during such period and (z) Consolidated Capital Expenditures (other than Capital Expenditures to the extent financed with the proceeds of Indebtedness (other than proceeds of Loans)) to (b) Consolidated Fixed Charges for such period.

“**Consolidated Fixed Charges**”: with respect to the Borrower and its consolidated Subsidiaries for any period, the sum (without duplication) of (a) Consolidated Interest Expense accrued for such period (other than interest paid-in-kind, amortization of financing fees, and other non-cash Consolidated Interest Expense), plus (b) payments made or required to be paid during such period on account of principal of Indebtedness of the Borrower and its consolidated Subsidiaries (excluding Loans under the Revolving Commitments to the extent the Borrower has the right to continue, reborrow or convert such Loans pursuant to Section 2.13 and any intercompany Indebtedness owed to the Borrower or any of its consolidated Subsidiaries).

“**Consolidated Interest Expense**”: for any period, total interest expense (including that portion of any Capital Lease Obligations that is treated as interest in accordance with GAAP) of the Borrower and its

consolidated Subsidiaries for such period with respect to all outstanding Indebtedness of such Persons (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

“**Consolidated Leverage Ratio**”: as at the last day of any period, the ratio of (a) Consolidated Total Indebtedness on such day to (b) Consolidated EBITDA for such period.

“**Consolidated Net Income**”: for any period, the consolidated net income (or loss) of the Borrower and its consolidated Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from the calculation of “Consolidated Net Income” (a) the income (or deficit) of any such Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or one of its Subsidiaries, (b) the income (or deficit) of any such Person (other than a Subsidiary of the Borrower) in which the Borrower or one of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions, and (c) the undistributed earnings of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Loan Document) or any Requirement of Law applicable to such Subsidiary or any owner of Capital Stock of such Subsidiary.

“**Consolidated Total Assets**”: as of any date of determination, the aggregate principal amount of all assets of the Borrower and its consolidated Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP, as set forth on the consolidated balance sheet of the Borrower as of such date.

“**Consolidated Total Indebtedness**”: as of any date of determination, the aggregate principal amount of all Indebtedness of the Borrower and its consolidated Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP, but excluding any liabilities referred to in clauses (f) and (g) of the definition of “Indebtedness.”

“**Contractual Obligation**”: as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

“**Control Agreement**”: any account control agreement entered into among the depository institution at which a Loan Party maintains a Deposit Account or the securities intermediary at which a Loan Party maintains a Securities Account, in each case other than an Excluded Account, such Loan Party, and the Administrative Agent pursuant to which the Administrative Agent obtains control (within the meaning of the UCC or any other applicable law) over such Deposit Account or Securities Account and which agreement is otherwise in form and substance reasonably satisfactory to Administrative Agent.

“**Debtor Relief Laws**”: the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“**Default**”: any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“**Defaulting Lender**”: subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

“**Default Rate**”: as defined in Section 2.15(c).

“**Deferred Payment Obligations**”: as defined in Section 7.2.

“**Deposit Account**”: any “deposit account” as defined in the UCC with such additions to such term as may hereafter be made.

“**Deposit Account Control Agreement**”: any Control Agreement entered into by the Administrative Agent, a Loan Party and a financial institution holding a Deposit Account (other than an Excluded Account) of such Loan Party pursuant to which the Administrative Agent is granted “control” (for purposes of the UCC) over such Deposit Account.

“**Determination Date**”: as defined in the definition of “Pro Forma Basis”.

“**Discharge of Obligations**”: subject to Section 10.8, means (a) the satisfaction of the Obligations (including all such Obligations relating to Bank Services and/or Specified Swap Agreements) by the payment in full, in cash (or, with respect to L/C Exposure and Bank Services, as applicable, Cash Collateralization in accordance with the terms hereof) of the principal of and interest on or other liabilities relating to each Loan

and any previously provided Bank Services, all fees and all other expenses or amounts payable under any Loan Document (other than inchoate indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans for which no claim has been made), and other Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under any Specified Swap Agreements provided by a Secured Party) under or in respect of Specified Swap Agreements and Bank Services, to the extent (i) no default or termination event shall have occurred and be continuing thereunder, (ii) any such Obligations in respect of Specified Swap Agreements have, if required by any applicable Qualified Counterparties, been Cash Collateralized, (b) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof), (c) no Obligations in respect of any Bank Services are outstanding (or, as applicable, all such outstanding Obligations in respect of Bank Services have been Cash Collateralized in accordance with the terms hereof), and (d) the aggregate Revolving Commitments of the Lenders are terminated.

“**Disposition**”: with respect to any property (including, without limitation, Capital Stock of the Borrower or any of its Subsidiaries), any sale, lease, Sale Leaseback Transaction, assignment, conveyance, transfer, encumbrance or other disposition thereof and any issuance of Capital Stock of the Borrower or any of its Subsidiaries. The terms “**Dispose**” and “**Disposed of**” shall have correlative meanings.

“**Disqualified Stock**”: any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the payment of any dividend in cash or any scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Stock, in each case, prior to the date that is 181 days after the Revolving Termination Date. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption or payment provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

“**Dollars**” and “**\$**”: dollars in lawful currency of the United States.

“**Dollar Equivalent**”: on any date of determination (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent in Dollars of such amount, determined by the Administrative Agent using the applicable Exchange Rate with respect to such currency at the time in effect pursuant to Section 10.19 or as otherwise provided herein.

“**Domestic Subsidiary**”: any Subsidiary of any Loan Party organized under the laws of any jurisdiction within the United States.

“**Eligible Assignee**”: any Person that meets the requirements to be an assignee under Section 10.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)).

“**EMU**”: the economic and monetary union as contemplated in the Treaty on European Union, as amended and in effect from time to time.

“**EMU Legislation**”: legislative measures of the European Council for the introduction of, changeover to, or operation of, a single or unified European currency (whether known as the Euro or otherwise), being in part the implementation of the third stage of EMU.

“**Engagement Letter**”: the Engagement Letter, dated as of October 16, 2015, between the Borrower, the Arrangers and the Administrative Agent.

“**Environmental Laws**”: any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time hereafter be in effect.

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

“**Equipment**”: all “equipment” as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**”: the Employee Retirement Income Security Act of 1974, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

“**ERISA Affiliate**”: each business or entity which is, or within the last six years was, a member of a “controlled group of corporations,” under “common control” or an “affiliated service group” with any Loan Party within the meaning of Section 414(b), (c) or (m) of the Code, required to be aggregated with any Loan Party under Section 414(o) of the Code, or is, or within the last six years was, under “common control” with any Loan Party, within the meaning of Section 4001(a)(14) of ERISA.

“**ERISA Event**”: any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or, to the knowledge of any Loan Party, any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Loan Party or, to the knowledge of an Loan Party, any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069

of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might 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 Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Loan Party or any Subsidiary thereof may be directly or indirectly liable; (m) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (n) the assertion of a material claim (other than routine claims for benefits) against any Pension Plan or the assets thereof, or against any Loan Party or any Subsidiary thereof in connection with any such Pension Plan; (o) receipt from the IRS of notice of the failure of any Pension Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; or (p) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code.

“**ERISA Funding Rules**”: the rules regarding minimum required contributions (including any installment payment thereof) to Pension Plans, as set forth in Section 412 of the Code and Section 302 of ERISA, with respect to Plan years ending prior to the effective date of the Pension Protection Act of 2006, and thereafter, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“**Euro**” and the sign “**€**”: the single currency of the European Union as constituted by the Treaty on European Union and as referred to in the EMU Legislation for the introduction of, changeover to or operation of the Euro in one or more Participating Member States.

“**Eurocurrency Base Rate**”: with respect to each day during each Interest Period pertaining to a (a) Eurocurrency Loan denominated in Dollars, the rate per annum determined by the Administrative Agent by reference to the ICE Benchmark Administration LIBOR Rate (or any successor thereto if the ICE Benchmark Administration is no longer making a LIBOR Rate available) (“**LIBOR**”) for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 A.M. (London, England time) two (2) Business Days prior to the beginning of such Interest Period (as set forth by Bloomberg Information Service or any successor thereto or any other commercially available service selected by the Administrative Agent which provides quotations of LIBOR), (b) Eurocurrency Loan denominated in an Agreed Currency other than Dollars, (i) if a Eurocurrency Loan denominated in Euros, the rate per annum appearing on Page 248 of the ICE Benchmark Administration (or any successor page) as the London interbank offered rate for deposits (for delivery on the first day of such Interest Period) in Euros, determined as of approximately 11:00 A.M. (London, England time) two (2) Business Days prior to the beginning of such Interest Period with a term equivalent to such Interest Period, (ii) if a Eurocurrency Loan denominated in Sterling, the rate per annum appearing on that page of Reuters, Bloomberg reporting service (as then being used by the Administrative Agent to obtain such interest rate

quotes) that displays an average British Bankers Association Interest Settlement Rate for deposits (for delivery on the first day of such Interest Period) in Sterling, determined as of approximately 11:00 A.M. (London, England time) two (2) Business Days prior to the beginning of such Interest Period with a term equivalent to such Interest Period, (iii) if a Eurocurrency Loan denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate, or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) as of approximately 10:00 a.m. (Toronto, Ontario time) two (2) Business Days prior to the beginning of such Interest Period with a term equivalent to such Interest Period, (iv) if a Eurocurrency Loan denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate, or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) as of approximately 10:30 a.m. (Melbourne, Australia time) two (2) Business Days prior to the beginning of such Interest Period with a term equivalent to such Interest Period, or (v) if a Eurocurrency Loan denominated in any other Agreed Currencies, the rate per annum appearing on that page of Reuters, Bloomberg reporting service (as then being used by the Administrative Agent to obtain such interest rate quotes) that displays an average British Bankers Association Interest Settlement Rate for deposits (for delivery on the first day of such Interest Period) in such Agreed Currency or such other rate as reasonably determined by the Administrative Agent, in each case of this clause (b)(v) as of approximately 11:00 A.M. (London, England time), two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period, and (c) Eurocurrency Loan denominated in any Agreed Currency, if for any reason any of the foregoing rates are not available for any Interest Period, the rate per annum reasonably determined by the Administrative Agent as the rate of interest at which deposits in the applicable Agreed Currency in the approximate amount of the Eurocurrency Loan comprising such borrowing would be offered by the Administrative Agent to major banks in the London interbank eurocurrency market at their request at or about 10:00 A.M., Pacific time, two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period. The Eurocurrency Base Rate shall be adjusted automatically as of the effective date of any change in the Eurocurrency Reserve Requirements which affect Eurocurrency Loans to be made, and ABR Loans to be converted into Eurocurrency Loans, in any such case, at the beginning of the next applicable Interest Period. In no event shall the Eurocurrency Base Rate be less than zero.

“**Eurocurrency Loans**”: Loans the rate of interest applicable to which is based upon the Eurocurrency Base Rate.

“**Eurocurrency Reserve Requirements**”: for any day as applied to a Eurocurrency Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

“**Eurocurrency Tranche**”: the collective reference to Eurocurrency Loans under the Revolving Facility (other than the L/C Facility), the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

“**Event of Default**”: any of the events specified in Section 8.1; provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“**Exchange Act**”: the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

“**Exchange Rate**”: on any day, with respect to any Agreed Currency, the rate at which such currency may be exchanged into Dollars, as set forth at approximately 11:00 A.M., Pacific time, on such day on the applicable page of the Bloomberg Service reporting the exchange rates for such Agreed Currency. In the event such exchange rate does not appear on the applicable page of such service, the Exchange Rate shall be determined by reference to such other publicly available services for displaying currency exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such agreement, such Exchange Rate shall instead be determined by the Administrative Agent based on current market spot rates in accordance with the provisions of [Section 10.19](#); provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

“**Excluded Account**”: as defined in the Guarantee and Collateral Agreement.

“**Excluded Assets**”: as defined in the Guarantee and Collateral Agreement.

“**Excluded Foreign Subsidiary**”: in respect of any Loan Party, any Subsidiary of such Loan Party, at any date of determination, that is (a) a CFC, (b) a Subsidiary of a CFC, or (c) a Domestic Subsidiary substantially all of the assets of which consist of Capital Stock of CFCs, assets incidental thereto and an immaterial amount of cash, if any.

“**Excluded Swap Obligation**”: with respect to any Guarantor, any guarantee of any Swap Obligations under a Swap Agreement if, and only to the extent that and for so long as, 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 under a Swap Agreement (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 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 under a Swap Agreement but for such Guarantor’s failure to constitute an “eligible contract participant” at such time.

“**Excluded Taxes**”: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in any such case (i) to the extent imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) to the extent constituting Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Commitment (other than pursuant to an assignment request by the Borrower under [Section 2.23](#)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to [Section 2.20](#), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient’s failure to comply with [Section 2.20\(f\)](#); and (d) any U.S. federal withholding Taxes imposed under FATCA.

“**Existing Credit Agreement**”: as defined in the preamble hereto.

“ **Existing Lenders** ”: SVB and the other “Lenders” under and as defined in the Existing Credit Agreement.

“ **Existing Letters of Credit** ”: the letters of credit described on Schedule 1.1B .

“ **Facility** ”: each of (a) the L/C Facility (which is a sub-facility of the Revolving Facility), and (b) the Revolving Facility.

“ **FASB ASC** ”: the Accounting Standards certification of the Financial Accounting Standards Board.

“ **FATCA** ”: (a) 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) and any current or future regulations or official interpretations thereof, (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction with the purpose (in either case) of facilitating the implementation of clause (a) above, or (c) any agreement pursuant to the implementation of clauses (a) or (b) above with the United States Internal Revenue Service, the United States government or any governmental or taxation authority in the United States.

“ **FCPA** ”: as defined in the Section 4.28 .

“ **Federal Funds Effective Rate** ”: for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by SVB from three federal funds brokers of recognized standing selected by it.

“ **Fee Letter** ”: the letter agreement dated as of October 16, 2015, between the Borrower, the Administrative Agent and the Arrangers.

“ **Flood Laws** ”: the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board of Governors of the Federal Reserve System).

“ **Flow of Funds Agreement** ”: the spreadsheet or other similar statement prepared and certified by the Borrower, regarding the disbursement of Revolving Loan proceeds on the Closing Date, the funding and the payment of the fees and expenses of the Administrative Agent, the Arrangers and the Lenders (including their respective counsel), and such other matters as may be agreed to by the Borrower, the Administrative Agent, the Arrangers, and the Lenders.

“ **Foreign Currency** ”: any Agreed Currency other than Dollars.

“ **Foreign Currency Letter of Credit** ”: a Letter of Credit denominated in a Foreign Currency.

“ **Foreign Currency Sublimit** ”: an amount equal to \$50,000,000.

“ **Foreign Lender** ”: (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“ **Foreign Subsidiary** ”: in respect of any Loan Party, any Subsidiary of such Loan Party that is not a Domestic Subsidiary of such Loan Party.

“**Fronting Exposure**”: at any time there is a Defaulting Lender, as applicable, (a) with respect to the Issuing Lender, such Defaulting Lender’s L/C Percentage of the outstanding L/C Exposure other than L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Percentage of outstanding Swingline Loans made by the Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

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

“**GAAP**”: generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 7.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 4.1(b). In the event that any “Accounting Change” (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then each party to this Agreement agrees to enter into negotiations to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. “**Accounting Changes**” refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

“**General Transaction Conditions**”: with respect to any transaction subject to the General Transaction Conditions, that (a) no Default or Event of Default shall have occurred and be continuing at the time of such transaction or would result therefrom, (b) immediately after giving effect to such transaction, the Borrower and its Subsidiaries shall be in compliance with each of the financial covenants set forth in Section 7.1, calculated on a Pro Forma Basis, (c) prior to and immediately after giving effect to such transaction, the Loan Parties shall have Liquidity of at least \$35,000,000, and (d) the Borrower shall have delivered to the Administrative Agent at least five (5) Business Days prior to the consummation of such transaction a certificate of a Responsible Officer in form reasonably satisfactory to the Administrative Agent stating that the General Transaction Conditions will be satisfied when the specified transaction is consummated and attaching pro forma financial statements demonstrating compliance with clause (b) above and a Liquidity Report as of the Business Day immediately before such certificate is delivered.

“**Governmental Approval**”: any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**”: the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Group Members**”: the collective reference to the Borrower and its Subsidiaries.

“**Guarantee and Collateral Agreement**”: the Second Amended and Restated Guarantee and Collateral Agreement to be executed and delivered by the Borrower and each Guarantor, substantially in the form of Exhibit A.

“**Guarantee Obligation**”: as to any Person (the “**guaranteeing person**”), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the “**primary obligations**”) of any other third Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) 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 or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“**Guarantors**”: a collective reference to each Subsidiary of the Borrower which has become a Guarantor pursuant to the Guarantee and Collateral Agreement. Notwithstanding any contrary provision herein or in any other Loan Document, no Excluded Foreign Subsidiary shall be required to become a Guarantor.

“**Immaterial Subsidiary**”: in respect of any Loan Party, any Subsidiary of such Loan Party that at any date of determination, holds less than \$100,000 in assets (determined in accordance with GAAP) and has not generated more than \$25,000 in revenue (determined in accordance with GAAP) for the four fiscal quarter period ending on the last day of the most recent period for which financial statements have been delivered after the Closing Date pursuant to Section 6.1; provided that all Subsidiaries that are individually “Immaterial Subsidiaries” shall not have aggregate total assets of more than \$5,000,000 as of such date (determined in accordance with GAAP) or have generated more than \$5,000,000 in aggregate total revenue (determined in accordance with GAAP) for such four fiscal quarter period.

“**Increase**”: as defined in Section 2.12.

“**Increase Joinder**”: an instrument, in form and substance reasonably satisfactory to the Administrative Agent, by which a Lender becomes a party to this Agreement pursuant to Section 2.12.

“**Incurred**”: as defined in the definition of “Pro Forma Basis”.

“**Indebtedness**”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all

indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and all Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Stock in such Person or any Capital Stock in any other Person, or any warrant, right or option to acquire such Capital Stock, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) the net obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

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

“ **Indemnitee** ”: is defined in Section 10.5(b).

“ **Insider Indebtedness** ”: any Indebtedness owing by any Loan Party to any Group Member or officer, director, shareholder or employee of any Group Member.

“ **Insider Subordinated Indebtedness** ”: any Insider Indebtedness which is also Subordinated Indebtedness.

“ **Insolvency Proceeding** ”: is (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. Federal, state or foreign law, including any Debtor Relief Law.

“ **Intangible Assets** ”: assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

“ **Intellectual Property** ”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, trade secrets, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“ **Interest Payment Date** ”: (a) as to any ABR Loan (including any Swingline Loan), the first Business

Day of each calendar month to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurocurrency Loan having an Interest Period of three (3) months or less, the last Business Day of such Interest Period, (c) as to any Eurocurrency Loan having an Interest Period longer than three (3) months, each day that is three (3) months (or, if such date is not a Business Day, the Business Day next succeeding such date) after the first day of such Interest Period and the last Business Day of such Interest Period, and (d) as to any Loan (other than any Revolving Loan that is an ABR Loan and any Swingline Loan), the date of any repayment or prepayment made in respect thereof.

“**Interest Period**”: as to any Eurocurrency Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurocurrency Loan and ending one (1), three (3) or six (6) months (and, if available from each Lender, two (2), nine (9) and twelve (12) months) thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurocurrency Loan and ending one (1), three (3) or six (6) months (and, if available from each Lender, two (2), nine (9) and twelve (12) months) thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent in a Notice of Conversion/Continuation not later than 10:00 A.M., Pacific time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period under a particular Facility that would extend beyond the Revolving Termination Date;

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

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Eurocurrency Loan during an Interest Period for such Loan.

“**Interest Rate Agreement**”: with respect to any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with such Person’s operations, (b) approved by Administrative Agent, and (c) not for speculative purposes.

“**Inventory**”: all “inventory,” as such term is defined in the Code, now owned or hereafter acquired by any Loan Party, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Loan Party for sale or lease or are furnished or are to be furnished under a contract of service, or that constitutes raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind used or consumed or to be used or consumed in such Loan Party’s business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

“**Investments**”: as defined in Section 7.8.

“**IRS**”: the Internal Revenue Service, or any successor thereto.

“**ISP**”: 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).

“**Issuing Lender**”: as the context may require, SVB or any Affiliate thereof, in its capacity as issuer of any Letter of Credit (including, without limitation, each Existing Letter of Credit), including any other Lender that may become a successor Issuing Lender pursuant to [Section 3.12](#). The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term “Issuing Lender” shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution.

“**Issuing Lender Fees**”: as defined in [Section 3.3\(a\)](#).

“**Judgment Currency**”: as defined in [Section 10.19](#).

“**L/C Advance**”: each L/C Lender’s funding of its participation in any L/C Disbursement in accordance with its L/C Percentage of the L/C Commitment.

“**L/C Commitment**”: as to any L/C Lender, the obligation of such L/C Lender, if any, to purchase an undivided interest in the Issuing Lender’s obligations and rights under and in respect of each Letter of Credit (including to make payments with respect to draws made under any Letter of Credit pursuant to [Section 3.5\(b\)](#)) in an aggregate principal amount not to exceed the amount set forth under the heading “L/C Commitment” opposite such L/C Lender’s name on [Schedule 1.1A](#) or in the Assignment and Assumption or the Increase Joinder pursuant to which such L/C Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The L/C Commitment is a sublimit of the Revolving Commitment and the aggregate amount of the L/C Commitments shall not exceed the amount of the Total L/C Commitments at any time.

“**L/C Disbursements**”: a payment or disbursement made by the Issuing Lender pursuant to a Letter of Credit.

“**L/C Exposure**”: at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, and (b) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time. The L/C Exposure of any L/C Lender at any time shall equal its L/C Percentage of the aggregate L/C Exposure at such time.

“**L/C Facility**”: the L/C Commitments and the extensions of credit made thereunder.

“**L/C Fee Payment Date**”: as defined in [Section 3.3\(a\)](#).

“**L/C Lender**”: a Lender with an L/C Commitment.

“**L/C Percentage**”: as to any L/C Lender at any time, the percentage of the Total L/C Commitments represented by such L/C Lender’s L/C Commitment, as such percentage may be adjusted as provided in [Section 2.23](#).

“**L/C-Related Documents**”: collectively, each Letter of Credit (including any Existing Letter of Credit), all applications for any Letter of Credit (and applications for the amendment of any Letter of Credit) submitted by the Borrower to the Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any of the Issuing Lender’s standard form documents for letter of credit issuances.

“ **Lenders** ”: any Person listed on Schedule 1.1A (other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption), any Person that becomes a party hereto pursuant to an Assignment and Assumption and any Additional Lender that becomes a party hereto pursuant to an Increase Joinder; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the Issuing Lender and the Swingline Lender.

“ **Letter of Credit** ”: as defined in Section 3.1(a); provided that such term shall include each Existing Letter of Credit.

“ **Letter of Credit Availability Period** ”: the period from and including the Closing Date to but excluding the Letter of Credit Maturity Date.

“ **Letter of Credit Fees** ”: as defined in Section 3.3(a).

“ **Letter of Credit Fronting Fees** ”: as defined in Section 3.3(a).

“ **Letter of Credit Maturity Date** ”: the date occurring 30 days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“ **LIBOR** ”: as defined in the definition of “Eurocurrency Base Rate.”

“ **Lien** ”: any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“ **Liquidity** ”: at any time, the sum of (a) the aggregate amount of cash or Cash Equivalents held at such time by any Loan Party in Deposit Accounts or Securities Accounts subject to Control Agreements (excluding cash and Cash Equivalents securing letters of credit or subject to any Lien other than Liens permitted under Section 7.3(a) or (l)), plus (b) the Available Revolving Commitment at such time.

“ **Liquidity Report** ”: a report, in form and substance reasonably satisfactory to the Administrative Agent, delivered by the Borrower to the Administrative Agent which discloses, as of the date of such report, the amount of Liquidity as of such date.

“ **Loan** ”: any loan made or maintained by any Lender pursuant to this Agreement.

“ **Loan Documents** ”: this Agreement, the Security Documents, the Notes, the Fee Letter, the Flow of Funds Agreement, the Solvency Certificate, the Collateral Information Certificate, each L/C-Related Document, each Compliance Certificate, each Liquidity Report, each Notice of Borrowing, each Notice of Conversion/Continuation, each Bank Services Agreement, each Specified Swap Agreement, and any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 3.10, and any amendment, waiver, supplement or other modification to any of the foregoing.

“ **Loan Parties** ”: each Group Member that is a party to a Loan Document.

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

“ **Materials of Environmental Concern** ”: any substance, material or waste that is defined, regulated, governed or otherwise characterized under any Environmental Law as hazardous or toxic or as a pollutant or contaminant (or by words of similar meaning and regulatory effect), any petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, molds or fungus, and radioactivity, radiofrequency radiation at levels known to be hazardous to human health and safety.

“ **Minority Lender** ”: as defined in [Section 10.1\(b\)](#).

“ **Moody ’ s** ”: Moody’s Investors Service, Inc.

“ **Mortgaged Properties** ”: the real properties as to which, pursuant to [Section 6.12\(b\)](#) or otherwise, the Administrative Agent, for the benefit of the Secured Parties, shall be granted a Lien pursuant to the Mortgages.

“ **Mortgages** ”: each of the mortgages, deeds of trust, deeds to secure debt or such equivalent documents hereafter entered into and executed and delivered by one or more of the Loan Parties to the Administrative Agent, in each case, as such documents may be amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time and in form and substance reasonably acceptable to the Administrative Agent.

“ **Mult employer Plan** ”: a “multiemployer plan” (within the meaning of Section 3(37) of ERISA) to which any Loan Party or any ERISA Affiliate thereof makes, is making, or is obligated or has ever been obligated to make, contributions.

“ **Non-Consenting Lender** ”: any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Affected Lenders in accordance with the terms of [Section 10.1](#) and (b) has been approved by the Required Lenders.

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

“ **Note** ”: a Revolving Loan Note or a Swingline Loan Note.

“ **Notice of Borrowing** ”: a notice substantially in the form of [Exhibit K](#).

“ **Notice of Conversion/Continuation** ”: a notice substantially in the form of [Exhibit L](#).

“ **Obligations** ”: the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans and all other obligations and liabilities (including any fees or expenses that accrue after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) of any Loan Party to the Administrative Agent, any Arranger, the Issuing Lender, any other Lender, any Bank Services Provider (in its capacity as a provider of Bank Services), or any Qualified Counterparty party to a Specified Swap Agreement, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document (including, for the avoidance of doubt, any Bank Services Agreement), the Letters of Credit, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or

therewith, whether on account of principal, interest, reimbursement obligations, payment obligations, fees, indemnities, costs, expenses (including all reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent, any Arranger, the Issuing Lender, any other Lender, any Bank Services Provider (to the extent that any applicable Bank Services Agreement requires the reimbursement by any applicable Group Member of any such expenses), and any Qualified Counterparty party to a Specified Swap Agreement that are required to be paid by any Loan Party pursuant any Loan Document) or otherwise, in each case, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents. For the avoidance of doubt, the Obligations shall not include any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender; provided that Obligations of any Guarantor shall not include any Excluded Swap Obligations.

“**Operating Documents**”: for any Person as of any date, such Person’s constitutional documents, formation documents and/or certificate of incorporation (or equivalent thereof), as certified (if applicable) by such Person’s jurisdiction of formation as of a recent date, and, (a) if such Person is a corporation, its bylaws or memorandum and articles of association (or equivalent thereof) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**OFAC**”: The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“**Original Loan Documents**”: as defined in Section 10.21.

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

“**Other Taxes**”: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

“**Overadvance**”: as defined in Section 2.8.

“**Overnight Foreign Currency Rate**”: for any amount payable in any Foreign Currency, the rate of interest per annum as determined by the Administrative Agent at which overnight or weekend deposits in such Foreign Currency (or if such amount due remains unpaid for more than three (3) Business Days, then for such other period as the Administrative Agent may elect) for delivery in immediately available and freely transferable funds would be offered by the Administrative Agent to major banks in the interbank market upon request of such major banks for the relevant currency as determined above and in an amount comparable to the unpaid amount.

“**Participant**”: as defined in Section 10.6(d).

“**Participant Register**”: as defined in Section 10.6(d).

“ **Patriot Act** ”: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Title III of Pub. L. 107-56, signed into law October 26, 2001.

“ **Payment Transaction Conditions** ”: with respect to any transaction subject to the Payment Transaction Conditions, that (a) no Default or Event of Default shall have occurred and be continuing at the time of such transaction or would result therefrom, (b) immediately after giving effect to such transaction, the Borrower and its Subsidiaries shall have a trailing four quarter Consolidated Leverage Ratio of not more than 2.25:1.00 and be in compliance with the covenant set forth in Section 7.1(a) (Fixed Charge Coverage Ratio), in each case, calculated on a Pro Forma Basis, (c) prior to and immediately after giving effect to such transaction, the Loan Parties shall have Liquidity of at least \$35,000,000, and (d) the Borrower shall have delivered to the Administrative Agent at least five (5) Business Days prior to the consummation of such transaction a certificate of a Responsible Officer in form reasonably satisfactory to the Administrative Agent stating that the Payment Transaction Conditions will be satisfied when the specified transaction is consummated and attaching pro forma financial statements demonstrating compliance with clause (b) above and a Liquidity Report as of the Business Day immediately before such certificate is delivered.

“ **Payoff Letter** ”: a letter, in form and substance satisfactory to the Administrative Agent, dated as of a date prior to the Closing Date and executed by the Cash Flow Agent and the Borrower to the effect that upon receipt by the Cash Flow Agent of the “payoff amount” (however designated) referenced therein, (a) the obligations of the Group Members under the Cash Flow Credit Agreement and all other related loan documents shall be satisfied in full, (b) the Liens held by the Cash Flow Agent under the Cash Flow Credit Agreement and all related security documents shall terminate without any further action, and (c) the Borrower and the Administrative Agent (and their respective counsel and such counsels’ agents) shall be entitled to file UCC-3 amendment statements, USPTO releases, USCRO releases and any other releases reasonably necessary to further evidence the termination of such Liens.

“ **PBGC** ”: the Pension Benefit Guaranty Corporation, or any successor thereto.

“ **Pension Plan** ”: an employee pension plan (as defined in Section 3(2) of ERISA) other than a Multiemployer Plan subject to the provisions of Title IV of ERISA or Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA and in respect of which any Loan Party or any ERISA Affiliate thereof is (or if such plan were terminated would under Section 4069 of ERISA be deemed to be) a “contributing sponsor” as defined in Section 4001(a)(13) of ERISA.

“ **Permitted Acquisition** ”: as defined in Section 7.8(k).

“ **Permitted Refinancing Indebtedness** ”: Indebtedness of any Person (“ **Refinancing Indebtedness** ”) issued or incurred by such Person (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew or replace existing Indebtedness of such Person (“ **Refinanced Indebtedness** ”); provided that (a) the principal amount of such Refinancing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and reasonable fees and expenses, in each case associated with such Refinancing Indebtedness, (b) such Refinancing Indebtedness has a final maturity that is no sooner than, and a weighted average life to maturity (measured as of the refinancing, renewal, or extension) that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantee Obligation thereof or any security therefor are subordinated to the Obligations, such Refinancing Indebtedness and any Guarantee Obligations thereof and any security therefor remain so subordinated on terms no less favorable to the Lenders and the other Secured Parties, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding extension, renewal or replacement are the only obligors on such Refinancing Indebtedness, (e) such Refinancing Indebtedness shall not be secured by any Lien on any

asset other than the assets required to secure such Refinanced Indebtedness, (f) such Refinancing Indebtedness shall not be on terms that would be prohibited by operation of Section 7.10 if the refinancing of such Refinanced Indebtedness were effected by way of an amendment to the terms of the Refinanced Indebtedness instead of by way of the issuance of Refinancing Indebtedness, and (g) any Refinancing Indebtedness that refinances Indebtedness permitted under Section 7.2(g) shall only constitute Permitted Refinancing Indebtedness if, in addition to satisfying each of the conditions set forth in clauses (a) through (f) above, such Refinancing Indebtedness also satisfies each of the conditions set forth in the proviso to Section 7.2(g).

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

“**Platform**”: is defined in Section 10.2(d)(i).

“**Platform Contribution License Agreement**”: the Platform Contribution License Agreement, effective as of August 1, 2014, by and between the Borrower and FitBit Holdings, a company organized under the laws of Ireland.

“**Preferred Stock**”: the preferred Capital Stock of any Loan Party.

“**Prime Rate**”: the rate of interest per annum from time to time published in the money rates section of the Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street Journal, becomes unavailable for any reason as determined by the Administrative Agent, the “Prime Rate” shall mean the rate of interest per annum announced by SVB as its prime rate in effect at its principal office in the State of California (such SVB announced Prime Rate not being intended to be the lowest rate of interest charged by SVB in connection with extensions of credit to debtors).

“**Pro Forma Basis**”: with respect to any calculation or determination for a Loan Party for any period, in making such calculation or determination on the specified date of determination (the “**Determination Date**”) means:

(a) *pro forma* effect will be given to any Indebtedness incurred (“**Incurred**”) by such Loan Party or any of its Subsidiaries (including by assumption of then outstanding Indebtedness) or by a Person becoming a Subsidiary after the beginning of the applicable period and on or before the Determination Date to the extent the Indebtedness is outstanding or is to be Incurred on the Determination Date, as if such Indebtedness had been Incurred on the first day of such period;

(b) *pro forma* calculations of interest on Indebtedness bearing a floating interest rate will be made as if the rate in effect on the Determination Date (taking into account any Swap Agreement applicable to the Indebtedness) had been the applicable rate for the entire reference period; and

(c) *pro forma* effect will be given to: (i) any acquisition or disposition of companies, divisions or lines of businesses by such Loan Party and its Subsidiaries, including any acquisition or disposition of a company, division or line of business since the beginning of the reference period by a Person that became a Subsidiary after the beginning of the applicable period; (ii) the discontinuation of any discontinued operations and (iii) in the case of any calculation on a Pro Forma Basis pursuant to the definitions of “General Transaction Conditions”, “Payment Transaction Conditions” or “Secured Debt Transaction Conditions”, the transaction that is subject to the General Transaction Conditions, the Payment Transaction Conditions or the Secured Debt Transaction Conditions, respectively; in each case of clauses (i), (ii) and (iii), that have occurred since the beginning of the applicable period and before the Determination Date as if such events had occurred,

and, in the case of any disposition, the proceeds thereof applied, on the first day of such period; provided that with respect to clause (iii), the applicable period shall be the period of four consecutive fiscal quarters ended on or prior to the Determination Date in respect of which financial statements have been delivered prior to such Determination Date. To the extent that *pro forma* effect is to be given to an acquisition or disposition of a company, division or line of business, the *pro forma* calculation will be calculated in good faith by a responsible financial or accounting officer of such Loan Party in accordance with Regulation S-X under the Securities Act, based upon the most recent full fiscal quarter for which the relevant financial information is available.

“ **Pro Forma Financial Statements** ”: balance sheets, income statements and cash flow statements prepared by the Borrower and its consolidated Subsidiaries that give effect (as if such events had occurred on such date) to the Closing Date and the incurrence of the Obligations, the termination of the Cash Flow Credit Agreement and the repayment of the obligations thereunder, and the payment of fees and expenses in connection with the foregoing, in each case prepared for (i) the four quarters ended September 30, 2015 as if such transactions had occurred on the last day of such period and (ii) on a quarterly basis through the first full fiscal year after the Closing Date, as applicable, and on an annual basis for each fiscal year thereafter through the Revolving Termination Date, in the case of each Pro Forma Financial Statements prepared on an annual basis, demonstrating pro forma compliance with the covenants set forth in Section 7.1.

“ **Projections** ”: as defined in Section 6.2(c).

“ **Properties** ”: as defined in Section 4.17(a).

“ **Qualified Counterparty** ”: with respect to any Specified Swap Agreement, any counterparty thereto that, at the time such Specified Swap Agreement was entered into or as of the Closing Date, was the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender.

“ **Qualified Stock** ”: any Capital Stock that is not Disqualified Stock.

“ **Recipient** ”: the Administrative Agent or a Lender, as applicable.

“ **Refunded Swingline Loans** ”: as defined in Section 2.7(b).

“ **Register** ”: is defined in Section 10.6(c).

“ **Regulation T** ”: Regulation T of the Board as in effect from time to time.

“ **Regulation U** ”: Regulation U of the Board as in effect from time to time.

“ **Regulation X** ”: Regulation X of the Board as in effect from time to time.

“ **Related Parties** ”: with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“ **Replacement Lender** ”: as defined in Section 2.23.

“ **Required Lenders** ”: at any time: (a) if only one Lender holds the Total Revolving Commitments, such Lender, and (b) if more than one Lender holds the Total Revolving Commitments, then at least two Lenders (who are not Affiliates of one another if two such Lenders exist) who together hold more than 50% of the Total Revolving Commitments (including, without duplication, the L/C Commitments) then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then

outstanding; provided that for the purposes of clause (b), the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“ **Requirement of Law** ”: as to any Person, the Operating Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“ **Responsible Officer** ”: the chief executive officer, president, vice president, chief financial officer, treasurer, controller or comptroller of an applicable Loan Party, but in any event, with respect to financial matters, the chief financial officer, treasurer, controller or comptroller of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“ **Restricted Payments** ”: as defined in Section 7.6.

“ **Revolving Commitment** ”: as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading “Revolving Commitment” opposite such Lender’s name on Schedule 1.1A or in the Assignment and Assumption or the Increase Joinder pursuant to which such Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof (including in connection with assignments and Increases permitted hereunder). The amount of each Lender’s Revolving Commitment shall be reduced on a pro rata basis in accordance with such Lender’s Revolving Percentage upon the reduction of the Total Revolving Commitments in accordance with the last sentence of the definition thereof.

“ **Revolving Commitment Period** ”: the period from and including the Closing Date to the Revolving Termination Date.

“ **Revolving Extensions of Credit** ”: as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding, plus (b) such Lender’s L/C Percentage of the aggregate undrawn amount of all outstanding Letters of Credit (including any Existing Letters of Credit) at such time, plus (c) such Lender’s L/C Percentage of the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, plus (d) such Lender’s Revolving Percentage of the aggregate principal amount of Swingline Loans then outstanding.

“ **Revolving Facility** ”: the Revolving Commitments and the extensions of credit made thereunder.

“ **Revolving Lender** ”: each Lender that has a Revolving Commitment or that holds Revolving Loans.

“ **Revolving Loan Conversion** ”: as defined in Section 3.5(b).

“ **Revolving Loan Funding Office** ”: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“ **Revolving Loan Note** ”: a promissory note in the form of Exhibit H-1, as it may be amended, supplemented or otherwise modified from time to time.

“ **Revolving Loans** ”: as defined in Section 2.4(a) .

“ **Revolving Percentage** ”: as to any Revolving Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Revolving Loans then outstanding constitutes of the aggregate principal amount of all Revolving Loans then outstanding; provided that in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Commitments, the Revolving Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Revolving Lenders on a comparable basis.

“ **Revolving Termination Date** ”: December 10, 2020.

“ **S&P** ”: Standard & Poor’s Ratings Services.

“ **Sale Leaseback Transaction** ”: any arrangement with any Person or Persons, whereby in contemporaneous or substantially contemporaneous transactions a Loan Party sells substantially all of its right, title and interest in any property and, in connection therewith, acquires, leases or licenses back the right to use all or a material portion of such property.

“ **Sanctions** ”: as defined in Section 4.29 .

“ **SAM Securities Account Control Agreement** ”: the Securities Account Control Agreement, dated as of February 27, 2014, among the Borrower, the Administrative Agent, SVB Asset Management, and U.S. Bank National Association.

“ **SEC** ”: the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

“ **Secured Debt Transaction Conditions** ”: with respect to any transaction subject to the Secured Debt Transaction Conditions, that (a) no Default or Event of Default shall have occurred and be continuing at the time of such transaction or would result therefrom, (b) immediately after giving effect to such transaction, the Borrower and its Subsidiaries shall have a trailing four quarter Consolidated Leverage Ratio of not more than 2.75:1.00 and be in compliance with the covenant set forth in Section 7.1(a) (Fixed Charge Coverage Ratio), in each case, calculated on a Pro Forma Basis, (c) prior to and immediately after giving effect to such transaction, the Loan Parties shall have Liquidity of at least \$35,000,000, and (d) the Borrower shall have delivered to the Administrative Agent at least five (5) Business Days prior to the consummation of such transaction a certificate of a Responsible Officer in form reasonably satisfactory to the Administrative Agent stating that the Secured Debt Transaction Conditions will be satisfied when the specified transaction is consummated and attaching pro forma financial statements demonstrating compliance with clause (b) above and a Liquidity Report as of the Business Day immediately before such certificate is delivered.

“ **Secured Obligations** ”: as defined in the Guarantee and Collateral Agreement.

“ **Secured Parties** ”: the collective reference to the Administrative Agent, the Arrangers, the Lenders (including the Issuing Lender in its capacity as Issuing Lender and any Swingline Lender in its capacity as Swingline Lender), each Bank Services Provider (in its capacity as a provider of Bank Services), and any Qualified Counterparties.

“**Securities Account**”: any “securities account” as defined in the UCC with such additions to such term as may hereafter be made.

“**Securities Account Control Agreement**”: any Control Agreement entered into by the Administrative Agent, a Loan Party and a securities intermediary holding a Securities Account of such Loan Party pursuant to which the Administrative Agent is granted “control” (for purposes of the UCC) over such Securities Account.

“**Securities Act**”: the Securities Act of 1933, as amended from time to time and any successor statute.

“**Security Documents**”: the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) the SAM Securities Account Control Agreement, (d) each Deposit Account Control Agreement, (e) each Securities Account Control Agreement, (f) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, (g) all other security documents hereinafter delivered to the Administrative Agent, for the benefit of any Bank Services Provider or Qualified Counterparty, or any of its applicable Affiliates granting a Lien on any property of any Person to secure the Obligations of any Group Member arising under any Bank Services Agreement or any Specified Swap Agreement, and (h) all financing statements, fixture filings, assignments, acknowledgments and other filings, documents and agreements made or delivered pursuant to any of the foregoing.

“**Solvency Certificate**”: the Solvency Certificate, dated the Closing Date, delivered to the Administrative Agent and the Lenders pursuant to Section 5.1(s), which Solvency Certificate shall be in substantially the form of Exhibit D.

“**Solvent**”: when used with respect to any Person, as of any date of determination, (a) the amount of the “fair value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the “present fair saleable value” of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim,” and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“**Specified Swap Agreement**”: any Swap Agreement entered into by the Borrower or any of its Subsidiaries and any Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Closing Date or as of the date such Swap Agreement was entered into) in respect of interest rates and currencies to the extent permitted under Section 7.13.

“**Sterling**” and the sign “**£**”: the lawful currency of the United Kingdom.

“**Subordinated Debt Document**”: any agreement, certificate, document or instrument executed or delivered by any Loan Party or any of their respective Subsidiaries and evidencing Subordinated Indebtedness of such Loan Party or such Subsidiary, and any renewals, modifications, or amendments thereof which are approved in writing by the Administrative Agent.

“**Subordinated Indebtedness**”: Indebtedness of a Loan Party subordinated to the Obligations pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) reasonably acceptable to the Administrative Agent.

“**Subsidiary**”: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “**Subsidiary**” or to “**Subsidiaries**” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Surety Indebtedness**”: as of any date of determination, indebtedness (contingent or otherwise) owing to sureties arising from surety bonds issued on behalf of any Loan Party or its respective Subsidiaries as support for, among other things, their contracts with customers, whether such indebtedness is owing directly or indirectly by such Loan Party or any such Subsidiary.

“**SVB**”: as defined in the preamble hereto.

“**Swap Agreement**”: any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement (including without limitation, any Interest Rate Agreement) involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower and its Subsidiaries shall be deemed to be a “Swap Agreement.”

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

“**Swingline Commitment**”: the obligation of the Swingline Lender to make Swingline Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed \$25,000,000.

“**Swingline Lender**”: SVB, in its capacity as the lender of Swingline Loans.

“**Swingline Loan Note**”: a promissory note in the form of Exhibit H-2, as it may be amended, supplemented or otherwise modified from time to time.

“**Swingline Loans**”: as defined in Section 2.6.

“**Swingline Participation Amount**”: as defined in Section 2.7(c).

“**Syndication Agent**”: as defined in the preamble hereto.

“**Synthetic Lease Obligation**”: the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) an agreement for the use of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“**TARGET**”: 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, reasonably determined by the Administrative Agent to be a suitable replacement) for the settlement of payments in Euros.

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

“**Total Credit Exposure**”: is, as to any Lender at any time, the unused Revolving Commitments and the Dollar Equivalent of the Revolving Extensions of Credit of such Lender at such time.

“**Total L/C Commitments**”: at any time, the sum of all L/C Commitments at such time, as the same may be reduced from time to time pursuant to Section 2.10 or 3.5(b). The initial amount of the Total L/C Commitments on the Closing Date is \$50,000,000.

“**Total Revolving Commitments**”: at any time, the aggregate amount of the Revolving Commitments then in effect. The original amount of the Total Revolving Commitments is \$250,000,000. The L/C Commitment and the Swingline Commitment are each sublimits of the Total Revolving Commitments.

“**Total Revolving Extensions of Credit**”: at any time, the aggregate amount of the Revolving Extensions of Credit outstanding at such time.

“**Trade Date**”: is defined in Section 10.6(b)(i)(B).

“**Transactions**”: as defined in Section 5.1(b).

“**Transferee**”: any Eligible Assignee or Participant.

“**Type**”: as to any Loan, its nature as an ABR Loan or a Eurocurrency Loan.

“**Unfriendly Acquisition**”: any acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally recognized governing body) of the Person to be acquired; except that with respect to any acquisition of a non-U.S. Person, an otherwise friendly acquisition shall not be deemed to be unfriendly if it is not customary in such jurisdiction to obtain such approval prior to the first public announcement of an offer relating to a friendly acquisition.

“**Uniform Commercial Code**” or “**UCC**”: the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State of New York, or as the context may require, any other applicable jurisdiction.

“**United States**” and “**U.S.**”: the United States of America.

“**USCRO**”: the U.S. Copyright Office.

“**USPTO**”: the U.S. Patent and Trademark Office.

“ **U.S. Person** ”: any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“ **U.S. Tax Compliance Certificate** ”: as defined in Section 2.20(f).

“ **Withholding Agent** ”: as applicable, any of any applicable Loan Party and the Administrative Agent, as the context may require.

1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and in any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, and (v) references to agreements (including this Agreement) or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated, amended and restated or otherwise modified from time to time. Notwithstanding the foregoing clause (i), for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of any Group Member shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(c) The words “ **hereof**,” “ **herein** ” and “ **hereunder** ” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (ii) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (iii) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

1.3 Currency Translations.

(a) For purposes of this Agreement and the other Loan Documents, where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, amounts stated in Dollars, such amounts shall be deemed to refer to Dollars or the Dollar Equivalent of such amount and any requisite currency translation shall be determined by

the Administrative Agent as set forth herein; provided that if any basket is exceeded solely as a result of fluctuations in applicable currency exchange rates after the last time such basket was utilized, such basket will not be deemed to have been exceeded solely as a result of such fluctuations in currency exchange rates.

(b) For purposes of all determinations of the outstanding amount of Loans and Letters of Credit, L/C Exposure and Required Lenders (and the components of each of them), any amount in any currency other than Dollars shall be deemed to refer to the Dollar Equivalent thereof and any requisite currency translation shall be determined by the Administrative Agent. For purposes of all calculations and determinations hereunder, and all certificates delivered hereunder, all amounts represented by such terms shall be expressed in Dollars or the Dollar Equivalent thereof.

(c) The Administrative Agent shall determine the Dollar Equivalent of any amount when required or permitted hereby, and a determination thereof by the Administrative Agent shall be conclusive absent manifest error. The Administrative Agent may, but shall not be obligated to, rely on any determination by the Borrower. The Administrative Agent may determine or re-determine the Dollar Equivalent of any amount on any date either in its own discretion or upon the request of the Borrower or any Lender, including without limitation, the Dollar Equivalent of any Loan made or issued in an Agreed Currency other than Dollars or any Foreign Currency Letter of Credit.

(d) The Administrative Agent may set up appropriate rounding-off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollars, whole Euros, whole Sterling or whole cents or other subunits of an Agreed Currency to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole units of the applicable Agreed Currency or in whole subunits of the applicable Agreed Currency, as may be necessary or appropriate.

SECTION 2 AMOUNT AND TERMS OF REVOLVING COMMITMENTS

2.1 [Reserved.]

2.2 [Reserved.]

2.3 [Reserved.]

2.4 Revolving Commitments.

(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (each, a “**Revolving Loan**” and, collectively, the “**Revolving Loans**”) to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount with respect to all such Revolving Loans at any one time outstanding which, when added to the Dollar Equivalent of each of the aggregate outstanding amount of any Revolving Loans, any Swingline Loans, the aggregate undrawn amount of all outstanding Letters of Credit, and the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans, incurred on behalf of the Borrower and owing to such Lender, does not exceed the amount of such Lender’s Revolving Commitment. In addition, (i) the amount of the Total Revolving Extensions of Credit outstanding at such time shall not exceed the Total Revolving Commitments in effect at such time and (ii) the Dollar Equivalent of all Revolving Loans funded in Foreign Currencies and the aggregate L/C Exposure with respect to Foreign Currency Letters of Credit shall not exceed the Foreign Currency Sublimit. During the Revolving Commitment Period the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to

time be Eurocurrency Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13. Notwithstanding anything to the contrary contained herein, during the existence of an Event of Default, no Revolving Loan may be borrowed as, converted to or continued as a Eurocurrency Loan.

- (b) The Borrower shall repay all outstanding Revolving Loans (including all Overadvances) on the Revolving Termination Date.
- (c) All Revolving Loans shall be made only in Dollars or other Agreed Currencies.
- (d) All Revolving Loans in Agreed Currencies other than Dollars shall be Eurocurrency Loans.

2.5 Procedure for Revolving Loan Borrowing . The Borrower may borrow up to the Available Revolving Commitment under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M., Pacific time, (a) three (3) Business Days prior to the requested Borrowing Date, in the case of Eurocurrency Loans, or (b) one (1) Business Day prior to the requested Borrowing Date, in the case of ABR Loans (in each case, with originals to follow within three (3) Business Days)) (provided that any such Notice of Borrowing of ABR Loans under the Revolving Facility to finance payments under Section 3.5(a) may be given not later than 10:00 A.M., Pacific time, on the date of the proposed borrowing), in each such case specifying (i) the amount and Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, (iii) in the case of Eurocurrency Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor, (iv) if the requested Revolving Loans are Eurocurrency Loans, the applicable Agreed Currency, and (v) instructions for remittance of the proceeds of the applicable Loans to be borrowed. Unless otherwise agreed by the Administrative Agent in its sole discretion, no Revolving Loan may be made as, converted into or continued as a Eurocurrency Loan having an Interest Period in excess of one month prior to the date that is 30 days after the Closing Date. Each borrowing of, conversion to or continuation of a Eurocurrency Loan shall be in a principal amount of the Dollar Equivalent of \$5,000,000 or a whole multiple of the Dollar Equivalent of \$1,000,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than the Dollar Equivalent of \$1,000,000, such lesser amount). Except as provided in Sections 3.5(b) and 2.7(b), 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 (or, if the then aggregate Available Revolving Commitments are less than \$1,000,000, such lesser amount). Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its pro rata share of each such borrowing available to the Administrative Agent for the account of the Borrower at the Revolving Loan Funding Office prior to 12:00 P.M., Pacific time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrower with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent or, if so specified in the Flow of Funds Agreement, the Administrative Agent shall wire transfer all or a portion of such aggregate amounts to the Cash Flow Agent (for application against amounts then outstanding under the Cash Flow Credit Agreement) or retain a portion of such funds to refinance loans under the Existing Credit Agreement, in accordance with the wire instructions specified for such purpose in the Flow of Funds Agreement. No Revolving Loan which constitutes a Eurocurrency Loan will be made on the Closing Date.

2.6 Swingline Commitment . Subject to the terms and conditions hereof, the Swingline Lender agrees to make available a portion of the credit accommodations otherwise available to the Borrower under the

Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans (each a “*Swingline Loan*” and, collectively, the “*Swingline Loans*”) to the Borrower; provided that (a) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed the Swingline Commitment then in effect, (b) the Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, the aggregate amount of the Available Revolving Commitments would be less than zero, and (c) the Borrower shall not use the proceeds of any Swingline Loan to refinance any then outstanding Swingline Loan. During the Revolving Commitment Period, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be ABR Loans only and shall be made only in Dollars. To the extent not otherwise required by the terms hereof to be repaid prior thereto, the Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Termination Date.

2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.

(a) Whenever the Borrower desires that the Swingline Lender make Swingline Loans the Borrower shall give the Swingline Lender irrevocable telephonic or electronic notice (which notice must be received by the Swingline Lender not later than 12:00 P.M., Pacific time, on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Each borrowing under the Swingline Commitment shall be in an amount equal to \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of Swingline Loans, the Swingline Lender shall make available to the Borrower an amount in immediately available funds equal to the amount of the Swingline Loan to be made by depositing such amount in the account designated in writing to the Administrative Agent by the Borrower. Unless a Swingline Loan is sooner refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrower no later than five (5) Business Days after the advance of such Swingline Loan.

(b) The Swingline Lender shall, no less frequently than weekly (or on a more frequent basis if so determined by the Swingline Lender in its sole discretion), on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), on one (1) Business Day’s telephonic notice given by the Swingline Lender no later than 12:00 P.M., Pacific time, and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender’s Revolving Percentage of the aggregate amount of such Swingline Loan (each a “*Refunded Swingline Loan*”) outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M., Pacific time, one (1) Business Day after the date of such notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower’s accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

(c) If prior to the time that the Borrower has repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in

Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Days' notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "**Swingline Participation Amount**") equal to (i) such Revolving Lender's Revolving Percentage times (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

(d) Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Revolving Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(f) The Swingline Lender may resign at any time by giving 30 days' prior notice to the Administrative Agent, the Lenders and the Borrower. After the resignation of the Swingline Lender hereunder, the retiring Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of the Swingline Lender under this Agreement and the other Loan Documents with respect to Swingline Loans made by it prior to such resignation, but shall not be required to make any additional Swingline Loans.

2.8 Overadvances . If at any time or for any reason (a) the amount of the Total Revolving Extensions of Credit exceeds the amount of the Total Revolving Commitments then in effect, other than as a result of fluctuations in exchange rates, or (b) solely as a result of fluctuations in currency exchange rates, the Dollar Equivalent of the amount of the Total Revolving Extensions of Credit denominated in Foreign Currencies as of the most recent Calculation Date exceeds 105% of the Foreign Currency Sublimit (in each case, any such excess, an "**Overadvance**"), the Borrower shall (x) in the case of any Overadvance referenced in clause (a) above, immediately, and (y) in the case of any Overadvance referenced in clause (b) above, reasonably promptly following receipt of notice thereof from the Administrative Agent setting forth such calculation in reasonable detail, pay the full amount of such Overadvance to the Administrative Agent for application against the Revolving Extensions of Credit in accordance with the terms hereof; provided that any such repayment of an Overadvance shall be applied by the Administrative Agent first to repay Revolving Loans that are ABR Loans and thereafter to Revolving Loans that are Eurocurrency Loans. Any prepayment of any Revolving Loan that is a Eurocurrency Loan hereunder shall be subject to Borrower's obligation to pay any amounts owing pursuant to Section 2.21 .

2.9 Fees.

(a) Fee Letter. The Borrower agrees to pay to the Administrative Agent or the Arrangers, as applicable, in Dollars, the fees in the amounts and on the dates as set forth in the Fee Letter and to perform any other obligations contained therein.

(b) Commitment Fee. As additional compensation for the Total Revolving Commitments, the Borrower shall pay to the Administrative Agent for the account of the Lenders, in Dollars, a fee for the Borrower's non-use of available funds under the Revolving Facility (the "**Commitment Fee**"), payable quarterly in arrears on the first day of each calendar quarter occurring after the Closing Date prior to the Revolving Termination Date, and on the Revolving Termination Date, in an amount equal to the Commitment Fee Rate multiplied by the average unused portion of the Total Revolving Commitments, as reasonably determined by the Administrative Agent. The unused portion of the Total Revolving Commitments, for purposes of this calculation, shall equal the difference between (i) the Total Revolving Commitments (as reduced from time to time), and (ii) the sum of (A) the average for the period of the daily closing balance of the Revolving Loans outstanding, (B) the aggregate undrawn amount of all Letters of Credit outstanding at such time, and (C) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time. For the avoidance of doubt, the outstanding amount of any Swingline Loans shall not be counted towards or considered usage of the Total Revolving Commitments for purposes of determining the Commitment Fee.

(c) Fees Nonrefundable. All fees payable under this Section 2.9 shall be fully earned on the date paid and nonrefundable.

2.10 Termination or Reduction of Total Revolving Commitments; Total L/C Commitments.

(a) Termination or Reduction of Total Revolving Commitments. The Borrower shall have the right, upon not less than three (3) Business Days' written notice delivered to the Administrative Agent, to terminate the Total Revolving Commitments or, from time to time, to reduce the amount of the Total Revolving Commitments; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans to be made on the effective date thereof the amount of the Total Revolving Extensions of Credit on such date would exceed the Total Revolving Commitments then in effect; and provided, further, that if such notice of termination or reduction indicates that such termination or reduction is conditioned on any financing, sale or other transaction, such notice may be revoked if the financing, sale or other transaction is not consummated. Any such reduction shall be in an amount equal to the Dollar Equivalent of \$1,000,000, or a whole multiple in excess thereof (or, if the then Total Revolving Commitments are less than the Dollar Equivalent of \$1,000,000, such lesser amount), and shall reduce permanently the Total Revolving Commitments then in effect; provided that, if in connection with any such reduction or termination of the Total Revolving Commitments a Eurocurrency Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. Any reduction of the Total Revolving Commitments shall be applied to the Revolving Commitments of each Lender according to its respective Revolving Percentage. All fees accrued until the effective date of any termination of the Total Revolving Commitments shall be paid on the effective date of such termination. Any such reduction in the Total Revolving Commitments below the Foreign Currency Sublimit shall result in a dollar-for-dollar reduction in the Foreign Currency Sublimit.

(b) Termination or Reduction of Total L/C Commitments. The Borrower shall have the right, upon not less than three (3) Business Days' written notice delivered to the Administrative Agent, to terminate the Total L/C Commitments available to the Borrower or, from time to time, to reduce the amount of the Total L/C Commitments available to the Borrower; provided that, in any such case, no such termination

or reduction of the Total L/C Commitments shall be permitted if, after giving effect thereto, the Total L/C Commitments shall be reduced to an amount that would result in the aggregate L/C Exposure exceeding the Total L/C Commitments (as so reduced) ; and provided, further, that if such notice of termination or reduction indicates that such termination or reduction is conditioned on any financing, sale or other transaction, such notice may be revoked if the financing, sale or other transaction is not consummated. Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple in excess thereof (or, if the then Total L/C Commitments are less than \$1,000,000, such lesser amount), and shall reduce permanently the Total L/C Commitments then in effect. Any reduction of the Total L/C Commitments shall be applied to the L/C Commitments of each Lender according to its respective L/C Percentage. All fees accrued until the effective date of any termination of the Total L/C Commitments shall be paid on the effective date of such termination.

2.11 Optional Loan Prepayments . The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 10:00 A.M., Pacific time, three (3) Business Days prior thereto, in the case of Eurocurrency Loans, and no later than 10:00 A.M., Pacific time, one (1) Business Day prior thereto, in the case of ABR Loans, which notice shall specify the date and amount of the proposed prepayment; provided that if a Eurocurrency Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21 ; and provided, further, that if such notice of prepayment indicates that such prepayment is to be funded with the proceeds of a refinancing or is conditioned on any other financing, sale or other transaction, such notice of prepayment may be revoked if the refinancing, other financing, sale or other transaction is not consummated. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans that are ABR Loans and Swingline Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Revolving Loans shall be in an aggregate principal amount of the Dollar Equivalent of \$1,000,000 or a whole multiple thereof. Partial prepayments of Swingline Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple thereof.

2.12 Incremental Facility.

(a) At any time during the Revolving Commitment Period, the Borrower may request (but subject to the conditions set forth in clause (b) below) that the Total Revolving Commitment be increased by an amount not to exceed the Available Revolving Increase Amount (each such increase, an “**Increase**”). The Administrative Agent shall invite each Lender to increase its Revolving Commitments (it being understood that no Lender shall be obligated to increase its Revolving Commitments) in connection with a proposed Increase. In addition, the Borrower may seek an Increase from any other banks, financial institutions and other institutional lenders that agree to become Lenders in connection therewith in accordance with Section 2.12(b)(iii) (the “**Additional Lenders**”); provided that any such Additional Lender must be an Eligible Assignee. Any Increase shall be in an amount of at least \$10,000,000 and integral multiples of \$5,000,000 in excess thereof. Additionally, for the avoidance of doubt, it is understood and agreed that in no event shall the aggregate amount of the Increases to the Total Revolving Commitments exceed \$100,000,000 during the term of the Agreement.

(b) Each of the following shall be conditions precedent to any Increase of the Revolving Commitments in connection therewith:

(i) any Increase shall be on the same terms (including the pricing, and maturity date), as applicable, as, and pursuant to documentation applicable to, the original Revolving Facility;

(ii) the Borrower shall have delivered an irrevocable written request for such Increase at least ten (10) Business Days prior to the requested funding date of such Increase;

(iii) each Lender and Additional Lender agreeing to such Increase, the Borrower and the Administrative Agent have signed an Increase Joinder (any Increase Joinder may, with the consent of the Administrative Agent, the Borrower and the Lenders agreeing to such Increase, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate to effectuate the provisions of this Section 2.12) and the Borrower shall have executed any Notes requested by any Lender in connection with the making of the Increase (it being understood and agreed that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, an Increase Joinder reasonably satisfactory to the Administrative Agent, and the amendments to this Agreement effected thereby (so long as such amendments only implement the increase permitted hereby), shall not require the consent of any Lender other than the Lender(s) agreeing to fund such Increase);

(iv) each of the conditions precedent set forth in Section 5.2 are satisfied;

(v) after giving *pro forma* effect to such Increase and the use of proceeds thereof, (A) no Default or Event of Default shall have occurred and be continuing at the time of such Increase, (B) the Borrower shall be in compliance with each of the financial covenants set forth in Section 7.1 hereof (calculated with respect to Section 7.1(a) and (b) as of the end of the most recently ended quarter for which financial statements have been delivered prior to such Increase as though such Increase were made on the last day of such quarter), and (C) the Borrower shall have delivered to the Administrative Agent a Compliance Certificate evidencing compliance with the requirements of this clause (v), together with all reasonably detailed calculations demonstrating such compliance;

(vi) the Borrower shall have delivered to the Administrative Agent (A) the relevant board resolutions or written consents of each Loan Party approving such Increase and (B) legal opinion(s) relating to the matters described above, which opinion(s) shall be in customary form and substance, and from counsel, reasonably satisfactory to the Administrative Agent; and

(vii) in connection with such Increase, the Borrower shall pay to Administrative Agent all fees required to be paid pursuant to the terms of the Fee Letter.

(c) Upon the funding of any Increase, (i) all references in this Agreement and any other Loan Document to the Revolving Loans shall be deemed, unless the context otherwise requires, to include such Increase advanced pursuant to this Section 2.12 and (ii) all references in this Agreement and any other Loan Document to the Revolving Commitment shall be deemed, unless the context otherwise requires, to include the commitment to advance an amount equal to such Increase pursuant to this Section 2.12.

(d) The Revolving Loans and Revolving Commitments established pursuant to this Section 2.12 shall constitute Revolving Loans and Revolving Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from any guarantees and the security interests created by the Loan Documents. The Borrower shall take any actions reasonably required by Administrative Agent to ensure and demonstrate that the Liens and security interests granted by the Loan Documents continue to be perfected under the Code or otherwise after giving effect to the establishment of any such new Revolving Commitments.

2.13 Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Eurocurrency Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M., Pacific time, on the Business Day preceding the proposed conversion date; provided that any such conversion of Eurocurrency Loans may only be made on the last day of an Interest Period with respect thereto. Subject to Section 2.17, the Borrower may elect from time to time to

convert ABR Loans to Eurocurrency Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M., Pacific time, on the third Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor); provided that no ABR Loan may be converted into a Eurocurrency Loan when any Event of Default has occurred and is continuing. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Subject to Section 2.17, any Eurocurrency Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice in a Notice of Conversion/Continuation to the Administrative Agent by no later than 10:00 A.M., Pacific time, on the date occurring three Business Days preceding the proposed continuation date and otherwise in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans; provided that no Eurocurrency Loan may be continued as such when any Event of Default has occurred and is continuing; and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso, such Loans shall automatically be converted to ABR Loans (and any such Eurocurrency Loan denominated in a Foreign Currency shall be redenominated in Dollars at the time of such conversion) on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

2.14 Limitations on Eurocurrency Tranches . Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurocurrency Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurocurrency Loans comprising each Eurocurrency Tranche shall be equal to the Dollar Equivalent of \$1,000,000 or a whole multiple of the Dollar Equivalent of \$100,000 in excess thereof, and (b) no more than seven (7) Eurocurrency Tranches shall be outstanding at any one time.

2.15 Interest Rates and Payment Dates.

(a) Each Eurocurrency Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to (i) the Eurocurrency Base Rate determined for such day plus (ii) the Applicable Margin.

(b) Each ABR Loan (including any Swingline Loan) shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

(c) During the continuance of an Event of Default, at the request of the Required Lenders, (i) all outstanding Loans shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section 2.15 plus 2.00% (the "**Default Rate** ") and (ii) the Letter of Credit Fee and other amounts shall be increased by a percentage equal to the Default Rate; provided that the Default Rate shall apply to all outstanding Loans and the Letter of Credit Fee automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f) .

(d) Interest on the outstanding principal amount of each Loan shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to Section 2.15(c) shall be payable from time to time on demand.

2.16 Computation of Interest and Fees.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurocurrency Base Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Base Rate shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.16(a).

2.17 Inability to Determine Interest Rate . If prior to the first day of any Interest Period, the Administrative Agent or the Required Lenders (after consultation with the Administrative Agent) shall have determined (which determination shall be conclusive and binding upon the Borrower) in connection with any request for a Eurocurrency Loan or a conversion to or a continuation thereof that, by reason of circumstances affecting the relevant market, (a) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such requested Loan or conversion or continuation, as applicable, (b) adequate and reasonable means do not exist for ascertaining the Eurocurrency Base Rate for such Interest Period, or (c) the Eurocurrency Base Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period, then, in any such case (a), (b) or (c), the Administrative Agent shall promptly notify the Borrower and the relevant Lenders thereof as soon as practicable thereafter. Any such determination shall specify the basis for such determination and shall, in the absence of manifest error, be conclusive and binding for all purposes. Thereafter, (x) any Eurocurrency Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as ABR Loans, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurocurrency Loans shall be continued as ABR Loans and (z) any outstanding Eurocurrency Loans under the relevant Facility shall be converted, on the last day of the then-current Interest Period, to ABR Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurocurrency Loans under the relevant Facility shall be made or continued as such, nor shall the Borrower have the right to convert Loans under the relevant Facility to Eurocurrency Loans.

2.18 Pro Rata Treatment and Payments.

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Revolving Commitments shall be made *pro rata* according to the respective L/C Percentages or Revolving Percentages, as the case may be, of the relevant Lenders.

(b) [Reserved.]

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 10:00 A.M., Pacific time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Revolving Loan Funding Office, in the applicable Agreed Currency and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 10:00 A.M. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder (other than payments on the Eurocurrency Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurocurrency Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension. If the Borrower does not, or is unable for any reason to, effect payment of a Loan to the Lenders in the Agreed Currency or if the Borrower shall default in the payment when due of any payment in such Agreed Currency, the Lenders may, at their option, require such payment to be made to the Lenders in the Dollar Equivalent of such Agreed Currency determined in accordance with Section 10.23. With respect to any such amount due and payable in an Agreed Currency other than Dollars, in the event such amount is paid in Dollars (instead of such Agreed Currency), the Borrower shall hold the Lenders harmless from any losses, if any, that are incurred by the Lenders arising from any change in the value of Dollars in relation to such Agreed Currency between the date such payment became due and the date of payment thereof (other than losses incurred by any Lender due to the gross negligence or willful misconduct of such Lender as determined by a court of competent jurisdiction in a final non-appealable order). Notwithstanding the foregoing provisions of this Section, if, after the making of any Loan in any Foreign Currency or issuance of a Foreign Currency Letter of Credit, currency control or exchange regulations are imposed in the country which issues such currency with the result that the type of currency in which the Loan or Foreign Currency Letter of Credit was made or issued (the “*Original Currency*”) no longer exists or the Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Original Currency, then all payments to be made by the Borrower hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Equivalent (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrower takes all risks of the imposition of any such currency control or exchange regulations.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrower severally agree to pay to the Administrative Agent, on demand, such corresponding amount in the applicable Agreed Currency in immediately available funds with interest thereon, for each day from and including the date on which such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (including, without limitation, the Overnight Foreign Currency Rate in the case of loans denominated in a Foreign Currency) and (ii) in the case of a payment to be made by the Borrower, the rate per annum applicable to ABR Loans under the relevant Facility. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the

Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower is making such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Loan Party.

(g) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable extension of credit set forth in Section 5.1 or Section 5.2 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(h) The obligations of the Lenders hereunder to (i) make Revolving Loans, (ii) to fund its participations in L/C Disbursements in accordance with its respective L/C Percentage, (iii) to fund its respective Swingline Participation Amount of any Swingline Loan, and (iv) to make payments pursuant to Section 9.7, as applicable, are several and not joint. The failure of any Lender to make any such Loan, to fund any such participation or to make any such payment under Section 9.7 on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.7.

(i) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(j) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest, fees, and Overadvances then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees, and Overadvances then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(k) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it, its participation in the L/C Exposure or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Revolving Percentage or L/C Percentage, as applicable, of such payment on account of the Loans or participations obtained by all of the

Lenders, such Lender shall forthwith advise the Administrative Agent of the receipt of such payment, and within five (5) Business Days of such receipt purchase (for cash at face value) from the other Revolving Lenders or L/C Lenders, as applicable (through the Administrative Agent), without recourse, such participations in the Revolving Loans made by them and/or participations in the L/C Exposure held by them, as applicable, or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Revolving Percentages or L/C Percentages, as applicable; provided, however, that if all or any portion of such excess payment is thereafter recovered by or on behalf of the Borrower from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.18(k) may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. No documentation other than notices and the like referred to in this Section 2.18(k) shall be required to implement the terms of this Section 2.18(k). The Administrative Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section 2.18(k) and shall in each case notify the Revolving Lenders or the L/C Lenders, as applicable, following any such purchase. The provisions of this Section 2.18(k) shall not be construed to apply to (i) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (ii) the application of Cash Collateral provided for in Section 3.10, or (iii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in any L/C Exposure to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower consents on behalf of itself and each other Loan Party to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

(l) Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its discretion at any time or from time to time, without the Borrower's request and even if the conditions set forth in Section 5.2 would not be satisfied, make a Revolving Loan in an amount equal to the portion of the Obligations constituting overdue interest and fees and Swingline Loans from time to time due and payable to itself, any Revolving Lender, the Swingline Lender or the Issuing Lender, and apply the proceeds of any such Revolving Loan to those Obligations; provided that after giving effect to any such Revolving Loan, the aggregate outstanding Revolving Loans will not exceed the Total Revolving Commitments then in effect.

2.19 Illegality; Requirements of Law.

(a) Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender to make, maintain or fund Eurocurrency Loans, or to determine or charge interest rates based upon the Eurocurrency Base Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, or to fund any Loans in any Foreign Currency, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Loans or to convert ABR Loans to Eurocurrency Loans or to fund any Loans in any Foreign Currency shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurocurrency Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to

maintain such Eurocurrency Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

(b) Requirements of Law. If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority having jurisdiction or the compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in the definition of Excluded Taxes and (C) Connection Income Taxes) on its Loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(ii) shall impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Base Rate); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining Loans determined with reference to the Eurocurrency Base Rate or of maintaining its obligation to make such Loans (including, without limitation, pursuant to any conversion of any Eurocurrency Loan denominated in an Agreed Currency into a Eurocurrency Loan denominated in any other Agreed Currency), or to increase the cost to such Lender or such other Recipient of issuing or participating in Letters of Credit (including, without limitation, pursuant to any conversion of any Eurocurrency Loan denominated in an Agreed Currency into a Eurocurrency Loan denominated in any other Agreed Currency), or to reduce any amount receivable or received by such Lender or other Recipient hereunder in respect thereof (whether in respect of principal, interest or any other amount) (including, without limitation, pursuant to any conversion of any Eurocurrency Loan denominated in an Agreed Currency into a Eurocurrency Loan denominated in any other Agreed Currency), then, in any such case, upon the request of such Lender or other Recipient and following such Lender's or Recipient's delivery of a reasonably detailed written statement to the Borrower explaining the basis for such request, the Borrower shall promptly pay such Lender or other Recipient, as the case may be, any additional amounts necessary to compensate such Lender or other Recipient, as the case may be, for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(c) If any Lender determines that any change in any Requirement of Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such change in such Requirement of Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, upon the request of such Lender and following such Lender's delivery of a reasonably detailed written statement to the Borrower explaining the basis for such

request, the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(d) For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives in connection therewith are deemed to have gone into effect and been adopted after the date of this Agreement, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in any Requirement of Law, regardless of the date enacted, adopted or issued.

(e) A reasonably detailed written certificate as to any additional amounts payable pursuant to paragraphs (b), (c), or (d) of this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 Business Days after receipt of such certificate. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation. Notwithstanding anything to the contrary in this Section 2.19, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.19 for any amounts incurred more than nine months prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that if the circumstances giving rise to such claim have a retroactive effect, then such nine-month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower arising pursuant to this Section 2.19 shall survive the Discharge of Obligations and the resignation of the Administrative Agent.

2.20 Taxes.

For purposes of this Section 2.20, the term "Lender" includes the Issuing Lender and the term "applicable law" includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law and the Borrower shall, and shall cause each other Loan Party, to comply with the requirements set forth in this Section 2.20. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.20) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes. The Borrower shall, and shall cause each other Loan Party to, timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes applicable to such Loan Party.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.20, the Borrower shall, or shall cause such other Loan Party to, deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by Loan Parties. The Borrower shall, and shall cause each other Loan Party to, jointly and severally indemnify each Recipient, within ten (10) Business Days after demand therefor accompanied by a reasonably detailed written explanation of the amount being demanded, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including any recording and filing fees with respect thereto or resulting therefrom and any liabilities with respect to, or resulting from, any delay in paying such Indemnified Taxes), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If any Loan Party fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, such Loan Party shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure.

(e) Indemnification by Lenders. 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 any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if the Lender is not legally entitled to complete, execute or deliver such documentation or, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the

applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Each Foreign Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Foreign Lender shall not be required to deliver any form pursuant to this paragraph that such Foreign Lender is not legally able to deliver.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the Discharge of Obligations.

2.21 Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) a default by the Borrower in making a borrowing of, conversion into or continuation of Eurocurrency Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) a default by the Borrower in making any prepayment of or conversion from Eurocurrency Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (c) for any reason, the making of a prepayment of Eurocurrency Loans on a day that is not the last day of an Interest Period with respect thereto. Such losses and expenses shall be equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, reduced, converted or

continued, for the period from the date of such prepayment or of such failure to borrow, reduce, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, reduce, convert or continue, the Interest Period that would have commenced on the date of such failure), in each case at the applicable rate of interest or other return for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any), over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurocurrency market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the Discharge of Obligations.

2.22 Change of Lending Office . Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19(b), Section 2.19(c), Section 2.20(a), or Section 2.20(d) 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 a different lending office for funding or booking its Loans affected by such event or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, in each case, with the object of avoiding the consequences of such event; provided that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal, regulatory or other disadvantage; provided, further that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.19(b), Section 2.19(c), Section 2.20(a) or Section 2.20(d). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment made at the request of the Borrower.

2.23 Substitution of Lenders . Upon the receipt by the Borrower of any of the following (or in the case of clause (a) below, if the Borrower is required to pay any such amount), with respect to any Lender (any such Lender described in clauses (a) through (c) below being referred to as an “**Affected Lender**” hereunder):

(a) a request from a Lender for payment of Indemnified Taxes or additional amounts under Section 2.20 or of increased costs pursuant to Section 2.19 (and, in any such case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.22 or is a Non-Consenting Lender);

(b) a notice from the Administrative Agent under Section 10.1(b) that one or more Minority Lenders are unwilling to agree to an amendment or other modification approved by the Required Lenders and the Administrative Agent; or

(c) notice from the Administrative Agent that a Lender is a Defaulting Lender;

then the Borrower may, at its sole expense and effort, upon notice to the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender’s Loans and Revolving Commitments; or (ii) designate a replacement lending institution (which shall be required to be an Eligible Assignee) to acquire and assume all or a ratable part of such Affected Lender’s Loans and Revolving Commitments (the replacing Lender or lender in (i) or (ii) being a “**Replacement Lender**”); provided, however, that the Borrower shall be liable for the payment upon demand of all costs and other amounts arising under Section 2.21 that result from the acquisition of any Affected Lender’s Loan and/or Revolving Commitments (or any portion thereof) by a Lender or Replacement Lender, as the case may be, on a date other than the last day of the applicable Interest Period with respect to any Eurocurrency Loans then outstanding; and provided, further, however, that if the Borrower elects to exercise such right with respect to any Affected Lender under clause (a) or (b) of this Section 2.23, then the Borrower shall be obligated to replace all Affected Lenders under such clauses. The Affected Lender replaced pursuant to this Section 2.23 shall be required to assign and delegate, without recourse, all of its interests, rights and

obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable part of such Affected Lender's Loans and Revolving Commitments upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender's Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including amounts under Section 2.21 hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in Section 10.6 (with the assignment fee to be paid by the Borrower in such instance), and, if such Replacement Lender is not already a Lender hereunder or an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Minority Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

2.24 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.1 and in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.7), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lender or to the Swingline Lender hereunder; third, to be held as Cash Collateral for the funding obligations of such Defaulting Lender of any participation in any Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and (y) be held as Cash Collateral for the future funding obligations of such Defaulting Lender of any participation in any future Letter of Credit; sixth, to the payment of any amounts owing to any L/C Lender, the Issuing Lender or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any L/C Lender, the Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower

against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Commitments under the applicable Facility without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.9(b) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender shall be limited in its right to receive Letter of Credit Fees as provided in Section 3.3(d).

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such Letter of Credit Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender and to the Swingline Lender, as applicable, the amount of any such fee or Letter of Credit Fee, as applicable, otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's or the Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee or Letter of Credit Fee, as applicable.

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 3.4 or in Swingline Loans pursuant to Section 2.7(c), the L/C Percentage of each non-Defaulting Lender of any such Letter of Credit and the Revolving Percentage of each non-Defaulting Lender of any such Swingline Loan, as the case may be, shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that, (A) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Event of Default has occurred and is continuing; (B) the aggregate obligations of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Loans and participation interests in respect of Swingline Loans of that Lender plus the aggregate amount of that Lender's L/C Percentage of then outstanding Letters of Credit and (C) the conditions set forth in Section 5.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time). No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure, and (y) second, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing in their sole discretion that 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 (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their respective Revolving Percentages and L/C Percentages, as applicable (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while 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 Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure in respect of Letters of Credit after giving effect thereto.

(d) Termination of Defaulting Lender. The Borrower may terminate the unused amount of the Revolving Commitment of any Revolving Lender that is a Defaulting Lender upon not less than ten (10) Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.24(a)(ii) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) no Event of Default shall have occurred and be continuing, and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender may have against such Defaulting Lender.

2.25 [Reserved].

2.26 Notes. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) (promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loans.

SECTION 3
LETTERS OF CREDIT

3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, the Issuing Lender agrees to issue letters of credit (“*Letters of Credit*”) for the account of the Borrower on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall not issue any Letter of Credit if, after giving effect to such issuance, the Dollar Equivalent of L/C Exposure would exceed either the Total L/C Commitments or the Available Revolving Commitment at such time. Each Letter of Credit shall (i) be denominated in Dollars or other Agreed Currencies and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above). For the avoidance of doubt, no commercial letters of credit shall be issued by the Issuing Lender to any Person under this Agreement.

(b) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit if:

(i) such issuance would conflict with, or cause the Issuing Lender or any L/C Lender to exceed any limits imposed by, any applicable Requirement of Law;

(ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing, amending or reinstating such Letter of Credit, or any law, rule or regulation applicable to the Issuing Lender or any request, guideline or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance, amendment, renewal or reinstatement of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it;

(iii) the Issuing Lender has received written notice from any Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance, amendment, renewal or reinstatement of such Letter of Credit, that one or more of the applicable conditions contained in Section 5.2 shall not then be satisfied (which notice shall contain a description of any such condition asserted not to be satisfied);

(iv) any requested Letter of Credit is not in form and substance acceptable to the Issuing Lender, or the issuance, amendment or renewal of a Letter of Credit shall violate any applicable laws or regulations or any applicable policies of the Issuing Lender;

(v) such Letter of Credit contains any provisions providing for automatic reinstatement of the stated amount after any drawing thereunder;

(vi) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial face amount less than the Dollar Equivalent of \$500,000;

(vii) after giving effect to such issuance, the Dollar Equivalent of all Revolving Loans funded in Foreign Currencies and the aggregate L/C Exposure with respect to Foreign Currency Letters of Credit would exceed the Foreign Currency Sublimit; or

(viii) any Lender is at that time a Defaulting Lender, unless the Issuing Lender has entered into arrangements, including the delivery of Cash Collateral pursuant to Section 3.10, satisfactory to the Issuing Lender (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the Issuing Lender's actual or potential Fronting Exposure (after giving effect to Section 2.24(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Exposure as to which the Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion;

3.2 Procedure for Issuance of Letters of Credit . The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit for the account of the Borrower by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the Issuing Lender and the Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. The Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof).

3.3 Fees and Other Charges.

(a) The Borrower agrees to pay in Dollars, with respect to each Existing Letter of Credit and each outstanding Letter of Credit issued for the account of (or at the request of) the Borrower, (i) a fronting fee of 0.125% per annum on the daily amount available to be drawn under each such Letter of Credit to the Issuing Lender for its own account (a "**Letter of Credit Fronting Fee**"), (ii) a letter of credit fee at a rate per annum equal to the Applicable Margin for Eurocurrency Loans multiplied by the daily amount available to be drawn under each such Letter of Credit on the drawable amount of such Letter of Credit to the Administrative Agent for the ratable account of the L/C Lenders (determined in accordance with their respective L/C Percentages) (a "**Letter of Credit Fee**"), and (iii) the Issuing Lender's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued for the account of (or at the request of) such Revolving Borrower or processing of drawings thereunder (the fees in this clause (iii), collectively, the "**Issuing Lender Fees**"). The Issuing Lender Fees shall be paid when required by the Issuing Lender, and the Letter of Credit Fronting Fee and the Letter of Credit Fee shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year and on the Letter of Credit Maturity Date (each, an "**L/C Fee Payment Date**") after the issuance date of such Letter of Credit. All Letter of Credit Fronting Fees and Letter of Credit Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

(c) The Borrower shall furnish to the Issuing Lender and the Administrative Agent such other documents and information pertaining to any requested Letter of Credit issuance, amendment or renewal, including any L/C-Related Documents, as the Issuing Lender or the Administrative Agent may require. This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(d) Any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Issuing Lender pursuant to Section 3.10 shall be payable, to the maximum extent permitted by applicable law, to the other L/C Lenders in accordance with the upward adjustments in their respective L/C Percentages allocable to such Letter of Credit pursuant to Section 2.24(a)(iv), with the balance of such Letter of Credit Fees, if any, payable to the Issuing Lender for its own account.

(e) All fees payable pursuant to this Section 3.3 shall be fully-earned on the date paid and shall not be refundable for any reason.

3.4 L/C Participations; Existing Letters of Credit.

(a) **L/C Participations** . The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Lender, and, to induce the Issuing Lender to issue Letters of Credit, each L/C Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions set forth below, for such L/C Lender's own account and risk an undivided interest equal to such L/C Lender's L/C Percentage in the Issuing Lender's obligations and rights under and in respect of each Letter of Credit and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Lender agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower pursuant to Section 3.5(a), such L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Lender's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5.2, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) **Existing Letters of Credit.** On and after the Closing Date, each Existing Letter of Credit shall be deemed for all purposes, including for purposes of the fees to be collected pursuant to Sections 3.3(a) and (b), reimbursement of costs and expenses to the extent provided herein and for purposes of being secured by the Collateral, a Letter of Credit outstanding under this Agreement and entitled to the benefits of this Agreement and the other Loan Documents, and shall be governed by the applications and agreements pertaining thereto and by this Agreement (which shall control in the event of a conflict).

3.5 Reimbursement.

(a) If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, the Issuing Lender shall notify the Borrower and the Administrative Agent thereof and the Borrower shall pay or cause to be paid to the Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than (i) the immediately following Business Day if the Issuing Lender issues such notice before 10:00 A.M., Pacific time, on the date of such L/C Disbursement, or (ii) on the second following Business Day if the Issuing Lender issues such notice at or after 10:00 A.M., Pacific time, on the date of such L/C Disbursement. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in the applicable Agreed Currency in which such L/C Disbursement was made and in immediately available funds.

(b) If the Issuing Lender shall not have received from the Borrower the payment that it is required to make pursuant to Section 3.5(a) with respect to a Letter of Credit within the time specified in such Section, the Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each L/C Lender of such L/C Disbursement and its L/C Percentage thereof, and each L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of such L/C Disbursement (and the Administrative Agent may apply Cash Collateral provided for this purpose) and upon such payment pursuant to this paragraph to reimburse the Issuing Lender for any L/C Disbursement, the Borrower shall be required to reimburse the L/C Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to Revolving Loans that are ABR Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the L/C Lenders, the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied, the Borrower may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the L/C Lenders be converted into Revolving Loans (a "**Revolving Loan Conversion**"), in which case, if such conditions are in fact satisfied, the L/C Lenders shall be deemed to have extended, and the Borrower shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party, and the Total L/C Commitments shall be permanently reduced by such amount; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder; provided that the Issuing Lender, at its option, may effectuate a Revolving Loan Conversion regardless of whether the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied.

3.6 Obligations Absolute . The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower's obligations hereunder shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Issuing Lender. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

In addition to amounts payable as elsewhere provided in the Agreement, the Borrower hereby agrees to pay and to protect, indemnify, and save Issuing Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees and allocated costs of internal counsel) that the Issuing Lender may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit, or (B) the failure of Issuing Lender or of any L/C Lender to honor a demand for payment under any Letter of Credit thereof as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than to the extent solely as a result of the gross negligence or willful misconduct of Issuing Lender or such L/C Lender (as finally determined by a court of competent jurisdiction).

3.7 Letter of Credit Payments . If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower and the Administrative Agent of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

3.8 Applications . To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 3, the provisions of this Section 3 shall apply.

3.9 Interim Interest . If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, then, unless either the Borrower shall have reimbursed such L/C Disbursement in full within the time period specified in Section 3.5(a) or the L/C Lenders shall have reimbursed such L/C Disbursement in full on such date as provided in Section 3.5(b), in each case the unpaid amount thereof shall bear interest for the account of the Issuing Lender, for each day from and including the date of such L/C Disbursement to but excluding the date of payment by the Borrower, at the rate per annum that would apply to such amount if such amount were a Revolving Loan that is an ABR Loan; provided that the provisions of Section 2.15(c) shall be applicable to any such amounts not paid when due.

3.10 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Advance by all the L/C Lenders that is not reimbursed by the Borrower or converted into a Revolving Loan pursuant to Section 3.5(b), or (ii) if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then effective L/C Exposure in an amount equal to 105% of the Dollar Equivalent of such L/C Exposure; provided that the portion of such amount of Cash Collateral that is attributable to undrawn Foreign Currency Letters of Credit or L/C Disbursements in an Agreed Currency that the Borrower is not late in reimbursing shall be deposited in the applicable Agreed Currencies in the actual amounts of such undrawn Foreign Currency Letters of Credit and L/C Disbursements.

At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 105% of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrower, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the L/C Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 105% of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrower or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 3.10, Section 2.24 or otherwise in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Exposure, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure in respect of Letters of Credit or other Obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 3.10 following (i) the elimination of the applicable Fronting Exposure and other Obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender), or (ii) a determination by the Administrative Agent and the Issuing Lender that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default, and (B) that, subject to Section 2.24, the Person providing such Cash Collateral and the Issuing Lender may agree that such Cash Collateral shall not be released but instead shall be held to support future anticipated Fronting Exposure or other obligations, and provided further, that to the extent that such Cash Collateral was provided by the Borrower or any other Loan Party, such Cash Collateral shall remain subject to any security interest and Lien granted pursuant to the Loan Documents.

3.11 [Reserved.]

3.12 Resignation of the Issuing Lender. The Issuing Lender may resign at any time by giving at least 30 days' prior written notice to the Administrative Agent, the Lenders and the Borrower. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Lender hereunder by a Lender that shall agree to serve as successor Issuing Lender, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Lender and the retiring Issuing Lender shall be discharged from its obligations to issue additional Letters of Credit hereunder without affecting its rights and obligations with respect to Letters of Credit previously issued by it. At the time such resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 3.3. The acceptance of any appointment as the Issuing Lender hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Lender under this Agreement and the other Loan Documents (other than with respect to the rights of the retiring Issuing Lender with respect to Letters of Credit issued by such retiring Issuing Lender) and (ii) references herein and in the other Loan Documents to the term "Issuing Lender" shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the resignation of the Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase any existing Letter of Credit.

3.13 Applicability of ISP. Unless otherwise expressly agreed by the Issuing Lender and the Borrower when a Letter of Credit is issued (including pursuant to any such agreement applicable to any Existing Letter of Credit) and subject to applicable laws, the Letters of Credit shall be governed by and subject to the rules of the ISP.

SECTION 4
REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Agreement, to make the initial Loans on the Closing Date and to make Loans and to issue the Letters of Credit thereafter, the Borrower hereby represents and warrants to the Administrative Agent and each Lender, as to itself, each of its Subsidiaries and each other Loan Party, as applicable, that:

4.1 Financial Condition.

(a) The Pro Forma Financial Statements have been prepared in good faith based on the information available to the Borrower as of the date of delivery thereof and assumptions believed by the Borrower to be reasonable when made and at the time so furnished, and the pro forma balance sheet as of September 30, 2015 included therein present fairly in all material respects on a Pro Forma Basis the estimated financial position of Borrower and its consolidated Subsidiaries as of such date, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

(b) The audited consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2013 and December 31, 2014, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PricewaterhouseCoopers, present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheets of the Borrower and its Subsidiaries as of March 31, 2015, June 30, 2015 and September 30, 2015, and the related consolidated statements of income and of cash flows for the fiscal quarters ended on such dates, present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal quarters then ended (in each case, subject to normal year end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein and subject to normal year end audit adjustments in the case of unaudited financial statements). No Group Member has, as of the Closing Date, any material Guarantee Obligations, material contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph or have been incurred after the date of such financial statements in the ordinary course of such Group Member's business that, in the case of material contingent liabilities, have not been disclosed to the Lenders. During the period from December 31, 2014 to and including the date hereof, there has been no Disposition by any Group Member of any material part of its business or property.

4.2 No Change . Since December 31, 2014, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

4.3 Existence; Compliance with Law . Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where the failure to be so qualified could reasonably be expected to have a Material Adverse Effect and (d) is in material compliance with all Requirements of Law

except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest would not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

4.4 Power, Authorization; Enforceable Obligations . Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices described in Schedule 4.4, which Governmental Approvals, consents, authorizations, filings and notices have been obtained or made and are in full force and effect, and (ii) the filings referred to in Section 4.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 No Legal Bar . The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any material Requirement of Law (except as set forth in Schedule 4.5 but including any Operating Document of any Group Member) or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any material Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents). No Requirement of Law or Contractual Obligation applicable to the Borrower or any of its Subsidiaries could reasonably be expected to have a Material Adverse Effect. The absence of obtaining the Governmental Approvals described in Schedule 4.5 and the violations of Requirements of Law referenced in Schedule 4.5 shall not have an adverse effect on any rights of the Lenders or the Administrative Agent pursuant to the Loan Documents.

4.6 Litigation . No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against any Group Member or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

4.7 No Default . No Group Member is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing, nor shall either result from the making of a requested credit extension.

4.8 Ownership of Property; Liens; Investments . Each Group Member has title in fee simple to, or a valid leasehold interest in, all of its real property, and good title to, or a valid leasehold interest in, all of its other property, in each case to the extent material to the conduct of its business and none of such property is subject to any Lien except as permitted by Section 7.3. No Loan Party owns any Investment except as permitted by Section 7.8. Section 10 of the Collateral Information Certificate sets forth a complete and

accurate list of all real property owned by each Loan Party as of the Closing Date, if any. Section 11 of the Collateral Information Certificate sets forth a complete and accurate list of all leases of real property under which any Loan Party is the lessee as of the Closing Date.

4.9 Intellectual Property . Each Group Member owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted in all material respects; provided that no representation is made in this sentence regarding infringement of rights of other Persons (which representation is the subject of the third sentence of this Section 4.9). No claim has been asserted and is pending by any Person challenging or questioning any Group Member's use of any Intellectual Property or the validity or effectiveness of any such Group Member's Intellectual Property, nor does the Borrower know of any valid basis for any such claim, unless such claim could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Loan Parties, the use of Intellectual Property by each Group Member, and the conduct of such Group Member's business, as currently conducted, does not infringe on or otherwise violate the rights of any Person, unless such infringement could not reasonably be expected to have a Material Adverse Effect, and there are no claims pending or, to the knowledge of the Borrower, threatened to such effect unless such claim could not reasonably be expected to have a Material Adverse Effect.

4.10 Taxes . Each Group Member has filed or caused to be filed all Federal, and all material state and other tax returns that are required to be filed and has paid all material taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with, and to the extent required by, GAAP have been provided on the books of the relevant Group Member); no tax Lien has been filed (other than Liens permitted by Section 7.3(c)), and, to the knowledge of the Borrower, no material claim is being asserted, with respect to any such tax, fee or other charge that is not being contested in good faith by appropriate proceedings.

4.11 Federal Regulations . No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used (a) for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect for any purpose that violates the provisions of the Regulations of the Board or (b) for any purpose that violates the provisions of the Regulations of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

4.12 Labor Matters . Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

4.13 ERISA .

(a) Each Loan Party and each of its respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA with respect to each Pension Plan, and have performed all their obligations under each Pension Plan;

(b) no ERISA Event has occurred or is reasonably expected to occur;

(c) each Loan Party and each of its respective ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Pension Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained;

(d) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and no Loan Party nor any of its respective ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent valuation date;

(e) as of the most recent valuation date for any Pension Plan, the amount of outstanding benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed \$100,000;

(f) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code;

(g) all liabilities under each Pension Plan are (i) funded to at least the minimum level required by law, (ii) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto or (iii) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and

(h) (i) no Loan Party is nor will any such Loan Party be a “plan” within the meaning of Section 4975(e) of the Code; (ii) the respective assets of the Loan Parties do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (iii) no Loan Party is nor will any such Loan Party be a “governmental plan” within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with any Loan Party are not and will not be subject to state statutes applicable to such Loan Party regulating investments of fiduciaries with respect to governmental plans.

4.14 Investment Company Act; Other Regulations . No Loan Party is an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended. Except as set forth in Schedule 4.5, no such Loan Party is subject to regulation under any Requirement of Law (other than Regulation X), including the Federal Power Act, that may limit its ability to incur Indebtedness or that may otherwise render all or any portion of the Obligations unenforceable.

4.15 Subsidiaries . Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 4.15 sets forth the name and jurisdiction of organization of the Borrower and each Subsidiary of the Borrower and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party, and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors’ qualifying shares) of any nature relating to any Capital Stock of the Borrower or any Subsidiary, except as may be created by the Loan Documents.

4.16 Use of Proceeds . The proceeds of the Revolving Loans shall be used to refinance the obligations of the Borrower outstanding under the Cash Flow Credit Agreement, to finance Permitted Acquisitions, to pay related fees and expenses and for general corporate purposes. All or a portion of the proceeds of the Swingline Loans and the Letters of Credit shall be used for general corporate purposes.

4.17 Environmental Matters . Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) Except as disclosed on Schedule 4.17, to the knowledge of the Group Members, the facilities and properties owned, leased or operated by any Group Member (the “**Properties**”) do not contain, and have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or have constituted a violation of, or could give rise to liability under, any Environmental Law;

(b) no Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the “**Business**”), nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) no Group Member has transported or disposed of Materials of Environmental Concern from the Properties in violation of, or in a manner or to a location that could give rise to liability under, any Environmental Law, nor has any Group Member generated, treated, stored or disposed of Materials of Environmental Concern at, on or under any of the Properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened, under any Environmental Law to which any Group Member is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(e) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties arising from or related to the operations of any Group Member or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under Environmental Laws;

(f) the Properties and all operations of the Group Members at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and except as disclosed on Schedule 4.17, to the knowledge of the Borrower, there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(g) no Group Member has assumed any liability of any other Person under Environmental Laws.

4.18 Accuracy of Information, Etc. No statement or information contained in this Agreement, any other Loan Document or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent, the Arrangers or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, when taken as a whole, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading in any material respect. The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

4.19 Security Documents.

(a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and the proceeds thereof. In the case of the Pledged Stock, if any, described in the Guarantee and Collateral Agreement that are securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the UCC or the corresponding code or statute of any other applicable jurisdiction (“*Certificated Securities*”), when certificates representing such Pledged Stock are delivered to the Administrative Agent, and in the case of the other Collateral constituting personal property described in the Guarantee and Collateral Agreement, when financing statements and other filings specified on Schedule 4.19(a) in appropriate form are filed in the offices specified on Schedule 4.19(a), the Administrative Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except, in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3 which are non-consensual permitted Liens, permitted purchase money Liens, or the interests of lessors under capital leases). As of the Closing Date, no Loan Party that is a limited liability company or partnership has any Capital Stock that is a not Certificated Security.

(b) Any Mortgages delivered after the Closing Date pursuant to Section 6.12 will be, upon execution, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person (except Liens permitted by Section 7.3 which are non-consensual permitted Liens, permitted purchase money Liens, or the interests of lessors under capital leases).

4.20 Solvency; Fraudulent Transfer . The Loan Parties are, and after giving effect to the incurrence of all Indebtedness, Obligations and obligations being incurred in connection herewith, Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.21 Regulation H . No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has not been made available under the National Flood Insurance Act of 1968.

4.22 Designated Senior Indebtedness . The Loan Documents and all of the Obligations have been deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any other Indebtedness of the Loan Parties.

4.23 [Reserved.]

4.24 Insurance . Each Group Member maintains insurance as required pursuant to Section 5.2 of the Guarantee and Collateral Agreement.

4.25 [Reserved].

4.26 [Reserved].

4.27 Capitalization . Schedule 4.27 sets forth the beneficial owners of all Capital Stock of the Borrower's consolidated Subsidiaries, and the amount of Capital Stock held by each such owner, as of the Closing Date.

4.28 Patriot Act; Anti-Corruption . To the extent applicable, each Loan Party is in compliance with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Patriot Act or the Bribery Act 2012. No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended ("**FCPA** "). Each Group Member is in compliance in all material respects with FCPA and other applicable anti-corruption laws and will maintain in effect policies and procedures designed to promote compliance by the Group Members and their respective directors, officers, employees and agents with FCPA and any other anti-corruption laws.

4.29 OFAC . No Loan Party nor any Subsidiary thereof is, and, to the knowledge of the Borrower, no director, officer, employee or controlled Affiliate of any Loan Party or any Subsidiary thereof is, a Person that is, or is owned or controlled by Persons that are: (i) the subject of any sanctions administered or enforced by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or Her Majesty's Treasury or Hong Kong Monetary Authority (collectively, "**Sanctions** "), or (ii) organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (currently, Cuba, Iran, North Korea, Sudan, the Crimean region of the Ukraine, and Syria).

SECTION 5 CONDITIONS PRECEDENT

5.1 Conditions to Initial Extension of Credit . The effectiveness of this Agreement and the obligation of each Lender to make its initial extension of credit hereunder shall be subject to the satisfaction, prior to or concurrently with the making of each such extension of credit on the Closing Date, of the following conditions precedent:

(a) Loan Documents . The Administrative Agent shall have received each of the following, each of which shall be in form and substance satisfactory to the Administrative Agent and each Arranger:

- (i) this Agreement, executed and delivered by the Administrative Agent, the Borrower and each Lender listed on Schedule 1.1A ;
- (ii) the Collateral Information Certificate, executed by a Responsible Officer of the Loan Parties;
- (iii) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrower in favor of such Revolving Lender;

-
- (iv) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrower in favor of such Swingline Lender;
 - (v) the Guarantee and Collateral Agreement, executed and delivered by the Borrower and each other Grantor named therein;
 - (vi) each other Security Document, executed and delivered by the applicable Loan Party party thereto; and
 - (vii) the Flow of Funds Agreement, certified by the Borrower.

(b) Access Agreements. Each Loan Party shall have used commercially reasonable efforts to obtain a landlord's agreement from (i) the lessor of its headquarters location and (ii) from the lessor of any other location in the United States where Collateral is stored or located with a fair market value in excess of \$10,000,000, which agreement shall contain a waiver or subordination of all Liens or claims that the landlord may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent.

(c) Financial Statements. The Administrative Agent shall have received the Pro Forma Financial Statements.

(d) Approvals. Except for the Governmental Approvals described in Schedule 4.4, all Governmental Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Capital Stock issued by any Loan Party) required in connection with the execution and performance of the Loan Documents, the consummation of the other transactions contemplated hereby, shall have been obtained and be in full force and effect. The absence of obtaining the Governmental Approvals described in Schedule 4.4 shall not have an adverse effect on any rights of the Lenders or the Administrative Agent pursuant to the Loan Documents or an adverse effect on the Group Members with regard to their continuing operations.

(e) Secretary's or Managing Member's Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date and executed by the secretary, managing member or equivalent officer of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (i) the Operating Documents of such Loan Party, (ii) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents to which such Loan Party is party, (iii) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, (iv) a long form good standing certificate for each Loan Party certified as of a recent date by the appropriate Governmental Authority of its respective jurisdiction of organization, and (v) certificates of qualification as a foreign corporation issued by each jurisdiction in which the failure of the applicable Loan Party to be so qualified could reasonably be expected to result in a Material Adverse Effect.

(f) Responsible Officer's Certificates.

(i) The Administrative Agent shall have received a certificate signed by a Responsible Officer or other authorized officer of each Loan Party, dated as of the Closing Date, in form and substance reasonably satisfactory to it, either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required.

(ii) The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 5.2(a) and (e) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2014, that has had or that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(g) Patriot Act, Etc. Each Lender shall have received, prior to the Closing Date, all documentation and other information required by Governmental Authorities, including OFAC, under applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act and Bank Secrecy Act requirements, and evidence of compliance by the Loan Parties with all laws, rules, and regulations of any jurisdiction applicable to the Loan Parties concerning or relating to bribery or corruption and economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (i) the U.S. government, including those administered by OFAC or the U.S. Department of State, and (ii) the United Nations Security Council, in each case, with results reasonably satisfactory to the Lenders.

(h) Due Diligence Investigation. The Administrative Agent and the Lenders shall have completed a due diligence investigation of the Borrower and its Subsidiaries in scope, and with results, satisfactory to the Administrative Agent and the Lenders and shall have been given such access to the management, records, books of account, contracts and properties of the Borrower and its Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing Persons and businesses as it shall have requested. No changes or developments shall have occurred, and no new or additional information shall have been received or discovered by the Administrative Agent or the Lenders, regarding the Borrower and its Subsidiaries or the transactions contemplated hereby after the date such due diligence investigation has been completed that (A) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (B) purports to adversely affect the Facilities or any other aspect of the transactions contemplated hereby, and nothing shall have come to the attention of the Administrative Agent or any Lender to lead them to believe that (x) the Information Materials (as defined in the Engagement Letter) were or have become misleading, incorrect or incomplete in any material respect, or (y) the transactions contemplated hereby will have a Material Adverse Effect.

(i) [Reserved.]

(j) Cash Flow Credit Agreement, Etc. The Borrower shall have provided notice to the Cash Flow Agent (in accordance with the terms of the Cash Flow Credit Agreement) of its intent to pay all obligations of the Group Members outstanding under the Cash Flow Credit Agreement on the Closing Date, (B) the Administrative Agent shall have received the Payoff Letter executed by the Cash Flow Agent and the Borrower, (C) all obligations of the Group Members in respect of the Cash Flow Credit Agreement shall, substantially contemporaneously with the funding of certain Loan proceeds on the Closing Date directly to the Cash Flow Agent as contemplated by Sections 2.2 and 2.5 and the Flow of Funds Agreement, have been paid in full, (D) the Administrative Agent shall be satisfied that all actions necessary to terminate the agreements evidencing the obligations of the Group Members in respect of the Cash Flow Credit Agreement and the Liens of the Cash Flow Agent in the assets of the Group Members securing obligations under the Cash Flow Credit Agreement shall have been, or substantially contemporaneously with the Closing Date, shall be, taken, and (E) the Administrative Agent shall have received such other documents and information related to the Cash Flow Credit Agreement and the refinancing thereof as it may request.

(k) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien searches in each of the jurisdictions where any of the Loan Parties is formed or organized and intellectual property searches with the USCRO and USPTO, and such searches shall reveal no liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3 or Liens to be discharged on or prior to the Closing Date.

(ii) Pledged Stock; Stock Powers; Pledged Notes. The Administrative Agent shall have received original versions of (A) the certificates representing the shares of Capital Stock (to the extent constituting Certificated Securities) pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, and (B) each promissory note (if any) pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iii) Filings, Registrations, Recordings, Agreements, Etc. Each document (including any UCC financing statements, Deposit Account Control Agreements, Securities Account Control Agreements, and landlord access agreements; it being agreed that prior to the Closing Date, the Borrower shall only be required to have used commercially reasonable efforts to obtain such landlord access agreements from its corporate headquarters and any other location in the United States where Collateral with a value in excess of \$10,000,000 is maintained on the Closing Date) required by the Loan Documents or under law or reasonably requested by the Administrative Agent to be filed, executed, registered or recorded to create in favor of the Administrative Agent (for the ratable benefit of the Secured Parties), a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed (if applicable) and delivered to the Administrative Agent in proper form for filing, registration or recordation.

(l) Insurance. (i) Subject to Section 5.3, the Administrative Agent shall have received insurance certificates satisfying the requirements of Section 6.6 hereof and Section 5.2(b) of the Guaranty and Collateral Agreement, together with evidence reasonably satisfactory to the Administrative Agent that the insurance policies of each Loan Party have been endorsed for the purpose of naming the Administrative Agent (for the ratable benefit of the Secured Parties) as an “additional insured” or “lender loss payee”, as applicable, with respect to such insurance policies, and (ii) to the extent that the Loan Parties maintain a domestic and a foreign receivables insurance policy issued by EULER American Credit Indemnity, the Administrative Agent shall have been named as beneficiary or have been assigned rights to such claims, in each case of clauses (i) and (ii), in form and substance reasonably satisfactory to the Administrative Agent.

(m) Fees. The Lenders, the Arrangers and the Administrative Agent shall have received all fees required to be paid on or prior to the Closing Date (including pursuant to the Fee Letter), and all reasonable and documented fees and expenses for which invoices have been presented (including the reasonable and documented fees and expenses of legal counsel to the Administrative Agent and each Arranger) for payment at least two Business Days before the Closing Date. All such amounts will be paid with proceeds of Loans made on the Closing Date and will be reflected in the Flow of Funds Agreement.

(n) Legal Opinion. The Administrative Agent shall have received the executed legal opinion of Fenwick & West LLP, counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent. Such legal opinion shall cover such matters incident to the transactions contemplated by this Agreement and the other Loan Documents as the Administrative Agent may reasonably require.

(o) Borrowing Notice. The Administrative Agent shall have received, in respect of any Revolving Loans to be made on the Closing Date, a completed Notice of Borrowing executed by the Borrower and otherwise complying with the requirements of Section 2.5.

(p) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate from the chief financial officer or treasurer of the Borrower.

(q) No Material Adverse Effect. There shall not have occurred since December 31, 2014 any event or condition that has had or could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(r) No Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened, that could reasonably be expected to be determined adversely to any Group Member which, if so determined, could reasonably be expected to have a Material Adverse Effect.

(s) Consistency. The final terms and conditions of each aspect of the Transaction, including, without limitation, all tax aspects thereof, shall be (i) as described in the Engagement Letter, and otherwise consistent with the description thereof provided to Administrative Agent in writing or (ii) otherwise reasonably satisfactory to Administrative Agent and the Lenders.

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying such Lender's objection thereto and either such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Closing Date or, if any extension of credit on the Closing Date has been requested, such Lender shall not have made available to the Administrative Agent on or prior to the Closing Date such Lender's Revolving Percentage of such requested extension of credit.

5.2 Conditions to Each Extension of Credit. The agreement of each Lender to make any extension of credit requested to be made by it hereunder on any date (including its initial Loans disbursed on the Closing Date but excluding any Revolving Loan Conversion, any conversion of Loans pursuant to Section 2.13(a) and any continuation of Loans pursuant to Section 2.13(b)) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by each Loan Party in or pursuant to any Loan Document (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date.

(b) [Reserved].

(c) Availability. With respect to any requests for any Revolving Extensions of Credit, after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 and Section 3.1 shall be complied with.

(d) Notices of Borrowing; Other Documentation. The Administrative Agent shall have received a Notice of Borrowing (and with respect to requested Letters of Credit, all documentation required by Section 3.2) in connection with any such request for extension of credit which complies with the requirements hereof.

(e) No Default. No Default or Event of Default shall have occurred and be continuing as of or on such date or after giving effect to the extensions of credit requested to be made on such date.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder (excluding any Revolving Loan Conversion, any conversion of Loans pursuant to Section 2.13(a) and any continuation of Loans pursuant to Section 2.13(b)) shall constitute a representation and warranty by the Borrower as of the date of such extension of credit or Revolving Loan Conversion, as applicable, that the conditions contained in this Section 5.2 have been satisfied.

5.3 Post-Closing Conditions Subsequent.

(a) Within 15 Business Days after the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion), the Borrower shall cause to be delivered to the Administrative Agent the insurance certificates and endorsements required to be delivered to the Administrative Agent pursuant to Section 5.1(l).

(b) Within 15 Business Days after the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion), the Borrower shall cause to be delivered to the Administrative Agent an executed Bank Depositor Agreement in the form provided by the Administrative Agent to the Borrower.

SECTION 6 AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall and, where applicable, shall cause each of its Subsidiaries to:

6.1 Financial Statements . Furnish to the Administrative Agent, with sufficient copies for distribution to each Lender:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of the Borrower (or, if earlier, 15 days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)), a copy of the audited consolidated and consolidating balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related audited consolidated and consolidating statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, together with an unqualified opinion by PricewaterhouseCoopers or other independent certified public accountants of nationally recognized standing and reasonably acceptable to the Administrative Agent;

(b) [reserved]; and

(c) as soon as available, but in any event not later than 45 days after the end of each fiscal quarter occurring during each fiscal year of the Borrower (or, if earlier, 15 days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)), the unaudited consolidated and consolidating balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated and consolidating statements of income and of cash

flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects (subject to normal year-end audit adjustments).

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods.

The obligations in paragraphs (a) and (b) of this Section 6.1 shall be deemed satisfied with either (i) the delivery of financial statements of the Borrower or (ii) the filing of Form 10-K or 10-Q, as applicable, with the SEC by the Borrower, as applicable, in each case with respect to the financial information described above.

6.2 Certificates; Reports; Other Information . Furnish to the Administrative Agent, for distribution to each Lender (or, in the case of clause (l), to the relevant Lender):

(a) [reserved];

(b) (i) concurrently with the delivery of any financial statements pursuant to Section 6.1(a), a certificate of a Responsible Officer stating that, to the best of such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) concurrently with the delivery of any financial statements pursuant to Section 6.1(c), (x) a Compliance Certificate containing all information and calculations necessary for determining compliance by each Group Member with the provisions of this Agreement referred to therein as of the last day of the fiscal quarter of the Borrower, as the case may be, and (y) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party since the date of the most recent report delivered pursuant to this clause (y) (or, in the case of the first such report so delivered, since the Closing Date);

(c) as soon as available, and in any event no later than 45 days after the end of each fiscal year of the Borrower, a detailed consolidated budget for such immediately subsequent fiscal year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of each fiscal quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto, projected Available Revolving Commitment and covenant compliance for each fiscal quarter period of such fiscal year), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Borrower stating that such Projections are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized that Projections are not to be viewed as fact and that actual results during the period or periods covered by such Projections may differ from the projected results set forth therein by a material amount;

(d) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof (other than routine comment letters from the staff of the SEC relating to the Borrower's filings with the SEC);

(e) within five days after the same are sent, copies of each annual report, proxy or financial statement or other material report that the Borrower sends to the holders of any class of the Borrower's debt securities or public equity securities and, within five days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto (provided that the obligations in this paragraph (e) shall be deemed satisfied and the information required hereby shall be deemed delivered if such information is available on the website of the SEC at <http://www.sec.gov>);

(f) upon request by the Administrative Agent, within five days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law and, in each case, that could reasonably be expected to have a Material Adverse Effect;

(g) concurrently with the delivery of the financial statements referred to in Section 6.1(a), current evidence of insurance coverage required to be maintained pursuant to Section 6.6 and the terms of the Guarantee and Collateral Agreement, together with any supplemental reports with respect thereto which the Administrative Agent may reasonably request;

(h) promptly after any request therefor, such additional financial and other information as the Administrative Agent or any Lender may from time to time reasonably request.

6.3 [Reserved].

6.4 Payment of Obligations; Taxes .

(a) Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations (including all material Taxes and material Other Taxes imposed by law on an applicable Loan Party) of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member.

(b) File or cause to be filed all Federal tax returns, and all material state and other material tax returns, that are required to be filed.

6.5 Maintenance of Existence; Compliance . (a)(i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) comply with all Contractual Obligations (including with respect to leasehold interests of the Borrower) and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with each Governmental Approval, and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its ERISA Affiliates to: (1) maintain each Pension Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Pension Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Pension Plan; (4) not become a party to any Multiemployer Plan; (5) ensure that all liabilities under each Pension Plan are either (x) funded to at least the minimum level required

by law or, if higher, to the level required by the terms governing such Pension Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and (6) ensure that the contributions or premium payments to or in respect of each Pension Plan are and continue to be promptly paid at no less than the rates required under the rules of such Pension Plan and in accordance with the most recent actuarial advice received in relation to such Pension Plan and applicable law.

6.6 Maintenance of Property; Insurance . (a) Keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its property (and also with respect to its foreign receivables) in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

6.7 Inspection of Property; Books and Records; Discussions . (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit representatives and independent contractors of the Administrative Agent and any Lender to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants. Unless a Default or an Event of Default has occurred and is continuing (in which case such visits and inspections shall occur as often as the Administrative Agent shall reasonably determine is necessary and shall be at the expense of Borrower), Borrower shall not be obligated to reimburse the Administrative Agent and the Lenders for visits and inspections that occur more frequently than once per calendar year.

6.8 Notices . Give prompt written notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default under any Contractual Obligation of any Group Member that could reasonably be expected to have a Material Adverse Effect; and (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority that, if adversely determined, could reasonably be expected to have a Material Adverse Effect, in each case after a Responsible Officer first has knowledge thereof;

(c) any litigation or proceeding affecting any Group Member that (i) would reasonably be expected to have a Material Adverse Effect or (ii) relates to any Loan Document, in each case after a Responsible Officer first has knowledge thereof;

(d) (i) promptly after a Responsible Officer first has knowledge of the occurrence of any of the following events affecting any Loan Party or any of its respective ERISA Affiliates (but in no event more than ten days after such event), the occurrence of any of the following events, and shall provide the Administrative Agent with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Borrower or any of its ERISA Affiliates with respect to such event, if such event could reasonably be expected to result in liability in excess of \$100,000 of any Loan Party or any of their respective ERISA Affiliates: (A) an ERISA Event, (B) the adoption of any new Pension Plan by the Borrower or any ERISA Affiliate, (C) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), or (D) the commencement of contributions by the Borrower or any ERISA Affiliate to any Pension Plan that is subject to Title IV of ERISA or Section 412 of the Code; and

(ii) upon the reasonable request of the Administrative Agent after the giving, sending or filing thereof, or the receipt thereof, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Loan Party or any of its respective ERISA Affiliates with the IRS with respect to each Pension Plan; and

(iii) promptly after the receipt thereof by any Loan Party or any of its respective ERISA Affiliates, all notices from a Multiemployer Plan sponsor concerning an ERISA Event that could reasonably be expected to result in a liability in excess of \$100,000 of any Loan Party or any of its respective ERISA Affiliates;

(e) [reserved];

(f) any material change in accounting policies or financial reporting practices by any Loan Party; and

(g) [reserved];

(h) [reserved]; and

(i) any development or event that has had or could reasonably be expected to have a Material Adverse Effect after a Responsible Officer first has knowledge thereof.

Each notice pursuant to this Section 6.8 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

6.9 Environmental Laws.

(a) Comply in all material respects with, and use reasonable commercial efforts to bring about compliance in all respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all respects with and maintain, and use reasonable commercial efforts to bring about that all tenants and subtenants obtain and comply in all respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

6.10 [Reserved].

6.11 [Reserved].

6.12 Additional Collateral, Etc.

(a) With respect to any property (other than Excluded Assets) acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c) or (d) below, and (y) any property subject to a Lien expressly permitted by Section 7.3(d)) as to which the Administrative Agent, for the ratable benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event within ten Business Days (as such time period may be extended by the Administrative Agent in its sole discretion))

(i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent may reasonably deem necessary or advisable to evidence that such Loan Party is a Guarantor and to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority (except as expressly permitted by Section 7.3) security interest and Lien in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent.

(b) With respect to any fee interest in any real property having a value (together with improvements thereof) of at least \$10,000,000 acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 7.3(g)), promptly (and in any event within 90 days after the acquisition thereof (as such time period may be extended by the Administrative Agent in its sole discretion)), to the extent requested by the Administrative Agent or the Required Lenders, (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent) as well as a current ALTA survey thereof, together with a surveyor's certificate, and (y) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent, and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than ten (10) days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.12 (or such later time as may be agreed by the Administrative Agent in its sole discretion but in any event not later than three (3) days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.12), in order to comply with the Flood Laws, the Administrative Agent shall have received the following documents: (A) a completed standard "life of loan" flood hazard determination form, (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party ("**Loan Party Notice**") and (if applicable) notification to the applicable Loan Party that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party's receipt of the Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders' written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to the Administrative Agent.

(c) With respect to any new direct or indirect Subsidiary (other than an Excluded Foreign Subsidiary or Immaterial Subsidiary) created or acquired after the Closing Date by any Loan Party (including pursuant to a Permitted Acquisition), promptly (and in any event within ten Business Days (as such time period may be extended by the Administrative Agent in its sole discretion)) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such new Subsidiary that is owned directly or indirectly by such Loan Party, (ii) deliver to the Administrative Agent

such documents and instruments as may be reasonably required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the ratable benefit of the Secured Parties a perfected security interest and Lien in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary, in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments, and (iv) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(d) With respect to any new Excluded Foreign Subsidiary created or acquired after the Closing Date by any Loan Party (and the Capital Stock of which is held by a Loan Party), promptly (and in any event within ten Business Days (as such time period may be extended by the Administrative Agent in its sole discretion)) (i) execute and deliver to the Administrative Agent such pledge agreements or amendments to the Guarantee and Collateral Agreement, as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such new Excluded Foreign Subsidiary that is owned by any such Loan Party (provided that in no event shall (y) more than 66% of the total outstanding voting Capital Stock of any such new Excluded Foreign Subsidiary that is owned by such Loan Party be required to be so pledged and (z) more than 100% of the non-voting Capital Stock of any such Excluded Foreign Subsidiary that is owned by such Loan Party be required to be pledged), (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) Each Loan Party shall use commercially reasonable efforts to obtain a landlord's agreement or bailee letter, as applicable, from (i) the lessor of its headquarters location and (ii) to the extent requested by the Administrative Agent, from the lessor of or the bailee related to any other location in the United States where Collateral is stored or located with a fair market value in excess of \$10,000,000, which agreement or letter, in any such case, shall contain a waiver or subordination of all Liens or claims that the landlord or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent.

6.13 [Reserved.]

6.14 Insider Subordinated Indebtedness . Cause any Insider Indebtedness owing by any Loan Party to become Insider Subordinated Indebtedness (a) on or prior to the Closing Date, in respect of any such Insider Indebtedness in existence as of the Closing Date or (b) contemporaneously with the incurrence thereof, in respect of any such Insider Indebtedness incurred at any time after the Closing Date.

6.15 Use of Proceeds . Use the proceeds of each credit extension only for the purposes specified in Section 4.16 .

6.16 Designated Senior Indebtedness . Cause the Loan Documents and all of the Obligations to be deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any other Indebtedness of the Loan Parties.

6.17 Further Assurances . Execute any further instruments and take such further action as the Administrative Agent reasonably deems necessary to perfect, protect, ensure the priority of or continue the Administrative Agent’s Lien on the Collateral or to effect the purposes of this Agreement.

SECTION 7 NEGATIVE COVENANTS

The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly:

7.1 Financial Condition Covenants.

(a) Consolidated Fixed Charge Coverage Ratio . Permit the Consolidated Fixed Charge Coverage Ratio as at the last day of any period of four consecutive fiscal quarters of the Borrower to be less than 1.15:1.00.

(b) Consolidated Leverage Ratio . Permit the Consolidated Leverage Ratio as at the last day of any period of four consecutive fiscal quarters of the Borrower to exceed 3.00:1.00.

7.2 Indebtedness . Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(b) ;

(c) unsecured Indebtedness so long as the General Transaction Conditions have been satisfied; provided that (i) if such Indebtedness is an obligation (directly or indirectly) of, or otherwise recourse to, any Group Member (other than a Foreign Subsidiary) that is not a Loan Party, the Secured Debt Transactions Conditions must be satisfied, and (ii) for unsecured Indebtedness incurred under this clause (c) in excess of the aggregate principal amount of \$75,000,000, (x) the terms of such Indebtedness do not provide for any maturity, scheduled repayment, mandatory redemption or sinking fund obligations prior to the Revolving Termination Date (other than offers to repurchase upon a change of control, “fundamental change”, asset sale or event of loss, delisting of common stock (in the case of convertible debt), or similar events, customary acceleration rights after or upon an event of default, and amortization (in the case of term debt) not to exceed 10% of the original principal amount thereof per annum), and (y) the Borrower shall have delivered to the Administrative Agent at least three (3) Business Days prior to the incurrence of such Indebtedness a certificate of a Responsible Officer in form reasonably satisfactory to the Administrative Agent stating that each of the conditions set forth in clause (ii) of this proviso will be satisfied when such Indebtedness is incurred;

(d) Indebtedness with respect to corporate credit cards, merchant services and arrangements, surety bonds and similar obligations incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness secured by Liens permitted under Section 7.3(b) and (d);

(g) secured Indebtedness in an aggregate amount not to exceed \$250,000,000 at any time outstanding so long as the Secured Debt Transaction Conditions have been satisfied; provided that: (i) the terms of such Indebtedness do not provide for any maturity, scheduled repayment, mandatory redemption or sinking fund obligations prior to the Revolving Termination Date (other than customary offers to repurchase upon a change of control, asset sale or event of loss, customary acceleration rights after an event of default, and amortization (in the case of term debt) not to exceed 10% of the original principal amount thereof per annum), (ii) the covenants, events of default, guarantees, collateral and other terms of such Indebtedness, when taken as a whole (other than interest rate and redemption premiums), are either (A) customary for similar Indebtedness in light of the then-prevailing market conditions (as determined in good faith by the Board of Directors of the Borrower), provided that, for secured Indebtedness incurred under this clause (g) in excess of the aggregate principal amount of \$35,000,000, any covenants that require maintenance of specified financial ratios or minimum levels of financial measures applicable to such Indebtedness that are more restrictive than those contained in this Agreement and the other Loan Documents shall be automatically deemed to be incorporated in this Agreement and the other Loan Documents, as applicable, *mutatis mutandis*, or (B) not more restrictive than the terms of this Agreement and the other Loan Documents and the rights and remedies of the Administrative Agent and other Secured Parties hereunder and thereunder (except for those applicable only to periods after the Revolving Termination Date (as of the Closing Date)), (iii) such Indebtedness is subject to an intercreditor agreement that is reasonably satisfactory to the Administrative Agent and that is entered into between the Administrative Agent, the holder of such Indebtedness, and the Loan Parties, and (iv) the Borrower shall have delivered to the Administrative Agent at least three (3) Business Days prior to the incurrence of such Indebtedness a certificate of a Responsible Officer in form reasonably satisfactory to the Administrative Agent stating that each of the conditions set forth in this proviso will be satisfied when such Indebtedness is incurred;

(h) Indebtedness of a Person (other than a Loan Party or one of their respective Subsidiaries which constituted a Subsidiary prior to the consummation of the applicable merger referenced below) existing at the time such Person is merged with or into a Loan Party or a Subsidiary or becomes a Subsidiary; provided that (i) such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition, (ii) such merger or acquisition constitutes a Permitted Acquisition, and (iii) with respect to any such Person who becomes a Subsidiary, (A) such Subsidiary is the only obligor in respect of such Indebtedness, and (B) to the extent such Indebtedness is permitted to be secured hereunder, only the assets of such Subsidiary secure such Indebtedness;

(i) Indebtedness in the form of purchase price adjustments, earn-outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with any Permitted Acquisition or other Investment permitted by Section 7.8 (and, in the case of deferred compensation representing, or in substance representing, consideration or a portion of the purchase price in connection with such Permitted Acquisitions or such Investment) (collectively, “**Deferred Payment Obligations**”), the amount of which shall be deemed to be the amount required to be accrued as a liability in accordance with GAAP;

(j) Indebtedness consisting of loans permitted by Section 7.8(l) and (m);

(k) Indebtedness of any Foreign Subsidiary under which the maximum aggregate amount of commitments or financial accommodations to be provided for all Foreign Subsidiaries would not exceed (i) \$37,500,000 or (ii) such additional amount in excess thereof to the extent such Indebtedness is unsecured and the General Transaction Conditions are satisfied, and in each case Guarantees thereof by the Borrower or any of its Subsidiaries;

(l) Indebtedness consisting of Swap Agreements permitted by Section 7.13;

(m) Guarantees (i) by the Borrower or any other Loan Party of any Indebtedness of the Borrower or any other Loan Party permitted under this Section 7.1, (ii) by the Borrower or any Loan Party of Indebtedness otherwise permitted under this Section 7.1 of any Subsidiary that is not a Loan Party; provided that any such Guarantee pursuant to this clause (m)(ii) shall be treated as an Investment in such Subsidiary that is not a Loan Party for purposes of Section 7.8, and (iii) by any Subsidiary that is not a Loan Party of any of Indebtedness otherwise permitted under this Section 7.1;

(n) Intercompany Indebtedness of the Borrower and its Subsidiaries to the extent permitted by Section 7.8(f); and

(o) Permitted Refinancing Indebtedness with respect to Indebtedness permitted under clauses (b), (c), (f), (g), (h) and (k) above.

7.3 Liens . Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens created pursuant to the Security Documents;

(b) Liens in existence on the date hereof listed on Schedule 7.3(b); provided that (i) no such Lien is spread to cover any additional property after the Closing Date, (ii) the amount of Indebtedness secured or benefitted thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured thereby is permitted by Section 7.2(l);

(c) Liens for taxes, fees, assessments or other government charges or levies, either (i) not yet delinquent or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its books and, with respect to this clause (ii), which do not have priority over the Liens created pursuant to the Security Documents, provided that no notice of any such Lien described in this clause (c) has been filed or recorded under the Code;

(d) so long as the Secured Debt Transactions Conditions have been satisfied, purchase money Liens (including Liens under capital leases) securing purchase money obligations owed to a third-party seller on Equipment and related software acquired by the Borrower incurred for financing the acquisition of the Equipment and related software;

(e) Liens arising from precautionary UCC financing statements filed under any lease permitted by this Agreement;

(f) Liens of carriers, warehousemen, mechanics, landlord, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to goods and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(g) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(h) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in clauses (a) through (c) or (q), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase;

(i) leases or subleases of real property granted in the ordinary course of the Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of the Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting the Administrative Agent, on behalf of the Secured Parties, a Lien therein;

(j) (A) non-exclusive licenses of Intellectual Property granted to third parties by the Borrower or any of its Subsidiaries in the ordinary course of business or pursuant to the Platform Contribution License Agreement, and (B) licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States; provided that any such license pursuant to this clause (j), (x) permits the use by (or license to) the Administrative Agent of the Intellectual Property covered thereby to permit the Administrative Agent, on a royalty free basis, to possess, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase, any Collateral, and (y) does not interfere in any material respect with the ordinary conduct of business of any Group Member;

(k) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Section 8.1(h) or (j) of this Agreement;

(l) Liens in favor of other financial institutions arising in connection with the Borrower's deposit and/or securities accounts held at such institutions solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the ordinary course of business, provided that the Administrative Agent, on behalf of the Secured Parties, has a perfected security interest in the amounts held in such deposit and/or securities accounts pursuant to the terms of a Control Agreement;

(m) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary of the Borrower in the ordinary course of business;

(n) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods manufactured for Borrower or its Subsidiaries overseas in the ordinary course of business;

(o) Liens consisting of deposits to secure real property lease obligations as a lessee incurred by the Borrower in the ordinary course of business;

(p) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(q) Liens securing Indebtedness permitted by Section 7.2(g); and

(r) Liens securing Indebtedness permitted by Section 7.2(k).

Notwithstanding the foregoing, other than non-consensual permitted Liens described above, no Liens set forth (other than those described in clauses (a) (only the extent required pursuant to the Guarantee and Collateral Agreement) or (j) or (r) above) shall attach to any Intellectual Property of any Group Member.

7.4 Fundamental Changes . Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) any Subsidiary of a Loan Party may be merged or consolidated with or into a Loan Party (provided that such Loan Party shall be the continuing or surviving Person);

(b) any Subsidiary of the Borrower may Dispose of any or all of its assets (i) pursuant to any liquidation or other transaction that results in the assets of such Subsidiary being transferred to the Borrower or any other Loan Party, or (ii) pursuant to a Disposition permitted by Section 7.5 ;

(c) any Investment expressly permitted by Section 7.8 (including a Permitted Acquisition) may be structured as a merger, consolidation or amalgamation;

(d) any Foreign Subsidiary may (i) be merged or consolidated or amalgamated with or into any other Foreign Subsidiary, or (ii) Dispose of all or substantially all of its assets to any other Foreign Subsidiary; and

(e) any Subsidiary may liquidate, wind up its affairs or dissolve itself at any time if the Borrower determines in good faith that such liquidation, winding up or dissolution is in the best interest of the Borrower and its Subsidiaries and not materially disadvantageous to the Lenders (as determined by the Borrower in good faith) (provided that in the case of any liquidation, winding up or dissolution of a Subsidiary that is a Loan Party, such Subsidiary shall at or before the time of such dissolution, liquidation or winding up transfer its assets to the Borrower or another Loan Party unless such Disposition of assets is permitted by Section 7.5).

7.5 Disposition of Property . Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary of the Borrower, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) Dispositions of Equipment that is substantially worn, damaged, or obsolete or no longer used or useful in the ordinary course of business of the Borrower and its Subsidiaries and leases or subleases of real property not useful in the conduct of the business of Borrower and its Subsidiaries;

(b) sales of Inventory to buyers in the ordinary course of business;

(c) Dispositions consisting of licenses of Intellectual Property permitted by Section 7.3(j) ;

(d) Dispositions of assets by (i) any Subsidiary of the Borrower to the Borrower or another Loan Party and (ii) any Subsidiary of the Borrower which is not a Loan Party to another Subsidiary of the Borrower which is not a Loan Party;

(e) Dispositions of property with an aggregate value not to exceed \$500,000 in any fiscal year of the Borrower;

(f) grants of security interests and Liens permitted by this Agreement;

(g) payments permitted under Section 7.6, Investments permitted under Section 7.8, Liens permitted under Section 7.3, payments in the ordinary course of business and other payments which payments (including those in the ordinary course of business), in each case, are not otherwise prohibited by this Agreement or any other Loan Document;

(h) Dispositions of non-core or surplus assets acquired in a Permitted Acquisition consummated within twelve (12) months of the date of the Permitted Acquisition so long as the consideration received for the assets to be so disposed is at least equal to the fair market value thereof; and

(i) Dispositions of the Capital Stock of Fitbit (Australia) Pty Ltd and/or Fitbit Limited (UK) to other Group Members; and

(j) so long as no Default or Event of Default shall have occurred or be continuing or would result therefrom, other Dispositions of property with an aggregate value not to exceed ten percent (10%) of Consolidated Total Assets;

provided, however, that any Disposition made pursuant to this Section 7.5 for a purchase price in excess of \$500,000 shall be made in good faith on an arm's length basis for fair market value (as determined in good faith by the Board of Directors of the Borrower).

Notwithstanding anything in this Section 7.5 to the contrary, any Disposition of Intellectual Property by any Loan Party to any Group Member that is not a Loan Party shall (x) be sold subject to the Administrative Agent's irrevocable, nonexclusive, worldwide license of the Intellectual Property granted pursuant to Section 8.14 of the Guarantee and Collateral Agreement to permit the Administrative Agent, on a royalty free basis, to possess, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase, any Collateral, and (y) not interfere in any material respect with the ordinary conduct of business of any Group Member.

7.6 Restricted Payments . Make any payment with respect to any Deferred Payment Obligations, any prepayment of principal of, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, Indebtedness permitted by Section 7.2(c) or (g), declare or pay any dividend (other than dividends payable solely in common Qualified Stock of the Person making such dividend) on, or make any payment or distribution on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, or otherwise acquire or retire for value, any Capital Stock of any Group Member or other rights to acquire Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect of any Capital Stock of any Group Member, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, "**Restricted Payments**"), except that, so long as no Default or Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) any Group Member may (i) make Restricted Payments to any Loan Party, (ii) if such Group Member is not a Loan Party, make Restricted Payments to any other Group Member, and (iii) declare and make dividends which are payable solely in the common Qualified Stock of such Group Member;

(b) the Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, in each case, other than any conversion into, or exchange for, Disqualified Stock;

(c) the Borrower and its Subsidiaries may make payments in respect of Deferred Payment Obligations; and

(d) other Restricted Payments so long as the Payment Transaction Conditions have been satisfied.

7.7 [Reserved.]

7.8 Investments . Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, “*Investments* ”), except:

(a) Investments (including, without limitation, Subsidiaries) existing on the date hereof listed on Schedule 7.8(a) (but specifically excluding any future Investments in any Subsidiaries unless otherwise permitted hereunder);

(b) (i) Investments consisting of Cash Equivalents and (ii) any Investments permitted by the Borrower’s investment policy, if any, approved by its Board of Directors, as adopted and amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by the Administrative Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of the Borrower;

(d) Investments consisting of deposit and securities accounts in which the Administrative Agent, on behalf of the Secured Parties, has a perfected security interest to the extent required under any Loan Document;

(e) Investments accepted in connection with Dispositions permitted by Section 7.5 of this Agreement;

(f) (i) Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries of the Borrower or in the Borrower, (ii) intercompany loans or advances made by Loan Parties in other Loan Parties or any of the Subsidiaries of Borrower; provided that (x) the aggregate amount of loans or advances made after the Closing Date to Subsidiaries that are not Loan Parties shall not exceed the greater of (A) \$100,000,000 and (B) 7.5% of Consolidated Total Assets at any time outstanding, and (y) such loans or advances in an aggregate amount in excess of \$30,000,000 made after the Closing Date to Subsidiaries that are not Loan Parties shall not remain outstanding for more than 180 days (or such longer period approved by the Administrative Agent not to exceed 270 days in the aggregate); and (iii) other Investments by Borrower and its Subsidiaries so long as the aggregate amount of all such Investments made in reliance on this clause (iii) in any fiscal year of Borrower does not exceed \$2,000,000;

(g) Investments consisting loans and advances to the Group Members’ employees, officers and directors in an aggregate amount outstanding not to exceed \$3,000,000 at any one time;

(h) Investments (including Indebtedness obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers which settlements are effected in the ordinary course of business;

(i) loans by the Borrower in favor of manufacturers and suppliers in an aggregate amount outstanding not to exceed \$1,000,000 at any time;

(j) (i) Investments constituting Permitted Acquisitions, and (ii) Investments held by any Person as of the date such Person is acquired in connection with a Permitted Acquisition, provided that (A) such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Permitted Acquisition, and (B) with respect to any such Person which becomes a Subsidiary as a result of such Permitted Acquisition, such Subsidiary remains the only holder of such Investment;

(k) purchases or other acquisitions (and contributions of the purchase price therefor) by any Group Member of the Capital Stock in a Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or all or substantially all of the assets of, or assets constituting one or more business units of, any Person (each, a “ **Permitted Acquisition** ”); provided that, with respect to each such purchase or other acquisition:

(i) the newly-created or acquired Subsidiary (or assets acquired in connection with an asset sale) shall be (x) in the same or a related line of business as that conducted by the Borrower on the date hereof, or (y) in a business that is ancillary to and in furtherance of the line of business as that conducted by the Borrower on the date hereof;

(ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with all Requirements of Law;

(iii) no Loan Party shall, as a result of or in connection with any such purchase or acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation or other matters) that, as of the date of such purchase or acquisition, could be expected to result in the existence or incurrence of a Material Adverse Effect, as determined by the Board of Directors of the Borrower in good faith;

(iv) the Borrower shall give the Administrative Agent at least ten (10) Business Days’ prior written notice of any such purchase or acquisition; the Borrower shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

(v) any such newly-created or acquired Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply with the requirements of Section 6.12, except to the extent compliance with Section 6.12 is prohibited by pre-existing Contractual Obligations or Requirements of Law binding on such Subsidiary or its properties;

(vi) [reserved];

(vii) no Indebtedness is assumed or incurred in connection with any such purchase or acquisition other than Indebtedness permitted by the terms of Sections 7.2;

(viii) such purchase or acquisition shall not constitute an Unfriendly Acquisition;

(ix) the General Transactions Conditions shall be satisfied at the time of such purchase or acquisition;

(x) unless the Payment Transactions Conditions have been satisfied at the time of such purchase or acquisition, each such Permitted Acquisition is of a Person organized under the laws of the United States and that becomes a Guarantor hereunder or of assets of which the majority of the book value thereof is located in the United States that become Collateral hereunder; and

(xi) the Borrower shall have delivered to the Administrative Agent, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated (or such later date as is agreed by the Administrative Agent in its sole discretion), a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(l) Investments in Foreign Subsidiaries to the extent that the proceeds thereof are paid (by such Foreign Subsidiary or by another Subsidiary to or in whom such Foreign Subsidiary lends or invests such proceeds) to a Loan Party to license Intellectual Property of the Borrower or one or more Subsidiaries thereof, or to otherwise pay consideration or royalties to a Loan Party for rights to such Intellectual Property, in connection with transactions permitted by Section 7.3(j) (including payments pursuant to the Platform Contribution License Agreement);

(m) so long as immediately after giving effect to any such Investments, no Default or Event of Default has occurred and is continuing, Investments in joint ventures and Investments in minority interests in an aggregate amount outstanding (net of repayments or returns thereof or thereof) not to exceed \$75,000,000;

(n) Guarantees by the Borrower or any Subsidiary of Indebtedness of the Borrower and the other Subsidiaries to the extent permitted under Section 7.2(m); and

(o) so long as immediately after giving effect to any such Investments, no Default or Event of Default has occurred and is continuing, other Investments in an amount outstanding at any time (net of repayments or returns thereof or thereon) not to exceed the greater of \$150,000,000 and 10% of Consolidated Total Assets.

7.9 ERISA . The Borrower shall not, and shall not permit any of its ERISA Affiliates to: (a) terminate any Pension Plan so as to result in any material liability to such Person or any of such Person's ERISA Affiliates, (b) permit to exist any ERISA Event, or any other event or condition, which presents the risk of a material liability to any of their respective ERISA Affiliates, (c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any material liability to such Person or any of their respective ERISA Affiliates, (d) enter into any new Pension Plan or modify any existing Pension Plan so as to increase its obligations thereunder which could result in any material liability to any such Person or any of its respective ERISA Affiliates, (e) permit the present value of all nonforfeitable accrued benefits under any Pension Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Pension Plan) materially to exceed the fair market value of Pension Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Pension Plan, or (f) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Administrative Agent or any Lender of any of its rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code.

7.10 Modifications of Preferred Stock and Debt Instruments . (a) Amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Preferred Stock, if any, (i) that would move to an earlier date the scheduled redemption date or increase the amount of any scheduled redemption payment or increase the rate or move to an earlier date any date for payment of dividends thereon or (ii) that would be otherwise materially adverse to any Lender or any other Secured Party; or (b) amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of any Indebtedness permitted by Section 7.2 (other than Indebtedness pursuant to any Loan Document) that would shorten the maturity or increase the amount of

any payment of principal thereof or the rate of interest thereon or shorten any date for payment of interest thereon or that would be otherwise materially adverse to any Lender or any other Secured Party or that would violate any subordination terms or any subordination agreement applicable thereto.

7.11 Transactions with Affiliates . Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party) except for any transaction (other than the payment of management, consulting, monitoring, advisory or similar fees) that (i) is otherwise permitted under this Agreement, (ii) is in the ordinary course of business of the relevant Group Member (or is permitted by Section 7.8(l) or (m) or, in connection with the Platform Contribution License Agreement, Section 7.3(j)), (iii) is upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate (e.g., cost-plus service agreements in the ordinary course of business between Affiliates), and (iv) both before and after giving *pro forma* effect to such transaction, no Default or Event of Default has occurred and is continuing or would result therefrom.

7.12 Sale Leaseback Transactions . Enter into any Sale Leaseback Transaction unless (a) the Disposition of the applicable property subject to such Sale Leaseback Transaction is permitted under Section 7.5, and (b) any Liens in the property of any Loan Party incurred in connection with any such Sale Leaseback Transaction are permitted under Section 7.3.

7.13 Swap Agreements . Enter into any Swap Agreement, except (a) Specified Swap Agreements or (b) other unsecured Swap Agreements, in each case, which are entered into by a Group Member to (i) hedge or mitigate risks (including foreign exchange risks) to which such Group Member has actual exposure (other than those in respect of Capital Stock), or (ii) effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Group Member.

7.14 Accounting Changes . Make any change in its (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

7.15 Negative Pledge Clauses . Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues (other than Intellectual Property of such Loan Party), whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) customary restrictions on the assignment of leases, licenses and other agreements, (d) customary provisions in joint venture agreements and similar agreements that restrict transfer of assets of, or equity interests in, joint ventures, and (e) any agreements governing Indebtedness permitted by Sections 7.2(g) or (k).

7.16 Clauses Restricting Subsidiary Distributions . Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party and any of their respective Subsidiaries to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member or (b) make loans or advances to, or other Investments in, any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with a Disposition permitted hereby of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements, or (iv) restrictions of the nature referred to in clause (c) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby.

7.17 Lines of Business . Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Borrower and its Subsidiaries are engaged on the date of this Agreement or that are reasonably related, ancillary or incidental thereto.

7.18 Designation of other Indebtedness . Designate any Indebtedness or indebtedness other than the Obligations as “Designated Senior Indebtedness” or a similar concept thereto, if applicable.

7.19 Certification of Certain Capital Stock . Take any action to certificate any Capital Stock having been pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) which were uncertificated at the time so pledged, in any such case, without first obtaining the Administrative Agent’s prior written consent to do so and undertaking to the reasonable satisfaction of the Administrative Agent all such actions as may reasonably be requested by the Administrative Agent to continue the perfection of its Liens (held for the ratable benefit of the Secured Parties) in any such newly certificated Capital Stock.

7.20 Amendments to Organizational Agreements and Material Contracts . Amend or permit any amendments to any Loan Party’s organizational documents if any such amendment would be adverse to the Administrative Agent or the Lenders in any material respect.

7.21 Use of Proceeds . Use the proceeds of any extension of credit hereunder, whether directly or indirectly, and whether immediately, incidentally or ultimately, to (a) purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, Regulation U or Regulation X or (b) finance an Unfriendly Acquisition.

7.22 Subordinated Debt.

(a) Amendments . Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any Subordinated Debt Document, unless the amendment, modification, supplement, waiver or consent (i) does not adversely affect the Loan Parties’ ability to pay and perform each of their respective Obligations at the time and in the manner set forth herein and in the other Loan Documents and is not otherwise adverse to the Administrative Agent and the Lenders, and (ii) is in compliance with the subordination provisions therein and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

(b) Payments . Make any voluntary or optional payment, prepayment or repayment on, redemption, exchange or acquisition for value of, or any sinking fund or similar payment with respect to, any Subordinated Indebtedness, except as permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

7.23 [Reserved.]

7.24 Anti-Terrorism Laws; OFAC; Anti-Corruption .

(a) Use the proceeds of any extension of credit hereunder, directly or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order

to obtain, retain or direct business or obtain any improper advantage, in violation by the Borrower or any of its Subsidiaries of FCPA. In addition, the Borrower will not, directly or indirectly, use the proceeds of any extension of credit hereunder to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, in each case in a manner that would result in a violation of Sanctions by any Person (including any Person participating in such extensions of credit, whether as underwriter, advisor, investor, or otherwise).

(b) Conduct, deal in or engage in any of the following activities: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 (“*Blocked Person*”), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act. The Borrower shall deliver to the Administrative Agent and the Lenders any certification or other evidence reasonably requested from time to time by the Administrative Agent or any Lender confirming Borrower’s compliance with this Section 7.24.

SECTION 8 EVENTS OF DEFAULT

8.1 Events of Default . The occurrence of any of the following shall constitute an Event of Default:

(a) the Borrower shall fail to pay:

(i) any amount of principal of any Loan when due in accordance with the terms hereof (including Section 2.8); or

(ii) the Borrower shall fail to pay any amount of interest on any Loan, or any other amount payable hereunder or under any other Loan Document (other than principal of any Loan as provided in clause (i) above), within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document (i) if qualified by materiality, shall be incorrect or misleading when made or deemed made, or (ii) if not qualified by materiality, shall be incorrect or misleading in any material respect when made or deemed made; or

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in Section 2.8, Section 5.3, Section 6.1, Section 6.2, clause (i) or (ii) of Section 6.5(a), Section 6.6(b), Section 6.7, Section 6.8, Section 6.12, Section 6.16 or Section 7 of this Agreement or (ii) an “Event of Default” under and as defined in any Security Document shall have occurred and be continuing; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document to which it is party (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 30 days thereafter; or

(e) (1) any Group Member shall (i) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) on the scheduled or original

due date with respect thereto; or (ii) default in making any payment of any interest, fees, costs or expenses on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in making any payment or delivery under any such Indebtedness constituting a Swap Agreement beyond the period of grace, if any, provided in such Swap Agreement; or (iv) default in the observance or performance of any other 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, the effect of which default or other event or condition is to (x) cause, or to permit the holder or beneficiary of, or, in the case of any such Indebtedness constituting a Swap Agreement, counterparty under, such Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable or (in the case of any such Indebtedness constituting a Swap Agreement) to be terminated, or (y) to cause, with the giving of notice if required, any Group Member to purchase or redeem or make an offer to purchase or redeem such Indebtedness prior to its stated maturity; provided that, unless such Indebtedness constitutes a Specified Swap Agreement, a default, event or condition described in clause (i), (ii), (iii), or (iv) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii), (iii), and (iv) of this paragraph (e) shall have occurred with respect to Indebtedness the outstanding principal amount (and, in the case of Swap Agreements, other than Specified Swap Agreements, the Swap Termination Value) of which, individually or in the aggregate of all such Indebtedness, exceeds in the aggregate \$20,000,000; or (2) any default or event of default (however designated) shall occur with respect to any Subordinated Indebtedness of any Group Member; or

(f) (i) any Group Member shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator, judicial manager or other similar official for it or for all or any substantial part of its assets, or any Group Member shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (a) results in the entry of an order for relief or any such adjudication or appointment, or (b) remains undismitted, undischarged or unbonded for a period of 45 days (provided that, during such 45-day period, no Loans shall be advanced or Letters of Credit issued hereunder); or (iii) there shall be commenced against any Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 45 days from the entry thereof (provided that, during such 45- day period, no Loans shall be advanced or Letters of Credit issued hereunder); or (iv) any Group Member shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) there shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of any Loan Party or any ERISA Affiliate thereof in excess of \$100,000 during the term of this Agreement; or there exists an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds \$20,000,000; or

(h) there is entered against any Group Member (i) one or more judgments or orders for the payment of money or fines or penalties issued by any Governmental Authority involving in the aggregate

a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$20,000,000 or more, or (ii) one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case (i) or (ii), (A) enforcement proceedings are commenced by any creditor or any such Governmental Authority, as applicable, upon such judgment, order, penalty or fine, as applicable, or (B) such judgment, order, penalty or fine, as applicable, shall not have been vacated, discharged, stayed or bonded, as applicable, pending appeal within 10 Business Days from the entry or issuance thereof; or

(i) any of the Security Documents shall cease, for any reason other than as the result of action or omission by the Administrative Agent or any Lender, to be in full force and effect (other than pursuant to the terms thereof), or any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) there shall be commenced against any Loan Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged or stayed or bonded pending appeal within 10 days from the entry thereof; or

(k) any court order enjoins, restrains or prevents a Loan Party from conducting all or any material part of its business; or

(l) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason other than as the result of action or omission by the Administrative Agent or any Lender, to be in full force and effect or any Loan Party shall so assert; or

(m) a Change of Control shall occur; or

(n) [reserved];

(o) [reserved]; or

(p) any Loan Document not otherwise referenced in Section 8.1(i) or (j), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the Discharge of Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or any further liability or obligation under any Loan Document to which it is a party, or purports to revoke, terminate or rescind any such Loan Document.

8.2 Remedies upon Event of Default . If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) of Section 8.1 with respect to the Borrower, the Revolving Commitments shall immediately terminate automatically and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall automatically immediately become due and payable, and

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving

Commitments, the Swingline Commitments and the L/C Commitments to be terminated forthwith, whereupon the Revolving Commitments, the Swingline Commitments and the L/C Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Bank Services Provider or any other Qualified Counterparty, as applicable, may terminate any Specified Swap Agreement, any foreign exchange service agreements, or any other Bank Services Agreement then outstanding; and (iv) exercise on behalf of itself, the Lenders and the Issuing Lender all rights and remedies available to it, the Lenders and the Issuing Lender under the Loan Documents, at law, or in equity. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall Cash Collateralize an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3. In addition, (x) the Borrower shall also Cash Collateralize the full amount of any Swingline Loans then outstanding, and (y) to the extent elected by Bank Services Provider or provider of any Specified Swap Agreement, the Borrower shall also Cash Collateralize the amount of any Obligations in respect of Bank Services then outstanding. After all such Letters of Credit and Bank Services Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrower and the other Loan Parties (including any such Obligations arising in connection with Bank Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3. Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

8.3 Application of Funds . After the occurrence of an Application Event or the exercise of remedies provided for in Section 8.2, any amounts received by the Administrative Agent on account of the Obligations (whether payments or proceeds of Collateral) shall be applied by the Administrative Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including any Collateral-Related Expenses, fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Sections 2.19, 2.20 and 2.21) payable to the Administrative Agent in its capacity as such (including interest thereon);

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders, the Issuing Lender (including any Letter of Credit Fronting Fees, Issuing Lender Fees and the reasonable fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lender and amounts payable under Sections 2.19, 2.20 and 2.21), any Qualified Counterparties and the Bank Services Providers, in each case, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest in respect of any Bank Services and on the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, and to payment of premiums and other fees (including any interest thereon) under any Specified Swap Agreements and any Bank Services Agreements in each case, ratably among the Lenders, the Issuing Lender, any Qualified Counterparties and the Bank Services Providers, in each case, ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Disbursements which have not yet been converted into Revolving Loans, and settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Bank Services Agreements, in each case, ratably among the Lenders, the Issuing Lender, Qualified Counterparties and the Bank Services Providers, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the Issuing Lender, to Cash Collateralize that portion of the L/C Exposure comprised of the aggregate undrawn amount of Letters of Credit pursuant to Section 3.10;

Sixth, to the Administrative Agent for the account of each Bank Services Provider and any applicable Qualified Counterparty, to Cash Collateralize then-outstanding Obligations arising in connection with Bank Services and under any then outstanding Specified Swap Agreements, in each case, ratably among them in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to the payment of all other Obligations of the Loan Parties that are then due and payable to the Administrative Agent and the other Secured Parties on such date, in each case, ratably among them in proportion to the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full (excluding, for this purpose, any Obligations which have been Cash Collateralized in accordance with the terms hereof), to the Borrower or as otherwise required by Law.

Subject to Sections 2.24(a), 3.4, 3.5 and 3.10, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral (whether for Letters of Credit after all Letters of Credit have either been fully drawn or expired, or for Obligations in respect of any Bank Services after all such Bank Services have been terminated, or for Obligations in respect of any Specified Swap Agreements after all such agreements have been terminated), such remaining amount shall be applied to the other Obligations, if any, in the order set forth above, and, if any amount then remains on deposit, it shall be promptly distributed to the Borrower.

SECTION 9 THE ADMINISTRATIVE AGENT

9.1 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints SVB to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of Section 9 are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. Notwithstanding any provision to the contrary elsewhere in this

Agreement, the Administrative Agent shall not have any duties or responsibilities to any Lender or any other Person, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent or any other Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(c) The Administrative Agent shall also act as the collateral agent under the Loan Documents, and the Issuing Lender and each of the other Lenders (in their respective capacities as a Lender and, as applicable, Qualified Counterparty or Bank Services Provider) hereby irrevocably (i) authorize the Administrative Agent to enter into all other Loan Documents, as applicable, including the Guarantee and Collateral Agreement, any subordination or intercreditor agreements and any other Security Documents, and (ii) appoint and authorize the Administrative Agent to act as the agent of the Secured Parties for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent, as collateral agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.2 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Section 9 and Section 10 (including Section 9.7, as though such co-agents, sub-agents and attorneys-in-fact were the collateral or administrative agent under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit the any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

9.2 Delegation of Duties . The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

9.3 Exculpatory Provisions . The Administrative Agent shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent shall not:

(a) be subject to any fiduciary or other implied duties, regardless of whether any Default or any Event of Default has occurred and is continuing;

(b) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), as applicable; provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and the Administrative Agent shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.2 and 10.1), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5.1, Section 5.2 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.4 Reliance by Administrative Agent . The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note 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 shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) 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 shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

9.5 Notice of Default . The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice in writing from a Lender 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 receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent 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 it shall deem advisable in the best interests of the Lenders.

9.6 Non-Reliance on Administrative Agent and Other Lenders . Each Lender expressly acknowledges that neither the Administrative Agent, any Arranger nor 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 any Arranger hereafter taken, including any review of the affairs of a Group Member or any affiliate of a Group Member, shall be deemed to constitute any representation or warranty by the Administrative Agent or any Arranger to any Lender. Each Lender represents to the Administrative Agent and each Arranger that it has, independently and without reliance upon the Administrative Agent, any Arranger or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of an investigation into the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon the Administrative Agent, any Arranger or any other Lender or any of their Related Parties, 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 or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, 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 the Group Members and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or affiliates.

9.7 Indemnification . Each of the Lenders agrees to indemnify the Administrative Agent, each Arranger, the Issuing Lender and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by the Borrower or any other Loan Party pursuant to any Loan Document and without limiting the obligation of the Borrower or any other Loan Party to do so) according to its Aggregate Exposure Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Revolving Commitments shall have terminated and the Loans shall have been paid in full, in accordance with its Aggregate Exposure Percentage 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 (whether

before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such other Person in any way relating to or arising out of, the Revolving Commitments, this Agreement, any of the other Loan 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 the Administrative Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Borrower or such other Loan Party; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from the Administrative Agent's or such other Person's gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

9.8 Agent in Its Individual Capacity . Any Person serving as the Administrative Agent or an Arranger hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.9 Successor Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. If no such successor Administrative Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and such collateral security is assigned to such successor

Administrative Agent) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of Section 9 and Section 10.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as the Administrative Agent.

9.10 Collateral and Guaranty Matters . The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (i) upon the Discharge of Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, Bank Services and Specified Swap Agreements (other than Letters of Credit, Bank Services and Specified Swap Agreements the Obligations in respect of which have been Cash Collateralized in an amount equal to 105% thereof in accordance with the terms hereof or, with respect to Bank Services or Specified Swap Agreements, as to which other arrangements satisfactory to the Administrative Agent, Bank Services Provider and applicable Qualified Counterparty, as applicable, shall have been made), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders or such other threshold of requisite threshold of Lenders required under Section 10.1;

(b) [reserved]; and

(c) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(d) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

(e) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Administrative Agent May File Proofs of Claim . In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative

Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations in respect of any Letter of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable to have the claims of the Lenders and the Administrative Agent (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 under Sections 2.9 and 10.5) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9 and 10.5.

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 Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.12 No Other Duties, Etc.

(a) Anything herein to the contrary notwithstanding, no Arranger shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except (i) in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder or (ii) those specifically provided to it hereunder as an Arranger. Without limiting the foregoing, each of the Arrangers, in such capacities, shall not have or be deemed to have any fiduciary relationship with any Lender or any Loan Party. Each Lender, the Administrative Agent, Issuing Lender, and each Loan Party acknowledges that it has not relied, and will not rely, on the Arrangers in deciding to enter into this Agreement or in taking or not taking action hereunder. Each of the Arrangers, in such capacity, shall be entitled to resign at any time by giving notice to the Administrative Agent and the Borrower.

(b) Anything herein to the contrary notwithstanding, the "Syndication Agent" shall not have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder.

9.13 Reports and Financial Statements .

Each Bank Services Provider and Qualified Counterparty agrees to furnish to the Administrative Agent at such frequency as the Administrative Agent may reasonably request with a summary of all Obligations in respect of Bank Services or Specified Swap Agreements due or to become due to such Bank Services Provider or Qualified Counterparty. In connection with any distributions to be made hereunder, the

Administrative Agent shall be entitled to assume that no amounts are due to any Bank Services Provider or Qualified Counterparty unless the Administrative Agent has received written notice thereof from such Bank Services Provider or Qualified Counterparty (as applicable) and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Bank Services Provider or Qualified Counterparty on account of Bank Services or Specified Swap Agreements is the amount set forth in such notice.

9.14 Survival.

This Section 9 shall survive the Discharge of Obligations.

SECTION 10 MISCELLANEOUS

10.1 Amendments and Waivers.

(a) Neither this Agreement, nor any other Loan Document (other than any L/C Related Document and other than any Bank Services Agreement and Specified Swap Agreement), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan or L/C Disbursement, reduce the stated rate of any interest or fee payable hereunder (except that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (A)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; (B) amend, modify, or eliminate this Section 10.1, Section 5.1, Section 5.2, or Section 9.10, without the written consent of each Lender; (C) eliminate, amend, waive, or otherwise modify the definition of Required Lenders or reduce any percentage specified in the definition of Required Lenders or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the value of the guarantees of the obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) [reserved]; (E) (i) amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects Revolving Lenders without the written consent of each Revolving Lender or (ii) amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects the L/C Lenders without the written consent of each L/C Lender; (F) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (G) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (H) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender; (I)(i) amend or modify the application of payments set forth Section 8.3 in a manner that adversely affects any Lender or the Administrative Agent without the written consent of each Lender and the Administrative Agent, (ii) amend or modify the application of payments set forth in Section 8.3

in a manner that adversely affects the L/C Lenders without the written consent of the L/C Lenders, or (iii) amend or modify the application of payments provisions set forth in Section 8.3 in a manner that adversely affects the Issuing Lender, Bank Services Provider or any Qualified Counterparty, as applicable, without the written consent of the Issuing Lender, Bank Services Provider or each such Qualified Counterparty, as applicable, (J) contractually subordinate any of Administrative Agent's Liens securing the Obligations without the consent of each Lender, (K) amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to the Administrative Agent, or any other rights or duties of the Administrative Agent under this Agreement or the other Loan Documents, without the written consent of the Administrative Agent, the Borrower, and the Required Lenders, or (L) amend, modify, or eliminate any of the provisions of Section 10.6(b) restricting assignments to, or participations with, Persons who are Loan Parties or Affiliates or Subsidiaries of any Loan Party. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Issuing Lender, each Bank Services Provider, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, the Issuing Lender may amend any of the L/C Documents without the consent of the Administrative Agent or any other Lender.

(b) Notwithstanding anything to the contrary contained in Section 10.1(a) above, in the event that the Borrower or any other Loan Party, as applicable, requests that this Agreement or any of the other Loan Documents, as applicable, be amended or otherwise modified in a manner which would require the consent of all of the Lenders and such amendment or other modification is agreed to by the Borrower and/or such other Loan Party, as applicable, the Required Lenders and the Administrative Agent, then, with the consent of the Borrower and/or such other Loan Party, as applicable, the Administrative Agent and the Required Lenders, this Agreement or such other Loan Document, as applicable, may be amended without the consent of the Lender or Lenders who are unwilling to agree to such amendment or other modification (each, a "**Minority Lender**"), to provide for:

(i) the termination of the Revolving Commitments of each such Minority Lender;

(ii) the assumption of the Loans and Revolving Commitments of each such Minority Lender by one or more Replacement Lenders pursuant to the provisions of Section 2.23; and

(iii) the payment of all interest, fees and other obligations payable or accrued in favor of each Minority Lender and such other modifications to this Agreement or to such Loan Documents as the Borrower, the Administrative Agent and the Required Lenders may determine to be appropriate in connection therewith.

(c) [Reserved.]

(d) Notwithstanding any provision herein to the contrary, any Bank Services Agreement or Specified Swap Agreement may be amended or otherwise modified by the parties thereto in accordance with the terms thereof without the consent of the Administrative Agent or any Lender.

10.2 Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly

provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrower: FitBit, Inc.
405 Howard Street
San Francisco, California 94105
Attention: Ronald W. Kisling, Chief Accounting Officer
Telephone No.: 415-902-1224
E-Mail: rkisling@fitbit.com

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

Fenwick & West LLP
801 California Street
Mountain View, CA 94041
Attention: David Michaels, Esq.
Facsimile No.: (650) 938-5200

Administrative Agent: Silicon Valley Bank
2400 Hanover Street
Palo Alto, CA 94304
Attention: Wendy Wong
Telephone No.: 415-764-3176
E-Mail: wwong@svb.com

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

Riemer & Braunstein LLP
7 Times Square, Ste. 2506
New York, NY 10036
Attention: Rick Denhup, Esq.
Facsimile No.: (212) 719-0140

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders shall not be effective until received.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (a) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such

as by the “return receipt requested” function, as available, return email or other written acknowledgment); and (b) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (a) and (b), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “**Platform**”).

(ii) the Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Borrower or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of communications through the Platform. “**Communications**” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

10.3 No Waiver; Cumulative Remedies . No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan 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.

10.4 Survival of Representations and Warranties . All representations and warranties made hereunder, in the other Loan 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 Loans and other extensions of credit hereunder.

10.5 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses . The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, each Arranger and each of their respective Affiliates (including the reasonable fees, charges and disbursements of one counsel for the Administrative Agent and each Arranger), in connection with the syndication of the Facilities, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated

hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of one counsel for the Administrative Agent (and any local or special counsel reasonably required by the Administrative Agent) and one counsel to the Lenders taken as a whole (or any additional counsel in the event of an actual or potential conflict of interest), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued or participated in hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender (including the Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an “*Indemnitee*”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of one counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower or any other Loan Party pursuant to any other Loan Document for any reason fails indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Arranger, the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender’s *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders’ Revolving Percentage (determined as of the time that the applicable unreimbursed

expense or indemnity payment is sought) and provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), any Arranger, the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.1, 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. Absent the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction by a final and nonappealable judgment, no Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the resignation of any of the Administrative Agent, any Arranger, the Issuing Lender and the Swingline Lender, the replacement of any Lender, the termination of the Loan Documents, the termination of the Revolving Commitments and the Discharge of Obligations.

10.6 Successors and Assigns; Participations and Assignments.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (which for purposes of this Section 10.6 shall include any Bank Services Provider (in its capacity as a provider of Bank Services) that is party to any Bank Services Agreement with the Borrower or another Group Member and any Qualified Counterparty (in its capacity as such)), except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitments and the Loans at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitments and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitments (which for this purpose includes Loans outstanding thereunder) or, if the applicable Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if " **Trade Date** " is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans and/or the Revolving Commitments assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment by a Lender except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the consent of the Borrower for an assignment to any Person that the Borrower reasonably classifies in writing to the Administrative Agent and the Lenders as a competitor of the Borrower may be given or denied by the Borrower in its sole discretion; and provided, further, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received reasonably detailed written notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of the Revolving Facility if such assignment is to a Person that is not a Lender with a Revolving Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent (such consent not to be unreasonably withheld or delayed) of the Issuing Lender and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) a Loan Party or any of a Loan Party's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20, 2.21 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in California 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 Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender, sell participations to any Person (other than a natural Person or any Loan Party or any of any Loan Party's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitments and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f) (it being understood that the documentation required under Section 2.20(f) shall be delivered to such Participant)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.23 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(k) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a nonfiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Notes. The Borrower, upon receipt by the Borrower of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

10.7 Adjustments; Set-off.

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a “**Benefitted Lender**”) shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 8.2, receive any payment of all or part of the Obligations owing to 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 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being expressly waived by the Borrower and each Loan Party, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, at any time held or owing, and any other credits, indebtedness, claims or obligations, 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, its Affiliates or any branch or agency thereof to or for the credit or the account of the Borrower or any other Loan Party, as the case may be, against any and all of the obligations of the Borrower or such other Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such other Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

10.8 Payments Set Aside . If any Secured Party repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such Person in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Services Agreement or any Specified Swap Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such Person elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such Person elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such Lender or Bank Services Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist and (ii) the Administrative Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) the Administrative Agent's Liens shall have been released or terminated or (B) any provision of this Agreement shall have been terminated or cancelled, the Administrative Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This Section 10.8 shall survive the Discharge of Obligations.

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

10.10 Counterparts; Electronic Execution of Assignments.

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

(b) The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption 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.

10.11 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. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.12 Integration . This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the other Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

10.13 GOVERNING LAW . THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. This Section 10.13 shall survive the Discharge of Obligations.

10.14 Submission to Jurisdiction; Waivers . The Borrower hereby irrevocably and unconditionally:

(a) submits to the exclusive jurisdiction of the State and Federal courts in the Southern District of the State of New York in the Borough of Manhattan; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Administrative Agent or such Lender. The Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and the Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrower at the addresses set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid;

(b) WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL;

(c) AGREES THAT IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN SECTION 10.13 ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE

REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE ' S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

This Section 10.14 shall survive the Discharge of Obligations.

10.15 Acknowledgements . The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Administrative Agent and the Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

10.16 [Reserved.]

10.17 Treatment of Certain Information; Confidentiality . Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties having a need to know such information in

connection with the transactions contemplated by this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), in which case such Person agrees, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulator authority, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, upon the request or demand of any Governmental Authority, in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or if requested or required to do so in connection with any litigation or similar proceeding (in which case such Person agrees, to the extent practicable and not prohibited by applicable laws, regulations, subpoena or legal process, to inform the Borrower promptly thereof); (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement enforceable by the Borrower containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws.

For purposes of this Section, “**Information**” means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses (including confidential information delivered prior to the Closing Date pursuant to the Engagement Letter), other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, but in no event less than reasonable care.

10.18 Automatic Debits . With respect to any principal, interest, fee, or any other cost or expense (including attorney costs of the Administrative Agent or any Lender payable by the Borrower hereunder) due and payable to the Administrative Agent or any Lender under the Loan Documents, the Borrower hereby irrevocably authorizes the Administrative Agent to debit any deposit account of the Borrower maintained with the Administrative Agent in an amount such that the aggregate amount debited from all such deposit accounts

does not exceed such principal, interest, fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount then due, such debits will be reversed (in whole or in part, in the Administrative Agent's sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section 10.18 shall be deemed a set-off.

10.19 Judgment Currency ; Exchange Rates .

(a) Judgment Currency . If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal 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 each Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document 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 or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Borrower or any other Loan Party in the Agreement Currency, such Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).

(b) Determination of Exchange Rates . Not later than 2:00 P.M. (London time) on each Calculation Date or upon the occurrence of an Event of Default, if any Loans are outstanding on such date in any Foreign Currency, the Administrative Agent shall (i) determine the Exchange Rate as of such Calculation Date with respect to such Foreign Currencies and (ii) give notice thereof to the Lenders and the Borrower. The Exchange Rate so determined shall become effective on the first Business Day immediately following the relevant Calculation Date or upon the occurrence of an Event of Default (a "**Reset Date**"), shall remain effective until the next succeeding Reset Date, and shall for all purposes of this Agreement (other than Section 10.23 or any other provision expressly requiring the use of a current Exchange Rate) be the Exchange Rates employed in determining the Dollar Equivalent of any amounts of Foreign Currencies; provided that for purposes of determining the Consolidated Fixed Charge Coverage Ratio or the Consolidated Leverage Ratio to test the financial covenants under Section 7.1, the Exchange Rate as of the last Business Day of the fiscal quarter for which such measurement is being made will be used.

(c) Notice of Foreign Currency Loans and Letters of Credit . Not later than 2:00 P.M. (London time) on each Reset Date and each date on which Loans denominated in any Foreign Currencies or Foreign Currency Letters of Credit are made or issued, if any such Loans or Foreign Currency Letters of Credit are outstanding on such date, the Administrative Agent shall (i) determine the Dollar Equivalent of the aggregate principal amounts of the Loans denominated in Foreign Currencies and the aggregate L/C Exposure with respect to Foreign Currency Letters of Credit and (ii) notify the Lenders and the Borrower of the results of such determination.

10.20 Patriot Act . Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrower that, pursuant to the requirements of the Patriot Act, it is required to

obtain, verify and record information that identifies the Borrower, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Patriot Act. The Borrower will, and will cause each of its Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with the Patriot Act.

10.21 Acknowledgment of Prior Obligations and Continuation Thereof . The Borrower (a) consents to the amendment and restatement of the Existing Credit Agreement by this Agreement; (b) acknowledges and agrees that (i) the “Obligations” (as defined in the Existing Credit Agreement) are owing to the Secured Parties (as defined in the Existing Credit Agreement), (ii) the prior grant or grants of security interests in favor of any of the Administrative Agent or any other Secured Party (as defined in the Existing Credit Agreement) in its properties and assets, under each “Loan Document” as defined in the Existing Credit Agreement (the “*Original Loan Documents*”) to which it is a party shall be in respect of the Obligations of such Person under this Agreement and the other Loan Documents; (c) reaffirms (i) all of the Obligations (as defined in the Existing Credit Agreement) owing to the Administrative Agent and the other Secured Parties (as defined in the Existing Credit Agreement), and (ii) all prior or concurrent grants of security interests in favor of any of the Administrative Agent or any other Secured Party (as defined in the Existing Credit Agreement) under each Original Loan Document and each Loan Document; and (d) agrees that, except as expressly amended hereby or unless being amended and restated concurrently herewith, each of the Original Loan Documents to which it is a party is and shall remain in full force and effect. The Borrower hereby confirms and agrees that all outstanding principal, interest and fees and other “Obligations” (as defined in the Existing Credit Agreement) under the Existing Credit Agreement immediately prior to the Closing Date shall, to the extent not paid on the Closing Date, from and after the Closing Date, be, without duplication, Obligations owing and payable pursuant to this Agreement and the other Loan Documents as in effect from time to time, shall accrue interest thereon as specified in this Agreement, and shall be secured by the Loan Documents.

10.22 No Novation . This Agreement does not extinguish the obligations for the payment of money outstanding under the Existing Credit Agreement or discharge or release the obligations or the liens or priority of any mortgage, pledge, security agreement or any other security therefor. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Credit Agreement, the other Original Loan Documents or instruments securing the same, which shall remain in full force and effect, except as modified hereby or by instruments executed concurrently herewith. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of the Borrower or any Guarantor from any of its obligations or liabilities under the Existing Credit Agreement or any of the security agreements, pledge agreements, mortgages, guaranties or other loan documents executed in connection therewith. The Borrower hereby (a) confirms and agrees that each Original Loan Document to which it is a party that is not being amended and restated concurrently herewith is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that on and after the Closing Date, all references in any such Original Loan Document to “the Credit Agreement,” “thereto,” “thereof,” “thereunder” or words of like import referring to the Existing Credit Agreement shall mean the Existing Credit Agreement as amended and restated by this Agreement; and (b) confirms and agrees that to the extent that any such Original Loan Document purports to assign or pledge to any Secured Party a security interest in or lien on, any collateral as security for all or any portion of any of the Obligations of the Borrower or any other Loan Party, as the case may be, from time to time existing in respect of the Existing Credit Agreement or the Original Loan Document, such pledge or assignment or grant of the security interest or lien is hereby ratified and confirmed in all respects with respect to this Agreement and the Loan Documents.

10.23 Market Disruption . Notwithstanding the satisfaction of all conditions referred to in Sections 2, 3 and 5 with respect to any Loan denominated in any Foreign Currency or any Foreign Currency Letter of Credit, if (a) there shall occur on or prior to the date such Loan is made or such Foreign Currency Letter of

Credit is issued any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which would in the reasonable opinion of the Administrative Agent, Issuing Lender or the Required Lenders make it impossible for the applicable Eurocurrency Loan or Foreign Currency Letter of Credit to be denominated in the Agreed Currency specified by the Borrower or (b) the Dollar Equivalent amount of such Agreed Currency is not readily calculable, then the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders and such Loan or Foreign Currency Letter of Credit shall not be denominated in such Foreign Currency, but shall be made on the date of such requested Loan or Foreign Currency Letter of Credit in Dollars in an aggregate principal amount equal to the Dollar Equivalent specified in the Notice of Borrowings as Base Rate Loans or Application, as the case may be.

10.24 Currency Conversion. All payments under this Agreement or any other Loan Document shall be made in Dollars, except for Loans or Foreign Currency Letters of Credit funded or issued (as applicable) in any Foreign Currency, which shall be repaid, including interest thereon, in such Foreign Currency. If any payment by the Borrower or the proceeds of any Collateral shall be made in a currency other than the currency required hereunder, such amount shall be converted into the currency required hereunder at the rate determined by the Administrative Agent or the Issuing Lender, as applicable, as the rate quoted by it in accordance with methods customarily used by such Person for such or similar purposes as the spot rate for the purchase by such Person of the required currency with the currency of actual payment through its principal foreign exchange trading office (including, in the case of the Administrative Agent, any Affiliate) at approximately 11:00 A.M. (local time at such office) two Business Days prior to the effective date of such conversion, provided that the Administrative Agent or the Issuing Lender, as applicable, may obtain such spot rate from another financial institution actively engaged in foreign currency exchange if the Administrative Agent or the Issuing Lender, as applicable, does not then have a spot rate for the required currency.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BORROWER:

FITBIT, INC.,
as the Borrower

By: /s/ William Zerella

Name: William Zerella

Title: Chief Financial Officer

ADMINISTRATIVE AGENT AND ARRANGER:

SILICON VALLEY BANK ,
as the Administrative Agent and an Arranger

By: /s/ Wendy Wong

Name: Wendy Wong

Title: VP

LENDERS:

SILICON VALLEY BANK ,

as Issuing Lender, Swingline Lender and as a Lender

By: /s/ Wendy Wong

Name: Wendy Wong

Title: VP

SUNTRUST BANK , as Syndication Agent and as a Lender

By: /s/ Marshall T. Mangum, III

Name: Marshall T. Mangum, III

Title: Director

SUNTRUST ROBINSON HUMPHREY, INC. , as an
Arranger

By: /s/ Frank P. Tantillo

Name: Frank P. Tantillo

Title: Managing Director

MORGAN STANLEY BANK, N.A. , as a Lender

By: /s/ Michael King

Name: Michael King

Title: Authorized Signatory

Signature Page to Second Amended and Restated Credit Agreement

BANK OF AMERICA, N.A. , as a Lender

By: /s/ Karina Skuggedal

Name: Karina Skuggedal

Title: Vice President

Signature Page to Second Amended and Restated Credit Agreement

DEUTSCHE BANK AG, NEW YORK BRANCH . as a
Lender

By: /s/ Anca Trifan

Name: Anca Trifan

Title: Managing Director

By: /s/ Michael Shannon

Name: Michael Shannon

Title: Vice President

Signature Page to Second Amended and Restated Credit Agreement

BARCLAYS BANK PLC , as a Lender

By: /s/ Ronnie Glen

Name: Ronnie Glen

Title: Vice President

Signature Page to Second Amended and Restated Credit Agreement

CITIBANK, N.A. , as a Lender

By: /s/ L. Vrettos

Name: L. Vrettos

Title: Vice President

Signature Page to Second Amended and Restated Credit Agreement

CITY NATIONAL BANK , as a Lender

By: /s/ Lynette C. Fletcher

Name: Lynette C. Fletcher

Title: S.V.P. / SR. Relationship Manager

Signature Page to Second Amended and Restated Credit Agreement

SCHEDULE 1.1A

REVOLVING COMMITMENTS
AND AGGREGATE EXPOSURE PERCENTAGES

REVOLVING COMMITMENTS

Lender	Revolving Commitment	Revolving Percentage
Silicon Valley Bank	\$ 43,333,333.34	17.333333333%
SunTrust Bank	\$ 43,333,333.34	17.333333333%
Deutsche Bank AG New York Branch	\$ 43,333,333.33	17.333333333%
Morgan Stanley Bank, N.A.	\$ 25,000,000.00	10.000000000%
Bank of America, N.A.	\$ 25,000,000.00	10.000000000%
Barclays Bank PLC	\$ 23,333,333.33	9.333333333%
Citibank, N.A.	\$ 23,333,333.33	9.333333333%
City National Bank	\$ 23,333,333.33	9.333333333%
Total	\$ 250,000,000	100%

L/C COMMITMENTS

(which is a sublimit of, and not in addition to, the Revolving Commitments)

Lender	L/C Commitments	L/C Percentage
Silicon Valley Bank	\$ 8,666,666.66	17.333333333%
SunTrust Bank	\$ 8,666,666.67	17.333333333%
Deutsche Bank AG New York Branch	\$ 8,666,666.66	17.333333333%
Morgan Stanley Bank, N.A.	\$ 5,000,000.00	10.000000000%
Bank of America, N.A.	\$ 5,000,000.00	10.000000000%
Barclays Bank PLC	\$ 4,666,666.67	9.333333333%
Citibank, N.A.	\$ 4,666,666.67	9.333333333%
City National Bank	\$ 4,666,666.67	9.333333333%
Total	\$ 50,000,000	100%

SWINGLINE COMMITMENT

(which is a sublimit of, and not in addition to, the Revolving Commitments)

Lender	Swingline Commitment	Exposure Percentage
Silicon Valley Bank	\$ 25,000,000	100%
SunTrust Bank	\$ 0	0%
Deutsche Bank AG New York Branch	\$ 0	0%
Morgan Stanley Bank, N.A.	\$ 0	0%
Bank of America, N.A.	\$ 0	0%
Barclays Bank PLC	\$ 0	0%
Citibank, N.A.	\$ 0	0%
City National Bank	\$ 0	0%
Total	\$ 25,000,000	100%

SCHEDULE 1.1B

EXISTING LETTERS OF CREDIT

L/C Number	Issuance Date	Expiration Date	Final Expiration Date	Beneficiary	Stated Amount
SVBSF008327	09/25/13	09/25/16	04/30/20	T-C FOUNDRY SQUARE II OWNER LLC	\$ 2,100,000.00
SVBSF008561	11/18/13	11/18/16	01/30/20	ORRICK HERRINGTON & SUTCLIFFE LLP	\$ 910,000.00
SVBSF010105	06/26/15	06/26/16	10/30/17	ENERNOC, INC.	\$ 181,068.75
SVBSF010133	07/02/15	07/02/16	09/30/24	GLL BIT FREMONT STREET PARTNERS L.P.	\$13,253,868.00
SVBSF010274	08/11/15	08/11/16	03/31/17	TAULIA INC.	\$ 80,640.00
SVBSF010534	11/23/15	11/23/16	06/01/18	CLEARSLIDE, INC.	\$ 107,819.69

SCHEDULE 4.4

**GOVERNMENTAL APPROVALS, CONSENTS,
AUTHORIZATIONS, FILINGS AND NOTICES**

None.

SCHEDULE 4.5

REQUIREMENTS OF LAW

None.

SCHEDULE 4.6

LITIGATION

The “Legal Proceedings” disclosure in the Company’s public filings are Incorporated by reference herein.

SCHEDULE 4.15**SUBSIDIARIES**

Entity	Name	Jurisdiction	Ownership
Borrower	Fitbit, Inc.	Delaware	N/A
Subsidiary	Fitbit Limited	United Kingdom	100% owned by Fitbit, Inc.
Subsidiary	FitBit International, LLC	Delaware	100% owned by Fitbit, Inc.
Subsidiary	FitStar, Inc.	Delaware	100% owned by Fitbit, Inc.
Subsidiary	Fitbit Korea Ltd.	Korea	100% owned by FitBit International, LLC
Subsidiary	Fitbit (Hong Kong) Limited	Hong Kong	100% owned by FitBit International, LLC
Subsidiary	Fitbit (Australia) Pty Ltd	Australia	100% owned by FitBit International, LLC
Subsidiary	Fitbit International Holdings	Ireland	100% owned by FitBit International, LLC
Subsidiary	Fitbit Holdings	Ireland	100% owned by Fitbit International Holdings
Subsidiary	Fitbit International Limited	Ireland	100% owned by Fitbit Holdings
Subsidiary	Fitbit Bel	Belarus	0.01% owned by Fitbit, Inc. 99.99% owned by Fitbit Limited
Subsidiary	Fitbit Fitness Technology (Shanghai) Company Limited	China	100% owned by Fitbit (Hong Kong) Limited
Subsidiary	Fitbit (Asia Pacific) Limited	Hong Kong	100% owned by Fitbit Holdings
Subsidiary	Fitbit India Private Limited	India	100% owned by FitBit International, LLC
Subsidiary	Fitbit (Japan) G.K.	Japan	100% owned by FitBit International, LLC
Subsidiary	Fitbit Singapore Pte Ltd	Singapore	100% owned by Fitbit Holdings
Subsidiary	Fitbit France SARL	France	100% owned by Fitbit International Limited
Subsidiary	Fitbit Operations Limited	Ireland	100% owned by Fitbit International Limited
Subsidiary	Fitbit Canada	Canada	100% owned by FitBit International, LLC

* Formation of corporate entities in Germany, Italy and Spain are in progress.

SCHEDULE 4.17

ENVIRONMENTAL MATTERS

None.

SCHEDULE 4.19(a)

FINANCING STATEMENTS AND OTHER FILINGS

1. UCC Financing Statement naming Fitbit, Inc., as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.
2. UCC Financing Statement naming FitStar, Inc. as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.
3. PPSA filing naming Fitbit, Inc., as “debtor” and the Administrative Agent as “secured party” to be filed with the appropriate filing office of the Province of Ontario.

SCHEDULE 4.27**CAPITALIZATION**

<u>Name</u>	<u>Jurisdiction</u>	<u>Ownership</u>
Fitbit, Inc.	Delaware	N/A
Fitbit Limited	United Kingdom	100% owned by Fitbit, Inc.
FitBit International, LLC	Delaware	100% owned by Fitbit, Inc.
FitStar, Inc.	Delaware	100% owned by Fitbit, Inc.
Fitbit Korea Ltd.	Korea	100% owned by FitBit International, LLC
Fitbit (Hong Kong) Limited	Hong Kong	100% owned by FitBit International, LLC
Fitbit (Australia) Pty Ltd	Australia	100% owned by FitBit International, LLC
Fitbit International Holdings	Ireland	100% owned by FitBit International, LLC
Fitbit Holdings	Ireland	100% owned by Fitbit International Holdings
Fitbit International Limited	Ireland	100% owned by Fitbit Holdings
Fitbit Bel	Belarus	0.01% owned by Fitbit, Inc. 99.99% owned by Fitbit Limited
Fitbit Fitness Technology (Shanghai) Company Limited	China	100% owned by Fitbit (Hong Kong) Limited
Fitbit (Asia Pacific) Limited	Hong Kong	100% owned by Fitbit Holdings
Fitbit India Private Limited	India	100% owned by FitBit International, LLC
Fitbit (Japan) G.K.	Japan	100% owned by FitBit International, LLC
Fitbit Singapore Pte Ltd	Singapore	100% owned by Fitbit Holdings
Fitbit France SARL	France	100% owned by Fitbit International Limited
Fitbit Operations Limited	Ireland	100% owned by Fitbit International Limited
Fitbit Canada	Canada	100% owned by FitBit International, LLC

SCHEDULE 7.2(b)

EXISTING INDEBTEDNESS

The Letters of Credit listed on Schedule 1.1B are incorporated by reference herein.

SCHEDULE 7.3(b)

EXISTING LIENS

None.

SCHEDULE 7.8(a)

EXISTING INVESTMENTS

Equity investments as of the Closing Date in the existing Subsidiaries:

<u>Subsidiary</u>	<u>Investment</u>
Fitbit Limited	100% owned by Fitbit, Inc.
FitBit International, LLC	100% owned by Fitbit, Inc.
FitStar, Inc.	100% owned by Fitbit, Inc.
Fitbit Korea Ltd.	100% owned by FitBit International, LLC
Fitbit (Hong Kong) Limited	100% owned by FitBit International, LLC
Fitbit (Australia) Pty Ltd	100% owned by FitBit International, LLC
Fitbit International Holdings	100% owned by FitBit International, LLC
Fitbit Holdings	100% owned by Fitbit International Holdings
Fitbit International Limited	100% owned by Fitbit Holdings
Fitbit Bel	0.01% owned by Fitbit, Inc. 99.99% owned by Fitbit Limited
Fitbit Fitness Technology (Shanghai) Company Limited	100% owned by Fitbit (Hong Kong) Limited
Fitbit (Asia Pacific) Limited	100% owned by Fitbit Holdings
Fitbit India Private Limited	100% owned by FitBit International, LLC
Fitbit (Japan) G.K.	100% owned by FitBit International, LLC
Fitbit Singapore Pte Ltd	100% owned by Fitbit Holdings
Fitbit France SARL	100% owned by Fitbit International Limited
Fitbit Operations Limited	100% owned by Fitbit International Limited
Fitbit Canada	100% owned by FitBit International, LLC

**FORM OF SECOND AMENDED AND RESTATED GUARANTEE AND COLLATERAL
AGREEMENT**

(Please see attached form)

SECOND AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT

Dated as of December 10, 2015

made by

FITBIT, INC.

and the other Grantors referred to herein,

in favor of

SILICON VALLEY BANK,
as Administrative Agent

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINED TERMS	2
1.1 Definitions	2
1.2 Other Definitional Provisions	7
SECTION 2. GUARANTEE	7
2.1 Guarantee	7
2.2 Right of Contribution	8
2.3 No Subrogation	8
2.4 Amendments, etc. with respect to the Secured Obligations	8
2.5 Guarantee Absolute and Unconditional; Guarantor Waivers; Guarantor Consents	9
2.6 Reinstatement	11
2.7 Payments	11
2.8 Keepwell	11
SECTION 3. GRANT OF SECURITY INTEREST	12
3.1 Grant of Security Interests	12
3.2 Grantors Remains Liable	13
3.3 Perfection and Priority	13
SECTION 4. REPRESENTATIONS AND WARRANTIES	14
4.1 Title; No Other Liens	15
4.2 Perfected Liens	15
4.3 Jurisdiction of Organization; Chief Executive Office and Locations of Books	15
4.4 Inventory and Equipment	15
4.5 Farm Products	15
4.6 Pledged Collateral	15
4.7 Investment Accounts	16
4.8 Receivables	16
4.9 [Reserved]	16
4.10 Instruments	16
4.11 Letter of Credit Rights	17
4.12 Commercial Tort Claims	17
SECTION 5. COVENANTS	17
5.1 Delivery of Instruments, Certificated Securities and Chattel Paper	17
5.2 Maintenance of Insurance	17
5.3 Maintenance of Perfected Security Interest; Further Documentation	17
5.4 Changes in Locations, Name, Etc.	18
5.5 Notices	18
5.6 Instruments; Investment Property	18
5.7 Securities Accounts; Deposit Accounts	19
5.8 [Reserved]	20
5.9 [Reserved]	20
5.10 Defense of Collateral	20
5.11 Preservation of Collateral	20
5.12 Compliance with Laws, Etc.	20
5.13 Location of Books and Chief Executive Office	20
5.14 Location of Collateral	20

5.15	[Reserved]	20
5.16	Disposition of Collateral	21
5.17	Liens	21
5.18	Expenses	21
5.19	[Reserved]	21
5.20	Chattel Paper	21
5.21	Commercial Tort Claims	21
5.22	Letter-of-Credit Rights	21
5.23	Shareholder Agreements and Other Agreements	21
SECTION 6.	REMEDIAL PROVISIONS	22
6.1	Certain Matters Relating to Receivables	22
6.2	Communications with Obligor; Grantors Remain Liable	22
6.3	Investment Property	22
6.4	Proceeds to be Turned Over To Administrative Agent	23
6.5	Application of Proceeds	24
6.6	Code and Other Remedies	24
6.7	Pledged Stock	25
6.8	[Reserved]	26
6.9	Deficiency	26
SECTION 7.	THE ADMINISTRATIVE AGENT	26
7.1	Administrative Agent's Appointment as Attorney-in-Fact, etc.	26
7.2	Duty of Administrative Agent	27
7.3	Authority of Administrative Agent	28
SECTION 8.	MISCELLANEOUS	28
8.1	Amendments in Writing	28
8.2	Notices	28
8.3	No Waiver by Course of Conduct; Cumulative Remedies	28
8.4	Enforcement Expenses; Indemnification	28
8.5	Successors and Assigns	29
8.6	Set Off	29
8.7	Counterparts	29
8.8	Severability	29
8.9	Section Headings	30
8.10	Integration	30
8.11	GOVERNING LAW	30
8.12	Submission to Jurisdiction; Waivers	30
8.13	Excluded Assets	31
8.14	Intellectual Property License	31
8.15	Acknowledgements	31
8.16	Additional Grantors	31
8.17	Releases	31
8.18	WAIVER OF JURY TRIAL	32
8.19	Amendment and Restatement of Existing Guarantee Agreement	32

SCHEDULES

Schedule 1	Notice Addresses
Schedule 2	Investment Property
Schedule 3	Perfection Matters
Schedule 4	Jurisdictions of Organization and Chief Executive Offices, etc.
Schedule 5	Equipment and Inventory Locations
Schedule 6	Letter of Credit Rights
Schedule 7	Commercial Tort Claims

ANNEXES

Annex 1	Form of Assumption Agreement
Annex 2	Form of Pledge Supplement

SECOND AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT

This SECOND AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT (this “*Agreement*”), dated as of December 10, 2015, is made by FITBIT, INC., a Delaware corporation (the “*Borrower*”), each other Person listed on the signature pages hereto as a “Grantor”, and each other entity that may become a party hereto as provided herein (the Borrower and each such Persons or entities, each a “*Grantor*” and, collectively, the “*Grantors*”), in favor of SILICON VALLEY BANK (“*SVB*”), as administrative agent and collateral agent (together with its successors, in such capacities, the “*Administrative Agent*”) for the banks and other financial institutions or entities (each a “*Lender*” and, collectively, the “*Lenders*”) from time to time parties to that certain Second Amended and Restated Credit Agreement, dated as of the date hereof (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “*Credit Agreement*”), among the (a) Borrower, (b) the Lenders party thereto, (c) the Administrative Agent, (d) SunTrust Bank, as syndication agents for the Lenders, and (e) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners. This Agreement amends and restates in its entirety, but shall not constitute a novation, waiver, release or modification of any rights, claims or remedies of the Administrative Agent under the Amended and Restated Guarantee and Collateral Agreement, dated as of August 13, 2014 (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the “*Existing Guarantee Agreement*”), by and among the Grantors and the Administrative Agent, and continues the security interests granted thereunder to the extent set forth herein.

INTRODUCTORY STATEMENTS

WHEREAS, the Borrower, the Administrative Agent, and certain other parties are party to that certain Credit Agreement, dated as of August 13, 2014 (as the same has been amended, restated, supplemented or otherwise modified from time to time prior to the Closing Date, the “*Existing Credit Agreement*”);

WHEREAS, the Borrower desires to amend and restate the Existing Credit Agreement to refinance certain Indebtedness, as well to provide as for working capital financing and letter of credit facilities, in each case, as further provided in the Credit Agreement;

WHEREAS, the Borrower and any other party hereto as a “Grantor” are or will be part of an affiliated group of companies that includes each other Grantor;

WHEREAS, the proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrower to make valuable transfers to one or more of the other Grantors in connection with the operation of their respective business;

WHEREAS, certain of the Qualified Counterparties may enter into Specified Swap Agreements with the Borrower;

WHEREAS, the Borrower and the other Grantors are engaged in related businesses, and each Grantor derives substantial direct and indirect benefit from the extensions of credit under the Credit Agreement and from the Specified Swap Agreements; and

WHEREAS, it is a condition precedent to amendment and restatement of the Existing Credit Agreement and the Closing Date that the Grantors shall have executed and delivered this Agreement in favor of the Administrative Agent for the ratable benefit of the Secured Parties.

NOW, THEREFORE, in consideration of the above premises, the parties hereto hereby agree as follows:

SECTION 1. DEFINED TERMS.

1.1 Definitions.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the respective meanings given to such terms in the Credit Agreement, and the following terms are used herein as defined in the UCC: Account, Certificated Security, Chattel Paper, Commercial Tort Claim, Commodity Account, Document, Equipment, Farm Products, Fixtures, General Intangible, Goods, Instrument, Inventory, Letter-of-Credit Rights, Money, Securities Account and Supporting Obligation.

(b) The following terms shall have the following meanings:

“ **Agreement** ”: as defined in the preamble hereto.

“ **Books** ”: all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for any Grantor in connection with the ownership of its assets or the conduct of its business or evidencing or containing information relating to the Collateral, including: (a) ledgers; (b) records indicating, summarizing, or evidencing such Grantor’s assets (including Inventory and Rights to Payment), business operations or financial condition; (c) computer programs and software; (d) computer discs, tapes, files, manuals, spreadsheets; (e) computer printouts and output of whatever kind; (f) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (g) any and all other rights now or hereafter arising out of any contract or agreement between such Grantor and any service bureau, computer or data processing company or other Person charged with preparing or maintaining any of such Grantor’s books or records or with credit reporting, including with regard to any of such Grantor’s Accounts.

“ **Borrower** ”: as defined in the preamble hereto.

“ **Canadian Collection Account** ”: the Deposit Account having account number 52189207 maintained by the Borrower with Bank of America, N.A., Canada Branch, in Canadian Dollars for the primary purpose of collecting accounts receivable from the Borrower’s Canadian customers.

“ **Collateral** ”: as defined in Section 3.1.

“ **Collateral Account** ”: any collateral account established by the Administrative Agent as provided in Section 6.4 of this Agreement.

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

“ **Copyright License** ”: any written agreement which (a) names a Grantor as licensor or licensee or (b) grants any right under any Copyright to a Grantor, including any rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

“ **Copyrights** ”: (a) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, together with the underlying works of authorship (including titles), whether registered or unregistered and whether published or unpublished, all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible

property embodying or incorporating any copyrights, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, in each case owned by a Grantor, and (b) the right to obtain any renewals thereof.

“ **Deposit Account** ”: as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including any demand, time, savings, passbook or like account maintained with a depository institution.

“ **Discharge of Obligations** ”: as defined in the Credit Agreement.

“ **Excluded Account** ”: any Investment Account (a) the sole purpose of which is for funding payroll, workers’ compensation claims, 401(k) benefits, health care benefits, retirement benefits or other employee benefits, or which is a withholding tax or fiduciary account or similar operational disbursement account, (b) the sole purpose of which is for funding escrow arrangements or holding funds owned by persons other than the Borrower and the other Grantors, (c) which is a zero-balance account, or (d) that is not otherwise described in this definition which, individually or collectively with any other Investment Account included in this clause (d), has a balance at any time of not greater than \$500,000 in the aggregate.

“ **Excluded Assets** ”: collectively,

(a) Capital Stock of any Excluded Foreign Subsidiary (other than (i) voting Capital Stock of any Excluded Foreign Subsidiary representing 66% of the total outstanding voting Capital Stock of any Excluded Foreign Subsidiary and (ii) 100% of the non-voting Capital Stock of any Excluded Foreign Subsidiary);

(b) any intent-to-use trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise;

(c) [reserved];

(d) rights held under a license or other contract that are not assignable by their terms without the consent of the licensor or other party thereof (but only to the extent such transfer is unenforceable under applicable law);

(e) any interest of a Grantor as a lessee under an Equipment lease if such Loan Party is prohibited by the terms of such lease from granting a security interest in such lease or under which such an assignment or Lien would cause a default to occur under such lease; *provided, however*, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by such Grantor or the Administrative Agent;

(f) Excluded Intellectual Property; *provided, however*, the forgoing to the contrary notwithstanding, Collateral shall include all Goods, all tangible property and tangible assets (whether embodying or incorporating any Excluded Intellectual Property or not), all Accounts, all Inventory and all proceeds and products of all Excluded Intellectual Property. If a judicial authority (including a United States Bankruptcy Court) would hold that a security interest in the underlying Excluded Intellectual Property is necessary to have a security interest in such Goods, such tangible property or tangible assets (whether embodying or incorporating any Excluded Intellectual Property or not), such Accounts, such Inventory or such property that are proceeds or products of Excluded Intellectual Property, then the Collateral shall automatically, and effective as of the Closing Date, include the Excluded Intellectual

Property to the extent necessary to permit creation and perfection of the Administrative Agent's security interest in such tangible property and tangible assets (whether embodying or incorporating any Excluded Intellectual Property or not), such Accounts, such Inventory and such other property of the Grantors that are products and proceeds of the Excluded Intellectual Property;

(g) Capital Stock of any Immaterial Subsidiary; and

(h) any interest of a Grantor under any Governmental Approval if granting a security interest or Lien thereon is prohibited under applicable law or would expose such Grantor to the risk of termination, revocation or any similar result with respect to such Governmental Approval under applicable law or would require any Grantor to obtain any Governmental Approval not already obtained;

provided, however, that (i) any Proceeds, substitutions or replacements of any Excluded Assets shall not be Excluded Assets (unless such Proceeds, substitutions or replacements are otherwise, in and of themselves, Excluded Assets); (ii) assets that satisfy clause (d), clause (e) or clause (g) above shall only constitute "Excluded Assets" if under the terms of such contract, lease, permit, Governmental Approval, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein is prohibited as a matter of law or under the terms of such contract, lease, permit, Governmental Approval, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, Governmental Approval, license, or license agreement has not been obtained (**provided** that the foregoing exclusions of this clause (ii) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408, or 9-409 of the UCC or other applicable law (unless after giving effect to such provisions of the UCC or other applicable law, the grant of a security interest or lien would violate or invalidate such contract, lease, permit Governmental Approval, license or license agreement or create a right of termination in favor of any party (other than the Grantor)), or (2) to apply to the extent that any consent or waiver has been obtained that would permit Agent's security interest or lien to attach notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, Governmental Approval, license, or license agreement); and **provided** that the foregoing assets shall cease to constitute Excluded Assets and the security interest shall attach immediately at such time as such restriction is not effective or applicable, or such prohibition, breach, default or termination is no longer applicable or is waived, and to the extent severable, shall attach immediately to any portion of such assets (which assets shall not constitute Excluded Assets) that does not result in such consequences; and (iii) the provisions of this definition of Excluded Assets shall in no way be construed to limit, impair, or otherwise affect any of the Administrative Agent's or any other Secured Party's continuing security interests in and liens upon any rights or interests of any Grantor in or to (1) monies due or to become due under or in connection with any described Excluded Assets, or (2) any proceeds from the sale, license, lease, or other dispositions of any such Excluded Assets (unless such monies or proceeds would constitute Excluded Assets in and of themselves).

"Excluded Copyrights": (a) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, together with the underlying works of authorship (including titles), whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the U.S. Copyright Office, and (b) the right to obtain any renewals thereof. The foregoing to the contrary notwithstanding, Excluded Copyrights does not include any Goods, any tangible property or tangible assets (whether embodying or incorporating any Copyrights or not), any Accounts, any Inventory, or any proceeds or products thereof.

"Excluded Intellectual Property": all right, title and interest of any Grantor in any Excluded Copyright, any Copyright License relative to any Excluded Copyright, any Patent, any Patent License, any Trademark, any Trademark License, trade secrets, know-how, inventions (whether or not patentable),

algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs and domain names, specifications, documentations, reports, catalogs, literature, and any other forms of proprietary technology or proprietary information of any kind, including all rights therein and all applications for registration or registrations thereof. The foregoing to the contrary notwithstanding, Excluded Intellectual Property does not include any Goods or tangible property or tangible assets (whether embodying or incorporating any Excluded Intellectual Property or not), any Accounts, any Inventory, or any proceeds or products of any of the foregoing.

“**Excluded Swap Obligation**”: with respect to any Grantor, any obligation to pay or perform under any Specified Swap Agreement, if and to the extent that all or a portion of the guarantee of such Grantor of, or the grant by such Grantor of a security interest to secure, such obligations under a Specified Swap Agreement (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Grantor’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 Grantor or the grant of such security interest becomes effective with respect to such obligations under a Specified Swap Agreement or such guarantee. If any obligation to pay or perform under any Specified Swap Agreement arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such obligations under a Specified Swap Agreement that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“**Foreign Account**”: an Investment Account that is maintained by a Grantor in a jurisdiction outside of the United States.

“**Grantor**”: as defined in the preamble hereto.

“**Guarantor**”: as defined in [Section 2.1\(a\)](#).

“**Investment Account**”: any Securities Account, Commodity Account or Deposit Account, but not including any Excluded Account.

“**Investment Property**”: the collective reference to (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the UCC (other than any voting Capital Stock or other ownership interests of an Excluded Foreign Subsidiary or Immaterial Subsidiary excluded from the definition of “Pledged Stock”), and (b) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Collateral.

“**Issuer**”: with respect to any Investment Property, the issuer of such Investment Property.

“**Patent License**”: any written agreement which (a) names a Grantor as licensor or licensee and (b) grants to such Grantor any right under a Patent, including the right to manufacture, use or sell any invention covered in whole or in part by such Patent.

“**Patents**”: (a) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith, (b) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, and (c) all rights to obtain any reissues or extensions of the foregoing, in each case owned by a Grantor.

“Pledged Collateral”: (a) any and all Pledged Stock; (b) all other Investment Property of any Grantor; (c) all warrants, options or other rights entitling any Grantor to acquire any interest in Capital Stock or other securities of the direct or indirect Subsidiaries of such Grantor or of any other Person; (d) all Instruments; (e) all securities, property, interest, dividends and other payments and distributions issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, any of the foregoing; (f) all certificates and instruments now or hereafter representing or evidencing any of the foregoing; (g) all rights, interests and claims with respect to the foregoing, including under any and all related agreements, instruments and other documents; and (h) all cash and non-cash proceeds of any of the foregoing, in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor.

“Pledged Collateral Agreements”: as defined in Section 5.22.

“Pledged Notes”: all promissory notes listed on Schedule 2 and all other promissory notes issued to or held by any Grantor.

“Pledged Stock”: all of the issued and outstanding shares of Capital Stock, whether certificated or uncertificated, of any Grantor’s direct Subsidiaries now or hereafter owned by any such Grantor and including the Capital Stock listed on Schedule 2 hereof (as amended or supplemented from time to time); provided that in no event shall Pledged Stock include any Excluded Assets.

“Proceeds”: all “proceeds” as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include, without limitation, all dividends or other income from any Investment Property constituting Collateral and all collections thereon or distributions or payments with respect thereto.

“Qualified ECP Guarantor”: in respect of any Specified Swap Obligation, each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant guaranty or grant of the relevant Lien becomes effective with respect to such Specified Swap Obligation or constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Receivable”: any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Account).

“Rights to Payment”: any and all of any Grantor’s Accounts and any and all of any Grantor’s rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

“Secured Obligations”: collectively, the “Obligations”, as such term is defined in the Credit Agreement; provided, however, that “Secured Obligations” of a particular Grantor shall not include any Excluded Swap Obligation of such Grantor.

“Secured Parties”: the Administrative Agent, each Arranger, the Issuing Lender, the Swing Line Lender, each Lender, each Bank Services Provider, and any Qualified Counterparty.

“Software”: (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

“ **Trademark License** ”: any written agreement which (a) names a Grantor as licensor or licensee and (b) grants to such Grantor any right to use any Trademark.

“ **Trademarks** ”: (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, Internet domain names and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, and (b) the right to obtain all renewals thereof in each case owned by a Grantor.

1.2 Other Definitional Provisions. The rules of interpretation set forth in Section 1.2 of the Credit Agreement are by this reference incorporated herein, *mutatis mutandis*, as if set forth herein in full.

SECTION 2. GUARANTEE .

2.1 Guarantee.

(a) The Borrower and each other Grantor that executes this Agreement as of the date hereof, together with each Subsidiary of the Borrower or any such Grantor who accedes to this Agreement as a Grantor after the date hereof pursuant to Section 6.12 of the Credit Agreement (each a “ **Guarantor** ” and, collectively, the “ **Guarantors** ”), hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower and the other Loan Parties when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations. In furtherance of the foregoing, and without limiting the generality thereof, each Guarantor agrees as follows:

(i) each Guarantor’s liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon the Administrative Agent’s or any Secured Party’s exercise or enforcement of any remedy it or they may have against the Borrower, any other Guarantor, any other Person, or all or any portion of the Collateral; and

(ii) **the Administrative Agent may enforce this guaranty notwithstanding the existence of any dispute between any of the Secured Parties and the Borrower or any other Guarantor with respect to the existence of any Event of Default .**

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 2.2).

(c) Each Guarantor agrees that the Secured Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of the Administrative Agent or any other Secured Party hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until the Discharge of Obligations, notwithstanding that from time to time during the term of the Credit Agreement the outstanding amount of the Secured Obligations may be zero.

(e) Except in connection with the release of a Guarantor's obligations hereunder as expressly provided in Section 8.17, no payment made by the Borrower, any Guarantor, any other guarantor or any other Person or received or collected by the Administrative Agent or any other Secured Party from the Borrower, any Guarantor, any other guarantor or any other Person by virtue of any action or proceeding or any setoff or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations), remain liable for the Secured Obligations up to the maximum liability of such Guarantor hereunder until the Discharge of Obligations.

(f) Any term or provision of this Agreement or any other Loan Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor shall be liable hereunder shall not exceed the maximum amount for which such Guarantor can be liable without rendering this Agreement or any other Loan Document, as it relates to such Guarantor, subject to avoidance under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of Title 11 of the United States Code or any applicable provisions of comparable Requirements of Law) (collectively, "**Fraudulent Transfer Laws**"). Any analysis of the provisions of this Agreement for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in Section 2.2, and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under the Agreement.

2.2 Right of Contribution. If in connection with any payment made by any Guarantor hereunder any rights of contribution arise in favor of such Guarantor against one or more other Guarantors, such rights of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the other Secured Parties, and each Guarantor shall remain liable to the Administrative Agent and the other Secured Parties for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any setoff or application of funds of any Guarantor by the Administrative Agent or any other Secured Party, no Guarantor shall be entitled to be subrogated to any of the rights of the Administrative Agent or any other Secured Party against the Borrower or any other Guarantor or any Collateral or guarantee or right of offset held by the Administrative Agent or any other Secured Party for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, in each case, until the Discharge of Obligations. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time prior to the Discharge of Obligations, such amount shall be held by such Guarantor in trust for the Administrative Agent and the other Secured Parties, shall be segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Administrative Agent, if required), to be applied in such order as set forth in Section 6.5 hereof irrespective of the occurrence or the continuance of any Event of Default.

2.4 Amendments, etc. with respect to the Secured Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by the Administrative Agent or any other Secured Party may be rescinded by the Administrative Agent or such Secured Party and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral

security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Administrative Agent or any other Secured Party, and the Credit Agreement, the other Loan Documents, the Specified Swap Agreements and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Required Lenders or all of the Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Administrative Agent or any other Secured Party for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released. Neither the Administrative Agent nor any other Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.5 Guarantee Absolute and Unconditional; Guarantor Waivers; Guarantor Consents. To the fullest extent permissible by law, each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by the Administrative Agent or any other Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and any of the Guarantors on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. To the fullest extent permissible by law, each Guarantor further waives:

(a) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the other Guarantors with respect to the Secured Obligations;

(b) any right to require any Secured Party to marshal assets in favor of the Borrower, such Guarantor, any other Guarantor or any other Person, to proceed against the Borrower, any other Guarantor or any other Person, to proceed against or exhaust any of the Collateral, to give notice of the terms, time and place of any public or private sale of personal property security constituting the Collateral or other collateral for the Secured Obligations or to comply with any other provisions of Section 9-611 of the UCC (or any equivalent provision of any other applicable law) or to pursue any other right, remedy, power or privilege of any Secured Party whatsoever;

(c) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Secured Obligations;

(d) any defense arising by reason of any lack of corporate or other authority or any other defense of the Borrower, such Guarantor or any other Person;

(e) any defense based upon the Administrative Agent's or any Secured Party's errors or omissions in the administration of the Secured Obligations;

(f) any rights to set-offs and counterclaims;

(g) any defense based upon an election of remedies (including, if available, an election to proceed by nonjudicial foreclosure) which destroys or impairs the subrogation rights of such Guarantor or the right of such Guarantor to proceed against the Borrower or any other obligor of the Secured Obligations for reimbursement; and

(h) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law that limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement.

Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (i) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Secured Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Administrative Agent or any other Secured Party, (ii) any defense, setoff or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against the Administrative Agent or any other Secured Party, (iii) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower and the Guarantors for the Secured Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance, (iv) any Insolvency Proceeding with respect to the Borrower, any Guarantor or any other Person, (v) any merger, acquisition, consolidation or change in structure of the Borrower, any Guarantor or any other Person, or any sale, lease, transfer or other disposition of any or all of the assets or Voting Stock of the Borrower, any Guarantor or any other Person, (vi) any assignment or other transfer, in whole or in part, of any Secured Party's interests in and rights under this Guaranty or the other Loan Documents, including any Secured Party's right to receive payment of the Secured Obligations, or any assignment or other transfer, in whole or in part, of any Secured Party's interests in and to any of the Collateral, (vi) any Secured Party's vote, claim, distribution, election, acceptance, action or inaction in any Insolvency Proceeding related to any of the Secured Obligations, and (vii) any other guaranty, whether by such Guarantor or any other Person, of all or any part of the Secured Obligations or any other indebtedness, obligations or liabilities of any Guarantor to any Secured Party.

When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Administrative Agent or any other Secured Party may, but shall be under no obligation to make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto. Any failure by the Administrative Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Administrative Agent or any other Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

Each Guarantor acknowledges that all or any portion of the Secured Obligations may now or hereafter be secured by a Lien or Liens upon real property owned or leased by the Borrower or any Guarantor and evidenced by certain documents including, without limitation, deeds of trust and assignments of rents. Any Secured Party may, pursuant to the terms of said documents and applicable law, foreclose under all or any portion of one or more of said Liens by means of judicial or nonjudicial sale or sales. Each Guarantor agrees that any Secured Party may exercise whatever rights and remedies it may have with respect to said real property security, all without affecting the liability of any Guarantor hereunder, except to the extent such Secured Party realizes payment by such action or proceeding. No election to proceed in one form of action or against any party, or on any obligation shall constitute a waiver of any Secured Party's right to proceed in any other form of action or against any Guarantor or

any other Person, or diminish the liability of any Guarantor, or affect the right of such Secured Party to proceed against any Guarantor for any deficiency, except to the extent such Secured Party realizes payment by such action, notwithstanding the effect of such action upon any Guarantor's rights of subrogation, reimbursement or indemnity, if any, against the Borrower, any Guarantor, or any other Person.

Each Guarantor further unconditionally consents and agrees that, without notice to or further assent from any Guarantor: (a) the principal amount of the Secured Obligations may be increased or decreased and additional indebtedness or obligations of the Borrower or any other Persons under the Loan Documents may be incurred, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise; (b) the time, manner, place or terms of any payment under any Loan Document may be extended or changed, including by an increase or decrease in the interest rate on any Secured Obligation or any fee or other amount payable under such Loan Document, by an amendment, modification or renewal of any Loan Document or otherwise; (c) the time for the Borrower's (or any other Loan Party's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as the Administrative Agent may deem proper; (d) in addition to the Collateral, the Secured Parties may take and hold other security (legal or equitable) of any kind, at any time, as collateral for the Secured Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; (e) any Secured Party may discharge or release, in whole or in part, any other Guarantor or any other Loan Party or other Person liable for the payment and performance of all or any part of the Secured Obligations, and may permit or consent to any such action or any result of such action, and shall not be obligated to demand or enforce payment upon any of the Collateral, nor shall any Secured Party be liable to any Guarantor for any failure to collect or enforce payment or performance of the Secured Obligations from any Person or to realize upon the Collateral, and (f) the Secured Parties may request and accept other guaranties of the Secured Obligations and any other indebtedness, obligations or liabilities of the Borrower or any other Loan Party to any Secured Party and may, from time to time, in whole or in part, surrender, release, subordinate, modify, waive, rescind, compromise or extend any such guaranty and may permit or consent to any such action or the result of any such action; in each case of clauses (a) through (f), as the Secured Parties may deem advisable, based on their reasonable good faith business judgment, and without impairing, abridging, releasing or affecting this Agreement.

2.6 Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any such Guarantor or any substantial part of its respective property, or otherwise, all as though such payments had not been made.

2.7 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent without setoff or counterclaim in Dollars at the Funding Office.

2.8 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Agreement in respect of Secured Obligations under Specified Swap Agreements (provided that, each Qualified ECP Guarantor shall only be liable under this Section 2.8 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.8 or otherwise under this Agreement,

voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 2.8 shall remain in full force and effect until the Secured Obligations have been paid in full in cash and all Commitments have terminated. Each Qualified ECP Guarantor intends that this Section 2.8 constitute, and this Section 2.8 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.”

SECTION 3. GRANT OF SECURITY INTEREST.

3.1 Grant of Security Interests. Each Grantor hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest and wherever located (collectively, the “Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations (whether now existing or arising hereafter):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Commercial Tort Claims, including all Commercial Tort Claims described on Schedule 7;
- (d) all Deposit Accounts (other than Excluded Accounts);
- (e) all Documents;
- (f) all Equipment;
- (g) all Farm Products (as defined in the UCC);
- (h) all Fixtures;
- (i) all General Intangibles;
- (j) all Goods;
- (k) Intellectual Property (but only to the extent provided in the definition of Excluded Assets);
- (l) all Instruments;
- (m) all Inventory;
- (n) all Investment Property (including all Pledged Collateral);
- (o) all Letter-of-Credit Rights, Letters of Credit (as defined in the UCC), Promissory Notes (as defined in the UCC), and Drafts (as defined in the UCC);
- (p) all Securities Accounts (other than Excluded Accounts);

(q) all Money;

(r) all Books and records pertaining to the Collateral;

(s) all other property not otherwise described above; and

(t) to the extent not otherwise included, all Proceeds, Supporting Obligations and products of any and all of the foregoing; provided, however, that notwithstanding anything to the contrary contained in clauses (a) through (s) above, the security interests created by this Agreement shall not extend to, and the term "Collateral" (including all of the individual items comprising Collateral) shall not include, any Excluded Assets.

3.2 Grantors Remains Liable. Anything herein to the contrary notwithstanding, (a) subject to Section 8.17, each Grantor shall remain liable under any contracts, agreements and other documents included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Administrative Agent of any of the rights granted to the Administrative Agent hereunder shall not release any Grantor from any of its duties or obligations under any such contracts, agreements and other documents included in the Collateral, and (c) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any such contracts, agreements and other documents included in the Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

3.3 Perfection and Priority.

(a) Financing Statements. Pursuant to any applicable law, each Grantor authorizes the Administrative Agent (and its counsel and its agents) to file or record at any time and from time to time any financing statements and other filing or recording documents or instruments with respect to the Collateral and each Grantor shall execute and deliver to the Administrative Agent and each Grantor hereby authorizes the Administrative Agent (and its counsel and its agents) to file (with or without the signature of such Grantor) at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, assignments, fixture filings, affidavits, reports notices and all other documents and instruments, in such form and in such offices as the Administrative Agent or the Required Lenders determine appropriate to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in the Collateral under and to accomplish the purposes of this Agreement. Each Grantor authorizes the Administrative Agent to use the collateral description "all personal property, whether now owned or hereafter acquired" or any other similar collateral description in any such financing statements. Each Grantor hereby ratifies and authorizes the filing by the Administrative Agent (and its counsel and its agents) of any financing statement with respect to the Collateral made prior to the date hereof.

(b) Filing of Financing Statements. Each Grantor shall deliver to the Administrative Agent, from time to time, such completed UCC-1 financing statements with respect to the Collateral for filing or recording in the appropriate filing offices as may be reasonably requested by the Administrative Agent.

(c) Transfer of Security Interest Other Than by Delivery. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in Section 5.6(b), each applicable Grantor shall promptly take such other steps as may be necessary or as shall be reasonably requested from time to time by the Administrative Agent to effect a transfer of a perfected first

priority security interest in and pledge of the Pledged Collateral to the Administrative Agent for itself and on behalf of and for the ratable benefit of the other Secured Parties pursuant to the UCC. To the extent practicable, each such Grantor shall thereafter deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in Section 5.6(b).

(d) [Reserved].

(e) Bailees. Any Person (other than the Administrative Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Administrative Agent. At any time and from time to time, the Administrative Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Administrative Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, at the request of the Administrative Agent, each Grantor will join with the Administrative Agent in notifying any Person who has possession of any Collateral of the Administrative Agent's security interest therein and to the extent that the value of such Collateral exceeds \$10,000,000 shall use commercially reasonable efforts to obtain an acknowledgment from such Person of the rights of the Administrative Agent.

(f) Control. Each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the UCC) of Collateral consisting of any Deposit Accounts, Electronic Chattel Paper, Investment Property, Securities Accounts or Letter-of-Credit Rights (other than Excluded Accounts), including delivery of control agreements, as the Administrative Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in such Collateral; provided that the foregoing shall not require the delivery of a Control Agreement with respect to (x) the Canadian Collection Account and (y) any other Foreign Account of any Grantor so long as the aggregate average daily balance over any period of thirty (30) consecutive days maintained in all such Foreign Accounts referenced in this clause (y) does not exceed the Dollar Equivalent of \$12,500,000 (the "**Threshold**"), and in the event the aggregate average daily balance for all such Foreign Accounts referenced in this clause (y) exceeds the Threshold, the Grantors will cooperate with the Administrative Agent to perfect the Administrative Agent's security interest in such Foreign Accounts (including by means of the delivery of control agreements as the Administrative Agent may reasonably request) by a date not later than ninety (90) days (or such later date as the Administrative Agent may agree in its sole discretion) after the date that the aggregate average daily balance in such accounts first exceeded the Threshold.

(g) Additional Subsidiaries. In the event that any Grantor acquires rights in any Subsidiary after the date hereof, within the time period required under Section 6.12 of the Credit Agreement, it shall deliver to the Administrative Agent a completed pledge supplement, substantially in the form of Annex 2 (the "**Pledge Supplement**"), together with all schedules thereto, reflecting the pledge of the Capital Stock of such new Subsidiary (except to the extent such Capital Stock consists of Excluded Assets). Notwithstanding the foregoing, it is understood and agreed that the security interest of the Administrative Agent shall attach to the Pledged Collateral related to such Subsidiary immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a Pledge Supplement.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby represents and warrants to the Administrative Agent and each other Secured Party that:

4.1 Title; No Other Liens. Except for the Liens permitted to exist on the Collateral by Section 7.3 of the Credit Agreement, such Grantor owns each item of the Collateral in which a Lien is granted by it free and clear of any and all Liens and other claims of others. No financing statement, fixture filing or other public notice with respect to all or any part of the Collateral is on file or of record or will be filed in any public office, except such as have been filed as permitted by the Credit Agreement.

4.2 Perfected Liens. The security interests granted to the Administrative Agent pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 3 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Administrative Agent in completed and duly (if applicable) executed form) will constitute valid perfected security interests in all of the Collateral in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations, enforceable in accordance with the terms hereof against any creditors of any Grantor and any Persons purporting to purchase any Collateral from any Grantor, and (ii) are prior to all other Liens on the Collateral (except in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3 of the Credit Agreement which are non-consensual permitted Liens, permitted purchase money Liens, or the interests of lessors under capital leases). Unless an Event of Default has occurred and is continuing, each Grantor has the right to remove the Fixtures in which such Grantor has an interest within the meaning of Section 9-334(f)(2) of the UCC.

4.3 Jurisdiction of Organization; Chief Executive Office and Locations of Books. On the date hereof, such Grantor's jurisdiction of organization, identification number from the jurisdiction of organization (if any), and the location of such Grantor's chief executive office or sole place of business, as the case may be, are specified on Schedule 4. All locations where Books pertaining to the Rights to Payment of such Grantor are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for such Grantor, are set forth in Schedule 4.

4.4 Inventory and Equipment. On the date hereof, (a) the Inventory and (b) the Equipment (other than goods which are then in-transit) are kept at the locations listed on Schedule 5; provided that with respect to any goods or components subject to a consignment arrangement, Schedule 5 sets forth the identity of the consignee, but not the location in which such good or component may be held.

4.5 Farm Products. None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.6 Pledged Collateral. (a) All of the Pledged Stock held by such Grantor has been duly and validly issued, and is fully paid and non-assessable, subject in the case of Pledged Stock constituting partnership interests or limited liability company membership interests to future assessments required under applicable law and any applicable partnership or operating agreement, (b) such Grantor is or, in the case of any such additional Pledged Collateral will be, the legal record and beneficial owner thereof, (c) in the case of Pledged Stock of a Subsidiary of such Grantor or Pledged Collateral of such Grantor constituting Instruments issued by a Subsidiary of such Grantor, there are no restrictions on the transferability of such Pledged Collateral or such additional Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent, except as provided under applicable laws, (d) the Pledged Stock pledged by such Grantor constitute all of the issued and outstanding shares of Capital Stock of each Issuer owned by such Grantor (except for Excluded Assets), and such Grantor owns no securities convertible into or exchangeable for any shares of Capital Stock of any such Issuer that do not constitute Pledged Stock hereunder, (e) any and all Pledged Collateral Agreements which affect or relate to the voting or giving of written consents with respect to any of the Pledged Stock pledged by such Grantor have been disclosed to the Administrative Agent, and

(f) as to each such Pledged Collateral Agreement relating to the Pledged Stock pledged by such Grantor, (i) to the best knowledge of such Grantor, such Pledged Collateral Agreement contains the entire agreement between the parties thereto with respect to the subject matter thereof and is in full force and effect in accordance with its terms, (ii) to the best knowledge of such Grantor party thereto, there exists no material violation or material default under any such Pledged Collateral Agreement by such Grantor or the other parties thereto, and (iii) such Grantor has not knowingly waived or released any of its material rights under or otherwise consented to a material departure from the terms and provisions of any such Pledged Collateral Agreement.

4.7 Investment Accounts.

(a) Schedule 2 sets forth under the headings “Securities Accounts” and “Commodity Accounts”, respectively, all of the Securities Accounts and Commodity Accounts on the date hereof (other than any Excluded Accounts) in which such Grantor has an interest. Except as disclosed to the Administrative Agent, such Grantor is the sole entitlement holder of each such Securities Account and Commodity Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent) having “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or any securities or other property credited thereto.

(b) Schedule 2 sets forth under the heading “Deposit Accounts” all of the Deposit Accounts on the date hereof (other than any Excluded Accounts) in which such Grantor has an interest and, except as otherwise disclosed to the Administrative Agent, such Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent) having either sole dominion and control (within the meaning of common law) or “control” (within the meaning of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(c) In each case to the extent requested by the Administrative Agent or as otherwise required under the terms of this Agreement or any other Loan Document, such Grantor has taken all actions necessary or desirable to: (i) establish the Administrative Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any Certificated Securities (as defined in Section 9-102 of the UCC); (ii) establish the Administrative Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Accounts constituting Securities Accounts, Commodity Accounts, Securities Entitlements or Uncertificated Securities (each as defined in Section 9-102 of the UCC) (other than Excluded Accounts); (iii) establish the Administrative Agent’s “control” (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts (other than Excluded Accounts); and (iv) deliver all Instruments (as defined in Section 9-102 of the UCC) to the Administrative Agent to the extent required hereunder.

4.8 Receivables. No amount payable to such Grantor under or in connection with any Receivable or other Right to Payment in an amount in excess of \$500,000 is evidenced by any Instrument (other than checks, drafts or other Instruments that will be promptly deposited in an Investment Account) or Chattel Paper which has not been delivered to the Administrative Agent.

4.9 [Reserved].

4.10 Instruments. (i) Such Grantor has not previously assigned any interest in any Instruments (including but not limited to the Pledged Notes) held by such Grantor (other than such interests as will be released on or before the date hereof), and (ii) no Person other than such Grantor owns an interest in such Instruments (whether as joint holders, participants or otherwise).

4.11 Letter of Credit Rights. Such Grantor does not have any Letter-of-Credit Rights having a potential value in excess of \$500,000 except as set forth in Schedule 6 or as have been notified to the Administrative Agent in accordance with Section 5.22.

4.12 Commercial Tort Claims. Such Grantor does not have any Commercial Tort Claims having a potential value in excess of \$500,000 except as set forth in Schedule 7 or as have been notified to the Administrative Agent in accordance with Section 5.21.

SECTION 5. COVENANTS

In addition to the covenants of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that, from and after the date of this Agreement until the Discharge of Obligations:

5.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument (other than checks, drafts or other Instruments that will be promptly deposited in an Investment Account), Certificated Security or Chattel Paper evidencing an amount in excess of \$500,000, such Instrument, Certificated Security or Chattel Paper shall be promptly delivered to the Administrative Agent, duly indorsed in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement.

5.2 Maintenance of Insurance.

(a) Such Grantor will maintain, with financially sound and reputable companies, insurance policies insuring such Grantor's and its Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located, including insuring the Inventory and Equipment against loss by fire, explosion, theft and such other casualties as is customary in such Grantor's industry. If the Borrower or its Subsidiaries fails to maintain such insurance, Administrative Agent may arrange for such insurance, but at the Borrower's expense and without any responsibility on the Administrative Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims.

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Administrative Agent of written notice thereof, and (ii) name the Administrative Agent as an additional insured party or lender loss payee, as applicable.

5.3 Maintenance of Perfected Security Interest; Further Documentation.

(a) Such Grantor shall take all actions reasonably requested by the Administrative Agent to maintain the security interests of the Administrative Agent (for the benefit of the Secured Parties) created by this Agreement as perfected security interests having at least the priority described in Section 4.2 (including, without limitation, using commercially reasonable efforts to take any and all actions reasonably requested by the Administrative Agent to comply with the Federal Assignment of Claims Act of 1940 with respect to any Accounts in excess of \$1,500,000 in the aggregate in which the Account Debtor is a United States government entity or any department, agency or instrumentality thereof) and shall take all actions reasonably requested by the Administrative Agent to defend such security interests against the claims and demands of all Persons whomsoever, subject in each case to Liens permitted by the Credit Agreement and to the rights of such Grantor under the Loan Documents to dispose of the Collateral.

(b) Such Grantor will furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith, in each case as the Administrative Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Investment Accounts, Letter-of-Credit Rights and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the UCC) with respect thereto to the extent required hereunder.

5.4 Changes in Locations, Name, Etc. Such Grantor will not, except upon 15 days' (or such shorter period as may be agreed to by the Administrative Agent) prior written notice to the Administrative Agent and delivery to the Administrative Agent of (a) all additional executed financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein, and (b) if applicable, a written supplement to Schedule 4 showing the relevant new location of chief executive office or sole place of business, as appropriate:

(i) change its identification number from the number (if any) or the location of its chief executive office or sole place of business, as appropriate, from that referred to in Section 4.3;

(ii) change its name; or

(iii) change its jurisdiction of organization from the jurisdiction of organization (if any) referred to in Section 4.3.

5.5 Notices. Such Grantor will advise the Administrative Agent promptly, in reasonable detail, of any Lien (other than Liens permitted under Section 7.3 of the Credit Agreement) on any of the Collateral.

5.6 Instruments; Investment Property.

(a) (i) Each Grantor shall promptly within the time period required under Section 6.12 of the Credit Agreement notify the Administrative Agent if any Grantor shall have obtained or otherwise acquired any Instruments, Documents, Chattel Paper, certificated securities with respect to any Investment Property, any letters of credit, and all other Rights to Payment held by such Grantor at any time evidenced by promissory notes, trade acceptances or other instruments, in each case, with a value in excess of \$500,000 individually or \$1,000,000 in the aggregate, and (ii) upon the request of the Administrative Agent, such Grantor will (A) immediately (or such later time if permitted under the Credit Agreement) deliver to the Administrative Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all such Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property held by such Grantor, all letters of credit of such Grantor, and all other Rights to Payment held by such Grantor at any time

evidenced by promissory notes, trade acceptances or other instruments, and (B) provide such notice, obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights held by such Grantor, as the Administrative Agent shall reasonably specify.

(b) If such Grantor shall become entitled to receive or shall receive any certificate (including any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any Pledged Collateral, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Administrative Agent and the other Secured Parties, hold the same in trust for the Administrative Agent and the other Secured Parties and deliver the same forthwith to the Administrative Agent in the exact form received, duly indorsed by such Grantor to the Administrative Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Administrative Agent so requests, signature guaranteed, to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for the Secured Obligations; provided that in no event shall this Section 5.6(b) apply to any Excluded Assets. If an Event of Default shall have occurred and be continuing, any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be paid over to the Administrative Agent to be held by it hereunder as additional collateral security for the Secured Obligations, and in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional collateral security for the Secured Obligations. If an Event of Default shall have occurred and be continuing, if any sums of money or property so paid or distributed in respect of such Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, hold such money or property in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Secured Obligations.

(c) In the case of any Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Capital Stock issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 5.6(a) and (b), with respect to the Pledged Collateral issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 with respect to the Capital Stock issued by it.

5.7 Securities Accounts: Deposit Accounts.

(a) Subject to Section 3.3(f), with respect to any Securities Account (other than Excluded Accounts), such Grantor shall cause any applicable securities intermediary maintaining such Securities Account to show on its books that the Administrative Agent is the entitlement holder with respect to such Securities Account, and, if requested by the Administrative Agent, promptly cause such securities intermediary to enter into an agreement in form and substance satisfactory to the Administrative Agent with respect to such Securities Account pursuant to which such securities intermediary shall agree to comply with the Administrative Agent's "entitlement orders" without further consent by such Grantor, as requested by the Administrative Agent; and

(b) Subject to Section 3.3(f), with respect to any Deposit Account (other than Excluded Accounts), such Grantor shall enter into and shall promptly cause the depository institution maintaining such account to enter into an agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which the Administrative Agent shall be granted “control” (within the meaning of Section 9-104 of the UCC) over such Deposit Account.

(c) The Administrative Agent agrees that it will not communicate “entitlement orders” with respect to the Deposit Accounts and Securities Accounts of the Grantors unless an Event of Default has occurred and is continuing.

(d) No Grantor shall transfer funds or other moneys from domestic Investment Accounts to the Canadian Collection Account for any purpose other than to pay for operating expenses of the Borrower in Canada in the ordinary course of business.

(e) Such Grantor shall give the Administrative Agent prompt (and in any event within 10 Business Days of such establishment (as such period may be extended by the Administrative Agent in its sole discretion)) notice of the establishment of any new Deposit Account and of any new Securities Account (other than Excluded Accounts) established by such Grantor with respect to any Investment Property held by such Grantor.

5.8 [Reserved].

5.9 [Reserved].

5.10 Defense of Collateral. At the reasonable request of the Administrative Agent, Grantors will appear in and defend any action, suit or proceeding which may affect to a material extent its title to, or right or interest in, or the Administrative Agent’s right or interest in, any material portion of the Collateral.

5.11 Preservation of Collateral. Grantors will do and perform all reasonable acts reasonably requested by the Administrative Agent that may be necessary and appropriate to maintain, preserve and protect the Collateral.

5.12 Compliance with Laws, Etc. Such Grantor will comply in all material respects with all laws, regulations and ordinances, and all policies of insurance, relating in a material way to the possession, operation, maintenance and control of the Collateral, except where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect or result in a violation of Section 5.2 hereof.

5.13 Location of Books and Chief Executive Office. Such Grantor will: (a) keep all Books pertaining to the Rights to Payment of such Grantor at the locations set forth in Schedule 4; and (b) give at least 15 days’ prior written notice to the Administrative Agent of any changes in any location where Books pertaining to the Rights to Payment of such Grantor are kept, including any change of name or address of any service bureau, computer or data processing company or other Person preparing or maintaining any such Books or collecting Rights to Payment for such Grantor.

5.14 Location of Collateral. Such Grantor shall not remove any Inventory from the United States (other than in connection with manufacturing, distribution and/or sales of Inventory in the ordinary course of such Grantor’s business or for bona fide commercial purposes in good faith).

5.15 [Reserved].

5.16 Disposition of Collateral. Such Grantor will not surrender or lose possession of (other than to the Administrative Agent), sell, lease, rent, or otherwise dispose of or transfer any of the Collateral held by such Grantor or any right or interest therein, except to as permitted by the Loan Documents.

5.17 Liens. Such Grantor will keep the Collateral held by such Grantor free of all Liens except Liens permitted under Section 7.3 of the Credit Agreement.

5.18 Expenses. Such Grantor will pay all expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral held by such Grantor, to the extent the failure to pay any such expenses could reasonably be expected to materially and adversely affect the value of the Collateral.

5.19 [Reserved].

5.20 Chattel Paper. Such Grantor will not create any Chattel Paper without placing a legend on such Chattel Paper acceptable to the Administrative Agent indicating that the Administrative Agent has a security interest in such Chattel Paper. Such Grantor will give the Administrative Agent prompt notice if such Grantor at any time holds or acquires an interest in any Chattel Paper, including any Electronic Chattel Paper and shall comply, in all respects, with the provisions of Section 5.1 hereof.

5.21 Commercial Tort Claims. Such Grantor will give the Administrative Agent prompt notice if such Grantor shall at any time hold or acquire any Commercial Tort Claim with a potential value in excess of \$500,000, and unless otherwise consented by the Administrative Agent, such Grantor shall enter into a supplement to this Agreement granting to the Administrative Agent a Lien in such Commercial Tort Claim.

5.22 Letter-of-Credit Rights. Such Grantor will give the Administrative Agent prompt notice if such Grantor shall at any time hold or acquire any Letter-of-Credit Rights with a potential value in excess of \$500,000.

5.23 Shareholder Agreements and Other Agreements.

(a) Such Grantor shall comply with all of its obligations under any shareholders agreement, operating agreement, partnership agreement, voting trust, proxy agreement or other agreement or understanding (collectively, the “*Pledged Collateral Agreements*”) to which it is a party and shall enforce all of its rights thereunder, except, with respect to any such Pledged Collateral Agreement relating to any Pledged Collateral issued by a Person other than a Subsidiary of a Grantor, to the extent the failure to enforce any such rights could reasonably be expected to materially and adversely affect the value of the Pledged Collateral to which any such Pledged Collateral Agreement relates.

(b) Such Grantor agrees that no Pledged Stock (i) shall be dealt in or traded on any securities exchange or in any securities market, (ii) shall constitute an investment company security, or (iii) shall be held by such Grantor in a Securities Account.

(c) Other than as expressly permitted by the Credit Agreement, such Grantor shall not vote to enable or take any other action to amend or terminate, or waive compliance with any of the terms of, any such Pledged Collateral Agreement, certificate or articles of incorporation, bylaws or other organizational documents in any way that materially and adversely affects the validity, perfection or priority of the Administrative Agent’s security interest therein.

SECTION 6. REMEDIAL PROVISIONS

Each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that, from and after the date of this Agreement until the Discharge of Obligations:

6.1 Certain Matters Relating to Receivables.

At the Administrative Agent's request, after the occurrence and during the continuance of an Event of Default, each Grantor shall deliver to the Administrative Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts.

6.2 Communications with Obligor; Grantors Remain Liable.

(a) The Administrative Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Receivables.

(b) Upon the request of the Administrative Agent, at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables that the Receivables have been assigned to the Administrative Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Administrative Agent or any Lender of any payment relating thereto, nor shall the Administrative Agent nor any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.3 Investment Property.

(a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given written notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Collateral and all payments made in respect of the Pledged Notes to the extent not prohibited by the Credit Agreement, and to exercise all voting and corporate or other organizational rights with respect to the Investment Property of such Grantor; provided, however, that no vote shall be cast or corporate or other organizational right exercised or other action taken which, in the Administrative Agent's reasonable discretion, would materially impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing and the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative Agent shall have the right (A) to receive any and all cash dividends, payments or other Proceeds paid in respect of the Investment Property (including the Pledged Collateral) of any or all of the Grantors and make application thereof to the Secured Obligations in the order set forth in Section 6.5, and (B) to exchange uncertificated Pledged Collateral for certificated Pledged Collateral and to exchange certificated Pledged Collateral for certificates of larger or smaller denominations, for any purpose consistent with this Agreement (in each case to the extent such exchanges are permitted under the applicable Pledged Collateral Agreements or otherwise agreed upon by the Issuer of such Pledged Collateral), and (ii) any and all of such Investment Property shall be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of any such Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other organizational structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Collateral or Pledged Notes pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Pledged Collateral or, as applicable, the Pledged Notes directly to the Administrative Agent.

(d) If an Event of Default has occurred and is continuing, the Administrative Agent shall have the right to apply the balance from any Deposit Account or Securities Account (other than any Excluded Account) or instruct the bank or securities intermediary, as applicable, at which any Deposit Account or Securities Account (other than any Excluded Account) is maintained to pay the balance of any such Deposit Account or Securities Account to or for the benefit of the Administrative Agent, for application in to the Obligations in accordance with the Credit Agreement.

6.4 Proceeds to be Turned Over To Administrative Agent. In addition to the rights of the Administrative Agent and the other Secured Parties specified in Section 6.1 of this Agreement, if an Event of Default has occurred and is continuing, all Proceeds received by any Grantor consisting of cash, checks, Cash Equivalents and other near-cash items shall be held by such Grantor in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account over which it maintains control, within the meaning of the UCC. All Proceeds while held by the Administrative Agent in a Collateral Account (or by such Grantor in trust for the Administrative Agent and the other Secured Parties) shall continue to be held as collateral security for all the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 6.5.

6.5 Application of Proceeds. If an Event of Default has occurred and is continuing at any date of determination, at any time at the Administrative Agent's election, the Administrative Agent may apply all or any part of Proceeds constituting Collateral, whether or not held in any Collateral Account, in payment of the Secured Obligations in accordance with the Credit Agreement.

6.6 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC or any other applicable law or in equity. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or any other Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent or any other Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, in accordance with the provisions of Section 6.5, only after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and the other Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, in such order as is contemplated by Section 8.3 of the Credit Agreement, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including Section 9-615(a)(3) of the UCC, but only to the extent of the surplus, if any, owing to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Administrative Agent or any other Secured Party arising out of the exercise by any of them of any rights hereunder, except to the extent caused by the gross negligence or willful misconduct of the Administrative Agent or such Secured Party or their respective agents. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition. Administrative Agent may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon any Grantor or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to any Grantor's Deposit Accounts in which Administrative Agent's Liens are perfected by control under Section 9-104 or any other section of the UCC, instruct the bank maintaining such Deposit Account for the applicable Grantor to pay the balance of such Deposit Account to or for the benefit of the Administrative Agent, and (ii) with respect to any Grantor's Securities Accounts in which Administrative Agent's Liens are perfected by control under Section 9-106 or any other section of the UCC, instruct the securities intermediary maintaining such Securities Account for the applicable Grantor to (A) transfer any cash in such Securities Account to or for the benefit of Administrative Agent, or (B) liquidate any financial assets in such Securities Account that are

customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Administrative Agent. Each Grantor hereby acknowledges that the Secured Obligations arise out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing Administrative Agent shall have the right to an immediate writ of possession without notice of a hearing. Administrative Agent shall have the right to the appointment of a receiver for the properties and assets of each Grantor, and each Grantor hereby consents to such rights and such appointment and hereby waives any objection such Grantor may have thereto or the right to have a bond or other security posted by Administrative Agent.

6.7 Pledged Stock.

(a) If an Event of Default shall occur and be continuing, the Administrative Agent may exercise in respect of the Pledged Stock, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Pledged Stock), and the Administrative Agent may also in its sole discretion, in accordance with applicable law, without notice except as specified below, sell the Pledged Stock or any part thereof in one or more parcels at public or private sale, at any exchange or broker's board or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Administrative Agent may deem commercially reasonable, irrespective of the impact of any such sales on the market price of the Pledged Stock. The Administrative Agent may be the purchaser of any or all of the Pledged Stock at any such sale and the Administrative Agent shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Stock 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 Pledged Stock payable by the Administrative Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Pledged Stock regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Administrative Agent arising by reason of the fact that the price at which any Pledged Stock may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Administrative Agent accepts the first offer received and does not offer such Pledged Stock to more than one offeree. If the proceeds of any sale or other disposition of the Pledged Stock are insufficient to pay all the Secured Obligations, each Grantor shall be liable for the deficiency and the fees of any attorneys employed by the Administrative Agent to collect such deficiency.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Stock, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof, provided that if the Administrative Agent resorts to such a private sale, it shall use its good faith judgment in carrying out such sale. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have

been made in a commercially reasonable manner. Subject to its compliance with state securities laws applicable to private sales, the Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Stock for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) If an Event of Default shall occur and be continuing, each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be necessary and to the extent requested by the Administrative Agent to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 6.7 valid and binding and in compliance with any applicable Requirement of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.7 will cause irreparable injury to the Administrative Agent and the other Secured Parties, that the Administrative Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Credit Agreement.

6.8 [Reserved].

6.9 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Secured Obligations and the reasonable fees and disbursements of any attorneys employed by the Administrative Agent or any other Secured Party to collect such deficiency.

SECTION 7. THE ADMINISTRATIVE AGENT

Each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that:

7.1 Administrative Agent's Appointment as Attorney-in-Fact, etc.

(a) Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) use any Intellectual Property or IP Licenses of such Grantor, including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling inventory or other Collateral and to collect any amounts due under accounts, contracts or other Collateral of such Grantor;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; and (G) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on any category of past due ABR Loans under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Duty of Administrative Agent. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, any other Secured Party nor any of their respective officers, directors, employees or agents 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 Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the other Secured Parties hereunder are solely to protect the Administrative Agent's and the other Secured Parties' interests in the Collateral and shall not impose any duty upon the Administrative Agent or any other Secured Party to exercise any such powers. The Administrative Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

7.3 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

SECTION 8. MISCELLANEOUS

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

8.2 Notices. All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Administrative Agent nor any other Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default, as applicable. No failure to exercise, nor any delay in exercising, on the part of the Administrative Agent or any other Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Administrative Agent or any other Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Administrative Agent or such other Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification

(a) Each Guarantor agrees to pay or reimburse the Administrative Agent and each other Secured Party for all its costs and expenses incurred in collecting against such Guarantor under the guaranty contained in Section 2 of this Agreement or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party, including the fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to the Administrative Agent and of counsel to each other Secured Party.

(b) Each Guarantor agrees to pay, and to save the Administrative Agent and each other Secured Party harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Guarantor agrees to pay, and to save the Administrative Agent and each other Secured Party harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to the Credit Agreement.

(d) The agreements in this Section 8.4 shall survive repayment of the Secured Obligations and any other amounts payable under the Credit Agreement and the other Loan Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Administrative Agent and each other Secured Party and their respective successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

8.6 Set Off. Each Grantor hereby irrevocably authorizes the Administrative Agent and each other Secured Party and any Affiliate thereof at any time and from time to time after the occurrence and during the continuance of an Event of Default, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to setoff and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), 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 the Administrative Agent or such Secured Party or such Affiliate to or for the credit or the account of such Grantor, or any part thereof in such amounts as the Administrative Agent or such Secured Party may elect, against and on account of the Secured Obligations and liabilities of such Grantor then due to the Administrative Agent or such Secured Party hereunder and under the other Loan Documents and claims of every nature and description of the Administrative Agent or such Secured Party against such Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as the Administrative Agent or such Secured Party may elect, whether or not the Administrative Agent or any other Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The rights of the Administrative Agent and each other Secured Party under this Section 8.6 are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Administrative Agent or such other Secured Party may have.

8.7 Counterparts. This Agreement may be executed and delivered by one or more of the parties to this Agreement on any number of separate counterparts (including delivery by facsimile and/or electronic mail), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8 Severability. Any provision of this Agreement which 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.

8.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any other Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

8.11 GOVERNING LAW. THE VALIDITY OF THIS AGREEMENT (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR RELATED HERETO SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. This Section 8.11 shall survive the Discharge of Obligations.

8.12 Submission to Jurisdiction; Waivers. Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-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 the State of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives 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 Grantor at its address referred to in Section 8.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction;

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 8.12 any special, exemplary, punitive or consequential damages; and

(f) acknowledged and agrees that Section 10.14(c) of the Credit Agreement is hereby incorporated by reference.

8.13 Excluded Assets. To ensure that a Lien and security interest is granted on assets or property otherwise excluded from Collateral under the definition of "Excluded Assets", each Grantor shall, if reasonably requested by the Administrative Agent, use its commercially reasonable efforts to obtain any required Governmental Approvals or other consents from any Person with respect to any material license or material Equipment lease with such Person entered into by such Grantor that requires such Governmental Approval or consent as a condition to the creation by such Grantor of a Lien on any right, title or interest in such license or Equipment lease.

8.14 Intellectual Property License. For the sole purpose of enabling Administrative Agent to exercise rights and remedies under this Agreement and the other Loan Documents (including, without limitation, in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase any Collateral) at such time as Administrative Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to Administrative Agent, for the benefit of the Secured Parties, (i) an irrevocable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor), including in such license the right to sublicense (to the extent such sublicense is not subject to an enforceable restriction pursuant to a license agreement to which such Grantor is a party), use and practice any Intellectual Property and all Excluded Intellectual Property now owned or hereafter acquired by such Grantor, including after the sale thereof to any third party, or now or hereafter licensed to such Grantor and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof (subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by the Grantors), and (ii) an irrevocable license (without payment of rent or other compensation to such Grantor) to use, operate and occupy all equipment and real property owned, operated, leased, subleased or otherwise occupied by such Grantor.

8.15 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Administrative Agent nor any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among any of the Secured Parties or among the Grantors and any of the Secured Parties.

8.16 Additional Grantors. Each Subsidiary of a Grantor that is required to become a party to this Agreement pursuant to Section 6.12 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.17 Releases.

(a) Upon the Discharge of Obligations, the Collateral shall be released from the Liens in favor of the Administrative Agent and the other Secured Parties created hereby, this Agreement shall terminate with respect to the Administrative Agent and the other Secured Parties, and all obligations

(other than those expressly stated to survive such termination) of each Grantor to the Administrative Agent or any other Secured Party hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the sole expense of any Grantor following any such termination, the Administrative Agent shall promptly deliver such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor to a Person that is not a Grantor in a transaction permitted by Section 7 of the Credit Agreement, (a) such Collateral shall, upon such sale, transfer or disposition, automatically be released from the Liens created hereby on such Collateral, and (b) then the Administrative Agent, at the request and sole expense of such Grantor, shall promptly execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral, as applicable. At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be sold, transferred or otherwise disposed of to a Person other than a Grantor in a transaction permitted by Section 7 of the Credit Agreement; provided that the Borrower shall have delivered to the Administrative Agent, at least ten days, or such shorter period as the Administrative Agent may agree, prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with terms and provisions of the Credit Agreement and the other Loan Documents.

8.18 WAIVER OF JURY TRIAL. EACH GRANTOR AND THE ADMINISTRATIVE AGENT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

8.19 Amendment and Restatement of Existing Guarantee Agreement. This Agreement amends, restates, supersedes, and replaces in its entirety the Existing Guarantee Agreement. The security interest granted by each Grantor in the "Collateral" (other than Excluded Intellectual Property to the extent constituting an Excluded Asset hereunder) under and as defined in the Existing Guarantee Agreement continues without interruption under this Agreement and such security interest is hereby ratified and confirmed in all respects. Nothing contained herein shall be construed as a novation or termination of the obligations outstanding under the Existing Guarantee Agreement, which shall remain in all respects continuing and in full force and effect, except as modified hereby. Nothing express or implied in this Agreement shall be construed as a release or discharge of any Grantor under the Existing Guarantee Agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Second Amended and Restated Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

GRANTORS:

FITBIT, INC.

By: _____
Name: _____
Title: _____

FITSTAR, INC.

By: _____
Name: _____
Title: _____

ADMINISTRATIVE AGENT:

SILICON VALLEY BANK

By: _____
Name: _____
Title: _____

SCHEDULE 1

NOTICE ADDRESSES OF GUARANTORS

Guarantor

Notice Address

SCHEDULE 2

DESCRIPTION OF INVESTMENT PROPERTY

Pledged Stock:

Grantor Issuer Class of Capital Stock Certificate No. No. of Shares / Units

Pledged Notes:

Securities Accounts:

Grantor Securities Intermediary Address Account Number(s)

Commodity Accounts:

Deposit Accounts:

Grantor Depository Bank Address Account Number(s)

SCHEDULE 3

FILINGS AND OTHER ACTIONS

Uniform Commercial Code Filings

1. UCC Financing Statement naming Fitbit, Inc., as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.
2. UCC Financing Statement naming FitStar, Inc., as “debtor” and the Administrative Agent as “secured party” to be filed with the Secretary of State of the State of Delaware.
3. UCC Financing Statement naming Fitbit, Inc., as “debtor” and the Administrative Agent as “secured party” to be filed with the appropriate filing office of the Province of Ontario.

Other Actions

SCHEDULE 4

**LOCATION OF JURISDICTION OF ORGANIZATION,
CHIEF EXECUTIVE OFFICE AND LOCATION OF BOOKS**

Grantor

Jurisdiction of
Organization

Organizational
Identification
Number

Location of
Chief Executive
Office

Location of
Books

SCHEDULE 5

LOCATIONS OF EQUIPMENT AND INVENTORY

Grantor

Address Location

SCHEDULE 6

LETTER OF CREDIT RIGHTS

SCHEDULE 7

COMMERCIAL TORT CLAIMS

ANNEX 1 TO
SECOND AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT

FORM OF
ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT, dated as of [], is executed and delivered by [] (the “ *Additional Grantor* ”), in favor of SILICON VALLEY BANK, as administrative agent (in such capacity, the “ *Administrative Agent* ”) for the banks and other financial institutions or entities (the “ *Lenders* ”) from time to time parties to that certain Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “ *Credit Agreement* ”), by and among, among, among others, FITBIT, INC., a Delaware corporation (the “ *Borrower* ”), the Lenders party thereto and the Administrative Agent. All capitalized terms not defined herein shall have the respective meanings ascribed to such terms in such Credit Agreement.

WITNESSETH:

WHEREAS, in connection with the Credit Agreement, the Borrower and certain of its Affiliates (other than the Additional Grantor) have entered into that certain Second Amended and Restated Guarantee and Collateral Agreement, dated as of December 10, 2015, in favor of the Administrative Agent for the benefit of the Secured Parties defined therein (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “ *Guarantee and Collateral Agreement* ”);

WHEREAS, the Borrower is required, pursuant to Section 6.12 of the Credit Agreement to cause the Additional Grantor to become a party to the Guarantee and Collateral Agreement in order to grant in favor of the Administrative Agent (for the ratable benefit of the Lenders) the Liens and security interests therein specified and provide its guarantee of the Obligations as therein contemplated; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. Guarantee and Collateral Agreement. By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Guarantee and Collateral Agreement, (a) hereby becomes a party to the Guarantee and Collateral Agreement as both a “Grantor” and a “Guarantor” thereunder with the same force and effect as if originally named therein as a Grantor and a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor and a Guarantor thereunder, (b) hereby grants to the Administrative Agent, for the benefit of the Secured Parties, as security for the Secured Obligations, a security interest in all of the Additional Grantor’s right, title and interest in any and to all Collateral of the Additional Grantor, in each case whether now owned or hereafter acquired or in which the Additional Grantor now has or hereafter acquires an interest and wherever the same may be located, but subject in all respects to the terms, conditions and exclusions set forth in the Guarantee and Collateral Agreement, and (c) jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrowers and the other Loan Parties when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations. The information set forth in Schedule 1 hereto is hereby added to the information set forth in the Schedules to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the

representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement (x) that is qualified by materiality is true and correct, and (y) that is not qualified by materiality, is true and correct in all material respects, in each case, on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty was true and correct in all material respects as of such earlier date).

2. Governing Law. **THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** The provisions of Sections 8.11 and 8.12 of the Guarantee and Collateral Agreement are hereby incorporated by reference.

3. Loan Document. This Assumption Agreement shall constitute a Loan Document under the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: _____
Name:
Title:

Supplement to Schedule 1

Supplement to Schedule 2

Supplement to Schedule 3

Supplement to Schedule 4

Supplement to Schedule 5

Supplement to Schedule 6

Supplement to Schedule 7

ANNEX 2 TO
SECOND AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT

FORM OF
PLEDGE SUPPLEMENT

To: Silicon Valley Bank, as Administrative Agent

Re: FITBIT, INC.

Date: _____

Ladies and Gentlemen:

This Pledge Supplement (this “**Pledge Supplement**”) is made and delivered pursuant to Section 3.3(g) of that certain Second Amended and Restated Guarantee and Collateral Agreement, dated as of December 10, 2015 (as amended, modified, renewed or extended from time to time, the “**Guarantee and Collateral Agreement**”), among each Grantor party thereto (each a “**Grantor**” and collectively, the “**Grantors**”), and Silicon Valley Bank (the “**Administrative Agent**”). All capitalized terms used in this Pledge Supplement and not otherwise defined herein shall have the meanings assigned to them in either the Guarantee and Collateral Agreement or the Credit Agreement (as defined in the Guarantee and Collateral Agreement), as the context may require.

The undersigned, *[insert name of Grantor]*, a *[corporation, partnership, limited liability company, etc.]*, confirms and agrees that all Pledged Collateral of the undersigned, including the property described on the supplemental schedule attached hereto, shall be and become part of the Pledged Collateral and shall secure all Secured Obligations.

Schedule 2 to the Guarantee and Collateral Agreement is hereby amended by adding to such Schedule 2 the information set forth in the supplement attached hereto.

This Pledge Supplement shall constitute a Loan Document under the Credit Agreement.

THIS PLEDGE SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. The provisions of Sections 8.11 and 8.12 of the Guarantee and Collateral Agreement are hereby incorporated by reference.

IN WITNESS WHEREOF, the undersigned has executed this Pledge Supplement, as of the date first above written.

[NAME OF APPLICABLE GRANTOR]

By: _____
Name: _____
Title: _____

**SUPPLEMENT TO ANNEX 2
TO THE SECURITY AGREEMENT**

<u>Name of Subsidiary</u>	<u>Number of Units/Shares Owned</u>	<u>Certificate(s) Numbers</u>	<u>Date Issued</u>	<u>Class or Type of Units or Shares</u>	<u>Percentage of Subsidiary's Total Equity Interests Owned</u>
---------------------------	---	-----------------------------------	--------------------	---	--

Exhibit B

FORM OF COMPLIANCE CERTIFICATE

FITBIT, INC.

Date: _____, 201

This Compliance Certificate is delivered pursuant to Section 6.2(b)(ii) of that certain Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “*Credit Agreement*”), among (a) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (c) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders (in such capacities, the “*Administrative Agent*”), (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

The undersigned, a duly authorized and acting Responsible Officer of the Borrower, hereby certifies, in his/her capacity as an officer of the Borrower, and not in any personal capacity, as follows:

I have reviewed and am familiar with the contents of this Compliance Certificate.

I have reviewed the terms of the Credit Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of the Borrower and its Subsidiaries during the accounting period covered by the financial statements attached hereto as Attachment 1 (the “*Financial Statements*”). Except as set forth on Attachment 2, such review did not disclose the existence during or at the end of the accounting period covered by the Financial Statements, and I have no knowledge of the existence as of the date of this Compliance Certificate, of any condition or event which constitutes a Default or an Event of Default.

Attached hereto as Attachment 3 are the computations showing compliance with the covenants set forth in Section 7.1 of the Credit Agreement.

To the extent not previously disclosed to the Administrative Agent, attached hereto as Attachment 4 is a description of any change in the jurisdiction of organization of any Loan Party.

[After giving *pro forma* effect to the Increase and the use of proceeds thereof on the date hereof, the Borrower has satisfied the requirements set forth in Section 2.12(b)(v) of the Credit Agreement. Attached hereto as Attachment 5 are calculations demonstrating compliance with the requirements of Section 2.12(b)(v) of the Credit Agreement.]¹

[Remainder of page intentionally left blank; signature page follows]

¹ For use in connection with an Increase.

IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

FITBIT, INC.

By: _____
Name: _____
Title: _____

Exhibit B

[Attach Financial Statements]

Attachment 1

Except as set forth below, no Default or Event of Default has occurred. [If a Default or Event of Default has occurred, the following describes the nature of the Default or Event of Default in reasonable detail and the steps, if any, being taken or contemplated by the Borrower to be taken on account thereof.]

Preliminary Note to Compliance Certificate Calculations

I. Section 7.1(a)— Consolidated Fixed Charge Coverage Ratio

The information described in this Section I is as of [], [] (the “*Statement Date*”), and pertains to the Subject Period defined below, as applicable.

A. Consolidated EBITDA for the Subject Period: ²

(“*Subject Period*” means the four fiscal quarter period ending on the Statement Date)

1. Consolidated Net Income for the Subject Period:	\$ _____
2. The sum, without duplication, of the following amounts of Borrower and its consolidated Subsidiaries for the Subject Period to the extent deducted in determining Consolidated Net Income for the Subject Period:	\$ _____
(a) Consolidated Interest Expense for the Subject Period:	\$ _____
(b) Provision for income taxes for the Subject Period:	\$ _____
(c) Depreciation expenses for the Subject Period:	\$ _____
(d) Amortization expenses for the Subject Period:	\$ _____
(e) (x) \$5,100,000:	\$ _____
(y) reasonable costs, fees and expenses in connection with the Borrower’s equity offerings of its Capital Stock (whether or not consummated) that are permitted by the Loan Documents	\$ _____
(f) non-cash stock compensation expenses:	\$ _____
(g) non-cash exchange, translation or performance losses relating to any foreign currency hedging transactions or currency fluctuations:	\$ _____

² Consolidated EBITDA for any period shall be determined on a Pro Forma Basis.

(h)	costs, fees and expenses (1) in connection with the execution and delivery of this Agreement and the other Loan Documents, (2) incurred in connection with the establishment, repayment and termination of the Cash Flow Credit Agreement, or (3) paid by any Group Member after the Closing Date in connection with its obligations under the Loan Documents which are incurred not later than six (6) months after the Closing Date:	\$ _____
(i)	one-time costs, fees, and expenses in connection with Permitted Acquisitions or other transactions that if closed, would have constituted a Permitted Acquisition:	\$ _____
(j)	non-cash purchase accounting adjustments (including, but not limited to deferred revenue write down) and any adjustments as required or permitted by the application of FASB 141 (requiring the use of purchase method of accounting for acquisitions and consolidations), FASB 142 (relating to changes in accounting for the amortization of good will and certain other intangibles) and FASB 144 (relating to the write downs of long-lived assets), in each case, in connection with Permitted Acquisitions:	\$ _____
(k)	non-cash charges for goodwill and other intangible write-offs and write-downs in connection with Permitted Acquisitions or otherwise:	\$ _____
(l)	other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period):	\$ _____
(m)	other non-recurring items reducing Consolidated Net Income in an amount not to exceed 5% of Consolidated EBITDA for such period (calculated before giving effect to such 'add back' for such non-recurring items) or such greater amount approved by the Administrative Agent and the Required Lenders in writing as an 'add back' to Consolidated EBITDA	\$ _____
3.	The sum, without duplication, of the following amounts of Borrower and its consolidated Subsidiaries for the Subject Period to the extent included in determining Consolidated Net Income for the Subject Period:	\$ _____
(a)	the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period):	\$ _____
(b)	interest income:	\$ _____
4.	Consolidated EBITDA for the Subject Period (Lines I.A.1 <u>plus</u> I.A.2 <u>minus</u> I.A.3):	\$ _____

B. Taxes based on income actually paid or required to be paid by the Borrower and its Subsidiaries in cash during the Subject Period (net of any cash refunds received, but only to the extent such adjustment would not result in a negative number):	\$ _____
C. Cash dividends and distributions paid to any Person that is not a Loan Party during the Subject Period:	\$ _____
D. Consolidated Capital Expenditures for the Subject Period (other than Capital Expenditures to the extent financed with the proceeds of Indebtedness (other than proceeds of Loans)):	\$ _____
E. Consolidated Fixed Charges for the Subject Period:	
1. Consolidated Interest Expense accrued for the Subject Period (other than interest paid-in-kind, amortization of financing fees, and other non-cash Consolidated Interest Expense):	\$ _____
2. Payments made or required to be paid during the Subject Period by the Borrower and its Subsidiaries on account of principal of Indebtedness of the Borrower and its Subsidiaries (excluding Loans to the extent the Borrower has the right to continue, reborrow or convert such Loans pursuant to <u>Section 2.13</u> of the Credit Agreement and any intercompany Indebtedness owed to the Borrower or any of its consolidated Subsidiaries):	\$ _____
3. Consolidated Fixed Charges for the Subject Period (Lines I.E.1+I.E.2) (without duplication):	\$ _____
F. Consolidated Fixed Charge Coverage Ratio for the Subject Period (ratio of Lines (I.A.4 <u>minus</u> I.B <u>minus</u> I.C. <u>minus</u> I.D.) to I.E.3):	_____ to 1
<i>Minimum required:</i>	1.15 to 1
<i>Covenant compliance:</i> Yes <input type="checkbox"/> No <input type="checkbox"/>	

II. Section 7.1(b)— Consolidated Leverage Ratio

The information described in this Section I is as of [], [] (the “*Statement Date*”), and pertains to the Subject Period defined below, as applicable.

A. Consolidated EBITDA for the Subject Period (from Line I.A.4 above):	\$ _____
B. Consolidated Total Indebtedness:	\$ _____
C. Consolidated Leverage Ratio for the Subject Period (ratio of Lines II.B. to II.A.):	_____ to 1
<i>Maximum allowed:</i>	3:00 to 1:00
<i>Covenant compliance:</i> Yes <input type="checkbox"/> No <input type="checkbox"/>	

Change in the Jurisdiction of Organization of any Loan Party

FORM OF [SECRETARY'S][MANAGING MEMBER'S] CERTIFICATE

[NAME OF APPLICABLE LOAN PARTY]

This Certificate is delivered pursuant to Section 5.1(e) of that certain Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “*Credit Agreement*”), among (a) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (c) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders, (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners. The undersigned [Secretary][Managing Member] of [the Borrower][*insert the name of the certifying Loan Party*], a [] [corporation][limited liability company], the “*Certifying Loan Party*”) hereby certifies in his/her capacity as an officer of the Borrower, and not in any personal capacity, as follows:

1. The representations and warranties of [the Borrower][the Certifying Loan Party] set forth in each of the Loan Documents to which it is a party or which are contained in any certificate furnished by or on behalf of [the Borrower][the Certifying Loan Party] pursuant to any of the Loan Documents to which it is a party are, (i) to the extent qualified by materiality, true and correct, and (ii) to the extent not qualified by materiality, true and correct in all material respects, in each case, on and as of the date hereof with the same effect as if made on the date hereof, except to the extent 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.

2. I am the duly elected and qualified [Secretary][Managing Member] of [the Borrower][the Certifying Loan Party].

3. No Default or Event of Default has occurred and is continuing as of the date hereof or after giving effect to the Loans to be made on the date hereof and the use of proceeds thereof.

4. The conditions precedent set forth in Section 5.1, of the Credit Agreement were satisfied or waived, as applicable, as of the Closing Date.

5. There are no liquidation or dissolution proceedings pending or, to my knowledge, threatened against [the Borrower][the Certifying Loan Party], nor has any other event occurred which could be reasonably likely to materially adversely affect or threaten the continued [corporate][company] existence of [the Borrower][the Certifying Loan Party].

6. [The Borrower][The Certifying Loan Party] is a [corporation][limited liability company] duly [incorporated][organized], validly existing and in good standing under the laws of the jurisdiction of its organization.

7. Attached hereto as Annex 1 is a true and complete copy of the resolutions duly adopted by the Board of [Directors][Managers] of [the Borrower][the Certifying Loan Party] authorizing the execution, delivery and performance of the Loan Documents to which [the

Borrower][the Certifying Loan Party] is a party and all other agreements, documents and instruments to be executed, delivered and performed in connection therewith. Such resolutions have not in any way been amended, modified, revoked or rescinded, and have been in full force and effect since their adoption up to and including the date hereof and are now in full force and effect.

8. Attached hereto as Annex 2 is a true and complete copy of the [By-Laws][Operating Agreement] of [the Borrower][the Certifying Loan Party] as in effect on the date hereof.

9. Attached hereto as Annex 3 is a true and complete copy of the Certificate of [Incorporation][Formation] of [the Borrower][the Certifying Loan Party] as in effect on the date hereof, along with a long-form good-standing certificate for [the Borrower][the Certifying Loan Party] from the jurisdiction of its organization.

10. Annex 4 sets forth duly elected and qualified officers of [the Borrower][the Certifying Loan Party] holding the offices indicated next to their respective names below, and the signatures appearing opposite their respective names below are the true and genuine signatures of such officers, and each of such officers, acting alone, is duly authorized to execute and deliver on behalf of [the Borrower][the Certifying Loan Party] each of the Loan Documents to which it is a party and any certificate or other document to be delivered by [the Borrower][the Certifying Loan Party] pursuant to the Loan Documents to which it is a party:

[*Signature page follows*]

Exhibit C

IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth below.

Name: _____

Title: [Secretary][Managing Member]

I, [], in my capacity as the [] of [the Borrower][the Certifying Loan Party], do hereby certify in the name and on behalf of [the Borrower][the Certifying Loan Party] that [] is the duly elected and qualified [Secretary][Managing Member] of [the Borrower][the Certifying Loan Party] and that the signature appearing above is [her][his] genuine signature.

Date: []

Name: _____

Title: _____

RESOLUTIONS

Exhibit C

[BY-LAWS][OPERATING AGREEMENT]

Exhibit C

[CERTIFICATE OF INCORPORATION][CERTIFICATE OF FORMATION]

AND

GOOD-STANDING CERTIFICATE

Exhibit C

FORM OF SOLVENCY CERTIFICATE

FITBIT, INC.

Date: _____, 2015

To the Administrative Agent,
and each of the Lenders party
to the Credit Agreement referred to below:

This **SOLVENCY CERTIFICATE** (this “*Certificate*”) is delivered pursuant to Section 5.1(p) of that certain Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “*Credit Agreement*”), among (a) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (c) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders (in such capacities, the “*Administrative Agent*”), (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement. The undersigned Chief Financial Officer of the Borrower, in such capacity only and not in her/his individual capacity, does hereby certify on behalf of each Loan Party as of the date hereof that:

1. For purposes of this Certificate, the undersigned has, or officers of the Loan Parties under the direction and supervision of the undersigned have, performed the following procedures as of and for the periods set forth below.

- (a) Reviewed the financial statements referred to in Section 5.1(c) of the Credit Agreement.
- (b) Made inquiries of certain officials of the Loan Parties who have responsibility for legal, financial and accounting matters.
- (c) Reviewed, to the satisfaction of the undersigned, the Loan Documents and the respective Schedules and Exhibits thereto.

3. Based on and subject to the foregoing, the undersigned Chief Financial Officer of the Borrower hereby certifies on behalf of each of the Loan Parties that, on and as of the date hereof and after giving effect to the Loans made by the Lenders on the Closing Date, the initial borrowings on the Closing Date and the application of the proceeds thereof, it is my opinion that each Loan Party is Solvent.

4. The Borrower does not intend, in receiving the Loans to be made on the Closing Date and the other transactions contemplated by the Loan Documents, to delay, hinder, or defraud either present or future creditors.

(Signature page follows)

I represent the foregoing information to be, to the best of my knowledge and belief, true and correct and execute this Certificate as of the date first written above.

By: _____
Name: _____

as Chief Financial Officer of Fitbit, Inc.

Exhibit D

FORM OF ASSIGNMENT AND ASSUMPTION

FITBIT, INC.

This Assignment and Assumption Agreement (the “*Assignment Agreement*”) is dated as of the Assignment Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “*Assignor*”) and the Assignee identified in item 2 below (the “*Assignee*”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment Agreement as if set forth herein in full.

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

1. Assignor: _____

2. Assignee: _____

[for Assignee, if applicable, indicate [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrower: FITBIT, INC., a Delaware corporation

4. Administrative Agent: SILICON VALLEY BANK

5. Credit Agreement: Second Amended and Restated Credit Agreement, dated as of December 10, 2015, among (a) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (c) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders (in such capacities, the “*Administrative Agent*”), (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners.

6. Assigned Interest[s]:

<u>Assignor</u>	<u>Assignee</u>	Aggregate Amount of Revolving Commitment / Revolving Loans for all Lenders ¹²	Amount of Revolving Commitment / Revolving Loans Assigned ³⁴	Percentage Assigned of Revolving Commitment / Revolving Loans ⁵	<u>CUSIP Number</u>
		\$	\$	%	
		\$	\$	%	
		\$	\$	%	

[7. Trade Date:] ⁶

Assignment Effective Date: , 20 [TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND WHICH SHALL BE THE ASSIGNMENT EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[Signature pages follow]

- ¹ Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Assignment Effective Date.
- ² Amount of Revolving Commitments to be represented in Dollars in the amount of the Dollar Equivalent of the outstanding Revolving Commitments for all Lenders at the Exchange Rate as of the Effective Date. Amount of Revolving Loans of all Lenders to be represented in the Agreed Currency in which it was such Loan was made.
- ³ Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Assignment Effective Date.
- ⁴ Amount of Revolving Commitments of the Assignor to be represented in Dollars in the amount of the Dollar Equivalent of such Assignor's outstanding Revolving Commitments at the Exchange Rate as of the Effective Date. Amount of Revolving Loans of the Assignor to be represented in the Agreed Currency in which it was such Loan was made.
- ⁵ Set forth, to at least 9 decimals, as a percentage of the applicable Commitment/Loans of all Lenders thereunder.
- ⁶ To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

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

ASSIGNOR ¹
[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE ²
[NAME OF ASSIGNEE]

By: _____
Name:
Title:

¹ Add additional signature blocks as needed.
² Add additional signature blocks as needed.

[Consented to and]Accepted:

SILICON VALLEY BANK,
as Administrative Agent

By _____
Name:
Title:

Consented to:

[FITBIT, INC.

By _____
Name:
Title:] 3

[SILICON VALLEY BANK,
as Issuing Lender

By _____
Name:
Title:

SILICON VALLEY BANK,
as Swingline Lender

By _____
Name:
Title:]

³ Borrower does not have consent rights if a Default or Event of Default has occurred and is continuing or the applicable assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the consent of the Borrower for an assignment to any Person that the Borrower reasonably classifies in writing as a competitor of the Borrower may be given or denied by the Borrower in its sole discretion; and provided, further, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received reasonably detailed written notice thereof.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties .

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

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

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

Effective Date and to the Assignee for amounts which have accrued from and after the Assignment Effective Date.

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

Exhibit E

EXHIBIT F-1

FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)

[Date]

Reference is made to that certain Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “*Credit Agreement*”), among (a) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (c) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders (in such capacities, the “*Administrative Agent*”), (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners.

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Lender]

By _____
Name:
Title:

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)**

[Date]

Reference is made to that certain Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “**Credit Agreement**”), among (a) Fitbit, Inc., a Delaware corporation (the “**Borrower**”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “**Lender**” and, collectively, the “**Lenders**”), (c) Silicon Valley Bank (“**SVB**”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders, (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners.

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Participant]

By _____
Name:
Title:

EXHIBIT F-3

FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)

[Date]

Reference is made to that certain Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “*Credit Agreement*”), among (a) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (c) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders, (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners.

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Participant]

By _____
Name:
Title:

FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)

[Date]

Reference is made to that certain Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “**Credit Agreement**”), among (a) Fitbit, Inc., a Delaware corporation (the “**Borrower**”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “**Lender**” and, collectively, the “**Lenders**”), (c) Silicon Valley Bank (“**SVB**”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders (in such capacities, the “**Administrative Agent**”), (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners.

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Lender]

By _____

Name:

Title:

[RESERVED]

Exhibit G

FORM OF [SECOND AMENDED AND RESTATED] 12 REVOLVING LOAN NOTE

FITBIT, INC.

THIS REVOLVING LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS REVOLVING LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REVOLVING LOAN REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

[\$ _____]

Santa Clara, California
[insert date]

FOR VALUE RECEIVED, the undersigned, Fitbit, Inc., a Delaware corporation (the “**Borrower**”), hereby unconditionally promises to pay to [*insert name of applicable Lender*] (the “**Lender**”) or its registered assigns at the Funding Office specified in the Credit Agreement (as hereinafter defined) in Dollars or other Agreed Currency, as applicable, and in immediately available funds, on the Revolving Termination Date the principal amount of (a) [*insert amount of applicable Lender’s Revolving Commitment*] (\$[_____]), or, if less, (b) the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower pursuant to Section 2.4 of the Credit Agreement referred to below. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The holder of this Revolving Loan Note (this “**Note**”) is authorized to indorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Revolving Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof, each conversion of all or a portion thereof to another Type and, in the case of Eurocurrency Loans, the length of each Interest Period with respect thereto and the applicable Agreed Currency thereof. Each such indorsement shall constitute prima facie evidence of the accuracy of the information indorsed. The failure to make any such indorsement or any error in any such indorsement shall not affect the obligations of the Borrower in respect of any Revolving Loan.

This Note (a) is one of the Revolving Loan Notes referred to in the Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “**Credit Agreement**”), among (i) Fitbit, Inc., a Delaware corporation (the “**Borrower**”), (ii) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “**Lender**” and, collectively, the “**Lenders**”), (iii) Silicon Valley Bank (“**SVB**”), as the Issuing Lender and the Swingline Lender, (iv) SVB, as administrative agent and collateral agent for the Lenders (in such capacities, the “**Administrative Agent**”), (v) SunTrust Bank, as syndication agent for the Lenders, and (vi) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security

¹² Insert as applicable if this Note amends and restates a prior note.

interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof. [This Note amends, restates and replaces in its entirety that certain Revolving Loan Note dated _____, 2014 in the original principal amount of \$[_____] made payable by the Borrower to the Lender.] ¹³

Upon the occurrence and during the continuance of any one or more Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, indorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

FITBIT, INC.

By: _____

Name: _____

Title: _____

¹³ Insert as applicable if this Note amends and restates a prior note.

LOANS, CONVERSIONS AND REPAYMENTS OF ABR LOANS

<u>Date</u>	<u>Amount of ABR Loans</u>	<u>Amount Converted to ABR Loans</u>	<u>Amount of Principal of ABR Loans Repaid</u>	<u>Amount of ABR Loans Converted to Eurocurrency Loans</u>	<u>Unpaid Principal Balance of ABR Loans</u>	<u>Notation Made By</u>
-------------	--------------------------------	--	--	--	--	-----------------------------

LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF EURODOLLAR LOANS

<u>Date</u>	<u>Amount and Agreed Currency of Eurocurrency Loans</u>	<u>Amount Converted to Eurocurrency Loans</u>	<u>Interest Period and Eurocurrency Rate with Respect Thereto</u>	<u>Amount of Principal of Eurocurrency Loans Repaid</u>	<u>Amount of Eurocurrency Loans Converted to ABR Loans</u>	<u>Unpaid Principal Balance of Eurocurrency Loans</u>	<u>Notation Made By</u>
-------------	---	---	---	---	--	---	-----------------------------

FORM OF SECOND AMENDED AND RESTATED SWINGLINE LOAN NOTE

FITBIT, INC.

THIS SWINGLINE LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS SWINGLINE LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REVOLVING LOAN REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$25,000,000.00

Santa Clara, California
December [], 2015

FOR VALUE RECEIVED, the undersigned, FITBIT, INC., a Delaware corporation (the “*Borrower*”), hereby unconditionally promises to pay to SILICON VALLEY BANK (the “*Lender*”) or its registered assigns at the Funding Office specified in the Credit Agreement (as hereinafter defined) in Dollars and in immediately available funds, on the Revolving Termination Date, the principal amount of (a) Twenty Five Million Dollars (\$25,000,000), or, if less, (b) the aggregate unpaid principal amount of all Swingline Loans made by the Lender to the Borrower pursuant to Section 2.6 of the Credit Agreement referred to below. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The holder of this Swingline Loan Note (this “*Note*”) is authorized to indorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date and amount of each Swingline Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof. Each such indorsement shall constitute prima facie evidence of the accuracy of the information indorsed. The failure to make any such indorsement or any error in any such indorsement shall not affect the obligations of the Borrower in respect of any Swingline Loan.

This Note (a) is the Swingline Loan Note referred to in the Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “*Credit Agreement*”), among (i) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (ii) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (iii) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (iv) SVB, as administrative agent and collateral agent for the Lenders, (v) SunTrust Bank, as syndication agent for the Lenders, and (vi) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof. This Note amends, restates and replaces in its entirety that certain Swingline Loan Note dated August 13, 2014 in the original principal amount of \$25,000,000 made payable by the Borrower to the Lender.

Upon the occurrence and during the continuance of any one or more Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, indorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

FITBIT, INC.

By: _____

Name: _____

Title: _____

LOANS AND REPAYMENTS

<u>Date</u>	<u>Amount of Loans</u>	<u>Amount of Principal of ABR Loans Repaid</u>	<u>Unpaid Principal Balance of ABR Loans</u>	<u>Notation Made By</u>
-------------	------------------------	--	--	-----------------------------

[RESERVED]

Exhibit I

FORM OF COLLATERAL INFORMATION CERTIFICATE

COLLATERAL INFORMATION CERTIFICATE

FITBIT, INC.

AS THE BORROWER

Dated as of December [], 2015

COLLATERAL INFORMATION CERTIFICATE

THIS COLLATERAL INFORMATION CERTIFICATE is being delivered pursuant to that certain Second Amended and Restated Credit Agreement (the “*Credit Agreement*”) to be entered into by and among Fitbit, Inc. (“*Borrower*”), the Lenders party thereto, and Silicon Valley Bank, as administrative agent (“*Agent*”), and certain other parties thereto.

Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Credit Agreement. Other terms which are used but not otherwise defined herein but which are defined in Article 8 or Article 9 of the Uniform Commercial Code shall have the meaning set forth in such applicable Article of the Uniform Commercial Code.

The undersigned, being the duly appointed [Responsible Officer] of Borrower, hereby certifies on behalf of Borrower and the Guarantors (collectively, the “*Loan Parties*”) that:

NAMES:

1. The exact legal name of each Loan Party as it appears in its organizational papers, its jurisdiction of formation, its organizational identification number and its date of formation, are as follows:

<u>Name</u>	<u>Jurisdiction of Formation</u>	<u>Organizational Identification No.</u>	<u>Date of Formation</u>
-------------	--------------------------------------	--	------------------------------

2. Set forth below is each other legal name that each Loan Party has had during the last five years, together with the date of the relevant change:

<u>Prior Name</u>	<u>Date Name Was Changed From Such Name</u>
-------------------	---

3. Within the past five years, the following Persons have been merged into any Loan Party or Loan Party has acquired all or a material portion of the assets of such Person (provide names, dates and brief description of transaction):
4. The following is a list of all other names (including trade names or similar appellations) used by any Loan Party or any of its divisions or other business units at any time during the past five years:

Name

LOCATIONS:

5. The chief executive office of each Loan Party is located at the following address:

Loan Party

Address

6. The following is a list of all locations not identified in Item 5, above, where each Loan Party maintains its books and records relating to the Collateral:

Loan Party

Address

7. The following is a list of all locations where any of the Collateral comprising Goods, including Inventory, Equipment or Fixtures (other than motor vehicles and other mobile goods to the extent in transit from time to time), is located:

Loan Party

Address

Brief Description of Assets at such Location

8. The following is a list of all real property owned of record and beneficially by any Loan Party:

Loan Party

County and
State

Address and Legal Description

9. The following is a list of all real property leased or subleased by or to any Loan Party, whether by way of a ground lease, a master lease, a standard site lease, license or otherwise (each a "Lease") (include the name of each of the parties to each Lease as it appears on the Lease, and the address of the relevant premises under such Lease).

INFORMATION ABOUT COLLATERAL:

Government Licenses:

10. The following is a list of all material federal, state and other governmental licenses or authorizations required or reasonably necessary to operate each Loan Party's business as currently conducted or as contemplated by such Loan Party, as applicable, to be operated immediately after the Closing Date (collectively, the "Governmental Licenses"):

<u>Loan Party</u>	<u>Licensing Entity</u>	<u>Type of License</u>	<u>Term</u>	<u>Assignable w/o Consent of Licensing Entity</u>
-------------------	-------------------------	------------------------	-------------	---

Investment Property and Deposits:

11. The Loan Parties hold notes payable from the following Persons:

<u>Loan Party</u>	<u>Name of Obligor</u>	<u>Amount</u>	<u>Basic Term</u>
-------------------	------------------------	---------------	-------------------

12. The Loan Parties maintain the following deposit accounts (including demand, time, savings, passbook or similar accounts) with depository banks:

<u>Loan Party</u>	<u>Name and Address of Depository Institution</u>	<u>Type and Account No.</u>	<u>Account-Holder</u>
-------------------	---	-----------------------------	-----------------------

13. The Loan Parties beneficially own "investment property" in the following securities accounts held with securities intermediaries:

<u>Loan Party</u>	<u>Name and Address of Securities Intermediary</u>	<u>Type and Account No.</u>	<u>Account-Holder</u>
-------------------	--	-----------------------------	-----------------------

Other Assets

14. The Loan Parties own the following types of assets:

Aircraft Motor Vehicles Vessels, boats , ships
Franchise agreements Commercial tort claims

15. The Loan Parties' assets are encumbered by liens of third parties as follows:

<u>Loan Party</u>	<u>Name and Address of Secured Party</u>	<u>Assets encumbered</u>	<u>Method of Perfection</u>
-------------------	--	--------------------------	-----------------------------

INFORMATION ABOUT THE LOAN PARTIES:

16. Each Loan Party, as of the Closing Date, is qualified to do business in the following jurisdictions:

<u>Name of Loan Party</u>	<u>Jurisdiction</u>
---------------------------	---------------------

25. The Loan Parties have the following subsidiaries:

<u>Loan Party</u>	<u>Name of Subsidiary</u>	<u>State of Formation or Organization</u>	<u>Percentage Owned by Entity</u>	<u>Owned by</u>
-------------------	-------------------------------	---	---------------------------------------	---------------------

26. List all formation documents and material equity holders agreements pertaining to each Loan Party or to which such Loan Party is a party, including operating agreements, partnership agreements, bylaws, certificates of formation, certificates or articles of organization, certificates or articles of incorporation, shareholder or other equityholder agreements, trust or voting rights agreements, registration rights agreements, warrants and warrant purchase agreements, convertible debt documents and options and other equity incentive plans. The undersigned certifies that each such agreement is in full force and effect, and has not been modified, amended, supplemented or restated except as listed.

-
27. The following is a complete list of pending and threatened litigation or claims involving amounts claimed against the Loan Parties in an indefinite amount or in excess of \$500,000 in each case:

Name of Claimant

Amount and Description

28. The Loan Parties have directly or indirectly guaranteed the following obligations of third parties:

Loan Party

Debtor

Creditor

Amount

[signature page follows]

The undersigned hereby certifies the foregoing information to be true and correct in all material respects and executes this Collateral Information Certificate as of _____, 2015

FITBIT, INC.

By: _____

Printed Name: _____

Title: _____

Exhibit J

FORM OF NOTICE OF BORROWING

FITBIT, INC.

Date: _____

To: **SILICON VALLEY BANK**
 3003 Tasman Drive
 Santa Clara, CA 95054
 Attention: Corporate Services Department

RE: Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “*Credit Agreement*”), among (a) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (c) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders, (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners. Capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Credit Agreement.

Ladies and Gentlemen:

The undersigned refers to the Credit Agreement and hereby gives you irrevocable notice, pursuant to Section [2.5] [2.7(a)] of the Credit Agreement, of the borrowing of a Revolving Loan][Swingline Loan].

1. The requested Borrowing Date, which shall be a Business Day, is _____.
2. The aggregate amount of the requested Loan is \$ _____.
3. The requested Loan shall consist of \$ _____ of ABR Loans and [\$][£][€][CAD][AUD] _____ of Eurocurrency Loans.
4. The duration of the Interest Period for the Eurocurrency Loans included in the requested Loan shall be [one][three][six] months.¹⁴
5. The applicable Agreed Currency for the Eurocurrency Loans included in the requested Loan shall be _____.¹⁵
6. [Insert instructions for remittance of the proceeds of the applicable Loans to be borrowed]

7. The undersigned, in his/her capacity as a Responsible Officer of the Borrower and not in his/her individual capacity, hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Loan before and after giving effect thereto, and to the application of the proceeds therefrom, as applicable:

¹⁴ If available to each Lender, [two][nine][twelve] months.

¹⁵ Note whether Dollars, Sterling, Australian Dollars, Euro or Canadian Dollars, as applicable.

(a) each representation and warranty of each Loan Party contained in or pursuant to any Loan Document (i) to the extent qualified by materiality, is true and correct, and (ii) to the extent not qualified by materiality, is true and correct in all material respects, in each case, on and as of the date hereof as if made on and as of the date hereof, except to the extent 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;

(b) no Default or Event of Default exists or will occur after giving effect to the extensions of credit requested herein; and

(c) after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 of the Credit Agreement will be satisfied.

[*Signature page follows*]

Exhibit K

IN WITNESS WHEREOF, the undersigned has caused this notice to be duly executed and delivered by its proper and duly authorized officer as of the day and year first written above.

FITBIT, INC.

By: _____
Name: _____
Title: _____

For internal Bank use only

<u>Eurocurrency Pricing Date</u>	<u>Eurocurrency Rate</u>	<u>Eurocurrency Variance</u>	<u>Maturity Date</u>
		_____%	

Exhibit K

FORM OF NOTICE OF CONVERSION/CONTINUATION

FITBIT, INC.

Date: _____

To: **SILICON VALLEY BANK**
 3003 Tasman Drive
 Santa Clara, CA 95054
 Attention:

RE: Second Amended and Restated Credit Agreement, dated as of December 10, 2015 (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the “*Credit Agreement*”), among (a) Fitbit, Inc., a Delaware corporation (the “*Borrower*”), (b) the several banks and other financial institutions or entities from time to time parties to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), (c) Silicon Valley Bank (“*SVB*”), as the Issuing Lender and the Swingline Lender, (d) SVB, as administrative agent and collateral agent for the Lenders, (e) SunTrust Bank, as syndication agent for the Lenders, and (f) SVB and SunTrust Robinson Humphrey, Inc., as co-lead arrangers and joint bookrunners. Capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Credit Agreement.

Ladies and Gentlemen:

The undersigned, in his/her capacity as a Responsible Officer of the Borrower and not in his/her individual capacity, refers to the Credit Agreement and hereby gives you irrevocable notice pursuant to Section [2.13(a)] [2.13(b)] of the Credit Agreement, of the [conversion] [continuation] of the Loans specified herein, that:

1. The date of the [conversion] [continuation] is _____.
2. The aggregate amount of the proposed Loans to be [converted] [continued] is \$ _____.
3. The Loans are to be [converted into] [continued as] [Eurocurrency] [ABR] Loans.
4. The duration of the Interest Period for the Eurocurrency Loans included in the [conversion] [continuation] shall be [one][three][six] months.¹⁶
5. The undersigned on behalf of the Borrower, hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed [conversion] [continuation], before and after giving effect thereto and to the application of the proceeds therefrom:

¹⁶ If available to each Lender, [two][nine][twelve] months.

(a) each representation and warranty of each Loan Party contained in or pursuant to any Loan Document (i) to the extent qualified by materiality, is true and correct, and (ii) to the extent not qualified by materiality, is true and correct in all material respects, in each case, on and as of the date hereof as if made on and as of the date hereof, except to the extent 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

(b) no Default or Event of Default exists or shall occur after giving effect to the [conversion] [continuation] requested to be made on such date.

[*Signature page follows*]

Exhibit L

IN WITNESS WHEREOF, the undersigned has caused this notice to be duly executed and delivered by its proper and duly authorized officer as of the day and year first written above.

FITBIT, INC.

By: _____
Name: _____
Title: _____

For internal Bank use only

<u>Eurocurrency Pricing Date</u>	<u>Eurocurrency Rate</u>	<u>Eurocurrency Variance</u>	<u>Maturity Date</u>
		_____%	