

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

FORM 10-K

(Mark One)

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

For the fiscal year ended June 30, 2023

or

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

For the transition period from to

Commission file number: 333-262106

Aspen Technology, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

87-3100817
(I.R.S. Employer
Identification No.)

20 Crosby Drive
Bedford
Massachusetts
(Address of principal executive offices)

01730
(Zip Code)

Registrant's telephone number, including area code: **781-221-6400**

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common stock, \$0.0001 par value per share	AZPN	Nasdaq Global Select Market

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

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

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

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

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

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

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

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

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant was approximately \$4.4 billion based on the last reported sale price reported on the Nasdaq Global Select Market on December 31, 2022 (the last business day of the Registrant's most recently completed second fiscal quarter).

There were 64,382,647 shares of common stock outstanding as of August 15, 2023.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement related to the registrant's 2023 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference in Part III, Items 10-14 of this Annual Report on Form 10-K.

[Table of Contents](#)

		<u>Page</u>
	<u>PART I</u>	
Item 1.	Business	3
Item 1A.	Risk Factors	17
Item 1B.	Unresolved Staff Comments	32
Item 2.	Properties	32
Item 3.	Legal Proceedings	32
Item 4.	Mine Safety Disclosures	32
	<u>PART II</u>	
Item 5.	Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	33
Item 6.	[Reserved]	35
Item 7.	Management’s Discussion and Analysis of Financial Condition and Results of Operations	35
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	51
Item 8.	Financial Statements and Supplementary Data	52
Item 9.	Changes in and Disagreements With Accountants on Accounting and Financial Disclosure	52
Item 9A.	Controls and Procedures	52
Item 9B.	Other Information	53
Item 9C.	Disclosure Regarding Foreign Jurisdictions That Prevent Inspection	53
	<u>PART III</u>	
Item 10.	Directors, Executive Officers and Corporate Governance	54
Item 11.	Executive Compensation	54
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	54
Item 13.	Certain Relationships and Related Transactions, and Director Independence	55
Item 14.	Principal Accountant Fees and Services	55
	<u>PART IV</u>	
Item 15.	Exhibits and Financial Statement Schedules	56
Item 16.	Form 10-K Summary	98
	<u>SIGNATURES</u>	

Aspen Technology, Inc. (“AspenTech”) has many registered trademarks including aspenONE and Aspen Plus. All other trade names, trademarks, and service marks appearing in this Annual Report on Form 10-K and not owned by AspenTech are the property of their respective owners.

Our fiscal year ends on June 30. In connection with the Transaction described below, we approved a change to our fiscal year end from September 30 to June 30 beginning with fiscal year 2022. Fiscal year 2023 refers to the twelve-month period ended June 30, 2023, fiscal year 2022 refers to the nine-month period ended June 30, 2022, and fiscal year 2021 refers to the twelve-month period ended September 30, 2021, unless otherwise noted.

Explanatory Note

On May 16, 2022 (the “Closing Date”), the transaction contemplated by the Transaction Agreement and Plan of Merger, dated as of October 10, 2021, as amended by Amendment No. 1, dated as of March 23, 2022, and Amendment No. 2, dated as of May 3, 2022 (as it may be further amended from time to time, the “Transaction Agreement”), was consummated between AspenTech Corporation (formerly known as Aspen Technology, Inc.) (“Heritage AspenTech”) and Emerson Electric Co. (“Emerson”) and certain of its subsidiaries, pursuant to which, among other matters, Emerson and its subsidiaries contributed to Heritage AspenTech shareholders \$6,014,000,000 in cash and its industrial software business (the “Industrial Software Business”), consisting of, Open Systems International, Inc. business (the “OSI business” or “OSI Inc.”) and Geological Simulation Software business, which we have renamed as Subsurface Science & Engineering (the “SSE business”) in exchange for 55% of our outstanding common stock (on a fully diluted basis) (the “Transaction”). The combined business of Heritage AspenTech, the OSI business and the SSE business are referred to herein as “AspenTech” or the “Company.”

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS AND INDUSTRY DATA

Statements in this Annual Report on Form 10-K and in the documents incorporated by reference herein that are not strictly historical may be “forward-looking statements” for purposes of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, which involve risks and uncertainties. In some cases, you can identify forward-looking statements by the following words: “may,” “will,” “could,” “would,” “should,” “expect,” “intend,” “plan,” “strategy,” “anticipate,” “believe,” “estimate,” “predict,” “project,” “potential,” “continue,” “ongoing,” “opportunity” or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. These statements are only predictions and are based on current expectations of management. The outcome of the events described in these forward-looking statements is subject to known and unknown risks, uncertainties and other factors that may cause our, our customer’ or our industry’s actual results, levels of activity, performance or achievements expressed or implied by these forward-looking statements, to differ. “Item 1. Business,” “Item 1A. Risk Factors” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” as well as other sections in this Annual Report on Form 10-K, discuss some of the factors that could contribute to these differences. The forward-looking statements made in this Annual Report on Form 10-K relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make. The industry in which we operate is subject to a high degree of uncertainty and risk due to variety of factors, including those described in “Item 1A. Risk Factors.” You should read this Annual Report on Form 10-K completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

PART I

Item 1. Business.

Overview

We are a global leader in industrial software focused on helping customers in asset-intensive industries address the dual challenge (the “Dual Challenge”) of meeting the increasing demand for resources from a rapidly growing population while also operating in a more sustainable manner. Our solutions address complex environments where it is critical to optimize across the full asset lifecycle - asset design, operation, and maintenance - enabling customers to run their assets safer, greener, longer and faster. Thousands of companies, ranging from multi-national corporations to start-ups, rely on our software to help them run their assets more profitably, resiliently, and sustainably to meet their operational excellence and sustainability goals.

We help customers solve some of their critical challenges via our purpose-built software that combines engineering first principles, deep industry domain knowledge, and advanced technologies. We drive significant value creation through our decades of experience in modeling, simulation, and optimization technologies. The operational challenges we help our customers solve include maintaining maximum efficiency in process operations, managing electrical grids amid the growth in renewable energy sources, helping ensure supply chain resiliency, reducing carbon emissions and more.

Today, our software also enables companies to develop new processes that can be scaled to support the energy transition and a net zero future, such as green hydrogen, biofuels, carbon capture, utilization and storage (“CCUS”), and circularity of plastics.

Emerson Transaction

As a result of the Transaction, we expanded the markets we serve, augmented our expertise and sales channels, and broadened our portfolio to five product suites: Performance Engineering (“ENG”), Manufacturing and Supply Chain (“MSC”), Asset Performance Management (“APM”), Digital Grid Management (“DGM”), and Subsurface Science & Engineering (“SSE”). In August 2022, we acquired Inmation Software GmbH (“Inmation”), a leader in industrial real-time information management software. Inmation enables customers to generate insights that improve operations and has since become core to our DataWorks business, which supports each of our product suites.

These expanded capabilities and offerings build on our track record of success in supporting the digital transformation of asset-intensive industries and further solidify our position as a provider of end-to-end value chain solutions for asset-intensive markets. Importantly, the addition of our DGM and SSE product suites allows us to offer comprehensive solutions in power and utility grid management, CCUS, and geothermal energy.

We also enhanced our existing commercial partnership with Emerson as part of the Transaction. This relationship helps unlock the strength of Emerson’s global sales channels, capital project resources, strategic account teams, and industry-focused sales organizations for AspenTech. Two new elements of the relationship are: 1) the opportunity for Emerson to OEM a select number of products from AspenTech to enhance the software capabilities in their industrial systems; and 2) co-innovating on new solutions that bring to the market the technical and innovation expertise of both companies, with a focus on sustainability, as already demonstrated for hydrogen production in the Microsoft Center of Excellence in Houston, Texas.

Market Trends

We serve customers in asset-intensive industries, which have complex operations, large footprints and require above-average levels of capital to operate. As a result, our customers face significant pressure to continuously focus on operational excellence. To do this, our customers seek leading technologies and methods for the safer, more efficient, more reliable and more profitable operation of their assets. There are several other important trends in our end markets, as described below.

The Dual Challenge

The Dual Challenge is the catalyst for our sustainability efforts. While most companies are impacted by the Dual Challenge in some form, our customers, who operate asset-intensive businesses, will play crucial roles in helping ensure nations meet their sustainability goals and can continually adapt to meet this challenge while also remaining viable businesses.

Solving for this Dual Challenge will become increasingly urgent in the decades to come. According to the U.S. Energy Information Administration, International Energy Outlook 2021 (“IEO2021”) Reference case, by 2050 global energy use is expected to increase by nearly 50% compared with energy usage in 2020.

Businesses will likely have to contend with an atmosphere of persistent volatility, uncertainty, complexity, and ambiguity as the world adapts to these changes in the years to come. Agility, flexibility, and insight will be critical as companies navigate these challenges, work to achieve and maintain operational excellence and ultimately meet their sustainability targets. We anticipate that digitalization will be essential, allowing companies to maximize the efficiency of their operations while minimizing emissions.

Energy Transition & Cross-Industry Convergence

We have observed a cross-industry convergence of needs as companies consider how best to leverage renewable energy sources such as wind, solar, bio feedstocks and hydrogen and other decarbonization technologies such as CCUS. This transition to renewable energy is already well underway. In 2021, the International Energy Agency (“IEA”) released its Renewables 2021 Report, stating that the growth of renewable capacity was forecast to accelerate from 2021 to 2026, accounting for almost 95% of the increase in global power capacity through 2026. Supporting the transition to renewable energy resources is one of the most impactful ways for asset-intensive industries to minimize their carbon emissions and overall environmental footprint.

Electrification

Electrification refers to the rising utilization of electrical power, particularly renewable electricity, over other energy sources. Driven in part by the increasing number of companies and individuals turning to electrification to help reduce their carbon footprint, global demand for electric power has increased by more than 70% since 2000, and electricity now makes up more than 19% of energy use worldwide, according to the IEA World Energy Outlook 2022 Report. To accommodate the continued strong demand for renewable energy, spending on the electrical grid is expected to more than double by 2030, to \$740 billion, also according to the same report.

Demand for Rare Metals

Demand for a wide range of metals and minerals, including lithium, nickel, cobalt and copper, are expected to increase as a result of electrification and the energy transition. According to an IEA report, “The Role of Critical Minerals in Clean Energy Transitions,” published in May 2021, increases in electrification could lead to as much as a 40-fold increase in demand for lithium by 2040 and could increase demand for cobalt by as much as 25 times.

Government Mandates

An increasing number of governments around the world view support for the green economy as mission-critical to their national interests. The significant amount of government subsidies available, particularly for renewables and electrification, has the potential to drive considerable advances in green economy infrastructure and technologies. Among the drivers of these national incentives for decarbonization are the creation of net-zero targets and the need for significant grid enhancements to accommodate the growth in renewable power and electrification.

Organizational Excellence

Companies in asset-intensive industries are facing the challenge of managing an ongoing generational transition that is impacting the capacity and capabilities in organizations to sustain operational excellence and manage their energy transition. This is reflected in a talent shortage and the transition to next-generation workforce where certain areas of knowledge and domain expertise are or may be less prevalent but are well-acclimated to a highly digital world. This will be particularly important in the decades to come. For example, by 2030, one in five Americans will be 65 or older, according to the United States Census Bureau in their report titled, “Projections of the Size and Composition of the U.S. Population: 2014 to 2060” published in March 2015. As workers retire, the loss of domain knowledge could have significant impacts on both operational excellence and sustainability initiatives. Therefore, many organizations are looking to digitalization and automation solutions to support operational excellence with further investments in talent, building training programs and establishing best practices to advance their organizations.

Collaboration and Co-Innovation

We believe collaboration and co-innovation will be critical to developing the solutions necessary for asset-intensive industries to meet the Dual Challenge in the coming decades. For example, companies increasingly are building partner ecosystems to support the development and scale-up of new processes.

We prioritize and value our co-innovation partnerships. For example, in fiscal 2023, we announced a partnership with Saudi Aramco, one of the world’s leading integrated energy and chemicals companies. As part of this partnership, both parties are collaborating to develop an integrated modeling and optimization solution to be used in the selection of CCUS. By simultaneously considering economics, process design, operations constraints and CO2 reduction, this solution aims to help asset-intensive companies identify the most promising CCUS paths to further optimize and accelerate their operational sustainability.

Our Customers

We serve customers across a wide range of asset-intensive industries. This includes energy (oil and gas exploration and production, or upstream; oil and gas processing and distribution, or midstream; and oil and gas refining and marketing, or downstream), bulk and specialty chemicals, engineering and construction, power and utilities, metals and mining and pharmaceuticals. We provide descriptions of these industries and their specific business characteristics below.

Upstream and Midstream

- The upstream energy industry involves identifying and extracting hydrocarbons from onshore and offshore fields located in diverse and demanding geographies worldwide. Companies must profile subsurface geological structures and materials with great accuracy and detail to produce hydrocarbons safely and reliably, optimize production from the field, and comply with strict regulatory and environmental requirements.
- Midstream companies are involved in gathering oil and natural gas from well heads, processing, and separation into oil, dry natural gas, and natural gas liquids, then the transportation to downstream markets. Petroleum product transportation utilizes vast pipeline networks across geographies. As a result, many companies rely on Supervisory Control and Data Acquisition (“SCADA”) systems to monitor and control these networks and help ensure safe, reliable, and efficient operations.

Downstream

- Downstream refiners use thermal and chemical processes to convert crude oil into end products, including gasoline, jet and diesel fuel and intermediate products used by chemical manufacturing companies. In recent years, some refiners have converted their facilities to process bio-feedstocks and the production of biofuels. This is a trend that we expect to continue as consumers look for more sustainable sources of energy.
- With high volumes and typically low operating margins, downstream companies focus on optimizing their feedstock selection and product mix to maximize profitability. Supply chain management, safety and reliability are of critical importance to this market.

New Energy

- Energy companies are increasingly focusing on decarbonization, hydrogen production, ammonia, and biofuels. Both traditional energy companies and new enterprises are investing in energy transition technologies to anticipate future market trends.

Chemicals

- Bulk chemical producers manufacture commodity chemicals and serve markets that are highly price sensitive. They seek to achieve economies of scale and manage operating margin pressure by building larger, more complex plants located near feedstock sources. Optimization of production yields, throughput, energy efficiency, and reliability are essential for bulk chemical producers.
- Specialty chemical manufacturers, which primarily produce more advanced, differentiated and even customer-specific products, face challenges in managing diverse product lines, multiple plants, complex supply chains and product quality.
- Many chemical producers are also working to develop new materials that are more easily recycled and new processes that allow for greater plastics circularity.

Engineering, Procurement & Construction (“EPC”)

- Engineering and construction firms need to quickly and efficiently produce optimal process and asset designs which incorporate highly accurate modeling, analysis, and cost estimations for complex, large-scale projects. Advanced software can help EPCs design processes and assets that operate at scale, safely, reliably, and sustainably. Capital investments can be optimized, and project risks are managed.
- These companies can use digital tools to quickly collaborate across a range of stakeholders, from internal employees to manufacturers and other engineering and construction firms, helping ensure projects stay on time and on budget.

Power and Utilities

- Power and utilities companies are responsible for generating, transmitting, and distributing reliable and safe electric power to commercial, industrial, and residential customers. In recent years, the industry has become more complex due

to the rapid growth of renewable energy sources, like wind and solar, and the challenges of incorporating these sources into the grid while also maintaining safety and reliability.

- In response to significant growth in distributed energy resources (“DERs”), like residential solar panels, smart thermostats and EV chargers, these companies are actively investing in modernizing the electrical grid to better monitor and optimize grid operations.
- Many utilities have begun to utilize Distributed Energy Resource Management Systems (“DERMS”) software solutions to manage the increasing number of DERs connected to the grid. DERMS software enables utility stakeholders, from operations, to consumer engagement, asset management and more, to monitor and intelligently control DERs in an orchestrated fashion, and make more informed grid management decisions.

Metals and Mining

- Mining companies are accelerating their digital initiatives to increase their efficiency and reliability, focusing on areas such as geological modeling, mine planning and scheduling, predictive maintenance and design and operational management.
- Mining companies can leverage advanced process control solutions to measure, monitor and adjust each stage of mineral processing. This method allows mining companies to work to ensure that the maximum amount of metal is recovered with minimal waste generation for higher operational efficiency.
- Mining companies are beginning to electrify their operations, including a wide range of mining equipment, to reduce their carbon footprints and increase efficiency.
- The metals and mining industry is essential to meet the growing demand for metals and minerals, including lithium, copper, nickel, cobalt and more, which are critical to building clean energy technologies, from electricity storage devices to wind turbines.

Pharmaceuticals

- Pharmaceutical companies need to quickly deliver drugs to the market, ensure consistent quality manufacturing and be flexible enough to produce advanced, personalized medicines. As a result, agility and reliability are critical for the pharmaceutical industry.
- Using digitalization tools, pharmaceutical companies can optimize key processes, including execution management, improve supply chain planning and scheduling and use predictive and prescriptive maintenance to maximize the return on their assets.

Other Asset Intensive Industries

- As a result of our enhanced relationship with Emerson, we also expect to expand the use of our software into other capital-intensive industries, such as pulp and paper and water and wastewater.
- Many companies in these industries are seeking asset optimization solutions to improve their processes and quality, reduce costs, and to improve their financial and operating results in the face of varied manufacturing challenges as well as the drive for sustainability.

Our Approach to Sustainability

Sustainability is core to our business and anchors AspenTech’s purpose. As industries are transforming to respond to a world with sustainability at its center, this is a core driver for our growth. Our integrated sustainability strategy includes a dedicated sustainability team, internal sustainability programs focused on reducing emissions and advancing diversity, equity, and inclusion in our workforce and sustainability solutions for our customers to accelerate emissions reductions in their asset-intensive industries through a series of critical sustainability pathways centered around industrial decarbonization and the energy transition.

Portfolio

Our portfolio spans the asset lifecycle from design to operation to maintenance, with differentiated offerings that help customers improve their safety, reliability and productivity while also reducing their carbon footprint. With our leading software for engineering, modeling and design, supply chain management, predictive and prescriptive maintenance, digital grid management, and industrial data management, we believe we are positioned to support the end-to-end asset lifecycle for our customers.

Performance Engineering

Our ENG solution provides market leading design and operations modeling capabilities to optimize the performance of process industry assets across the CAPEX and OPEX cycles. The solution includes research and development (“R&D”) with process modeling and optimization, accelerating design with concurrent engineering applications and then optimizing production performance with process digital twins. Our ENG software helps customers address a variety of challenges, including accelerating and innovating design of new low-carbon technologies, improving safety and overall profitability while driving to meet emerging sustainability targets.

Manufacturing and Supply Chain

Our MSC software enables optimization of both day-to-day operations and strategic supply chain decisions, helping customers to make better, faster decisions that typically lead to improved performance and operating results. These solutions include software applications that help customers make real-time decisions, which can reduce fixed and variable costs and improve product yields. Our MSC suite helps manufacturers close the gap between planning and operations to work to increase profitability in dynamic markets; create an integrated workflow that provides real-time insight across disciplines to maximize throughput, quality, and margins; and help meet customers’ sustainability goals through reduced emissions, energy efficiencies and waste reduction.

Asset Performance Management

Our APM software is used to understand and predict the reliability of a system – multiple assets, a single asset, or equipment in a facility. Factors that impact reliability include how operating conditions degrade equipment performance over time, or how process conditions can lead to equipment failure. Our APM suite is a comprehensive set of machine learning and analytics technologies which can be used with historical and real time asset and process data to help our customers ensure high asset availability and receive early, accurate warnings of problems to better plan around an event. This solution uses analytics to make smarter decisions to increase asset availability, lower costs and improve throughput.

Digital Grid Management

Our DGM software includes: energy management solutions (“EMS”) that monitor, control and work to optimize the increasingly interconnected generation fleets and transmission networks to manage grid stability and help ensure security and regulatory compliance; and advanced distribution management solutions (“ADMS”) that enable safe and secure energy distribution, outage management, distributed generation, demand response and microgrid solutions. These solutions provide improved system resiliency, efficiency, and safety by monitoring, controlling, and modeling the distribution network as utilities seek to increase reliability, predict, and react to increasingly dynamic supply and demand patterns, resolve outages faster and in a more automated manner, and manage field service digitally. Our DGM solutions help power and utility customers reduce their carbon footprints via the integration of new green energy resources, improve situational awareness to drive desired outcomes and protect critical assets across the network through enhanced cybersecurity.

Subsurface Science & Engineering

Our SSE solutions are a comprehensive portfolio of end-to-end geoscience and modeling software for optimization across subsurface engineering and operations. These solutions provide the ability to characterize, model and monitor the subsurface for the responsible management of resources, while supporting energy transition pathways, such as CCUS; optimize well placement and production using geophysics, petrophysics, and modeling to help minimize operational costs and obtain more productive wells with less planning; and locate and delineate opportunities for new fields, while helping to optimize and minimize risk, using seismic imaging and interpretation solutions and connecting subsurface technology to operational activities.

DataWorks Industrial Data Management

DataWorks Industrial Data Management (“DataWorks”) is our industry-leading data platform that supports each of our product suites. Inmation, acquired by AspenTech in August 2022, and our AIoT Hub form the core of our DataWorks platform. With advanced capabilities in data contextualization, structuring and cleansing, DataWorks allows AspenTech customers to better manage their industrial data at scale. In addition, DataWorks empowers AspenTech customers to create operational data lakes, which connect and contextualize data at the process level to help customers manage data security and integration across the enterprise from a central location.

Business Model

Industrial Software

The majority of AspenTech revenue is generated from software licenses and software maintenance and support (“SMS”) contracts. Implementation services, other than for our DGM product suite, are primarily provided by third-party implementation service partners (“ISPs”). We are currently building a third-party ISP network for our DGM software license implementations.

Recurring Revenue

Most of our revenue is generated through term software contracts. This model, combined with our tokenization usage model (see below), allows customers to access the full range of our products and solutions within a given software suite and, importantly, new products, features, technical advances, and solutions as they are developed and introduced to the suite via our continuous investments in innovation and R&D. This business model has allowed us to better serve our customers and cultivate a more predictable base of recurring cash flows.

At the time of the closing of the Transaction, most of the DGM software licensing revenue was generated from perpetual license contracts. Perpetual license contracts generally include a one-time software license sale and SMS coverage over a fixed period, with the option to purchase additional SMS coverage following the end of the agreement. We are in the process of transitioning the DGM suite to a majority term software model, which is a key element of the overall transformation to align with AspenTech’s business model.

Tokenization Usage Model

AspenTech’s tokenization usage model is a licensing and pricing strategy whereby customers purchase tokens for a given suite as a means of fulfilling their software needs. We believe this model benefits our customers by providing them with the flexibility to utilize their desired set of products and solutions and allowing them to explore new products and solutions to discover previously unknown or undiscovered use cases in operating their assets. This helps us to drive increased consumption, gather valuable customer feedback, and enhance our position as a strategic partner for our customers.

For both new and existing AspenTech customers, understanding their software usage requirements is paramount. Customers work with our sales team and solutions consultants to determine their requirements based on the specific needs of their assets and use cases or products. Customers contract with AspenTech for a total number of tokens to be used under a given term software contract. After software installation, customers gain access to our full set of products and solutions, with each assigned a specific token value, within the product suite, with usage constraints based on the number of tokens in their token pool. Each month, customers receive a report detailing their token and suite usage. Customers can engage with our sales team and customer success partners to evaluate the purchase of additional tokens to better solve their use cases and meet their asset requirements.

Key Financial Metrics

AspenTech recognizes customer software license contract revenue under ASU No. 2014-09, *Revenue from Contracts with Customers* (Topic 606). As a result, our license revenue is heavily impacted by the timing of bookings and, more specifically, the timing of renewals. The timing of renewals is not linear between quarters or fiscal years, and the actual timing of renewal bookings can be impacted by early renewals. Please refer to the Notes to Consolidated and Combined Financial Statements below for additional disclosures around how Topic ASC 606 impacts our revenue recognition.

AspenTech management utilizes Annual Contract Value (“ACV”), Total Contract Value (“TCV”), and bookings as key metrics to track and assess our business performance. In addition to GAAP metrics, AspenTech also uses non-GAAP business

metrics to track its business performance, namely Free Cash Flow and Non-GAAP operating income. Please refer to the Key Business Metrics section for a complete description of these metrics.

Sales & Marketing: Go-to-Market Approach

Strategic Engagement

AspenTech offers powerful software suites for asset-intensive industries and employs a value-based sales and marketing approach that aligns our capabilities and solutions with our customers' needs. Our solutions support our customers in achieving their strategic business goals, including the design of their assets and processes, optimization of their operations, improved reliability, the use of analytics and data science to improve performance across their enterprise, and to support their sustainability goals.

Our software is a strategic investment for customers and, therefore, we work to engage with their senior management teams, which generally include decision makers in manufacturing, operations, maintenance, and technology business groups. Our industrial data management capabilities are also relevant for information technology ("IT") and digital transformation leaders whom we also work closely with.

Our Industry Business Groups cover AspenTech's core markets to strategically engage with customers and understand their needs. This group provides deep knowledge of industry dynamics, develops tailored value propositions and use cases for our solutions, and collaborates with customers to jointly create value. Our deep industry knowledge and technical expertise are crucial components of how we generate value for our customers.

Our total sales and marketing team, which consists of sales account managers, solution consultants, global partnerships as well as marketing personnel, consisted of 722 employees as of June 30, 2023.

Direct Sales

Historically, most of AspenTech's software sales have been generated through our direct Field Sales organization, which includes account managers, technical sales personnel, and solution consultants. To educate our customers on the specific functionality and other technical features of our software, our account managers work with specialized teams of technical sales personnel and solution consultants. Our technical sales personnel typically have degrees in engineering or related disciplines and actively consult with our customers' engineers. Solution consultants use their detailed knowledge of our software features to demonstrate how they can be applied to the unique business processes of different vertical industries. In addition to our direct Field Sales organization, we also employ an inside sales team that supports and collaborates with customers.

High Velocity Sales Team

AspenTech's High Velocity Sales Team engages with small-to-medium sized businesses and develops new accounts of all sizes as an entry point. Our focus in this customer segment is to expand individual customer accounts, achieve license subscription renewals, scale, and replicate target applications, and further our business development efforts.

Emerson Channel Partnership

Following the closing of the Transaction, we enhanced our existing commercial partnership with Emerson. Together, we are identifying and targeting market dynamics, developing new solutions and pursuing joint go-to-market opportunities which leverage our comprehensive product portfolios and Emerson's significant global installed base and sales force.

As part of this partnership, AspenTech and Emerson have created teams to identify cross-selling opportunities. The formation of these teams has involved setting quotas, sales enablement and building cross-functional relationships between AspenTech and Emerson personnel. Emerson has dedicated specific resources, in addition to its worldwide sales force, to resell AspenTech products, while AspenTech has formed an internal Emerson commercial organization that is dedicated to sales enablement and technical sales support for Emerson. Fiscal 2023 was a key year for both parties to engage in strategic planning and to lay the foundation for future channel collaboration, innovation, and growth.

We collaborate with Emerson and aim to achieve our target synergies through five different vectors, as listed below.

- **Capital Projects** – We jointly pursue capital projects with Emerson, with Emerson providing automation solutions and AspenTech providing software solutions.

- **New Market Entry** – We work with Emerson to enter new markets or expand within existing markets, leveraging the power of our combined portfolios and Emerson’s customer relationships. These markets include life sciences, water and wastewater management, power generation, pulp and paper and more.
- **Emerson Installed Base** – In collaboration with Emerson, we are focused on expanding the use of AspenTech’s software in their customer installed base. We believe the combined capabilities of the technology and solutions from AspenTech and Emerson create a strong and clear value proposition for these customers.
- **Collaboration and Co-Innovation** – We collaborate and co-innovate with Emerson and other joint partners. In this work, we are focused on sustainability areas, such as green hydrogen, CCUS, and plastics circularity. In fiscal 2023, for example, we jointly developed a hydrogen value chain solution with Emerson and Microsoft that has the potential to help customers optimize their CAPEX investments, lifecycle operating cost production, supply chain and storage infrastructure to expedite speed to market.
- **OEM Solutions** – Several AspenTech solutions can be included as an integral part of Emerson’s automation offerings, such as control systems. We expect these OEM opportunities will continue to grow as both companies continue collaboration on joint solutions and go-to-market approaches.

Customer Success

Outcome Based Model

AspenTech’s Customer Success organization supports our customers to capture, sustain and expand the value from their AspenTech solutions by maintaining lasting partnerships and helping them leverage our innovative technology to add value to their business. Our teams are regionally located and focus on our customers’ needs to help drive satisfaction, retention, and lifetime value creation.

Software Maintenance and Support

SMS consists primarily of providing customers with technical support, access to software patches and upgrades and an online knowledge base. Technical support services are provided via telephone, live chat, email, and website from our eight customer support centers located around the globe. Customers with SMS coverage also are provided access to a support website where they can download the latest versions of our software and software patches and read knowledge-based articles on how to best utilize our solutions. As of June 30, 2023, the knowledge base archive includes more than 30,000 articles.

For customers with term licenses, SMS is included with the software license payment. For perpetual software license arrangements that do not include SMS, customers can purchase standalone SMS.

Third-Party Implementation Services Partners

AspenTech’s solutions are designed with the intent of third-party implementation, consistent with our industrial software strategy. AspenTech ISPs are trained in providing delivery and implementation across AspenTech solutions for customers. AspenTech ISPs have track records of successful system integrations, upgrades, and performance monitoring events to draw upon. We build and maintain these third-party ISP networks around the world to help ensure the successful deployment and adoption of our product suites with customers around the world. We are in the process of building out our ISP network for our DGM product suite.

Professional Services

We provide professional services to help facilitate the implementation of our technology within customer assets. Our professional services team primarily consists of engineers with deep industry experience in technical areas relevant to our solutions and end markets. Importantly, our solutions are designed with the intent of third-party implementation, enabling global, scalable project execution and support. By working closely with our third-party ISPs, our professional services members help to guide the implementation process for customers and, in doing so, work to ensure our customers realize the full value of our software.

Customer Education

We offer training services through our program “AspenTech University”. Each year, AspenTech University trains approximately 15,000 individuals through more than 1,300 classes, covering a full curriculum with over 150 courses, including 20 courses dedicated to sustainability. Training is offered through a variety of flexible learning options, including public classes open to all customers or private classes for specific customers only, taught by instructors in physical classrooms or over the Internet, private coaching with tailored course content, and/or self-paced on-demand eLearning. AspenTech University also offers User Certifications through certification exams. As of June 30, 2023, approximately 6,000 users have received Aspen Certified Users status.

We also provide customers with on-demand training via more than 300 eLearning modules, which can be accessed within the product suite they have licensed. Customers can also separately purchase eLearning subscriptions which give them access to AspenTech University’s entire eLearning course catalog.

As of June 30, 2023, there were 1,014 employees in our customer support, professional services, and training groups.

Strategic Alliances

AspenTech partners with leading technology and advisory companies, as well as customers, to co-innovate and advance digitalization throughout asset-intensive industries. By leveraging partners’ complementary expertise and offerings, we can gain a deeper understanding of customer requirements, prioritize use cases, formulate novel approaches and jointly develop solutions. The following section outlines our key approaches in forming strategic alliances.

Technology & Advisory Partners

Leading independent software vendors (“ISVs”) and cloud providers partner with AspenTech to deliver joint solutions, infrastructure, and services. These partnerships help to provide our customers with solutions and services that are complementary to our product suites, often as part of broader digital transformation initiatives. Key partners for AspenTech in this area include, but are not limited to, Microsoft, Amazon Web Services and Hexagon.

AspenTech also partners with leading advisory firms to engage customers on broad business strategies and to strategically position our portfolio to support large-scale enterprise needs.

Co-innovation

Co-innovation is a key focus for AspenTech’s development strategy. AspenTech works with customers and partners to create solutions leveraging shared knowledge and expertise that not only help solve specific customer challenges, but also are scalable to address industry-wide challenges.

In fiscal 2023, AspenTech developed a formal collaboration with Saudi Aramco, which further demonstrated the importance of technology innovators working together to address the biggest challenges in helping ensure a sustainable future. Working together, AspenTech and Saudi Aramco have developed a solution that allows companies to rapidly evaluate potential opportunities and new innovative solutions to help mitigate carbon emissions while helping ensure profitability.

AspenTech Academy Board

We also maintain strong relationships with academic institutions through our AspenTech Academy Board. We form these strategic alliances with academic partners to advance research and technology developments that can help our customers improve their operational and sustainability performance. For example, we are currently working with professors from the University of Delaware and Columbia University to combine molecular modeling in bio feedstock production and to advance artificial intelligence (“AI”) applications for sustainability, respectively.

Growth Strategy

Organic Growth

We have an installed base of more than 3,000 customers. Our growth strategy includes organic expansion within our existing customer base by capitalizing on growth trends within our core markets. This growth strategy focuses on driving increased usage through organic innovation and collaborating with customers to deliver end-to-end value chain solutions with differentiated value at enterprise scale.

Industry trends and market dynamics, including the need for greater sustainability and digital transformation, are impacting each of our targeted industry verticals in diverse ways. These trends also represent key drivers for AspenTech solutions, enabling us to continue strengthening our customer relationships. We believe that our chosen partnership approach will increase our opportunities for co-innovation with our customers and therefore accelerate our development of innovative products and solutions that can be deployed at enterprise scale.

Focused Portfolio Expansion

We maintain a focused approach to the organic and inorganic expansion of our portfolio. We aim to capture more value from the industries we serve as we continue to execute this strategy and build our suites of end-to-end software solutions. In addition, we expect to increase our opportunities for expansion through our commercial agreement with Emerson, which includes both OEM and joint solution development, as well as through acquisitions that provide growth into adjacent solution areas.

Operational Excellence

Operational excellence is a key tenant of our strategy and we believe this distinguishes us in the market, as we continue to stay focused on transforming our business and developing a best in class industrial software company. We believe we have proven our ability to run and transform software businesses over the years, and we aim to maintain our strong margins in the years to come as we drive growth across our portfolio.

Product Strategy & Product Roadmap

We view our continuous investments in innovation as fundamental to our success in helping customers operate their assets more profitably and sustainably. AspenTech's product organization is structured around the following key strategic pillars that integrate product, technology & sustainability with an industrial data management layer to scale the business and partner with our customers to transform the industries we serve.

Self-Optimizing Asset

AspenTech's product roadmap is centered on helping our customers progress along the path toward greater operational autonomy and sustainability, and ultimately achieving what we call the Self-Optimizing Asset. We define the Self-Optimizing Asset as a capital asset, such as a plant or electric grid, which has achieved a state where technologies and processes work together to:

- Utilize data from across the enterprise to get smarter and increase accuracy and scope of predictions;
- React in real-time to changing conditions by automatically adjusting to meet targets; and
- Detect anomalies and trigger actions to improve longevity and prevent performance degradation.

To help our customers develop Self-Optimizing Assets, we are focused on driving product innovation and incorporating advanced technologies in Industrial AI; edge and cloud infrastructure and edge to cloud strategies; an elevated user experience which enables enterprise-wide collaboration and the incorporation of advanced visualization technologies; digital twins and industrial data universes.

Smart Enterprise

Within the Self-Optimizing Asset framework, the Smart Enterprise is a business that is fully integrated across the corporate value chain, from daily operations to asset processes and supply chain management. We believe that optimization technologies for our customers' value chains, underpinned by Industrial AI, will enable the Smart Enterprise through closer integration between multiple assets and will help drive key breakthroughs for our customers in asset-intensive industries in the future.

Sustainability Solutions

AspenTech is highly focused on developing products and solutions that can help our customers minimize their environmental footprints and operate more sustainably while maintaining profitability and providing critical services to meet the world's increasing demand for resources. While our software traditionally has allowed customers to enhance the efficiency of their asset operations, which inherently reduces their environmental footprints, we now are making a concentrated effort to develop offerings that can help our customers meet their sustainability targets.

For example, in fiscal 2023, we introduced AspenTech Emissions Management solution which incorporates AspenTech Operational Insights™, a proven decision support capability that unites, correlates, analyzes and visualizes data from across an organization for fast, confident decision-making on those critical areas affecting emissions. By integrating decision support with our world class products, our customers can then take specific actions to mitigate issues which could compromise their ability to meet their sustainability goals.

We also hired a Chief Product and Sustainability Officer and formed a sustainability office to bring together our sustainability product development efforts with our sustainability programs to take an integrated approach in building a world class sustainability practice.

Sustainability Pathways

AspenTech has developed several sustainability pathways to partner with our customers to advance the energy transition and facilitate industrial decarbonization while meeting the demand for critical resources globally. These pathways range from well-understood approaches to energy efficiency and emissions reduction, to newer technologies, such as CCUS, the hydrogen economy and renewable energy, to novel pathways, such as direct air capture, the use of CO₂ as feedstock and advanced plastics recycling.

Using these pathways as guideposts, customers can combine our user-friendly sustainability models and industrial optimization software to reduce their carbon footprints and jumpstart their efforts in emissions management, renewable energy usage and more. In addition, our software enables emerging customers in the sustainability space to innovate and reduce time to market with feasible solutions. For example, in the direct-air carbon capture space, emerging players today leverage AspenTech software to de-risk their capital projects and ensure their technical feasibility.

These sustainability pathways help to inform our product innovation. For example, in green hydrogen production and CCUS, our advanced modeling and simulation tools are used to help customers identify the best, most economical and scalable processes, prior to companies committing to significant capital investments.

Industry Solutions

With decades of expertise in our core end markets, we maintain a strong foundation of industry-specific knowledge and experience. This experience, combined with our focus on hiring talent with asset-intensive industry experience and STEM educational backgrounds, as well as our dedication to continuous innovation, provide us with deeper insight into new and existing challenges and opportunities for our customers. We leverage this knowledge in our product development process to develop end-to-end solutions that are tailored for customers' specific industry use cases. We also place a high priority on developing those products and solutions that can cover the full value chain of specific industries and industry areas, thereby helping our customers to simplify and streamline their overall asset management.

Advanced Technology and Innovation

Our overall approach to innovation is centered around building a pipeline of ideas focused on solving our customers' biggest challenges. We continuously scan and screen the external environment for innovative ideas while enabling our organization to contribute ideas that have the potential to further evolve our product capabilities.

We recognize that utilizing innovative technology is critical to our ability to deliver the best products and solutions to our customers. As such, we seek to hire and retain top talent across STEM disciplines, which has allowed us to build and maintain what we believe is a best-in-class R&D organization. By cultivating this talent and committing resources to R&D, we can actively engage in research projects around innovative technologies that demonstrate potential for application in our workflows and product suites. We run programs that enable these teams to innovate including engagements with academia through

AspenTech Academy, hack-a-thons and innovation contests during our annual Technology Summit and carve out portions of their time to work on forward looking research projects with the mentorship and coaching of our technology leaders.

Examples of this work include the application of AI to create more innovative user experiences within our products. We also actively explore how to broaden our applications to support new user groups and markets, such as industrial data scientists.

We further collaborate with our technology partners to explore emerging technologies. For example, through our established partnership with Microsoft, we are now exploring the potential application of quantum computing technologies with Azure Quantum Elements. We believe this project can accelerate the innovation of technologies to enable a more sustainable future.

Human Capital Resources

AspenTech has approximately 3,900 employees located in 82 countries around the world — all playing a key role in enabling our success and partnering with customers to deliver value through our solutions. We are committed to our culture, core values and ongoing investment in our employees' professional and personal growth.

Management Team

AspenTech has evolved the executive team over the last 30 months to introduce capabilities and expertise that will allow us to operate successfully at scale and align with our new business structure and corporate strategy. Today, AspenTech's current executive team maintains deep expertise in each member's respective functional area as well as a proven track-record of success in operating at scale. Collectively, we believe the leadership team has experience with the processes and approaches required to support our growth and performance goals.

Diversity, Equity and Inclusion

The source of our innovation and expertise is cultivated through the diversity of our employees. Novel and impactful ideas result from people with varying backgrounds, experiences and perspectives working together. At AspenTech, diversity, equity and inclusion ("DEI") is a major initiative, combining company-led programs with employee-led activities through employee resource groups ("ERGs"). We believe these efforts are important for the well-being of our employees and have a positive impact on employee development and retention, as well as recruiting.

AspenTech's ERGs seek diversity, openness, understanding and inclusiveness to create a positive work environment. These groups are an open forum for employees with common interests and concerns to meet and support one another while also acting as a resource for leadership regarding employees and community interests, needs and policies. All ERGs are open to all employees. We believe these efforts are important to represent the importance of diversity in driving innovation and for the well-being of our employees.

Talent Management and Development

We maintain a strong commitment to learning and talent development programs for employees by building the skills of our current managers and those with ambitions to grow into management positions. Our goal is to foster a culture of lifelong learning and a desire for top performers to stay at AspenTech.

Our key programs for talent development include:

- **Emerging Leaders** — In partnership with Cornell University, this nearly year-long course gives participants the opportunity to apply various business fundamentals to the AspenTech business and culminates in a presentation to the CEO and executive team. Since 2018, over half of program participants have been promoted, and we have improved employee retention among this group.
- **Leadership 2.0** — This program focuses on building the people skills of management, including motivation, communication, goal development and giving feedback. The program provides a deeper understanding of the differences between management and leadership and how to balance these two skills for a successful career at AspenTech.
- **Women in Leadership Program** — Created to support the leadership journey of women, this program focuses on building skills as a cohort through Cornell University. Following positive initial reception to the program, we plan to expand the program in the coming year.

As of June 30, 2023, of our approximately 3,900 full-time employees, 1,875 were located in the United States. None of our employees in the United States is represented by a labor union; however, labor unions or workers' councils may represent some of our employees in certain foreign subsidiaries. We have experienced no work stoppages and believe that our employee relations are satisfactory.

Intellectual Property

Proprietary Rights

Our software is proprietary and fundamental to our business. AspenTech relies on a combination of copyright, patent, trademark, and trade secret protections granted by laws in the United States and other jurisdictions to protect our software, our brand, and all our proprietary technology from unauthorized access or use. AspenTech also includes protections in license agreements and enters into non-disclosure and confidentiality agreements with its employees, vendors, and customers to add additional legal protections to its contractual engagements. AspenTech restricts access to valuable assets such as software and source code and implements a variety of software security measures.

AspenTech has obtained or applied for patent protection with respect to some of its intellectual property and has registered or applied to register some of its trademarks in the United States and in selected other countries. As of June 30, 2023, we have 394 issued patents and pending patent applications worldwide. We will continue to develop or acquire new intellectual property and file new applications to protect our ongoing research and development activities and brands. In addition, Emerson provides us with a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license to use certain intellectual property rights owned by Emerson and its subsidiaries in the operation of the OSI and SSE businesses.

We actively monitor use of our intellectual property and enforce, and will continue to enforce, our intellectual property rights against infringement, misappropriation, or other violations worldwide as deemed appropriate to protect our businesses. In the United States, we generally maintain our patents for up to 20 years from the earliest effective filing date and maintain our trademark registrations for as long as the trademarks are in use. Additionally, we consider the quality and timely delivery of our products, the services we provide to our customers, and the technical knowledge and skills of our personnel to be important components of our overall portfolio and assets.

The laws of many countries in which our products are licensed may not protect our intellectual property rights to the same extent as the laws of the United States. While we consider our intellectual property rights to be valuable, we do not believe that our competitive position in the industry depends solely on obtaining legal protection for our software products and technology. Instead, we believe that the success of our business also depends on our ability to maintain a leadership position by continuing to develop innovative software products and technology.

Our proprietary rights are subject to risks and uncertainties described under Item 1A. "Risk Factors" below.

Licenses

In connection with Heritage AspenTech's acquisition of Hyprotech Ltd. and related subsidiaries of AEA Technology plc in May 2002 and the consent decree Heritage AspenTech entered into with the Federal Trade Commission in December 2004 to resolve allegations that the acquisition was improperly anticompetitive, Heritage AspenTech and certain of our subsidiaries entered into a purchase and sale agreement with Honeywell International Inc. and certain of its subsidiaries, pursuant to which Heritage AspenTech sold intellectual property and other assets to Honeywell relating to our operator training business and Heritage AspenTech Hyprotech engineering software products. Under the terms of the transactions, Heritage AspenTech retained a perpetual, irrevocable, worldwide, royalty-free non-exclusive license to the Hyprotech engineering software and have the right to continue to develop, license and sell the Hyprotech engineering products.

In March 1982, Heritage AspenTech entered into a System License Agreement with the Massachusetts Institute of Technology, or MIT, granting Heritage AspenTech a worldwide, perpetual non-exclusive license (with the right to sublicense) to use, reproduce, distribute and create derivative works of the computer program known as "ASPEN" which provides a framework for simulating the steady-state behavior of chemical processes that Heritage AspenTech utilizes in the simulation engine for Heritage AspenTech Aspen Plus product. MIT agreed that Heritage AspenTech would own any derivative works and enhancements. MIT has the right to terminate the agreement if: Heritage AspenTech breaches the agreement and does not cure the breach within 90 days after receiving a written notice from MIT; Heritage AspenTech ceases to carry on its business; or certain bankruptcy or insolvency proceedings are commenced and not dismissed. In the event of such termination, sublicenses granted to Heritage AspenTech customers prior to termination would remain in effect.

University Relationships, Research & Scholarships

For decades, AspenTech has actively supported the development of the next generation of engineers and scientists, educating them on the tools used by asset-intensive industries to design, operate and maintain processes and assets. AspenTech software provides students with insight into the entire lifecycle of a plant with integrated software solutions for engineering operations. The technology enhances their education by delivering the tools they need to apply theoretical concepts in a hands-on manner. Students use realistic and practical simulated exercises to solve real-world problems and gain the critical skills and expertise needed to succeed in the workforce.

Over 1,300 universities in more than 80 countries utilize AspenTech software, along with more than 140,000 active student users. Through access to our applications and training modules designed specifically for students, we are helping ensure tomorrow's workforce is knowledgeable in their field and able to apply that knowledge through the latest technology.

Competition

The market for our software solutions is highly competitive and dynamic.

Our competitors include, but are not limited to: industrial software companies offering asset optimization software used in the design, optimization, and/or maintenance of assets; large global, publicly traded industrial automation companies or equipment manufacturers with software portfolios; start-up firms targeting specific applications and/or utilizing specific technologies; and solutions produced and maintained in-house by our customers.

Some of our current and potential future competitors may have greater financial, technical, marketing, and other resources than us, and some have well-established relationships with current and potential future customers of ours. While we believe we are well positioned to maintain our position in the market, we cannot guarantee that we will be able to compete successfully against existing or future competitors.

We believe our deep domain expertise in the industries we serve, our decades of experience and expertise in modeling, simulation and optimization technologies, our capacity to innovate and our technical depth are among our key competitive advantages.

Corporate Information

Aspen Technology, Inc. was formed in Delaware in 2021. Our principal executive offices are at 20 Crosby Drive, Bedford, Massachusetts 01730, and our telephone number at that address is (781) 221-6400. Our website address is <http://www.aspentech.com>. The information on our website is not part of this Report on Form 10-K.

Available Information

We file reports with the Securities and Exchange Commission, or the SEC, which we make available on our website free of charge. These reports include annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, including exhibits, and amendments to such reports, each of which is provided on our website as soon as reasonably practicable after we electronically file such materials with, or furnish them to, the SEC. In addition, the SEC maintains a website (<http://www.sec.gov>) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including us.

Item 1A. Risk Factors.

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below before purchasing our common stock. The risks and uncertainties described below are not the only ones facing our company. Additional risks and uncertainties may also impair our business operations. If any of the following risks actually occurs, our business, financial condition, results of operations or cash flows would likely suffer. In that case, the trading price of our common stock could fall, and you may lose all or part of your investment in our common stock.

SUMMARY OF RISK FACTORS

Our business is subject to numerous risks and uncertainties that you should be aware of before making an investment decision, including those highlighted in the section entitled *Risk Factors*. These risks include, but are not limited to, the following:

- The integration of Heritage AspenTech, the OSI business and the SSE business may present challenges that may not result in the anticipated benefits of the Transaction.
- AspenTech has incurred and will continue to incur transaction-related costs in connection with the Transaction and the integration of the OSI and SSE businesses.
- Emerson could engage in business and other activities that compete with us.
- After the second anniversary of the closing of the Transaction, subject to restrictions, Emerson will be permitted to transfer its shares of our common stock and acquire more shares of our common stock, which could have a negative impact on our stock price or ability to maintain Nasdaq continued listing requirements. Additionally, Emerson has the right to purchase additional securities of AspenTech pursuant to certain pre-agreed prices and procedures, which could have a negative impact on AspenTech's stock price.
- AspenTech is controlled by Emerson. The interests of Emerson may differ from the interests of other stockholders of AspenTech. Relatedly, the corporate opportunity provisions in the Stockholders Agreement could enable Emerson to benefit from corporate opportunities that might otherwise be available to us.
- Certain historical financial information of the OSI business and SSE business may not be representative of their results or financial condition if they had been operated separately from Emerson and, as a result, may not be a reliable indicator of future results.
- Actual or threatened public health crises could adversely affect our business in a material way.
- We may be unable to hire or retain personnel with the necessary skills to operate and grow our business, which could adversely affect our ability to compete.
- A significant portion of our revenue is attributable to operations outside the United States, and our operating results therefore may be materially affected by the economic, political, military, regulatory and other risks of foreign operations or of transacting business with customers outside the United States.
- The ongoing conflict in Ukraine could adversely impact our business, financial position, cash flows and results of operations in Russia and Ukraine which may in turn spread and impact our overall business, financial position, cash flows and results of operations.
- We have delayed revenue recognition in the past and may in the future be required to delay revenue recognition for portions of our license activity.
- If we fail to increase usage and product adoption by customers of our Performance Engineering, Manufacturing and Supply Chain, Asset Performance Management, Digital Grid Management, and Subsurface Science & Engineering product suites, or fail to provide innovative, market-leading solutions, or fail to retain our current customers, we may be unable to implement our growth strategy successfully, and our business could be seriously impacted.
- Our business could suffer if demand for, or usage of, our software declines for any reason, including declines due to adverse changes in the process and other capital-intensive industries.
- Unfavorable economic and market conditions or a lessening demand in the market for asset optimization software could adversely affect our operating results.
- Climate change, and the regulatory and legislative developments related to climate change, may materially adversely affect our business and financial condition.
- Fluctuations in foreign currency exchange rates could result in declines in our reported revenue and operating results.
- Competition from software offered by current competitors and new market entrants, as well as from internally developed solutions by our customers, could adversely affect our ability to sell our software products and related services and could result in pressure to price our products in a manner that reduces our margins.
- Defects or errors in our software products could impact our reputation, impair our ability to sell our products and result in significant costs to us.
- Potential strategic transactions could be difficult to consummate and integrate into our operations, and these potential strategic transactions could disrupt our business, dilute stockholder value or impair our financial results.
- If our goodwill or intangible assets become impaired, then we could be required to record a significant charge to earnings.
- We may be subject to significant expenses and damages because of product-related claims and other litigation.
- Claims that we infringe the intellectual property rights of others may be costly to defend or settle and could damage our business.
- We may not be able to protect our intellectual property rights, which could make us less competitive and cause us to lose market share.
- Our software research and development initiatives, our customer relationships, and our customers' operations could be compromised if the security of our information technology is breached as a result of a cyberattack. Additionally, security breaches or disruptions of our information technology systems from foreign state actors could adversely affect our business. Any compromise of the security of our information technology systems could have a material adverse effect on our business, operating results and financial condition, and could impact our competitive position.

- Our liquidity and ongoing access to capital could be materially and negatively affected by increased volatility in the financial and securities markets, including increased inflation and interest rates.
- Our inability to maintain or develop our strategic and technology relationships could adversely affect our business.
- Emerson is our controlling owner, which could discourage takeover attempts. If Emerson ceases to be our controlling owner, anti-takeover provisions contained in our charter and bylaws could impair attempts by a party other than Emerson to acquire a significant number of shares of our common stock.
- Our charter designates specific courts as the exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.
- Our common stock may experience substantial price and volume fluctuations.

You should consider carefully the risks and uncertainties described below, in this section entitled "Risk Factors" and the other information contained in this Annual Report on Form 10-K, including our consolidated financial statements and the related notes, before you decide whether to purchase our common stock. The risks described above are not the only risks that we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations.

Risks Related to Our Transaction with Emerson

The integration of Heritage AspenTech, the OSI business and the SSE business may present challenges that may not result in the anticipated benefits of the Transaction.

We are continuing to integrate a combination of businesses that were operated as independent businesses. Potential difficulties in the integration process include the following:

- the inability to successfully integrate the businesses, including operations, technologies, products and services, in a manner that permits AspenTech to achieve the cost savings and revenue synergies anticipated to result from the Transaction, which could result in the anticipated benefits of the Transaction not being realized partly or wholly in the time frame currently anticipated or at all;
- lost sales and customers as a result of certain customers of any of the businesses deciding not to do business with AspenTech, or deciding to decrease their amount of business in order to reduce their reliance on a single company;
- the necessity of coordinating geographically separated organizations, systems and facilities;
- potential unknown liabilities and unforeseen increased expenses, delays or regulatory conditions associated with the Transaction;
- integrating personnel with diverse business backgrounds and business cultures, while maintaining a focus on providing consistent, high-quality products and services;
- consolidating and rationalizing information technology platforms, cybersecurity routines and protocols and administrative infrastructures as well as accounting systems and related financial reporting activities and difficulty implementing effective internal controls over financial reporting and disclosure controls and procedures in particular; and
- preserving important relationships of the combined businesses and resolving potential conflicts that may arise.

Furthermore, we have lost and may continue to lose key employees or skilled workers. The loss of key employees and skilled workers could adversely affect our ability to successfully conduct our business because of their experience and knowledge of Heritage AspenTech's and the OSI and SSE businesses. In addition, AspenTech could be adversely affected by the diversion of management's attention and any delays or difficulties encountered in connection with the integration. The process of integrating operations could cause an interruption of, or loss of momentum in, the activities of one or more business segments. If AspenTech experiences difficulties with the integration process, the anticipated benefits of the Transaction may not be realized fully or at all, or may take longer to realize than expected. These integration matters could have an adverse effect on the business, results of operations, financial condition or prospects of AspenTech.

AspenTech has incurred and will continue to incur transaction-related costs in connection with the Transaction and the integration of the OSI and SSE businesses.

AspenTech has incurred transaction-related costs in connection with the Transaction and will continue to incur costs in connection with the integration of the OSI and SSE businesses. Many of the expenses that will be incurred, by their nature, are difficult to estimate accurately at the present time. These expenses could, particularly in the near term, reduce the cost synergies that AspenTech expects to achieve from the elimination of duplicative expenses and the realization of economies of scale and

cost synergies related to the integration of the businesses, and accordingly, any net synergies may not be achieved in the near term or at all. These integration expenses may result in AspenTech taking significant charges against earnings.

Emerson could engage in business and other activities that compete with us.

Emerson has agreed in the Stockholders Agreement entered into as part of the Transaction that until 45 days after the occurrence of one of the specified trigger events based on Emerson ceasing to beneficially own more than 50% of our outstanding common stock specified, Emerson will not compete in the business of developing, marketing and selling certain industrial software, subject to certain exceptions.

Subject to the terms of such Stockholders Agreement, Emerson or any of its subsidiaries may engage in certain activities notwithstanding that they may fall within the scope of the competing business. In addition, if we engage in activities outside the scope of the non-competition obligation under the Stockholders Agreement, Emerson will not be restricted from engaging in such activities in competition with us. To the extent that Emerson engages in the same or similar business activities or lines of business as us, or engages in business with any of our partners, customers or vendors, our ability to successfully operate and expand our business may be hampered.

After the second anniversary of the closing of the Transaction, subject to restrictions, Emerson will be permitted to transfer its shares of our common stock and acquire more shares of our common stock, which could have a negative impact on AspenTech's stock price or ability to maintain Nasdaq continued listing requirements.

For two years following the completion of the Transaction, unless Emerson ceases to beneficially own a least 20% of our outstanding common stock, Emerson will be prohibited from transferring any of its shares of our common stock other than to a controlled affiliate of Emerson, unless approved by a special committee of our board of directors (the "Board"). Following such two-year lock-up period, Emerson will be permitted, subject to certain restrictions, to transfer shares of our common stock, including in public offerings pursuant to registration rights granted by AspenTech. Any such transfer could significantly increase the number of shares of our common stock available in the market, which could cause a decrease in the price of shares of our common stock. In addition, even if Emerson does not transfer a large number of its shares of our common stock into the market, the existence of Emerson's right to transfer a large number of shares into the market may depress the price of shares of our common stock.

For two years following the completion of the Transaction, Emerson is prohibited from acquiring or seeking to acquire, directly or indirectly, additional shares of our common stock that would result in Emerson having an ownership percentage of our outstanding common stock greater than the percentage of outstanding common stock Emerson owned as of the closing of the Transaction, subject to certain exceptions. Following such two-year standstill period that will end on May 16, 2024, Emerson will be permitted, subject to certain restrictions, to acquire or seek to acquire, directly or indirectly, additional shares of our common stock which may have an adverse effect on our ability to maintain Nasdaq continued listing requirements, including requirements with respect to a minimum number of holders of the common stock. If we are unable to maintain Nasdaq continued listing requirements, we may be required to delist from Nasdaq and the price of our stock may decline.

Emerson has the right to purchase additional securities of AspenTech pursuant to certain pre-agreed prices and procedures, which could have a negative impact on AspenTech's stock price.

Emerson has the option (but not the obligation) to, among other things: (i) purchase additional securities of AspenTech in connection with securities being issued as consideration in a merger and acquisition transaction, or purchase securities of AspenTech in a public offering, or other circumstances where AspenTech securities are not being offered for cash by AspenTech, in each case at pre-agreed prices without the need for the approval of a special committee of the Board; (ii) purchase additional shares of our common stock up to its percentage maintenance share in connection with the issuance of equity awards or securities of AspenTech pursuant to any "at the market" program, on a quarterly basis and in accordance with pre-agreed prices; and (iii) purchase additional equity securities of AspenTech at pre-agreed prices to maintain Emerson's ownership of certain percentages of our outstanding common stock during certain cure periods after Emerson's ownership of our common stock falls below certain thresholds. Any such purchase could significantly increase the number of shares of our common stock outstanding, which could cause a decrease in the price of shares of our common stock. In addition, even if Emerson does not exercise its right to purchase, the existence of such right may depress the price of shares of our common stock.

AspenTech is controlled by Emerson. The interests of Emerson may differ from the interests of other stockholders of AspenTech.

Following the closing of the Transaction, Emerson beneficially owned approximately 55% of the fully diluted shares of our common stock. Under the Stockholders Agreement, Emerson will have the right to acquire additional equity securities of AspenTech pursuant to pre-agreed procedures, preemptive rights and percentage maintenance rights.

Emerson has the ability to designate and elect a majority of the directors of our Board. The Stockholders Agreement provides that, for so long as Emerson beneficially owns more than 50% of the outstanding shares of our common stock, to the extent permitted by applicable law, if so requested by Emerson, AspenTech will avail itself of available "Controlled Company" exemptions to the corporate governance listing standards of Nasdaq (in whole or in part, as requested by Emerson) that would otherwise require AspenTech to have (i) a majority of the Board consist of independent directors, (ii) a nominating/corporate governance committee that is composed solely of independent directors; and (iii) a compensation committee that is composed solely of independent directors. Emerson has requested that AspenTech avail itself of the exemptions from the requirements that (i) the nominating/corporate governance committee be composed solely of independent directors and (ii) the compensation committee be composed solely of independent directors.

Pursuant to the Stockholders Agreement, the Board has four directors not designated by Emerson and five directors designated by Emerson.

Pursuant to the terms of the Stockholders Agreement, Emerson will have the right to consent to certain material actions of AspenTech and its subsidiaries for so long as it maintains certain ownership percentages, including over certain mergers and acquisitions, sales of assets, incurrences of indebtedness, issuances of securities and the appointment and removal of our Chief Executive Officer. For as long as Emerson beneficially owns a majority of the outstanding shares of our common stock, Emerson also will have control over all other matters submitted to stockholders for approval, including changes in capital structure, transactions requiring stockholder approval under Delaware law and corporate governance matters, subject to the terms of the Stockholders Agreement relating to Emerson's agreement to vote in favor of director nominees not designated by Emerson and to proposals by Emerson to acquire all of the shares of our common stock held by non-Emerson stockholders.

Emerson may have different interests than other holders of our common stock and may make decisions adverse to the interests of those holders.

Among other things, Emerson's control could delay, defer, or prevent a sale of AspenTech that AspenTech's other stockholders support, or, conversely, this control could result in the consummation of such a transaction that other stockholders do not support. This concentrated control could discourage a potential investor from seeking to acquire our common stock and, as a result, might impact the market price of our common stock.

The corporate opportunity provisions in the Stockholders Agreement could enable Emerson to benefit from corporate opportunities that might otherwise be available to us.

The Stockholders Agreement contains provisions related to corporate opportunities that may be of interest to both AspenTech and Emerson. These provisions provide in general that (i) a corporate opportunity offered to any individual who is a director, but not an officer or employee of AspenTech and who is also a director, officer or employee of Emerson will belong to AspenTech only if such opportunity is expressly offered to such person solely in his or her capacity as a director of AspenTech and otherwise will belong to Emerson and (ii) a corporate opportunity offered to any individual who is an officer or employee of AspenTech and also is a director, officer or employee of Emerson will belong to AspenTech unless such opportunity is expressly offered to such person in his or her capacity as a director, officer or employee of Emerson, in which case it will belong to Emerson. The absence of a duty on the part of Emerson or its affiliates to present corporate opportunities to AspenTech could have a material adverse effect on our business, financial condition, results of operations or prospects if attractive corporate opportunities are allocated by Emerson to itself or its affiliates (not including AspenTech).

Certain historical financial information of the OSI business and SSE business may not be representative of their results or financial condition if they had been operated separately from Emerson and, as a result, may not be a reliable indicator of future results.

Certain historical financial information of the OSI business and SSE business included in this document has been derived from the consolidated financial statements and accounting records of Emerson and reflects all direct costs as well as an allocation of indirect costs based on assumptions and allocations made by Emerson management. The financial position, results of operations and cash flows of the OSI business and SSE business presented may be different from those that would have resulted had the OSI business and SSE business been operated separately from Emerson during the applicable periods or at the applicable dates. For example, in preparing the financial statements of the OSI business and SSE business, Emerson made

allocations of costs and Emerson corporate expenses deemed to be attributable to the OSI business and SSE business. However, these costs and expenses reflect the costs and expenses attributable to the OSI business and SSE business operated as part of a larger organization and do not necessarily reflect costs and expenses that would have been incurred by the OSI business and SSE business had they been operated independently. As a result, the historical financial information of the OSI business and SSE business contained in this document may not be a reliable indicator of their future results.

Risks Related to Our Business

Actual or threatened public health crises could adversely affect our business in a material way.

As a global company, with employees, customers and partners located around the world in a variety of industries, our performance may be impacted by public health crises, including the COVID-19 pandemic, which has caused global economic uncertainty. The emergence of a public health threat could pose the risk that our employees, customers and partners may be prevented from conducting business activities at full capacity for an indefinite period, due to the spread of disease or as suggested or mandated by governmental authorities. These conditions also can affect the rate of spending by customers in the industries in which we operate (for example, materially reduced spending budgets due to oil and gas price declines and volatility) and may adversely affect our customers' willingness to purchase our solutions, delay prospective customers' purchasing decisions, reduce the value or duration of their contracts, cause our customers to request contractual concessions, or affect attrition rates, all of which could adversely affect our future sales and operating results. Finally, the conditions may lead to worker shortages, supply chain issues, inflationary pressures, and vaccine and testing requirements. We are unable to predict the future path or impact of any global or regional COVID-19 resurgences or future epidemics or pandemics or other public health crises, which could adversely affect our business, operations and financial condition, as well as the business, operations and financial conditions of our other customers and partners.

We may be unable to hire or retain personnel with the necessary skills to operate and grow our business, which could adversely affect our ability to compete.

Our future success depends upon our ability to attract, develop, motivate and retain highly skilled managerial, sales and marketing, technical, financial and administrative personnel necessary to guide our operations and support and grow our business. The market for this talent is highly competitive.

In addition, because of the highly technical nature of our products and services, we must attract and retain highly skilled engineering and development personnel. The technical personnel that we require to develop our products and solutions are in high demand, particularly technical personnel with a combination of AI, domain and real-time application expertise as there are comparatively fewer persons with those skills. If we are unable to attract and retain technical personnel with the requisite skills, our product and solution development efforts could be delayed, which could adversely affect our ability to compete and thereby adversely affect our revenues and profitability.

Furthermore, our ability to attract and retain employees may be affected by the COVID-19 pandemic and its effects on global workforce patterns and employee expectations regarding returning to offices, and may result in a more geographically distributed workforce and higher employee turnover than we anticipate.

In addition, recent inflationary pressure may impact our ability to attract and retain personnel potentially because of a need to increase compensation in certain areas.

All of our officers and other U.S. employees are at-will employees, meaning that they may terminate their employment relationship with us at any time, and their knowledge of our business and industry would be extremely difficult to replace. If we do not succeed in attracting well-qualified employees or retaining and motivating existing employees, our business, financial condition and operating results may be materially adversely affected.

If we are unable to attract, develop, motivate and retain the personnel we need to develop compelling products and solutions, and guide, operate and support our business, we may be unable to successfully compete in the marketplace, which would adversely affect our revenues and profitability.

A significant portion of our revenue is attributable to operations outside the United States, and our operating results therefore may be materially affected by the economic, political, military, regulatory and other risks of foreign operations or of transacting business with customers outside the United States.

Customers outside of the United States account for a significant portion of our total revenue and will for the foreseeable future. Our operating results attributable to operations outside the United States are subject to additional risks, including:

- being subject to a wide variety of complex foreign laws, treaties and regulations and adjusting to any unexpected changes in such laws, treaties and regulations, including local labor laws;
- unexpected changes in regulatory requirements, including, for example, changes in climate regulations, changes in competition laws, or other regulatory restrictions imposed by the United States or foreign governments;
- difficulties in collecting trade accounts receivable in other countries;
- adverse tax consequences;
- the challenges of managing legal disputes in foreign jurisdictions.
- difficulties in staffing and managing foreign operations;
- limited protection for the enforcement of contract and intellectual property rights in certain countries where we may sell our products or work with suppliers or other third parties;
- potentially longer sales and payment cycles and potentially greater difficulties in collecting accounts receivable;
- costs and difficulties of customizing products for foreign countries;
- challenges in providing solutions across a significant distance, in different languages and among different cultures;
- laws and business practices favoring local competition;
- strict laws and regulations governing privacy and data security, including the European Union's General Data Protection Regulation;
- uncertainty and resultant political, financial and market instability arising from the United Kingdom's exit from the European Union;
- compliance with U.S. laws affecting activities of U.S. companies abroad, including the U.S. Foreign Corrupt Practices Act;
- international trade disputes, tariffs, embargoes, export controls, sanctions and other trade barriers or restrictions and other regulatory or contractual limitations on our ability to sell or develop our products in certain foreign markets;
- operating in countries with a higher incidence of corruption and fraudulent business practices;
- seasonal reductions in business activity in certain parts of the world, particularly during the summer months in Europe and at year end globally;
- rapid changes in government, economic and political policies and conditions; and
- political or civil unrest or instability, acts of war, terrorism or epidemics and other similar outbreaks or events, such as the war between Russia and Ukraine.

While we license our products primarily through a direct sales force located throughout the world, we also leverage sales relationships with Emerson and other channel partners to market our products in certain locations. In the event that we are unable to adequately staff and maintain our foreign operations, we could face difficulties managing our international operations.

In addition, the ongoing conflict in Ukraine could adversely impact our business, financial position, cash flows and results of operations in Russia and Ukraine which may in turn spread and impact our overall business, financial position, cash flows and results of operations.

We maintain operations in Russia and license software and provide related services to customers in Russia and areas of Ukraine that are not under sanction. We have net sales of approximately \$44.6 million and \$9.9 million for fiscal 2023 and 2022, respectively, and total assets of approximately \$39.7 million and \$23.4 million as of June 30, 2023 and 2022, respectively, related to operations in Russia. As of June 30, 2023 and 2022, respectively, we had \$36.7 million and \$36.6 million of ACV in Russia.

In February of 2022, Russia invaded Ukraine and the war between the two countries could result in more widespread conflict. As a result of the conflict between Russia and Ukraine, the United States, the European Union, the United Kingdom and other governments, among others, have developed coordinated sanctions and export-control measure packages. These packages include, comprehensive financial sanctions against major Russian banks (including SWIFT cut off); designations of individuals and entities involved in Russian military activities; additional designations of Russian individuals including but not limited to those with significant business interests and government connections; and enhanced export controls and trade sanctions targeting Russia's imports of a wide range of goods as a whole, including potentially tighter controls on exports and reexports of items previously subject to only a low level of control, stricter licensing policy with respect to issuing export licenses, and/or increased use of "end-use" controls to block or impose licensing requirements on exports.

We may be required to cease or suspend operations in Russia or, should the conflict or the effects of sanctions, export control measures and business restrictions worsen, we may voluntarily elect to do so. For example, we have recently terminated all engineering services in Russia, which may impact our ability to renew existing contracts and provide support to customers. While we continue to evaluate the impact, if any, of the various sanctions, export control measures and business restrictions imposed by the United States, other governments, and financial institutions on our ability to do business in Russia and areas of Ukraine that are not under sanction, maintain contracts with vendors and pay employees in Russia, and receive payment from customers in Russia and areas of Ukraine that are not under sanction, there is no assurance that we will be able to do so in the future. Any disruption to, or suspension of, our business and operations in Russia would result in the loss of revenue from the business in Russia and would negatively impact our growth. We also may suffer reputational harm as a result of our continued operations in Russia, which may adversely impact our sales and other businesses in other countries.

We assess our operations for potential asset impairment in accordance with our accounting practices, and are periodically evaluating the impact, if any, of the various sanctions, export controls measures and business restrictions imposed by the United States, other governments and financial institutions on our ability to do business in Russia, maintain contracts with vendors and pay employees in Russia, as well as receive payment from customers in Russia or Ukraine that are not under sanction. The outcome of these assessments and their potential impact on our ability to continue to conduct business to the same extent as currently conducted will depend on how the conflict evolves and on further actions that may be taken by the United States, Russia, other governments, and others.

Furthermore, the ongoing military conflict and sanctions on Russia have resulted in adverse macroeconomic effects which have in the past and may in the future have an adverse effect on our business. For example, the war between Russia and Ukraine has already resulted in significant volatility in financial markets and depreciation of the Russian ruble and the Ukrainian hryvnia against the U.S. dollar, as well as an increase in energy and commodity prices globally. The conflict may also result in additional consequences including, but not limited to, supply shortages, further increases in prices of commodities, reduced consumer purchasing power, significant disruptions in logistics infrastructure, telecommunications services and risks relating to the availability of information technology systems and infrastructure. Other potential consequences include, but are not limited to, growth in the number of popular uprisings in the region, increased political discontent, especially in the regions most affected by the conflict or economic sanctions, increase in cyberterrorism activities and attacks, displacement of persons to regions close to the areas of conflict and an increase in the number of refugees fleeing across Europe, among other unforeseen social and humanitarian effects.

Continued conflict between Russia and Ukraine and any escalation of that conflict, could have a material adverse impact on our business, financial condition, cash flows and results of operations and could cause the market value of our securities to decline.

We have delayed revenue recognition in the past and may in the future be required to delay revenue recognition for portions of our license activity.

If our OSI business is unable to provide professional services under our customer contracts on a timely basis, which has occurred in the past, our license and solutions and professional services revenue recognition may be delayed which could adversely affect our financial results in a given period. License and solutions and professional services revenue in any quarter depend substantially upon contracts signed and services delivered in that quarter. For integrated solution contracts executed by the OSI business prior to the third quarter of fiscal 2023, we recognize revenue over time, using an input measure of progress based on the ratio of actual costs incurred to date to the total estimated cost to complete (percentage of completion accounting), until the implementation is complete. For new OSI Inc. contracts entered into on or after January 1, 2023, we account for OSI Inc. software license, hardware, maintenance, and professional services as separate and distinct performance obligations and software license revenue is recognized at a point in time when control transfers to the customer. Hardware revenue is recognized at the point in time when control transfers to the customer, which generally occurs upon delivery, and professional services revenue is recognized over time using percentage of completion accounting. As a result, revenue may be delayed while we meet all of the conditions necessary for revenue recognition.

Due to the nature of how we recognize revenue, if our OSI business is unable to commence and perform its contractual obligations under our integrated solution contracts executed prior to the third quarter of fiscal 2023, our revenue may be deferred into future periods. The ability of the OSI business to perform its contractual obligations is dependent on a number of factors, including, among others, its ability to hire and retain employees and subcontract to third-party ISPs as well as customer delays. In addition, changes in the estimates of anticipated costs could impact the timing of revenue recognition under percentage of completion accounting.

Given that revenue is recognized over time under the integrated solution contracts executed by the OSI business prior to the third quarter of fiscal 2023, a portion of the license and solutions revenue we report in each quarter is attributable to agreements entered into during previous quarters. Variations related to our revenue recognition may cause significant fluctuations in our results of operations and cash flows, may make it challenging for an investor to predict our performance on a quarterly basis and have prevented, and may in the future prevent, us from achieving our quarterly or annual forecasts or meeting or exceeding the expectations of research analysts or investors, which in turn may cause our stock price to decline.

If we fail to increase usage and product adoption by customers of our Performance Engineering, Manufacturing and Supply Chain, Asset Performance Management, Digital Grid Management, and Subsurface Science & Engineering product suites, or fail to provide innovative, market-leading solutions, or fail to retain our current customers, we may be unable to implement our growth strategy successfully, and our business could be seriously impacted.

Our market position and our future growth is largely dependent upon our ability to increase usage and product adoption by customers of our product suites, and to develop new software products that achieve market acceptance with acceptable operating margins. Enterprises are requiring their application software vendors to provide greater levels of functionality and broader product offerings. We must continue to enhance our current product line and develop and introduce new products and services that keep pace with increasingly sophisticated customer requirements and the technological developments of our competitors. If we fail to do so, customers may choose not to renew their contracts with us. Our business and operating results could suffer if we cannot successfully execute our strategy and drive usage and product adoption.

We are implementing an integrated software product strategy across our businesses with differentiated vertical solutions targeted at specific capital-intensive industries. We cannot ensure that our product strategy will result in new and existing products that will meet market needs and achieve significant usage and product adoption. If we fail to increase usage and product adoption or fail to develop or acquire new software products that meet the demands of our customers or our target markets, our operating results and cash flows from operations will grow at a slower rate than we anticipate and our financial condition could suffer.

In addition, we are transitioning our OSI and SSE businesses to token and/or term license models to provide enhanced flexibility and broader access to our software suite for customers and improve long-term revenue and profitability. Although our management has significant experience in such business model transitions, we may not be successful in such a transition and there is no guarantee that we will achieve the expected results; for example, if our planned model transition is not acceptable to current customers of our OSI and SSE businesses, they may choose not to continue their relationships with us. Further, we may encounter unforeseen expenses, complications and delays in the process of the transition.

Our business could suffer if demand for, or usage of, our software declines for any reason, including declines due to adverse changes in the process and other capital-intensive industries.

If demand for, or usage of, our software solutions declines for any reason, our operating results, cash flows from operations and financial position would suffer. Our business could be adversely affected by:

- any decline in demand for or usage of our software solutions, including those resulting from global supply chain disruptions;
- the introduction of products and technologies that serve as a replacement or substitute for, or represent an improvement over, our software solutions;
- technological innovations that our software solutions do not address;
- our inability to release enhanced versions of our software on a timely basis; and
- adverse changes in capital intensive industries or otherwise that lead to reductions, postponements or cancellations of customer purchases of our products and services, or delays in the execution of license agreement renewals in the same quarter in which the original agreements expire.

Because of the nature of their products and manufacturing processes and their global operations, companies in the process and other capital-intensive industries are subject to risk of adverse or even catastrophic environmental, safety and health accidents or incidents and are often subject to changing standards and regulations worldwide. In addition, worldwide economic downturns and pricing pressures experienced by energy, chemical, engineering and construction, and other capital-intensive industries have led to consolidations and reorganizations. In particular, a significant percentage of our revenue is derived from companies in the oil and gas sector. In the future, any reduced demand for oil due to macroeconomic factors or other reasons

would likely impact the operating levels and capital spending of certain of these customers. In the past, this has resulted in, and could continue to result in, less predictable and lower demand for our products and services. Additionally, if there are any disruptions to global supply chains in many industries, such as occurred as a result of the COVID-19 pandemic, such disruptions could also impact the operating levels and capital spending of certain of our customers and result in less predictable and lower demand for our products and services. Any such adverse environmental, safety or health incident, change in regulatory standards, or economic downturn that affects the capital-intensive industries, including continued challenges and uncertainty among customers whose business is adversely affected by a shift to a greater percentage of renewable energy sources such as wind and solar, as well as general domestic and foreign economic conditions and other factors that reduce spending by companies in these industries, could impact our operating results in the future.

Unfavorable economic and market conditions or a lessening demand in the market for asset optimization software could adversely affect our operating results.

Our business is influenced by a range of factors that are beyond our control and difficult or impossible to predict. If the market for asset optimization software grows more slowly than we anticipate, demand for our products and services could decline and our operating results could be impaired.

Our overall performance depends, in part, on worldwide economic conditions. In the recent past, we have observed increased economic uncertainty in the United States and abroad. Impacts of such economic weakness include:

- falling overall demand for goods and services, leading to reduced profitability;
- reduced credit availability;
- higher borrowing costs;
- reduced liquidity;
- volatility in credit, equity and foreign exchange markets; and
- bankruptcies.

Further, the state of the global economy may deteriorate in the future. Customer demand for our products is linked to the strength of the global economy. If weakness in the global economy persists, many customers may amend their procurement strategies to delay or reduce their technology purchases. Capital expenditure and operating expense budgetary cycles are inherent in our customers' procurement strategies. These cycles are often informed by oil prices and environmental factors, including macroeconomic trends. Delay or reduction in our customers' technology purchases could result in reductions in sales of our products, longer sales cycles, slower adoption of new technologies, increased price competition or reduced use of our products by our customers. We will lose revenue if demand for our products is reduced because potential customers experience weak or deteriorating economic conditions, and our business, results of operations, financial condition and cash flow from operations would likely be adversely affected.

Climate change, and the regulatory and legislative developments related to climate change, may materially adversely affect our business and financial condition.

We must anticipate and respond to market and technological changes driven by broader trends such as decarbonization and electrification efforts in response to climate change. Market growth from the use of cleaner energy sources, as well as emissions management, energy efficiency, lower greenhouse gas refrigerant usage, and decarbonization efforts are likely to depend in part on technologies not yet deployed or widely adopted today. We may not adequately innovate or position our businesses for the adoption of technologies such as battery storage solutions, hydrogen use cases in industry, mobility, and power generation, enhanced power grid demand management, CCUS or advanced nuclear power.

These trends and the relative competitiveness of our product and service offerings will continue to be impacted by uncertain factors, such as the pace of technological developments and related cost considerations, the levels of economic growth in different markets around the world and the adoption of climate change-related policies such as carbon taxes, greenhouse gas emission reductions, incentives or mandates for particular types of energy, or policies that impact the availability of financing for certain types of projects.

Fluctuations in foreign currency exchange rates could result in declines in our reported revenue and operating results.

Some of our revenue is denominated in a currency other than the U.S. dollar, and certain of our operating expenses that are incurred outside the United States are denominated in currencies other than the U.S. dollar. Our reported revenue and operating results are subject to fluctuations in foreign exchange rates. Foreign currency risk arises primarily from the net difference between non-U.S. dollar receipts from customers outside the United States and non-U.S. dollar operating expenses

for subsidiaries in foreign countries. Currently, we anticipate that our largest exposures to foreign exchange rates exist primarily with the Euro, Japanese Yen, Pound Sterling, Chinese Yuan, Norwegian Krone, Indonesian Rupiah, Brazilian Real, Canadian Dollar, and Russian Ruble against the U.S. dollar. We cannot predict the impact of foreign currency fluctuations, and foreign currency fluctuations in the future may adversely affect our revenue and operating results. Any hedging policies we may implement in the future may not be successful, and the cost of those hedging techniques may have a significant negative impact on our operating results.

Competition from software offered by current competitors and new market entrants, as well as from internally developed solutions by our customers, could adversely affect our ability to sell our software products and related services and could result in pressure to price our products in a manner that reduces our margins.

Our markets in general are competitive and differ among our five product suites: ENG, MSC, APM, DGM, and SSE. We face challenges in selling our solutions to large companies that have internally developed their own proprietary software solutions, and we face competition from well-established vendors as well as new entrants in our markets. Many of our current and potential competitors have greater financial, technical, marketing, service and other resources than we have. As a result, these companies may be able to offer lower prices, additional products or services, or other incentives that we cannot match or offer. These competitors may be in a stronger position to respond more quickly to new technologies and may be able to undertake more extensive marketing campaigns. We believe they also have adopted and may continue to pursue more aggressive pricing policies and make more attractive offers to potential customers, employees and strategic partners. For example, some competitors may be able to initiate relationships through sales and installations of hardware and then seek to expand their customer relationships by offering asset optimization software at a discount. In addition, many of our competitors have established, and may in the future continue to establish, cooperative relationships with third parties to improve their product offerings and to increase the availability of their products in the marketplace. Competitors with greater financial resources may make strategic acquisitions to increase their ability to gain market share or improve the quality or marketability of their products.

Competition could seriously impede our ability to sell additional software products and related services on terms favorable to us. Businesses may continue to enhance their internally developed solutions, rather than investing in commercial software such as ours. Our current and potential commercial competitors may develop and market new technologies that render our existing or future products obsolete, unmarketable or less competitive. In addition, if these competitors develop products with similar or superior functionality to our products, we may need to decrease the prices for our products in order to remain competitive. If we are unable to maintain attractive pricing due to competitive pressures, our margins will be reduced and our operating results will be negatively affected. We cannot ensure that we will be able to compete successfully against current or future competitors or that competitive pressures will not materially adversely affect our business, financial condition and operating results.

Defects or errors in our software products could impact our reputation, impair our ability to sell our products and result in significant costs to us.

Our software products are complex and may contain undetected defects or errors. We may from time to time find defects in our products and we may discover additional defects in the future. We may not be able to detect and correct defects or errors before releasing products. Consequently, we or our customers may discover defects or errors after our products have been implemented. We have in the past issued, and may in the future need to issue, corrective releases of our products to remedy defects or errors. The occurrence of any defects or errors could result in:

- lost or delayed market acceptance and sales of our products;
- delays in payment to us by customers;
- product returns;
- injury to our reputation;
- diversion of our resources;
- increased service and warranty expenses or financial concessions;
- increased insurance costs; and
- legal claims, including product liability claims.

Defects and errors in our software products could result in claims for substantial damages against us and the loss of relationships with certain of our customers which could harm our results of operations and business.

Potential strategic transactions could be difficult to consummate and integrate into our operations, and these potential strategic transactions could disrupt our business, dilute stockholder value or impair our financial results.

As part of our business strategy, we from time to time seek to grow our business through acquisitions of, investments in, or partnerships with, new or complementary businesses, technologies or products that we believe can improve our ability to compete in our existing customer markets or allow us to enter new markets. For example, we recently terminated our agreement to acquire Micromine, a global leader in design and operational management solutions for the mining industry, due to uncertainty regarding the obtainment of certain regulatory approvals. The potential risks associated with acquisitions and investment transactions and partnerships include, but are not limited to:

- failure to realize anticipated returns on investment, cost savings and synergies;
- difficulty in assimilating the operations, policies and personnel of the acquired company;
- unanticipated costs or liabilities associated with, or arising from, acquisitions;
- challenges in combining product offerings and entering into new markets in which we may not have experience;
- distraction of management's attention from normal business operations;
- potential loss of key employees of the acquired company;
- difficulty implementing effective internal controls over financial reporting and disclosure controls and procedures;
- impairment of relationships with customers or suppliers;
- possibility of incurring impairment losses related to goodwill and intangible assets; and
- other issues not discovered in due diligence, which may include product quality issues or legal or other contingencies.

Acquisitions and/or investments may also result in potentially dilutive issuances of equity securities, the incurrence of debt and contingent liabilities, the expenditure of available cash, and amortization expenses or write-downs related to intangible assets such as goodwill, any of which could have a material adverse effect on our operating results or financial condition. Investments in, or partnerships with, immature businesses with unproven track records and technologies have an especially high degree of risk, with the possibility that we may lose our entire investment or incur unexpected liabilities. We may experience risks relating to the challenges and costs of closing a business combination or investment transaction and the risk that an announced business combination or investment transaction may not close. There can be no assurance that we will be successful in making additional acquisitions in the future or in integrating or executing on our business plan for existing or future acquisitions.

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

We are required under generally accepted accounting principles to review our goodwill and intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill must be tested for impairment at least annually. Factors that may be considered a change in circumstances indicating that the carrying value of our reporting unit and intangible assets may not be recoverable include: a significant decline in our stock price for a sustained period; significant negative industry or economic trends; a significant change in our market capitalization relative to our net book value; significant changes in our business strategy; slower growth rates in our operations; significant underperformance relative to historical or projected future operating results; and/or other materially adverse events that have implications on the profitability of our business. We may be required to record charges to earnings during any period in which an impairment of our goodwill or intangible assets is determined which could adversely affect our results of operations.

We may be subject to significant expenses and damages because of product-related claims and other litigation.

We may be, from time to time, involved in lawsuits, claims, investigations, proceedings and threats of litigation. The amount of damages cannot be predicted with certainty, and a successful matter brought against us could materially impact our business and financial condition. Such matters, including product-related and shareholder claims, even if not successful, could damage our reputation, cause us to lose existing clients, limit our ability to obtain new clients, divert management's attention from operations, result in significant revenue loss, create potential liabilities for our clients and us, and increase insurance and other operational costs.

Claims that we infringe the intellectual property rights of others may be costly to defend or settle and could damage our business.

We cannot be certain that our software and services do not infringe patents, copyrights, trademarks or other intellectual property rights, so infringement claims might be asserted against us. In addition, we have agreed, and may agree in the future, to indemnify certain of our customers against infringement claims that third parties may assert against our customers based on use of our software or services. Such claims may have a material adverse effect on our business, may be time-consuming and

may result in substantial costs and diversion of resources, including our management's attention to our business. Furthermore, a party making an infringement claim could secure a judgment that requires us to pay substantial damages and could also include an injunction or other court order that could prevent us from selling our software or require that we re-engineer some or all of our products. Claims of intellectual property infringement also might require us to enter costly royalty or license agreements. We may be unable to obtain royalty or license agreements on terms acceptable to us or at all. Our business, operating results and financial condition could be impacted significantly if any of these events were to occur, and the price of our common stock could be adversely affected.

We may not be able to protect our intellectual property rights, which could make us less competitive and cause us to lose market share.

Our software is proprietary. Our strategy is to rely on a combination of copyright, patent, trademark and trade secret laws in the United States and other jurisdictions, and to rely on license and confidentiality agreements and software security measures to further protect our proprietary technology and brand. We obtain or apply for patent protection with respect to some of our intellectual property, but generally do not rely on patents as a principal means of protecting our intellectual property. We register or apply to register some of our trademarks in the United States and in selected other countries. We generally enter into non-disclosure agreements with our employees and customers, and restrict third-party access to our software and source code, which we regard as proprietary information. In certain cases, we may provide copies of source code to customers for the purpose of special product customization or may deposit copies of the source code with a third-party escrow agent as security for ongoing service and license obligations. In these cases, we rely on non-disclosure and other contractual provisions to protect our proprietary rights.

The steps we have taken to protect our proprietary rights may not be adequate to deter misappropriation of our technology or independent development by others of technologies that are substantially equivalent or superior to our technology. Our intellectual property rights may expire or be challenged, invalidated or infringed upon by third parties or we may be unable to maintain, renew or enter into new licenses on commercially reasonable terms. Any misappropriation of our technology or development of competitive technologies could impact our business and could diminish or cause us to lose the competitive advantages associated with our proprietary technology, and could subject us to substantial costs in protecting and enforcing our intellectual property rights, and/or temporarily or permanently disrupt our sales and marketing of the affected products or services. The laws of some countries in which our products are licensed do not protect our intellectual property rights to the same extent as the laws of the United States. Moreover, in some non-U.S. countries, laws affecting intellectual property rights are uncertain in their application, including with respect to new technologies such as AI, which can affect the scope of enforceability of our intellectual property rights.

Our software research and development initiatives, our customer relationships, and our customers' operations could be compromised if the security of our information technology is breached as a result of a cyberattack. This could have a material adverse effect on our business, operating results and financial condition, and could impact our competitive position.

We have devoted and will continue to devote significant resources to updating our software and developing new products, and our financial performance is dependent in part upon our ability to bring new products and services to market. Our customers use our software to optimize their manufacturing processes and manage asset performance, and they rely on us to provide updates and releases as part of our software maintenance and support services, and to provide remote on-line troubleshooting support. The security of our information technology environment is therefore important to our development initiatives, and an important consideration in our customers' purchasing decisions.

We rely on IT networks and systems, including the Internet, to process, transmit and store electronic information, and to manage or support a variety of business processes and activities. While we maintain cybersecurity policies and procedures (including government security clearances, access controls, data encryption, vulnerability assessments, continuous monitoring, employee training and maintenance of backup and protective systems), we cannot provide assurance that our services and databases will not be compromised or disrupted. Moreover, the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently or may be designed to remain dormant until a predetermined event and often are not recognized until launched against a target. As a result, it is possible for such vulnerabilities to remain undetected for an extended period.

Our technology networks and systems may be susceptible to damage, disruptions or shutdowns due to criminal conduct, DDoS attacks, or other advanced persistent attacks by malicious actors, including hackers and cybercriminals; failures during the process of upgrading or replacing software, databases or components; power outages; telecommunications or system failures; terrorist attacks; natural disasters; employee negligence, error or malfeasance; server or cloud provider breaches; and

computer viruses or cyberattacks. Cybersecurity threats and incidents can range from uncoordinated individual attempts to gain unauthorized access to IT networks and systems to more sophisticated and targeted measures, known as advanced persistent threats, directed at our products, customers and/or third-party service providers. In addition, it is possible a security breach could result in theft of trade secrets or other intellectual property or disclosure of or access to confidential customer, supplier or employee information, including personal information.

Our policy is to follow the appropriate cybersecurity frameworks to manage and reduce cybersecurity risk. We may incur additional costs to maintain appropriate cybersecurity protections in response to evolving cybersecurity threats, and we may not be able to safeguard against all data security breaches or misuses of data. Should we be unable to prevent security breaches or other damage to our IT systems, disruptions could have an adverse effect on our operations, as well as expose us to material loss of business and revenue, litigation, liability or penalties under privacy laws, increased cybersecurity protection costs, reputational damage and product failure, and additional costs associated with responding to the service interruption or security breach, such as investigative and remediation costs, the costs of providing individuals and/or data owners with notice of the breach, legal fees, the costs of any additional fraud detection activities, or the costs of prolonged system disruptions or shutdowns. Any of these events could materially adversely impact our business and results of operations. Our customers and their operations also may be subject to cyberattacks and resulting business disruptions and losses. We seek to cap the liability to which we are exposed in the event of losses or harm to our customers, including those resulting from security incidents, but we cannot be certain that we will obtain these caps or that these caps, if obtained, will be enforced in all instances. Furthermore, the cybersecurity insurance we maintain may be inadequate or may not be available in the future on acceptable terms, or at all. In addition, our policy may not cover our remediation expenses or any claim against us for loss of data or other indirect or consequential damages. Defending any suit based on or related to any data loss or system disruption, regardless of its merit and available insurance coverage, could be costly and divert management's attention. In addition, we must comply with increasingly complex and rigorous regulatory standards enacted to protect business and personal data in the United States and elsewhere. Compliance with privacy and localization laws and regulations increases operational complexity. Failure to comply with these regulatory standards could subject us to fines and penalties, as well as legal and reputational risks, including investigations and proceedings brought against us by governmental entities or others.

Security breaches or disruptions of our information technology systems from foreign state actors could adversely affect our business.

Any cyberattacks on us or our systems could adversely affect our network systems or other operations. There may be an increased risk of cyberattacks by state actors due to the current conflict between Russia and Ukraine. Although we maintain cybersecurity policies and procedures to manage risk to our information systems, adapt our systems and processes to mitigate such threats, and plan to enhance our protections against such attacks, we may not be able to address these cybersecurity threats proactively or implement adequate preventative measures and there can be no assurance that we will promptly detect and address any such disruption or security breach, if at all.

Our liquidity and ongoing access to capital could be materially and negatively affected by increased volatility in the financial and securities markets, including increased inflation and interest rates.

Our continued access to sources of liquidity depends on multiple factors, including global macroeconomic conditions, the condition of global financial markets, the availability of sufficient amounts of financing and our operating performance. There has been increased volatility in the financial and securities markets, as well as increased inflation and interest rates, which generally has made access to capital less certain and has increased the cost of obtaining new capital. We may need to obtain equity, equity-linked, or debt financing in the future to fund our operations, including our acquisition strategy, and there is no guarantee that such debt financing will be available in the future, or that it will be available on commercially reasonable terms, in which case we may need to seek other sources of funding.

Our inability to maintain or develop our strategic and technology relationships could adversely affect our business.

We have strategic and technology relationships with other companies with which we work to offer complementary solutions and services, that market and sell our solutions, and that provide technologies that we embed in our solutions. We may not realize the expected benefits from these relationships and such relationships may be terminated by the other party. If these companies fail to perform or if a company terminates or substantially alters the terms of the relationship, we could suffer delays in product development, reduced sales or other operational difficulties and our business, results of operations and financial condition could be materially adversely affected.

Risks Related to Our Common Stock

Emerson is our controlling owner, which could discourage takeover attempts. If Emerson ceases to be our controlling owner, anti-takeover provisions contained in our charter and bylaws could impair attempts by a party other than Emerson to acquire a significant number of shares of our common stock.

Emerson and its subsidiaries beneficially own a majority of the shares of our common stock, which could discourage takeover attempts by a third party. Further, our charter and bylaws also contain provisions that may delay, defer or discourage another party from acquiring a significant number of shares of our common stock or, in the event that Emerson and its subsidiaries no longer beneficially own a majority of the shares of our common stock, control of us. Among other things, our charter and bylaws include provisions regarding:

- the ability of our Board to issue shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of an unsolicited acquirer;
- the prohibition on us to engage in any business combination with any person who owns 15% or more of our outstanding voting stock (excluding Emerson) (an “interested stockholder”) for a period of three years following the time that such stockholder became an interested stockholder unless certain conditions are met; and
- the ability of our Board to amend our bylaws, which may allow our Board to take additional actions to prevent an unsolicited takeover and inhibit the ability of an acquirer to amend our bylaws to facilitate an unsolicited takeover attempt.

These provisions may discourage, in the event that Emerson and its subsidiaries no longer beneficially own a majority of the shares of our common stock, unsolicited takeover proposals that stockholders may consider to be in their best interests. Together these provisions may make the removal of management more difficult and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our securities, especially in the event that Emerson and its subsidiaries no longer beneficially own a majority of the shares of our common stock.

Our charter designates specific courts as the exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us.

Pursuant to our charter, unless our Board consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the sole and exclusive forum for state law claims for: (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee or stockholder of us to us or our stockholders; (iii) any action asserting a claim arising pursuant to any provision of Delaware General Corporation Law (the “DGCL”), or our charter or bylaws; (iv) any action asserting a claim related to, involving or against us governed by the internal affairs doctrine; or (v) any action asserting an “internal corporate claim” as that term is defined in Section 115 of the DGCL. The foregoing does not apply to claims arising under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or the rules and regulations promulgated thereunder. Our charter further provides that unless our Board consents in writing to the selection of an alternative forum, the federal district courts of the United States shall, to the fullest extent permitted by law, be the sole and exclusive forum for any complaint asserting a cause of action arising under the Securities Act or the rules and regulations promulgated thereunder (the “Federal Forum Provision”, and together with the provision in the first sentence of this paragraph, the “Forum Selection Provisions”).

The Forum Selection Provisions in our charter may impose additional litigation costs on stockholders in pursuing any such claims. Additionally, the Forum Selection Provisions may limit our stockholders’ ability to bring a claim in a judicial forum that they find favorable for disputes with us or our directors, officers or employees, which may discourage the filing of such lawsuits against us and our directors, officers and employees even though an action, if successful, might benefit our stockholders. The Court of Chancery of the State of Delaware and the federal district courts of the United States may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments may be more or less favorable to us than our stockholders.

Section 22 of the Securities Act of 1933, as amended (the “Securities Act”), creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. While the Delaware Supreme Court ruled in March 2020 that federal forum selection provisions purporting to require claims under the Securities Act be brought in federal court are “facially valid” under Delaware law, there is uncertainty as to whether other courts will enforce the Federal Forum Provision in our charter. If the Federal Forum Provision is found to be

unenforceable, we may incur additional costs associated with resolving claims under the Securities Act. The Federal Forum Provision may also impose additional litigation costs on stockholders who assert that the provision is not enforceable or invalid.

Our common stock may experience substantial price and volume fluctuations.

The equity markets have from time to time experienced extreme price and volume fluctuations, particularly in the high technology sector, and those fluctuations often have been unrelated to the operating performance of particular companies. In addition, the market price of our common stock may be affected by other factors, such as: (i) our financial performance; (ii) announcements of technological innovations or new products by us or our competitors; and (iii) market conditions in the computer software or hardware industries.

In the past, following periods of volatility in the market price of a public company's securities, securities class action litigation has often been instituted against that company. This type of litigation against us could result in substantial liability and costs and divert management's attention and resources.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our principal executive offices are located in leased facilities in Bedford, Massachusetts, to accommodate product development, sales, marketing, operations, finance and administrative functions. The lease for our Bedford executive offices commenced in November 2014 and is scheduled to expire in March 2025. Subject to the terms and conditions of the lease, we may extend the term of the lease for two successive terms of five years each.

We also lease office space in Medina, Minnesota and in Houston, Texas to accommodate sales, services, product development functions, marketing, operations, finance and administrative functions. Additionally, we lease office space in the United Kingdom, Shanghai, Mexico City, Canada, Australia, Singapore, Beijing, India, Moscow, Tokyo, Romania, and Bahrain, to accommodate sales, services and product development functions.

In the remainder of our other locations, the majority of our leases have lease terms of four years or less that are generally based on the number of workstations required. We believe this facilities strategy provides us with significant flexibility to adjust to changes in our business environment. We do not own any real property. We believe that our leased facilities are adequate for our anticipated future needs.

Item 3. Legal Proceedings.

None.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

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

Market Information

Our common stock currently trades on The Nasdaq Global Select Market under the symbol “AZPN.”

Holders

On August 15, 2023, there were 42 holders of record of our common stock. The number of record holders does not include persons who held common stock in nominee or “street name” accounts through brokers.

Dividends

We have never declared or paid cash dividends on our common stock. We do not anticipate paying cash dividends on our common stock in the foreseeable future.

On May 16, 2022, AspenTech and certain of its subsidiaries entered into a Borrower Assignment and Accession Agreement (the “Borrower Assignment and Accession Agreement”) relating to the Amended and Restated Credit Agreement dated as of December 23, 2019, as amended from time to time, among Heritage AspenTech, the other loan parties from time to time party thereto, the lenders party thereto, and JPMorgan Chase Bank, National Association (“JPMorgan”), as Administrative Agent (as previously amended, the “Amended and Restated Credit Agreement”).

The Amended and Restated Credit Agreement contains affirmative and negative covenants customary for facilities of this type, including restrictions on incurrence of additional debt, liens, fundamental changes, asset sales, restricted payments (including dividends) and transactions with affiliates.

In addition, the declaration or payment of a cash or other dividend requires the consent of Emerson under the Stockholders Agreement under certain circumstances.

Any future determination relating to our dividend policy will be made at the discretion of our Board and will depend on a number of factors, including our future earnings, capital requirements, financial condition and future prospects and such other factors as our Board may deem relevant.

Purchases of Equity Securities by the Issuer

On May 5, 2023, we entered into an accelerated share repurchase program (“ASR Program”) with JPMorgan to repurchase an aggregate of \$100.0 million of our common stock. For more details on of the ASR Program, refer to Note 15, “Stock Repurchases” to our Consolidated and Combined Financial Statements. During fiscal 2023 we repurchased 487,626 shares of our common stock for \$100.0 million pursuant to the ASR Program. The ASR Program settled on August 7, 2023, resulting in an additional delivery of 107,045 shares of our common stock to us.

The following is a summary of stock repurchases for each month during the fourth quarter of the year ended June 30, 2023.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased As Part of Publicly Announced Plans or Programs	Approximate Dollar Value that May Yet Be Purchased Under the Plans or Programs (1)
<i>(In Thousands, Except Shares and per Share Data)</i>				
April 1, 2023 to April 30, 2023	—	—	—	—
May 1, 2023 to May 31, 2023	487,626	\$ 172.57	487,626	\$ 15,850
June 1, 2023 to June 30, 2023	—	—	—	15,850
Total	487,626	\$ 172.57	487,626	

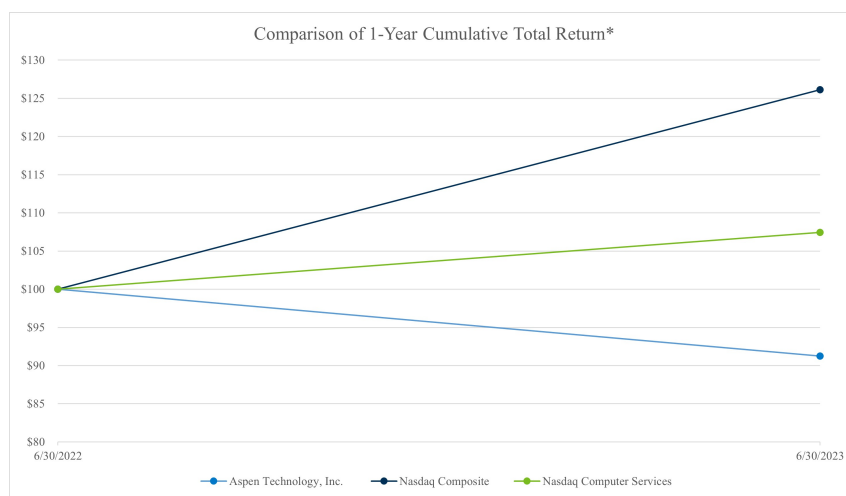
(1) On May 5, 2023, we entered into the ASR Program with JPMorgan to repurchase an aggregate of \$100.0 million of our common stock. The ASR Program settled on August 7, 2023.

On August 1, 2023, we announced that the Board approved a share repurchase authorization (the “Share Repurchase Authorization”), pursuant to which we may repurchase up to \$300.0 million in the aggregate of our outstanding shares of common stock, by means of open market transactions, block transactions, privately negotiated purchase transactions or any other purchase techniques, including 10b5-1 trading plans. The Share Repurchase Authorization will commence after the conclusion of our ASR Program.

Stock Performance Graph

Notwithstanding any statement to the contrary in any of our previous or future filings with the SEC, the following information relating to the price performance of our common stock shall not be deemed “filed” with the Commission under the Securities Exchange Act and shall not be incorporated by reference into any such filings.

The following graph compares the cumulative total return attained by holders of our common stock relative to the cumulative total return delivered by the Nasdaq Composite Index (“Nasdaq Composite”) and Nasdaq Computer Services Index (“Nasdaq Computer Services”). The graph tracks the performance of a \$100 investment in our common stock, Nasdaq Composite, and Nasdaq Computer Services Index performance values, assuming the reinvestment of any dividends.



*The Transaction closed on May 16, 2022. We are presenting this comparison for fiscal 2023, our first full fiscal year as the new operating company resulting from the Transaction.

Item 6. [Reserved].

[Reserved].

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

You should read the following discussion in conjunction with our consolidated and combined financial statements and related notes beginning on page 60. In addition to historical information, this discussion contains forward-looking statements that involve risks and uncertainties. You should read “Item 1A. Risk Factors” for a discussion of important factors that could cause our actual results to differ materially from our expectations.

In connection with the Transaction, we approved a change to our fiscal year end from September 30 to June 30. References to our fiscal year 2023 are to the twelve-month period ended June 30, 2023, to our fiscal year 2022 are to the nine-month period ended June 30, 2022 and to our fiscal year 2021 are to the twelve-month period ended September 30, 2021, unless otherwise noted. Refer to Note 1, “Operations” to our Consolidated and Combined Financial Statements for additional information.

The Transaction has been accounted for as a business combination in accordance with U.S. GAAP, with the OSI business and the SSE business treated as the “acquirer” and Heritage AspenTech treated as the “acquired” company for financial reporting purposes. Accordingly, the historical financial statements of the OSI business and the SSE business are the historical financial statements of AspenTech following the completion of the Transaction. Our historical financial results are not necessarily indicative of future financial results because Heritage AspenTech has only been included since the Closing Date.

Business Overview

We are a global leader in industrial software focused on helping customers in asset-intensive industries address the Dual Challenge. Our solutions address complex environments where it is critical to optimize across the full asset lifecycle - asset design, operation, and maintenance - enabling customers to run their assets safer, greener, longer and faster. Thousands of companies, ranging from multi-national corporations to start-ups, rely on our software to help them run their assets more profitably, resiliently, and sustainably to meet their operational excellence and sustainability goals.

We help customers solve some of their most critical challenges via our purpose-built software that combines engineering first principles, deep industry domain knowledge, and advanced technologies. We drive significant value creation through our decades of experience in modeling, simulation, and optimization technologies. The operational challenges we help our customers solve include how to maintain maximum efficiency in process operations, manage electrical grids amid the growth in renewable energy sources, ensure supply chain resiliency, reduce carbon emissions and more.

Our software also enables companies to develop new processes that can be scaled to support the energy transition and a net zero future, such as green hydrogen, biofuels, carbon capture, utilization and storage and circularity of plastics.

On October 10, 2021, Heritage AspenTech and Emerson and certain of its subsidiaries, entered into a definitive agreement pursuant to which, among other matters, Emerson and its subsidiaries contributed to Heritage AspenTech shareholders \$6,014,000,000 in cash and the OSI business and the SSE business in exchange for 55% of our outstanding common stock (on a fully diluted basis). The Transaction closed on May 16, 2022.

By combining the software capabilities, deep domain expertise and leadership of Heritage AspenTech with the OSI and SSE businesses, we expanded our served markets, augmented our expertise and sales channels, and broadened our portfolio to five product suites: ENG, MSC, APM, DGM, and SSE.

Relationship with Emerson

At the closing of the Transaction, we entered into a Stockholders Agreement with Emerson. In addition to that agreement, we also entered into a Commercial Agreement and a Transition Services Agreement related to certain operations going forward.

Pursuant to the Commercial Agreement, AspenTech granted a subsidiary of Emerson the right to distribute, on a non-exclusive basis, certain (i) existing Heritage AspenTech products, (ii) existing Emerson products transferred to AspenTech pursuant to the Transaction and (iii) future AspenTech products as mutually agreed upon by the parties during the term of the Commercial Agreement, in each case, to end-users through such subsidiary of Emerson acting as an agent, reseller or original equipment manufacturer.

Pursuant to the Transition Services Agreement, Emerson provides AspenTech and its subsidiaries with certain services, including information technology, human resources and other specified services, as well as access to certain of Emerson's existing facilities, for a limited time.

Heritage AspenTech

Heritage AspenTech was founded over 40 years ago with a focus on industrial process efficiency and optimization. As a global leader in asset optimization software, Heritage AspenTech combines decades of modeling and operations expertise with big data, AI, and advanced analytics. Heritage AspenTech's unique asset lifecycle approach and market-leading solutions help customers achieve new levels of efficiency, accelerate innovation and reduce emissions and waste, without compromising safety.

Heritage AspenTech has developed its applications to design and optimize industrial operations across three principal business areas: engineering, manufacturing and supply chain, and asset performance management. Heritage AspenTech is a recognized technology leader in providing process optimization and asset performance management software for each of these business areas. With its mission to digitally transform the industries we serve by optimizing their assets to run safer, greener, longer and faster, Heritage AspenTech is also a global leader in helping companies achieve their sustainability goals while achieving operational excellence.

Customers use our solutions to help advance sustainability technology pathways in improving resource efficiencies, such as energy, water or feedstock; supporting energy transition and decarbonization initiatives, including integrating renewable and alternative energy sources, such as biofuels; innovating new approaches for the hydrogen economy and carbon capture; and, enabling recycling efficiencies for waste reduction throughout operations with advanced simulation and scale-up solutions.

OSI Business (Digital Grid Management)

Our OSI business offers operational technology (OT) solutions that enable electric, gas, and water utilities and asset operators to manage and optimize the digital grid, incorporating all types of generation, industrial cogeneration, transmission, distribution, and microgrids. Utilities, industry, and institutions use OSI solutions to transform and digitize the grid to seamlessly incorporate renewable energy and storage, to achieve reliability, maximize cybersecurity, and minimize peak loading.

Our OSI business' energy management solution (EMS) monitors, controls, and optimizes the increasingly interconnected transmission networks and generation fleets to help manage grid stability and ensure security and regulatory compliance. Our advanced distribution management solution (ADMS), distributed energy resource management solution (DERMS) and Outage Management offerings provide system resiliency, efficiency, and safety by monitoring, controlling and modeling the distribution network as utilities seek to increase reliability, predict and react to increasingly dynamics supply and demand patterns, resolve outages faster and in a more automated manner, and manage field service digitally.

SSE Business (Subsurface Science & Engineering)

Our SSE business is a leading provider of geoscience and modeling software for optimization across subsurface engineering and operations. With over 30 years of technology experience in geophysics, petrophysics, geological and reservoir modeling, SSE software empowers decision makers to reduce uncertainty, improve confidence, minimize risk, and support responsible asset management. Used extensively by the global energy industry, SSE solutions also have applications that extend into geothermal energy, and carbon capture and storage.

Our SSE business provides end-to-end workflows from seismic analysis and interpretation to reservoir and production simulation and from asset appraisal to operational planning and execution, to optimize production and utilization and minimize energy use, water use, and fugitive emissions. SSE software is also employed to screen and assess oil and saline aquifer reservoirs for CO₂ sequestration and to monitor CO₂ storage.

Business Segments

Prior to the Transaction, the Industrial Software Business had two operating and reportable segments: OSI Inc. and the SSE business. The Transaction resulted in the creation of a third operating and reportable segment: Heritage AspenTech. During the three months ended September 30, 2022, we completed certain integration activities and changes to our organizational structure that triggered a change in the composition of our operating and reportable segments. As a result, beginning with the interim period ended September 30, 2022, AspenTech is comprised of a single operating and reportable segment. Accordingly, we have restated our operating and reportable segment information for fiscal 2022 and 2021. Our chief operating decision maker is our President and Chief Executive Officer.

Recent Events

On May 5, 2023, we entered into a share repurchase program for up to \$100.0 million of our outstanding shares of common stock in fiscal years 2023 and 2024, subject to the terms of the program. The program includes the ASR Program to repurchase up to \$100.0 million of AspenTech's common stock. The ASR Program settled on August 7, 2023.

On July 27, 2022, we announced that we entered into a definitive agreement to acquire Mining Software Holdings Pty Ltd ("Micromine"), a global leader in design and operational management solutions for the metals and mining industry, from private equity firm Potentia Capital and other sellers for AU \$900.0 million in cash (approximately \$623.0 million USD based on foreign currency exchange rate at the time of announcement). We previously intended to finance the transaction primarily through debt financing under the Emerson Credit Agreement (described below). In connection with the agreement to purchase Micromine, and to mitigate the impact of the foreign currency exchange associated with the transaction, we also entered into foreign currency forward contracts on August 2, 2022 that settled on February 6, 2023. We entered into an additional foreign currency forward contract on February 6, 2023 that ultimately terminated on June 21, 2023.

On July 28, 2023, we entered into the Plantweb Optics Analytics Assignment and License Agreement with Emerson for the purchase of Emerson's Plantweb Optics Analytics software and the perpetual and royalty-free licensing of other Emerson intellectual property for \$12.5 million, paid on July 28, 2023.

On August 1, 2023, we announced the termination of the agreement to purchase Micromine. We, along with the sellers of Micromine, had been waiting to secure a final Russian regulatory approval as a condition to the closing of the transaction. As this process continued, the timing and requirements necessary to get this approval became increasingly unclear. This lack of clarity on the potential for, and timing of, a successful review led us and the sellers of Micromine to this mutual course of action.

On August 1, 2023, we announced that the Board approved a share repurchase authorization (the "Share Repurchase Authorization"), pursuant to which we may repurchase up to \$300.0 million in the aggregate of our outstanding shares of common stock, by means of open market transactions, block transactions, privately negotiated purchase transactions or any other purchase techniques, including 10b5-1 trading plans. The Share Repurchase Authorization will commence after the conclusion of our ASR Program.

On August 18, 2023, the Emerson Credit Agreement was terminated in connection with the termination of the agreement to purchase Micromine.

Key Components of Operations

Revenue

We generate revenue primarily from the following sources:

License and Solutions Revenue. We sell our software products to end users primarily under fixed term licenses. We also sell integrated solutions to our end users under perpetual software licenses along with professional services and hardware by OSI. For customer contracts entered into by the OSI business on or after January 1, 2023 we account for the OSI software license, hardware, maintenance, and professional services as separate and distinct performance obligations. See Note 2, "Significant Accounting Policies" to our Consolidated and Combined Financial Statements for more information.

Maintenance Revenue. We provide customers technical support, software assurance patch management services and the right to receive any when-and-if available updates to software. Our technical support services are provided from our customer support centers throughout the world, as well as via email and through our support website.

Services and Other Revenue. We provide training and professional services to our customers. Our professional services are focused on implementing our technology in order to improve customers' plant performance and gain better operational data. Customers who use our professional services typically engage us to provide those services over periods of up to 24 months. We charge customers for professional services on a time-and-materials or fixed-price basis. We provide training services to our customers, including on-site, Internet-based and customized training.

Cost of Revenue

Cost of License and Solutions. Our cost of license revenue consists of (i) royalties, (ii) amortization of capitalized software and intangible assets associated with developed technology, and (iii) distribution fees.

Cost of Maintenance. Our cost of maintenance revenue consists primarily of personnel-related costs of providing our customers technical support, software assurance patch management services and the right to receive any when-and-if available updates to software.

Cost of Services and Other. Our cost of services and other revenue consists primarily of personnel-related and external consultant costs associated with providing our customers professional services and training.

Operating Expenses

Selling and Marketing Expenses. Selling and marketing expenses consist primarily of the personnel and travel expenses related to the effort expended to license our products and services to current and potential customers, as well as for overall management of customer relationships. Marketing expenses include expenses needed to promote our company and our products and to conduct market research to help us better understand our customers and their business needs, and expenses resulted from amortization of intangible assets associated with customer relationships and backlog.

Research and Development Expenses. Research and development expenses consist primarily of amortization of developed technology, personnel expenses related to the creation of new software products, enhancements and engineering changes to existing products.

General and Administrative Expenses. General and administrative expenses include the personnel expenses of corporate and support functions, such as executive leadership and administration groups, finance, legal, human resources and corporate communications, and other costs, such as outside professional and consultant fees, amortization of intangible assets associated with certain purchased software, and the provision for bad debt on accounts receivable.

Restructuring Costs. Restructuring costs were related to the undertaking of certain restructuring transactions in accordance with the restructuring plan attached to the Transaction Agreement to separate the OSI business and the SSE business from Emerson's other business activities and to consolidate such separated business under a holding company, which was contributed to AspenTech as part of the Transaction.

Other Income and Expenses

Interest Income (Expense). Interest income is recorded for financing components under Accounting Standards Update ("ASU") No. 2014-09, *Revenue from Contracts with Customers* (Topic 606) or Topic 606. When a contract includes a significant financing component, we generally receive the majority of the customer consideration after the recognition of a substantial portion of the arrangement fee as license revenue. As a result, we decrease the amount of revenue recognized and increase interest income by a corresponding amount. Interest income also includes interest earned on the Company's receivable balances under the cash pooling arrangements and debt agreements with Emerson and on the interest-bearing cash balances held at our designated financial institutions worldwide. Interest expense is primarily related to outstanding borrowings under our Amended and Restated Credit Agreement and payable balances under the cash pooling arrangements and debt agreements with Emerson.

Other (Expense) Income, Net. Other (expense) income, net is comprised primarily of unrealized gains and losses on foreign currency forward contracts and unrealized and realized foreign currency exchange gains and losses generated from the settlement and remeasurement of transactions denominated in currencies other than the functional currency of our entities.

Provision for Income Taxes. Provision for income taxes is comprised of domestic and foreign taxes. We record interest and penalties related to income tax matters as a component of income tax expense. Our effective income tax rate may fluctuate

between fiscal years and from quarter to quarter due to items arising from discrete events, such as tax benefits from the disposition of employee equity awards, settlements of tax audits and assessments and tax law changes. Our effective income tax rate is also impacted by, and may fluctuate in any given period because of, the composition of income in foreign jurisdictions where tax rates differ.

Change in Fiscal Year

On the Closing Date, we changed our fiscal year end from September 30 to June 30. As a result, our fiscal year 2023 results of operations, cash flows, and all transactions impacting stockholders' equity presented in this Annual Report on Form 10-K are for the twelve-month period ended June 30, 2023 whereas those same items for our fiscal year 2022 are for the nine-month period ended June 30, 2022 and for our fiscal year 2021 are for the twelve-month period ended September 30, 2021, unless otherwise noted. As such, the Company's fiscal year 2022, or fiscal 2022, refers to the period from October 1, 2021 to June 30, 2022.

This Annual Report on Form 10-K also includes unaudited consolidated and combined statements of operations and cash flows for the twelve months ended June 30, 202; see Note 23, "Transition Period Comparative Data" to our Consolidated and Combined Financial Statements for further information.

The discussion below in the Results of Operations section provides a comparison for the twelve months ended June 30, 2023 to the unaudited twelve months ended June 30, 2022.

Key Business Metrics

Background

We utilize key business metrics to track and assess the performance of our business. We have identified the following set of appropriate business metrics in the context of our evolving business:

- Annual Contract Value
- Total Contract Value
- Bookings

We also use the following non-GAAP metrics in addition to GAAP measures to track our business performance:

- Free cash flow
- Non-GAAP operating income

We make these measures available to investors and none of these metrics should be considered as an alternative to any measure of financial performance calculated in accordance with GAAP.

Annual Contract Value

Annual contract value (ACV) is an estimate of the annual value of our portfolio of term license and software maintenance and support (SMS) contracts, the annual value of SMS agreements purchased with perpetual licenses, and the annual value of standalone SMS agreements purchased with certain legacy term license agreements, which have become an immaterial part of our business.

Comparing ACV for different dates can provide insight into the growth and retention rates of our recurring software business because ACV represents the estimated annual billings associated with our recurring license and maintenance agreements at any point in time. Management uses the ACV business metric to evaluate the growth and performance of our business as well as for planning and forecasting purposes. We believe that ACV is a useful business metric to investors as it provides insight into the growth component of our software business.

ACV generally increases as a result of new term license and SMS agreements with new or existing customers, renewals or modifications of existing term license agreements that result in higher license fees due to a contractually-agreed price

escalation or an increase in the number of tokens (units of software usage) or products licensed, or an increase in the value of licenses delivered.

ACV is adversely affected by term license and SMS agreements that are renewed at a lower entitlement level or not renewed, a decrease in the value of licenses delivered, and, to a lesser extent, by customer agreements that become inactive during the agreement's term because, in our determination, amounts due (or which will become due) under the agreement are not collectible. As ACV is an estimate of annual billings, it will generally not include contracts with a term of less than one year. Because ACV represents all other active term software and SMS agreements, it may include amounts under agreements with customers that are delinquent in paying invoices, that are in bankruptcy proceedings, are subject to termination by the customer or where payment is otherwise in doubt.

As of June 30, 2023, customer agreements representing approximately 84% of our ACV (by value) were denominated in U.S. dollars. For agreements denominated in other currencies, we use a fixed historical exchange rate to calculate ACV in dollars rather than using current exchange rates, so that our calculation of growth in ACV is not affected by fluctuations in foreign currencies. We have not applied this methodology retroactively for the OSI business software amounts delivered prior to October 2020, but do not believe this to have a material impact on our reported ACV metric due to the high USD-denominated concentration of the OSI business. As of June 30, 2023, approximately 96% of OSI Inc. ACV was denominated in USD.

For term license agreements that contain professional services or other products and services, we have included in ACV the portion of the invoice reflective of the relative fair value of the term license rather than the portion of the invoice attributed to the term license as outlined in the agreement. We believe that this methodology more accurately allocates any discounts or premiums to the different elements of the agreement.

We estimate that the pro forma ACV of AspenTech grew by approximately 11.8% during fiscal 2023, from \$791.2 million as of June 30, 2022 to \$884.9 million as of June 30, 2023. We estimate that pro forma ACV grew by approximately 7.8% during fiscal 2022, from \$733.8 million as of June 30, 2021 to \$791.2 million as of June 30, 2022.

Total Contract Value

Total Contract Value ("TCV") is the aggregate value of all payments received or to be received under all active term license and perpetual SMS agreements, including maintenance and escalation. TCV of AspenTech was \$3.6 billion and \$3.2 billion as of June 30, 2023 and 2022, respectively.

Bookings

Bookings is the total value of customer term license and perpetual license SMS contracts signed and delivered in the current period, less the value of such contracts signed in the current period where the initial licenses and SMS agreements are not yet deemed delivered, plus term license contracts and perpetual license SMS contracts signed in a previous period for which the initial licenses are deemed delivered in the current period.

The bookings of AspenTech was \$1.078 billion during the twelve-month period ended June 30, 2023, compared to \$937.9 million and \$906.7 million during the nine-month period ended June 30, 2022 and the twelve-month period ended September 30, 2021, respectively. The change in bookings is related to the timing of renewals.

Non-GAAP Business Metrics

We use a non-GAAP measure of free cash flow to analyze cash flows generated from our operations. Management believes that this financial measure is useful to investors because it permits investors to view our performance using the same tools that management uses to gauge progress in achieving our goals. We believe this measure is also useful to investors because it is an indication of cash flow that may be available to fund investments in future growth initiatives or to repay borrowings under the Amended and Restated Credit Agreement, and it is a basis for comparing our performance with that of our competitors. The presentation of free cash flow is not meant to be considered in isolation or as an alternative to cash flows from operating activities as a measure of liquidity.

The following table provides a reconciliation of GAAP net cash provided by operating activities to free cash flow for the indicated periods (in thousands):

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
(Dollars in Thousands)			
Net cash provided by operating activities (GAAP)	\$ 299,209	\$ 28,962	\$ 54,800
Purchase of property, equipment, and leasehold improvements	(6,577)	(2,263)	(6,185)
Payments for capitalized computer software development costs	(366)	(508)	—
Free cash flow (non-GAAP) ⁽¹⁾	<u>\$ 292,266</u>	<u>\$ 26,191</u>	<u>\$ 48,615</u>

(1) For the interim period beginning January 1, 2023, we no longer exclude acquisition and integration planning related payments from our computation of free cash flow. Free cash flow for all prior periods presented has been revised to the current period computation methodology.

Non-GAAP income from operations excludes certain non-cash and non-recurring expenses, and is used as a supplement to income from operations presented on a GAAP basis. We believe that non-GAAP income from operations is a useful financial measure because removing certain non-cash and other items provides additional insight into recurring profitability and cash flow from operations.

The following table presents our (loss) from operations, as adjusted for stock-based compensation expense, amortization of intangible assets, and other items, such as the impact of acquisition and integration planning related fees, for the indicated periods (in thousands):

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021	Twelve-Month Period 2023 Compared to Nine-Month Period 2022		Nine-Month Period 2022 Compared to Twelve-Month Period 2021	
				\$	%	\$	%
GAAP income (loss) from operations	\$ (183,065)	\$ 36,157	\$ (60,439)	\$ (219,222)	(606.3)%	\$ 96,596	(159.8)%
Plus:							
Stock-based compensation	84,850	15,763	1,744	69,087	438.3	14,019	803.8
Amortization of intangible assets ⁽¹⁾	485,486	116,743	120,330	368,743	315.9	(3,587)	(3.0)
Acquisition and integration planning related fees	7,556	3,749	6,102	3,807	101.5	(2,353)	(38.6)
Non-GAAP income from operations	<u>\$ 394,827</u>	<u>\$ 172,412</u>	<u>\$ 67,737</u>	<u>\$ 222,415</u>	<u>129.0 %</u>	<u>\$ 104,675</u>	<u>154.5 %</u>

(1) The Company has elevated amortization of intangible assets following the close of the Transaction with Emerson. As a result, the Company expects its amortization of intangibles assets to remain elevated for the next several years as the related asset balance is amortized over the respective expected useful lives of the intangible assets.

Results of Operations

The following table sets forth the results of operations and the period-over-period percentage change for the twelve-months ended June 30, 2023 and 2022, and the nine-month periods ended June 30, 2022 and 2021. A discussion regarding our financial condition and results of operations for the year ended June 30, 2023 compared to the year ended June 30, 2022 is presented below. A discussion regarding our financial condition and results of operations for the nine-month period ended June 30, 2022 compared to the nine-month period ended June 30, 2021, can be found under Item 7 in our Transition Report on Form 10-KT for the fiscal year ended June 30, 2022, filed with the SEC on August 25, 2022.

(Dollars in Thousands)	Twelve Months Ended June 30,		Nine Months Ended June 30,		Twelve-Month Period 2023 Compared to 2022 %	Nine Month Period 2022 Compared to 2021 %
	2023	2022 <i>(unaudited)</i>	2022	2021		
Revenue:						
License and solutions	\$ 669,185	\$ 322,804	\$ 278,589	\$ 136,699	107.3 %	103.8 %
Maintenance	316,911	128,321	103,786	68,027	147.0	52.6
Services and other	58,082	31,186	22,921	18,899	86.2	21.3
Total revenue	1,044,178	482,311	405,296	223,625	116.5	81.2
Cost of revenue:						
License and solutions	279,564	159,646	125,258	90,793	75.1	38.0
Maintenance	36,650	19,265	15,030	14,376	90.2	4.5
Services and other	57,375	21,005	16,108	14,321	173.1	12.5
Total cost of revenue	373,589	199,916	156,396	119,490	86.9	30.9
Gross profit	670,589	282,395	248,900	104,135	137.5	139.0
Operating expenses:						
Selling and marketing	482,656	133,463	108,463	78,311	261.6	38.5
Research and development	209,347	79,840	64,285	44,091	162.2	45.8
General and administrative	161,651	46,496	39,878	26,021	247.7	53.3
Restructuring costs	—	324	117	2,267	(100.0)	(94.8)
Total operating expenses	853,654	260,123	212,743	150,690	228.2	41.2
(Loss) income from operations	(183,065)	22,272	36,157	(46,555)	(922.0)	(177.7)
Other (expense) income, net	(29,418)	(1,048)	310	(4,000)	2,707.1	(107.8)
Interest income, net	31,917	3,222	3,494	157	890.6	2,125.5
(Loss) income before provision for income taxes	(180,566)	24,446	39,961	(50,398)	(838.6)	(179.3)
(Benefit) for income taxes	(72,806)	(17,498)	(13,185)	(40,992)	316.1	(67.8)
Net (loss) income	\$ (107,760)	\$ 41,944	\$ 53,146	\$ (9,406)	(356.9)%	(665.0)%

The following table sets forth the results of operations as a percentage of total revenue for certain financial data for the years ended June 30, 2023 and 2022, and the nine-month periods ended June 30, 2022 and 2021.

(% of Revenue)	Twelve Months Ended June 30,		Nine Months Ended June 30,	
	2023	2022 <i>(unaudited)</i>	2022	2021
Revenue:				
License and solutions	64.1 %	66.9 %	68.7 %	61.1 %
Maintenance	30.4	26.6	25.6	30.4
Services and other	5.5	6.5	5.7	8.5
Total revenue	100.0	100.0	100.0	100.0
Cost of revenue:				
License and solutions	26.8	33.1	30.9	40.6
Maintenance	3.5	4.0	3.7	6.4
Services and other	5.5	4.4	4.0	6.4
Total cost of revenue	35.8	41.5	38.6	53.4
Gross profit	64.2	58.5	61.4	46.6
Operating expenses:				
Selling and marketing	46.2	27.7	26.8	35.0
Research and development	20.0	16.6	15.9	19.7
General and administrative	15.5	9.6	9.8	11.6
Restructuring costs	—	0.1	—	1.0
Total operating expenses	81.7	54.0	52.5	67.3
(Loss) income from operations	(17.5)	4.6	8.9	(20.8)
Other (expense) income, net	(2.8)	(0.2)	0.1	(1.8)
Interest income, net	3.1	0.7	0.9	0.1
(Loss) income before provision for income taxes	(17.2)	5.1	9.9	(22.5)
(Benefit) for income taxes	(7.0)	(3.6)	(3.3)	(18.3)
Net (loss) income	(10.2)%	8.7 %	13.2 %	(4.2)%

Revenue

Total revenue for the twelve-month period ended June 30, 2023 was \$1.0 billion, an increase of \$561.9 million, or 116.5% compared with the twelve-month period ended June 30, 2022. The increase reflected the Heritage AspenTech acquisition pursuant to the Transaction which contributed \$760.8 million of revenue during the twelve-month period ended June 30, 2023.

License and Solutions Revenue

License and solutions revenue includes primarily term software licenses sold by Heritage AspenTech and SSE and integrated solutions sold by OSI Inc. License and solutions revenue changes are due to sales to new customers or the loss of existing customers, the timing of multi-year term license renewals, new offerings to existing customers, and the timing of progress on integrated solutions.

The increase in license and solutions revenue of \$346.4 million during the twelve-month period ended June 30, 2023 as compared to the twelve-month period ended June 30, 2022, was primarily due to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in license and solutions revenue of \$366.2 million. License and solutions revenue from SSE increased by \$12.9 million, which was primarily driven by an increase in license sales during the twelve-month period ended June 30, 2023, while license and solutions revenue from OSI decreased \$32.8 million due to changes in estimates and contract modifications, associated with certain integrated solution projects, that resulted in a reduction of revenue.

Maintenance Revenue

Maintenance revenue includes technical support, software assurance patch management services and the right to receive any when-and-if available updates to software. Maintenance revenue changes as a result of adding new term or perpetual software license customers, the timing of maintenance renewals for existing perpetual software license customers, the scope of maintenance offerings customers subscribe to, and the escalation of annual payments.

The increase in maintenance revenue of \$188.6 million during the twelve-month period ended June 30, 2023 as compared to the twelve-month period ended June 30, 2022, was primarily due to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in maintenance revenue of \$193.8 million. Maintenance revenue from OSI increased by \$6.8 million due to the completion and timing of certain integrated solution projects, while maintenance revenue from SSE decreased by \$12.0 million, primarily attributable to the expiration of certain customers' maintenance renewals.

Services and Other Revenue

Services and other revenue includes professional services that are not considered part of an integrated software solution, in addition to training services. Time-and-materials contracts are based upon hours worked and contractually agreed-upon hourly rates. Fixed-price engagements recognize revenue using the proportional performance method by comparing the costs incurred to the total estimated project cost.

Services and other revenue increased by \$26.9 million during the twelve-month period ended June 30, 2023 as compared to the twelve-month period ended June 30, 2022, primarily due to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in services and other revenue of \$26.9 million.

Cost of Revenue

Cost of License and Solutions Revenue

Cost of license and solutions revenue increased by \$119.9 million during the twelve-month period ended June 30, 2023 as compared to the twelve-month period ended June 30, 2022, primarily due to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in cost of license and solutions revenue of \$124.0 million. License gross profit margin was 58.2% for the twelve-month period ended June 30, 2023, compared to 50.5% for the twelve-month period ended June 30, 2022. The improvement on gross profit margin in fiscal 2023 was attributable to the Heritage AspenTech acquisition pursuant to the Transaction, which contributed a higher gross profit margin on a weighted average basis as compared to the prior fiscal year.

Cost of Maintenance Revenue

Cost of maintenance revenue increased by \$17.4 million during the twelve-month period ended June 30, 2023 as compared to the twelve-month period ended June 30, 2022, primarily due to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in cost of maintenance revenue of \$21.1 million. This was offset by a \$3.8 million decrease in cost of maintenance revenue due to reduced compensation expenses resulting from a prior restructuring. Maintenance gross profit margin was 88.4% during the twelve-month period ended June 30, 2023, compared to 85.0% for the twelve-month period ended June 30, 2022.

Cost of Services and Other Revenue

The timing of revenue and expense recognition on professional service arrangements can impact the comparability of cost and gross profit margin of professional services revenue from year to year. For example, revenue from fixed-price engagements is recognized using the proportional performance method based on the ratio of costs incurred to the total estimated project costs.

Cost of services and other revenue increased by \$36.4 million during the twelve-month period ended June 30, 2023 as compared to the twelve-month period ended June 30, 2022, primarily due to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in cost of services and other revenue of \$36.4 million. Service and other revenue gross profit margin was 1.2% for the twelve-month period ended June 30, 2023 and 32.6% for the twelve-month period ended June 30, 2022.

Gross Profit

For further discussion of subscription and software gross profit and services and other gross profit, please refer to the “Cost of License and Solutions Revenue,” “Cost of Maintenance Revenue,” and “Cost of Services and Other Revenue” sections above.

Gross profit increased by \$388.2 million during the twelve-month period ended June 30, 2023 as compared to the twelve-month period ended June 30, 2022. Gross profit margin increased to 64.2% during the twelve-month period ended June 30, 2023 compared to 58.6% in the twelve-month period ended June 30, 2022 primarily due to the acquisition of Heritage AspenTech pursuant to the Transaction.

Operating Expenses

Selling and Marketing Expense

Selling and marketing expense was \$482.7 million for the twelve-month period ended June 30, 2023, an increase of \$349.2 million as compared to the twelve-month period ended June 30, 2022. The increase was primarily due to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in selling and marketing expense of \$355.7 million, primarily related to amortization of intangible assets of \$257.8 million. This was partially offset by a decrease of \$6.5 million in selling and marketing expenses due to fewer headcount and compensation expenses.

Research and Development Expense

Research and development expense was \$209.3 million for the twelve-month period ended June 30, 2023, an increase of \$129.5 million as compared to the twelve-month period ended June 30, 2022. The increase was primarily due to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in research and development expense of \$120.9 million, and an increase of \$8.7 million in research and development expenses as a result of greater headcount and compensation expenses.

General and Administrative Expense

The increase of \$115.2 million in general and administrative expense during the twelve-month period ended June 30, 2023 as compared to the twelve-month period ended June 30, 2022 was primarily related to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase in general and administrative expense of \$117.6 million, an increase of \$2.8 million as a result of greater compensation and consulting expenses, partially offset by a \$5.2 million decrease due to reduced personnel and facilities expenses as a result of the Heritage AspenTech acquisition pursuant to the Transaction.

Restructuring Costs

Restructuring costs were less than \$0.1 million during the twelve-month period ended June 30, 2023, a decrease of \$0.3 million compared with the twelve-month period ended June 30, 2022.

Non-Operating (Expense)

Other (Expense), Net

Other (expense), net was \$29.4 million for the twelve-month period ended June 30, 2023, an increase of \$28.4 million compared to the twelve-month period ended June 30, 2022. This increase was primarily related to the realized loss on foreign currency forward contracts. See Note 17, “Derivatives”, to the Consolidated and Combined Financial Statements for further discussion of the foreign current forward contracts.

Interest Income, Net

Interest income, net was \$31.9 million for the twelve-month period ended June 30, 2023, an increase of \$28.7 million as compared to the twelve-month period ended June 30, 2022. The increase was primarily attributable to the Heritage AspenTech acquisition pursuant to the Transaction, which represented an increase of \$26.9 million resulting from interest income earned on our long-term term revenue contracts.

Provision (Benefit) for Income Taxes

The effective tax rate for the periods presented is primarily the result of income earned in the United States taxed at U.S. federal and state statutory income tax rates, income earned in foreign tax jurisdictions taxed at the applicable rates, as well as the impact of permanent differences between book and tax income.

Our effective tax rate was 40.3% and (71.6)% for the twelve-month periods ended June 30, 2023 and 2022, respectively.

We recognized income tax benefits of \$72.8 million for the twelve-month period ended June 30, 2023 compared to \$17.5 million for the twelve-month period ended June 30, 2022. Our tax benefits for the twelve-month period ended June 30, 2023 was favorably impacted primarily by the Foreign-Derived Intangible Income ("FDII") deduction, the benefit from the deduction of state taxes, the difference in foreign tax rates, and the change in valuation allowance on certain jurisdictions, offset by Global Intangible Low-Taxed Income ("GILTI"), stock-based compensation, and return to provision adjustment. The tax benefits for the twelve-month period ended June 30, 2022 was favorably impacted primarily by the FDII deduction and the benefit from the remeasurement of state deferred taxes related to the Transaction.

As of June 30, 2023, we maintained a valuation allowance in the United States primarily for certain deferred tax assets related to the investment in a joint venture and on state R&D credits. We also maintained a valuation allowance on certain foreign subsidiary tax attributes, primarily net operating loss carryforwards and other deferred tax assets because it is more likely than not that a benefit will not be realized. As of June 30, 2023 our total valuation allowance was \$16.0 million.

Liquidity and Capital Resources

Resources

As of June 30, 2023 and 2022, our principal sources of liquidity consisted of \$241.2 million and \$449.7 million in cash and cash equivalents, respectively.

We believe our existing cash on hand and cash flows generated by operations are sufficient for at least the next 12 months to meet our operating requirements, including those related to salaries and wages, working capital, capital expenditures, and other liquidity requirements associated with operations. We may need to raise additional funds if we decide to make one or more acquisitions of businesses, technologies or products. If additional funding for such purposes is required beyond existing resources and our Amended and Restated Credit Agreement described below, we may not be able to affect a receivable, equity or debt financing on terms acceptable to us or at all.

Bridge Facility

On July 27, 2022, the Company entered into the \$475.0 million Bridge Facility with JPMorgan to finance the Micromine acquisition. The Bridge Facility was entered into under the existing Amended and Restated Credit Agreement. The Company could have elected that each incremental borrowing under the Bridge Facility bear interest at a rate per annum equal to (a) the Alternate Base Rate ("ABR"), plus the applicable margin or (b) the Adjusted Term Secured Overnight Financing Rate ("SOFR"), plus the applicable margin.

On December 23, 2022, the Company terminated the Bridge Facility and entered into the Emerson Credit Agreement, which provides for an aggregate term loan commitment of \$630.0 million.

On August 18, 2023, the Emerson Credit Agreement was terminated in connection with the termination of the agreement to purchase Micromine. No amounts were outstanding under the Emerson Credit Agreement as of or subsequent to June 30, 2023 through the termination date.

Refer to Note 19, "Related-Party Transactions", to our Consolidated and Combined Financial Statements for further discussion of the Emerson Credit Agreement.

Amended and Restated Credit Agreement

The Amended and Restated Credit Agreement provides for a \$200.0 million secured revolving credit facility and a \$320.0 million secured term loan facility.

On January 17, 2023, the Company paid off the outstanding balance of our existing term loan facility of \$264.0 million, plus accrued interest.

For a more detailed description of the Amended and Restated Credit Agreement, see Note 13, "Debt" to our Consolidated and Combined Financial Statements.

Cash Balance and Cash Flows

Our cash and cash equivalents were \$241.2 million and \$449.7 million as of June 30, 2023 and 2022, respectively.

Operating cash flows for the fiscal year ended June 30, 2023 was \$299.2 million as compared to \$29.0 million for the nine-month period ended June 30, 2022. The increase was primarily attributable to the acquisition of Heritage AspenTech as part of the Transaction.

The table below summarizes our operating and free cash flow (in thousands).

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
Net cash provided by operating activities (GAAP)	\$ 299,209	\$ 28,962	\$ 54,800
Purchase of property, equipment, and leasehold improvements	(6,577)	(2,263)	(6,185)
Payments for capitalized computer software development costs	(366)	(508)	—
Free cash flow (non-GAAP) ⁽¹⁾	<u>\$ 292,266</u>	<u>\$ 26,191</u>	<u>\$ 48,615</u>

(1) Effective January 1, 2023, we no longer exclude acquisition and integration planning related payments from our computation of free cash flow. Free cash flow for all prior periods presented has been revised to the current period computation methodology.

Contractual Obligations and Requirements

Our contractual obligations, which consisted of borrowings, interest, and fees under our Amended and Restated Credit Agreement, operating lease commitments for our headquarters and other facilities, royalty obligations, equity method investments, deferred acquisition payments, and standby letters of credit and other obligations, were as follows as of June 30, 2023 (in thousands):

	Payments due by Period				
	Total	Less than 1 Year	1 to 3 Years	3 to 5 Years	More than 5 Years
Contractual Cash Obligations:					
Operating leases ⁽¹⁾	\$ 76,639	\$ 14,811	\$ 17,583	\$ 12,693	\$ 31,552
Royalty obligations	15,347	3,456	5,647	4,788	1,456
Equity method investments	2,673	2,673	—	—	—
Deferred acquisition payments	8,273	8,273	—	—	—
Other purchase obligations	54,679	42,031	12,571	77	—
Total contractual cash obligations	<u>\$ 157,611</u>	<u>\$ 71,244</u>	<u>\$ 35,801</u>	<u>\$ 17,558</u>	<u>\$ 33,008</u>
Other Commercial Commitments:					
Standby letters of credit	38,992	26,091	6,303	3,520	3,078
Total commercial commitments	<u>\$ 196,603</u>	<u>\$ 97,335</u>	<u>\$ 42,104</u>	<u>\$ 21,078</u>	<u>\$ 36,086</u>

(1) The \$76.6 million of contractual obligations includes rent and fixed fees for all of our operating leases, including those not recognized on the balance sheet.

We are not currently a party to any other material purchase contracts related to future capital expenditures.

The standby letters of credit secured our performance on professional services contracts, certain facility leases and potential liabilities as of June 30, 2023. The letters of credit expire at various dates through fiscal 2030.

The above table does not reflect a liability for uncertain tax positions of \$9.1 million as of June 30, 2023. We estimate that none of this amount will be paid within the next year and we are currently unable to reasonably estimate the timing of payments for the remainder of the liability.

Effects of Inflation

We do not believe that inflation has had a material impact on our business or operating results during the periods presented. However, inflation may in the future have an impact on our ability to execute on our acquisition strategy. Inflationary costs could adversely affect our business, financial condition and results of operations. In addition, increased inflation has had, and may continue to have, an effect on interest rates. Increased interest rates may adversely affect our borrowing rate and our ability to obtain, or the terms under which we can obtain, any potential additional funding.

Critical Accounting Estimates and Judgments

Our consolidated and combined financial statements are prepared in accordance with GAAP. The preparation of our financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures. The most significant areas where management judgments and estimates impact the primary consolidated and combined financial statements are described below. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

For further information on our significant accounting policies, refer to Note 2, "Significant Accounting Policies," to our Consolidated and Combined Financial Statements.

Revenue Recognition

In accordance with ASC 606, Revenue from Contracts with Customers, we account for a customer contract when both parties have approved the contract and are committed to perform their respective obligations, each party's rights can be identified, payment terms can be identified, the contract has commercial substance, and it is probable that we will collect substantially all of the consideration to which we are entitled to. We evaluate our contracts with customers to identify the promised goods or services and recognize revenue for the identified performance obligations at the amount we expect to be entitled to in exchange for those goods or services. A performance obligation is a promise in a contract to transfer a distinct good or service to a customer. Revenue is recognized when, or as, performance obligations are satisfied, and control has transferred to the customer.

We disaggregate our revenue into three categories: (i) license and solutions, (ii) maintenance and (iii) services and other.

License and solutions

License and solutions revenue is primarily derived from term software licenses. It also includes OSI perpetual and term software licenses sold, along with professional services and recognized as revenue in one performance obligation. See Note 3, "Revenue from Contracts with Customers" and Note 22, "Segment and Geographic Information," to our Consolidated and Combined Financial Statements for additional information about our revenues disaggregated by region, and type of performance obligation.

Term software license revenue is recognized at a point in time when control transfers to the customer, which generally aligns with the first day of the contractual term.

Prior to the third quarter of fiscal 2023, OSI software licenses were primarily sold with professional services and hardware to form an integrated solution for the customer. The professional services and hardware sold with the license significantly customized the underlying functionality and usability of the software. As such, neither the license, hardware, nor professional services were considered distinct within the context of the contract and were therefore considered a single performance obligation. Because the integrated solution had no alternative use to us and we held an enforceable right to payment, revenue was recognized over time (typically one to two years) using an input measure of progress based on the ratio of actual costs incurred to date to the total estimated cost to complete. For integrated solution contracts executed prior to the third quarter of fiscal 2023, revenue continues to be recognized over time until the implementation is complete.

At the start of the third quarter of fiscal 2023, we completed a series of business transformation activities relating to OSI products and services in conjunction with its ongoing integration activities. As part of a change in the related go-to-market strategy, we have invested in tools and processes to simplify and streamline the implementation services to significantly reduce

the complexity and interdependency associated with its software. In addition, we have identified and trained several third-party ISPs to operate autonomously and directly with OSI customers to implement its products.

Accordingly, effective January 1, 2023 following the completion of these business transformation activities, for all new OSI contracts, we account for the OSI software license, hardware, maintenance, and professional services as separate and distinct performance obligations. Software license revenue is recognized at a point in time when control transfers to the customer, which generally aligns with the first day of the contractual term. Hardware revenue is recognized at the point in time when control transfers to the customer, which generally occurs upon delivery. The recognition of maintenance revenue at OSI is unchanged. Maintenance revenue continues to be recognized ratably over the maintenance term. Professional services revenue is recognized over time (typically one to two years) using the proportional performance method by comparing the costs incurred to the total estimated project costs.

Maintenance

Software maintenance is recognized ratably over the maintenance term and includes technical support, software assurance patch management services and the right to receive any when-and-if available updates to the software. For term software licenses, maintenance is included with the license. For perpetual software licenses, maintenance is initially sold with the license and subsequently sold separately, both primarily on an annual basis. Software maintenance does not significantly modify or otherwise depend on other performance obligations within the contracts and therefore is accounted for as a separate performance obligation. For maintenance sold with the integrated solution, the maintenance term begins once implementation is complete.

Services and other

All of our businesses offer services, which consist of professional services and training.

Professional service revenue is provided to customers on a time-and-materials ("T&M") or fixed-price basis. The obligation to provide professional services is generally satisfied over time, with the customer simultaneously receiving and consuming the benefits as we satisfy our performance obligation. Professional service revenue is recognized by measuring progress toward the completion of our obligations. We recognize professional services revenue for our T&M contracts based upon hours worked at contractually agreed-upon hourly rates. Fixed-price engagements recognize revenue using the proportional performance method by comparing the costs incurred to the total estimated project cost. The use of the proportional performance method depends on our ability to reliably estimate the costs to complete a project. Historical experience is used as a basis for future estimates to complete current projects. Additionally, we believe that costs are the best available measure of performance. Out-of-pocket expenses which are reimbursed by customers are recorded as revenue.

Training services provided to customers include on-site, internet-based and customized training. These services are considered separate performance obligations as they do not significantly modify, integrate or otherwise depend on other performance obligations included in a contract. Revenue is recognized as the customer consumes the benefits of the services we provide.

Contracts with Multiple Performance Obligations

We allocate total contract consideration to each distinct performance obligation in an arrangement on a relative standalone selling price basis. The standalone selling price reflects the price that would be charged for a specific product or service if it was sold separately in similar circumstances and to similar customers.

When two or more contracts are entered into at or near the same time with the same customer, we evaluate the facts and circumstances associated with the negotiation of those contracts. Where the contracts are negotiated as a package, we will account for them as a single arrangement and allocate the consideration for the combined contracts among the performance obligations accordingly.

When available, we use directly observable transactions to determine the standalone selling prices for performance obligations. If directly observable data is not available when software licenses are sold together with software maintenance in a bundled arrangement, we estimate a standalone selling price for these distinct performance obligations using relevant information, including our overall pricing objectives and strategies, historical pricing data, market consideration and other factors.

Contract Modifications

We sometimes enter into agreements to modify previously executed contracts, which constitute contract modifications. We assess each of these contract modifications to determine (i) if the additional products and services are distinct from the products and services in the original arrangement; and (ii) if the amount of consideration expected for the added products and services reflects the standalone selling price of those products and services, as adjusted for contract-specific circumstances. A contract modification meeting both criteria is accounted for as a separate contract. A contract modification not meeting both requirements is considered a change to the original contract and is accounted for on either (i) a prospective basis as a termination of the existing contract and the creation of a new contract or (ii) a cumulative catch-up basis.

Contract Assets and Contract Liabilities

Payment terms and conditions vary by contract type. Terms generally include a requirement of payment annually over the term of the license arrangement. During the majority of each customer contract term, the amount invoiced is generally less than the amount of revenue recognized to date, primarily because we transfer control of the performance obligation related to the software license at the inception of the contract term, and the allocation of contract consideration to the license performance obligation is a significant portion of the total contract consideration. Therefore, our contracts often result in the recording of a contract asset throughout the majority of the contract term. We record a contract asset when revenue recognized on a contract exceeds the billings.

We record accounts receivable when it has the unconditional right to issue an invoice and receive payment regardless of whether revenue has been recognized. If revenue is not yet recognizable and we have a right to invoice or have received consideration, a contract liability is recorded to defer the revenue until recognition is appropriate. If revenue is recognizable in advance of the right to invoice, and the right to consideration is conditional on something other than the passage of time, a contract asset is recorded until invoicing occurs.

We defer unearned maintenance and service revenue when it has the right to invoice, with recognition of the revenue recognized over the support period. Contract assets and contract liabilities are presented net at the contract level for each reporting period.

Payment Terms

We generally receive payment from a customer after the performance obligation related to the term license has been satisfied, and therefore, our contracts with terms greater than one year generally contain a significant financing component. The significant financing component is calculated utilizing an interest rate that derives the net present value of the performance obligations delivered on an upfront basis based on the allocation of consideration. We have instituted a customer portfolio approach in assigning interest rates. The rates are determined at contract inception and are based on the credit characteristics of the customers within each portfolio.

Perpetual software licenses, sold along with professional services and hardware as an integrated solution, generally require payments from the customer aligned with progress milestones in the contract. Payment terms on invoiced amounts are typically net 30 days. We do not offer return rights for our products and services in the ordinary course of business, and contracts generally do not include customer acceptance clauses.

Goodwill and Other Intangibles Impairment Testing

Assets and liabilities acquired in business combinations are accounted for using the acquisition method and recorded at their respective fair values. Goodwill represents the excess of consideration paid over the net assets acquired and is assigned to the reporting unit that acquires the business. During the nine-month period ended June 30, 2022, we voluntarily changed the date of our annual goodwill impairment test from last day of September to the last day of May due to the Transaction and subsequent change in our fiscal year-end. We test goodwill between tests if events or circumstances indicate a reporting unit's fair value may be less than its carrying value. If an initial qualitative assessment indicates it is more likely than not goodwill may be impaired, it is evaluated by comparing the reporting unit's estimated fair value to its carrying value. An impairment charge would be recorded for the amount by which the carrying value of the reporting unit exceeds the estimated fair value. Estimated fair values are developed primarily under an income approach that discounts estimated future cash flows using risk-adjusted interest rates, as well as earnings multiples or other techniques as warranted. As of the May 31, 2023 annual impairment testing date, the carrying value of our stockholders' equity exceeded our market capitalization. Accordingly, to further validate the reasonableness of the initial qualitative assessment and evaluation, a reconciliation of our market capitalization to the carrying value of our stockholders' equity was performed by calculating an implied control premium. We

concluded that the implied control premium was reasonable based on an assessment performed, which included a comparison to actual control premiums realized in recent comparable market transactions. If our stock price declines and is sustained, further evaluation would be necessary and an impairment of our goodwill may result. No goodwill impairment was recorded for fiscal 2023, 2022, or 2021.

With the exception of certain trade names, all of our identifiable intangible assets are subject to amortization on a straight-line basis over their estimated useful lives. Identifiable intangibles consist of intellectual property such as patented and unpatented technology and trademarks, customer relationships and capitalized software. Identifiable intangible assets are also subject to evaluation for potential impairment if events or circumstances indicate the carrying value may not be recoverable.

Valuation of Assets and Liabilities Acquired in a Business Combination

The accounting for a business combination requires the excess of the purchase price for an acquisition over the net book value of assets acquired to be allocated to identifiable assets, including intangible assets. We engaged an independent third-party valuation specialist to assist in the determination of the fair value of intangible assets related to the acquisitions of Heritage AspenTech and OSI. This included the use of certain assumptions and estimates, including the projected revenue for the customer relationship and developed technology intangible asset and the obsolescence rate for the developed technology intangible asset. Although we believe the assumptions and estimates to be reasonable and appropriate, they require judgement and are based on experience and historical information obtained from Heritage AspenTech and OSI.

Recent Accounting Pronouncements

Refer to Note 2 (p) "New Accounting Pronouncements Adopted in Fiscal 2023 and 2022" and Note 2 (q) "Recently Issued Accounting Pronouncements," to our Consolidated and Combined Financial Statements for information about recent accounting pronouncements.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

In the ordinary course of conducting business, we are exposed to certain risks associated with potential changes in market conditions. These market risks include changes in currency exchange rates and interest rates which could affect operating results, financial position and cash flows. We manage our exposure to these market risks through our regular operating and financing activities and, if considered appropriate, we may enter into derivative financial instruments such as forward currency exchange contracts.

Foreign Currency Risk

During fiscal 2023 and 2022, approximately 9% and 17% of our total revenue, respectively, was denominated in a currency other than the U.S. dollar. In addition, certain of our operating costs incurred outside the United States are denominated in currencies other than the U.S. dollar. We conduct business on a worldwide basis and as a result, a portion of our revenue, earnings, net assets, and net investments in foreign affiliates is exposed to changes in foreign currency exchange rates. We measure our net exposure for cash balance positions and for cash inflows and outflows in order to evaluate the need to mitigate our foreign exchange risk. We may enter into foreign currency forward contracts to minimize the impact related to unfavorable exchange rate movements. Our largest exposures to foreign currency exchange rates exist primarily with the Euro, Japanese Yen, Pound Sterling, Chinese Yuan, Norwegian Krone, Indonesian Rupiah, Brazilian Real, Canadian Dollar, and Russian Ruble.

During fiscal 2023 and fiscal 2022, we recorded net foreign currency losses (gains) of \$4.1 million and \$(0.3) million, respectively, related to the settlement and remeasurement of transactions denominated in currencies other than the functional currency of our operating units. Our analysis of operating results transacted in various foreign currencies indicated that a hypothetical 10% change in the foreign currency exchange rates could have increased or decreased the consolidated and combined results of operations by approximately \$14.3 million and \$6.0 million for fiscal 2023 and 2022, respectively.

Interest Rate Risk

We place our investments in money market instruments. Our analysis of our investments and interest rates at June 30, 2023 indicated that a hypothetical 100 basis point increase or decrease in interest rates would not have a material impact on the fair value of our investments determined in accordance with an income-based approach utilizing portfolio future cash flows discounted at the appropriate rates.

Investment Risk

We own an interest in a limited partnership investment fund. The primary objective of this partnership is investing in equity and equity-related securities (including convertible debt) of venture growth-stage businesses. We account for the investment in accordance with Topic 323, *Investments - Equity Method and Joint Ventures*. Our total commitment under this partnership is 5.0 million CAD (\$3.7 million USD). Under the conditions of the equity method investment, unfavorable future changes in market conditions could lead to a potential loss up to the full value of our 5.0 million CAD (\$3.7 million USD) commitment. To date, payments to the partnership totaled 3.5 million CAD (\$2.7 million USD) and represents the fair value of our investment as of June 30, 2023. The investment is recorded in non-current assets in our consolidated and combined balance sheet.

Item 8. Financial Statements and Supplementary Data.

The following consolidated and combined financial statements specified by this Item, together with the report thereon of KPMG LLP, are presented following Item 15 of this Annual Report on Form 10-K:

Financial Statements:

- Report of Independent Registered Public Accounting Firm
- Consolidated and Combined Statements of Operations for the fiscal year ended June 30, 2023, the nine-month period ended June 30, 2022 and fiscal year ended September 30, 2021
- Consolidated and Combined Statements of Comprehensive (Loss) Income for the fiscal year ended June 30, 2023, the nine-month period ended June 30, 2022 and fiscal year ended September 30, 2021
- Consolidated and Combined Balance Sheets as of June 30, 2023 and 2022
- Consolidated and Combined Statements of Stockholders' Equity for the fiscal year ended June 30, 2023, the nine-month period ended June 30, 2022 and fiscal year ended September 30, 2021
- Consolidated and Combined Statements of Cash Flows for the fiscal year ended June 30, 2023, the nine-month period ended June 30, 2022 and fiscal year ended September 30, 2021
- Notes to Consolidated and Combined Financial Statements

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

As required by Rule 13a-15(b) under the Securities Exchange Act, as of the end of the period covered by this report, we carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures. In designing and evaluating our disclosure controls and procedures, we recognize that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management necessarily applies its judgment in evaluating and implementing possible controls and procedures. The effectiveness of our disclosure controls and procedures is also necessarily limited by the staff and other resources available to us and the geographic diversity of our operations. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2023, our disclosure controls and procedures were effective.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control system is designed to provide reasonable assurance concerning the reliability of the financial data used in the preparation of our Consolidated and Combined Financial Statements, as well as reasonable assurance with respect to safeguarding our assets from unauthorized use or disposition.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement presentation and other results of such systems.

Management conducted an evaluation of the effectiveness of our internal control over financial reporting as of June 30, 2023. In making this evaluation, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control – Integrated Framework (2013). Management’s evaluation included reviewing the documentation of its controls, evaluating the design effectiveness of controls and testing their operating effectiveness. Based on the evaluation, management concluded that as of June 30, 2023, our internal controls over financial reporting were effective.

KPMG LLP, an independent registered public accounting firm, audited the consolidated and combined financial statements included in this Annual Report on Form 10-K and has issued an attestation report on our internal control over financial reporting as of June 30, 2023. Its report is included herein.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the fourth fiscal quarter ended June 30, 2023, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

During the three months ended June 30, 2023, none of our directors or officers adopted, made certain modifications or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

Item 9C. Disclosure Regarding Foreign Jurisdictions That Prevent Inspection

Not applicable

PART III**Item 10. Directors, Executive Officers and Corporate Governance.**

The complete response to this Item regarding the backgrounds of our executive officers and directors and other information required by Items 401, 405, 406 and 407 of Regulation S-K will be contained in our definitive proxy statement for our 2023 Annual Meeting of Stockholders under the sections captioned “Proposal One: Election of Directors,” “Executive Officers of the Registrant,” “Section 16(a) Beneficial Ownership Reporting Compliance” and “Information Regarding the Board and Corporate Governance and is incorporated by reference herein.

Our executive officers and directors and their positions at the Company as of June 30, 2023, are as follows:

Name	Age	Position at the Company	Principal Occupation
Antonio J. Pietri	57	President and Chief Executive Officer; Director	-
Chantelle Breithaupt	50	Senior Vice President and Chief Financial Officer	-
Mark Mouritsen	55	Senior Vice President, Chief Legal Officer and Secretary	-
Patrick M. Antkowiak	63	Director	President, CEM Technology Advisors, LLC and former Chief Strategy and Technology Officer and CVP, Northrop Grumman Corporation
Robert E. Beauchamp	63	Director	Advisor to Chief Executive Officer and General Counsel of BMC Software, Inc. and former President and Chief Executive Officer, BMC Software, Inc.
Thomas F. Bogan	71	Director	Retired Vice Chairman, Workday, Inc. and former Executive Vice President of Workday’s Planning Business Unit
Karen M. Golz	69	Director	Retired Partner and former Global Vice Chair, Japan, Ernst & Young LLP
Ram R. Krishnan	52	Director	Executive Vice President & Chief Operating Officer, Emerson Electric Co.
Arlen R. Shenkman	52	Director	President and Chief Financial Officer, Boomi, Inc.
Jill D. Smith	65	Director	Retired President, Chief Executive Officer, and director, Allied Minds plc and former Chair, Chief Executive Officer and President of DigitalGlobe Inc.
Robert M. Whelan, Jr.	71	Director	Founder of Whelan & Co.

Item 11. Executive Compensation.

Certain information required under this Item 11 will appear under the sections entitled “Director Compensation,” “Compensation Discussion and Analysis,” “Executive Compensation,” “Human Capital Committee Interlocks and Insider Participation,” “Human Capital Committee Report,” and “Employment and Change in Control Agreements” in our definitive proxy statement for our 2023 Annual Meeting of Stockholders, and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Certain information required under this Item 12 will appear under the sections entitled “Beneficial Ownership of Common Stock” and “Compensation Discussion and Analysis - Securities Authorized for Issuance under Equity Compensation Plans” in our definitive proxy statement for our 2023 Annual Meeting of Stockholders, and is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Certain information required under this Item 13 will appear under the sections entitled “Information Regarding the Board and Corporate Governance” and “Related-Party Transactions” in our definitive proxy statement for our 2023 Annual Meeting of Stockholders, and is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services.

Certain information required under this Item 14 will appear under the section entitled “Independent Registered Public Accountants” in our definitive proxy statement for our 2023 Annual Meeting of Stockholders, and is incorporated herein by reference.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Financial Statements

Description	Page
Report of Independent Registered Public Accounting Firm (KPMG LLP, Boston, MA Firm ID: 185)	58
Consolidated and Combined Statements of Operations for the fiscal year ended June 30, 2023, nine-month period ended June 30, 2022, and fiscal year ended September 30, 2021	60
Consolidated and Combined Statements of Comprehensive (Loss) Income for the fiscal year ended June 30, 2023, nine-month period ended June 30, 2022, and fiscal yearended September 30, 2021	61
Consolidated and Combined Balance Sheets as of June 30, 2023 and 2022	62
Consolidated and Combined Statements of Stockholders' Equity for the fiscal year ended June 30, 2023, nine-month period ended June 30, 2022, and fiscal yearended September 30, 2021	63
Consolidated and Combined Statements of Cash Flows for the fiscal year ended June 30, 2023, nine-month period ended June 30, 2022, and fiscal yearended September 30, 2021	64
Notes to Consolidated and Combined Financial Statements	65

(a)(2) Exhibits

The exhibits listed in the accompanying exhibit index are filed or incorporated by reference as part of this Annual Report on Form 10-K.

INDEX TO CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm (KPMG LLP, Boston, MA, Auditor Firm ID: 185)	58
Consolidated and Combined Statements of Operations for the fiscal year ended June 30, 2023, the nine-month period ended June 30, 2022 and fiscal year ended September 30, 2021	60
Consolidated and Combined Statements of Comprehensive (Loss) Income for the fiscal year ended June 30, 2023, the nine-month period ended June 30, 2022 and fiscal year ended September 30, 2021	61
Consolidated and Combined Balance Sheets as of June 30, 2023 and 2022	62
Consolidated and Combined Statements of Stockholders' Equity for the fiscal year ended June 30, 2023, the nine-month period ended June 30, 2022 and fiscal year ended September 30, 2021	63
Consolidated and Combined Statements of Cash Flows for the fiscal year ended June 30, 2023, the nine-month period ended June 30, 2022 and fiscal year ended September 30, 2021	64
Notes to Consolidated and Combined Financial Statements	65

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Aspen Technology, Inc.:

Opinions on the Consolidated and Combined Financial Statements and Internal Control Over Financial Reporting

We have audited the accompanying consolidated and combined balance sheets of Aspen Technology, Inc. and subsidiaries (the Company) as of June 30, 2023 and 2022, the related consolidated and combined statements of operations, comprehensive (loss) income, stockholders' equity, and cash flows for the year ended June 30, 2023, nine months ended June 30, 2022 and year ended September 30, 2021, and the related notes (collectively, the consolidated and combined financial statements). We also have audited the Company's internal control over financial reporting as of June 30, 2023, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the consolidated and combined financial statements referred to above present fairly, in all material respects, the financial position of the Company as of June 30, 2023 and 2022, and the results of its operations and its cash flows for the year ended June 30, 2023, nine months ended June 30, 2022 and year ended September 30, 2021, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of June 30, 2023 based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.

Basis for Opinions

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

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

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated and combined financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated and combined financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the consolidated and combined financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Sufficiency of audit evidence over revenue

As discussed in Note 2 to the consolidated and combined financial statements and disclosed in the consolidated and combined statements of operations, the Company recorded \$669.2 million of license and solutions revenue for the year ended June 30, 2023, a portion of which related to the Heritage AspenTech business, consisting primarily of term software license sales. In addition, the Company recognized \$316.9 million of maintenance revenue for the year ended June 30, 2023, a portion of which related to the Heritage AspenTech business.

We identified the evaluation of sufficiency of audit evidence over term software license and maintenance revenue related to the Heritage AspenTech business as a critical audit matter. Subjective auditor judgment was required to evaluate the nature and extent of procedures obtained over these revenue streams because the Company uses a complex set of manual and automated procedures and systems to generate data to process and record its revenue transactions, including interfaces between multiple information technology (IT) applications. IT professionals with specialized skills and knowledge were also required to assess the Company's IT systems used in the revenue recognition process.

The following are the primary procedures we performed to address this critical audit matter. We applied auditor judgment to determine the nature and extent of procedures to be performed over term software license and maintenance revenue related to the Heritage AspenTech business. We evaluated the design and tested the operating effectiveness of certain internal controls over the Company's revenue recognition process, including certain manual and automated controls related to processing and recording of term software license and maintenance revenue. We involved IT professionals with specialized skills and knowledge, who assisted in the testing of certain general IT controls and IT application controls, including data interfaces and IT system-generated reports used by the Company in its revenue recognition process. On a sample basis, we also tested certain Heritage AspenTech term software license and maintenance revenue transactions by comparing the recorded amounts to underlying documentation, including contracts with customers. In addition, we evaluated the sufficiency of audit evidence obtained over term software license and maintenance revenue for Heritage AspenTech by assessing the results of procedures performed, including the nature and extent of such evidence.

/s/ KPMG LLP

We have served as the Company's auditor since 2021.

Boston, Massachusetts
August 21, 2023

ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES
CONSOLIDATED AND COMBINED STATEMENTS OF OPERATIONS

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
(Dollars and Shares in Thousands, Except Per Share Data)			
Revenue:			
License and solutions	\$ 669,185	\$ 278,589	\$ 180,914
Maintenance	316,911	103,786	92,562
Services and other	58,082	22,921	27,164
Total revenue	<u>1,044,178</u>	<u>405,296</u>	<u>300,640</u>
Cost of revenue:			
License and solutions	279,564	125,258	125,181
Maintenance	36,650	15,030	18,610
Services and other	57,375	16,108	19,219
Total cost of revenue	<u>373,589</u>	<u>156,396</u>	<u>163,010</u>
Gross profit	<u>670,589</u>	<u>248,900</u>	<u>137,630</u>
Operating expenses:			
Selling and marketing	482,656	108,463	103,311
Research and development	209,347	64,285	59,646
General and administrative	161,651	39,878	32,638
Restructuring costs	—	117	2,474
Total operating expenses	<u>853,654</u>	<u>212,743</u>	<u>198,069</u>
(Loss) income from operations	(183,065)	36,157	(60,439)
Other (expense) income, net	(29,418)	310	(5,359)
Interest income, net	31,917	3,494	(115)
(Loss) income before provision for income taxes	(180,566)	39,961	(65,913)
(Benefit) for income taxes	(72,806)	(13,185)	(45,305)
Net (loss) income	<u>\$ (107,760)</u>	<u>\$ 53,146</u>	<u>\$ (20,608)</u>
Net (loss) income per common share:			
Basic	\$ (1.67)	\$ 1.30	\$ (0.57)
Diluted	\$ (1.67)	\$ 1.30	\$ (0.57)
Weighted average shares outstanding:			
Basic	64,621	40,931	36,308
Diluted	64,621	41,008	36,308

See accompanying notes to these consolidated and combined financial statements.

ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES
CONSOLIDATED AND COMBINED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
	(Dollars in Thousands)		
Net (loss) income	\$ (107,760)	\$ 53,146	\$ (20,608)
Other comprehensive income (loss):			
Foreign currency translation adjustments	7,548	289	122
Pension, net of tax benefit (expense) of: 2023, \$146; 2022, \$(176); 2021, \$(288)	(524)	807	723
Total other comprehensive income	7,024	1,096	845
Comprehensive (loss) income	<u>\$ (100,736)</u>	<u>\$ 54,242</u>	<u>\$ (19,763)</u>

See accompanying notes to these consolidated and combined financial statements.

ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES
CONSOLIDATED AND COMBINED BALANCE SHEETS

	June 30,	
	2023	2022
(Dollars in Thousands, Except Share and Per Share Data)		
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 241,209	\$ 449,725
Accounts receivable, net	122,789	111,027
Current contract assets, net	367,539	428,833
Prepaid expenses and other current assets	27,728	23,461
Receivables from related parties	62,375	16,941
Prepaid income taxes	11,424	17,503
Total current assets	833,064	1,047,490
Property, equipment and leasehold improvements, net	18,670	17,148
Goodwill	8,330,811	8,266,809
Intangible assets, net	4,659,657	5,112,781
Non-current contract assets, net	536,104	428,232
Contract costs	15,992	5,473
Operating lease right-of-use assets	67,642	78,286
Deferred tax assets	10,638	4,937
Other non-current assets	13,474	8,766
Total assets	\$ 14,486,052	\$ 14,969,922
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 20,299	\$ 21,416
Accrued expenses and other current liabilities	99,526	90,123
Due to related parties	22,019	4,111
Current operating lease liabilities	12,928	7,191
Income taxes payable	46,205	6,768
Current borrowings	—	28,000
Current contract liabilities	151,450	143,327
Total current liabilities	352,427	300,936
Non-current contract liabilities	30,103	21,081
Deferred tax liabilities	957,911	1,145,408
Non-current operating lease liabilities	55,442	71,933
Non-current borrowings, net	—	245,647
Other non-current liabilities	19,240	15,560
Stockholders' equity:		
Common stock, 0.0001 par value—Authorized—600,000,000 shares		
Issued— 64,952,868 shares at June 30, 2023 and 64,425,378 shares at June 30, 2022		
Outstanding— 64,465,242 shares at June 30, 2023 and 64,425,378 shares at June 30, 2022	6	6
Additional paid-in capital	13,194,028	13,107,570
(Accumulated deficit) retained earnings	(41,391)	66,369
Accumulated other comprehensive income (loss)	2,436	(4,588)
Treasury stock, at cost- 487,626 shares of common stock at June 30, 2023 and none at June 30, 2022	(84,150)	—
Total stockholders' equity	13,070,929	13,169,357
Total liabilities and stockholders' equity	\$ 14,486,052	\$ 14,969,922

See accompanying notes to these consolidated and combined financial statements.

ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

CONSOLIDATED AND COMBINED STATEMENTS OF STOCKHOLDERS' EQUITY

	Net Parent Investment	Accumulated Other Comprehensive (Loss) Income	Common Stock			Treasury Stock		Total Stockholders' Equity
			Number of Shares	Par Value	Additional Paid-in Capital	(Accumulated Deficit) Retained Earnings	Number of Shares	
(Dollars in Thousands, Except Share Data)								
Balance September 30, 2020	\$ 244,357	\$ (6,529)	—	\$ —	\$ —	\$ —	—	\$ 237,828
Net loss	(20,608)	—	—	—	—	—	—	(20,608)
Net transfer from Emerson	1,553,281	—	—	—	—	—	—	1,553,281
Other comprehensive income	—	845	—	—	—	—	—	845
Balance September 30, 2021	\$ 1,777,030	\$ (5,684)	—	\$ —	\$ —	\$ —	—	\$ 1,771,346
Net loss prior to Transaction	(13,223)	—	—	—	—	—	—	(13,223)
Net transfer from Emerson	5,971,995	—	—	—	—	—	—	5,971,995
Recapitalization as a result of the Transaction	(7,735,802)	—	64,305,618	6	13,092,917	—	—	5,357,121
Net income subsequent to the Transaction	—	—	—	—	—	66,369	—	66,369
Other comprehensive income	—	1,096	—	—	—	—	—	1,096
Issuances of shares of common stock subsequent to the Transaction	—	—	61,292	—	5,621	—	—	5,621
Issuance of restricted stock units and net share settlement relating to withholding taxes	—	—	58,468	—	(5,632)	—	—	(5,632)
Stock-based compensation	—	—	—	—	14,664	—	—	14,664
Balance June 30, 2022	\$ —	\$ (4,588)	64,425,378	\$ 6	\$ 13,107,570	\$ 66,369	—	\$ 13,169,357
Net loss	—	—	—	—	—	(107,760)	—	(107,760)
Other comprehensive income	—	7,024	—	—	—	—	—	7,024
Issuances of shares of common stock	—	—	365,937	—	36,046	—	—	36,046
Issuance of restricted stock units and net share settlement relating to withholding taxes	—	—	161,553	—	(18,588)	—	—	(18,588)
Repurchase of common stock	—	—	—	—	(15,850)	—	487,626	(100,000)
Stock-based compensation	—	—	—	—	84,850	—	—	84,850
Balance June 30, 2023	\$ —	\$ 2,436	64,952,868	\$ 6	\$ 13,194,028	\$ (41,391)	487,626	\$ 13,070,929

See accompanying notes to these consolidated and combined financial statements.

ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES
CONSOLIDATED AND COMBINED STATEMENTS OF CASH FLOWS

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
(Dollars in Thousands)			
Cash flows from operating activities:			
Net (loss) income	\$ (107,760)	\$ 53,146	\$ (20,608)
Adjustments to reconcile net (loss) income to net cash provided by operating activities:			
Depreciation and amortization	491,419	119,930	125,642
Reduction in the carrying amount of right-of-use assets	13,869	5,915	5,515
Net foreign currency losses (gains)	4,079	(306)	5,525
Net realized loss on settlement of foreign currency forward contracts	26,176	—	—
Stock-based compensation	84,850	15,763	1,744
Deferred income taxes	(192,926)	(79,021)	(57,086)
Provision for uncollectible receivables	7,827	794	(145)
Other non-cash operating activities	(228)	228	165
Changes in assets and liabilities:			
Accounts receivable	(25,538)	11,204	(5,476)
Contract assets	(21,658)	(78,122)	(17,868)
Contract costs	(10,165)	(4,992)	—
Lease liabilities	(13,655)	(5,558)	(4,673)
Prepaid expenses, prepaid income taxes, and other assets	7,625	(8,776)	1,553
Accounts payable, accrued expenses, income taxes payable and other liabilities	18,315	(23,674)	(1,740)
Contract liabilities	16,979	22,431	22,252
Net cash provided by operating activities	<u>299,209</u>	<u>28,962</u>	<u>54,800</u>
Cash flows from investing activities:			
Purchase of property, equipment and leasehold improvements	(6,577)	(2,263)	(6,185)
Proceeds from sale of property and equipment	—	91	—
Payments for business acquisitions, net of cash acquired	(72,498)	(5,571,931)	(1,588,802)
Net payments for settlement of foreign currency forward contracts	(26,176)	—	—
Payments for equity method investments	(700)	(24)	—
Payments for capitalized computer software development costs	(366)	(508)	—
Purchase of other assets	(1,000)	(553)	5
Net cash (used in) investing activities	<u>(107,317)</u>	<u>(5,575,188)</u>	<u>(1,594,982)</u>
Cash flows from financing activities:			
Issuance of shares of common stock	36,736	5,702	—
Repurchases of common stock	(100,000)	—	—
Payment of tax withholding obligations related to restricted stock	(20,836)	(1,676)	—
Deferred business acquisition payments	(1,363)	(1,200)	—
Repayments of amounts borrowed under term loan	(276,000)	(6,000)	—
Net transfers (to) from Parent Company	(19,933)	5,971,995	1,551,537
Payments of debt issuance costs	(2,375)	—	—
Net cash (used in) provided by financing activities	<u>(383,771)</u>	<u>5,968,821</u>	<u>1,551,537</u>
Effect of exchange rate changes on cash and cash equivalents	(16,637)	1,417	(141)
(Decrease) increase in cash and cash equivalents	(208,516)	424,012	11,214
Cash and cash equivalents, beginning of period	449,725	25,713	14,499
Cash and cash equivalents, end of period	<u>\$ 241,209</u>	<u>\$ 449,725</u>	<u>\$ 25,713</u>
Supplemental disclosure of cash flow information:			
Income taxes paid, net	\$ 79,819	\$ 84,997	\$ 9,600
Interest paid	13,615	237	693
Supplemental disclosure of non-cash activities:			
Change in purchases of property, equipment and leasehold improvements included in accounts payable and accrued expenses	\$ (915)	\$ (363)	\$ 483
Lease liabilities arising from obtaining right-of-use assets	1,345	280	219

See accompanying notes to these consolidated and combined financial statements.

ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS

1. Organization and Basis of Presentation

Aspen Technology, Inc., together with its subsidiaries (“AspenTech” or “Company”), is a leading industrial software company that develops solutions to address complex industrial environments where it is critical to optimize the asset design, operations and maintenance lifecycle. Through the Company’s unique combination of product capabilities and deep domain expertise and award-winning innovation, customers across diverse end markets in capital-intensive industries can improve their operational excellence while achieving sustainability goals.

On October 10, 2021, Emerson Electric Co. (“Emerson” or “Parent Company”) entered into a definitive agreement (the “Transaction Agreement”) with AspenTech Corporation (f/k/a Aspen Technology, Inc.) (“Heritage AspenTech”) to contribute the Emerson industrial software business (the “Industrial Software Business”), along with \$6.014 billion in cash, to create AspenTech (the “Transaction”). The Industrial Software Business included Open Systems International, Inc. (“OSI Inc.”) and the Geological Simulation Software business (“GSS”), which the Company has renamed as Subsurface Science & Engineering (“SSE”). The Transaction closed on May 16, 2022 (“Closing Date”). Emerson owns 55% of AspenTech on a fully diluted basis as of June 30, 2023.

On December 23, 2022, the Company entered into a credit agreement with Emerson (the “Emerson Credit Agreement”), which will provide for an aggregate term loan commitment of \$630.0 million. Refer to Note 19, “Related-Party Transactions”, for further discussion of the Emerson Credit Agreement.

On July 27, 2022, the Company entered into a definitive agreement to acquire Mining Software Holdings Pty Ltd (“Micromine”) for AU\$900.0 million in cash (approximately \$623.0 million based on exchange rates when the acquisition was initially announced). Micromine is a global leader in design and operational management solutions for the metals and mining industry. The Company intended to finance the transaction primarily through debt financing under the Emerson Credit Agreement.

On August 1, 2023, the Company announced the termination of the agreement to purchase Micromine due to uncertainty regarding the obtainment of certain regulatory approvals.

The Company operates globally in 82 countries as of June 30, 2023.

Basis of Presentation

The accompanying consolidated and combined financial statements include the accounts of Aspen Technology, Inc. and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

The Company has prepared the accompanying consolidated and combined financial statements pursuant to the rules and regulations of the U.S. Securities and Exchange Commission (the “SEC”) and in accordance with generally accepted accounting principles in the United States (“GAAP”).

The Transaction was accounted for as a business combination in accordance with GAAP, with the Industrial Software Business treated as the “acquirer” and Heritage AspenTech treated as the “acquired” company for financial reporting purposes. On the Closing Date, the Company changed its fiscal year end from September 30 to June 30. The consolidated and combined financial statements for the year ended June 30, 2023 comprise the results of the Industrial Software Business and Heritage AspenTech (“fiscal 2023” or “fiscal year 2023”). The consolidated and combined financial statements for the nine months ended June 30, 2022 comprise the results of the Industrial Software Business and include the results of Heritage AspenTech from the Closing Date through June 30, 2022 (“fiscal 2022” or “fiscal year 2022”). The consolidated and combined financial statements for the year ended September 30, 2021 comprise the results of the Industrial Software Business only and do not include the results of Heritage AspenTech (“fiscal 2021” or “fiscal year 2021”). This Annual Report on Form 10-K also includes an unaudited consolidated and combined statements of operations and cash flows for the comparable period of July 1, 2021 to June 30, 2022; see Note 23, “Transition Period Comparative Data” for further information.

The preparation of financial statements and related disclosures in conformity with GAAP requires us to make judgments, assumptions, and estimates that affect the amounts reported in the consolidated and combined financial statements and accompanying notes. The actual results that the Company experiences may differ materially from its estimates.

Certain reclassifications have been made to the amounts in prior periods in order to conform to the current period's presentation. The Company has evaluated subsequent events through the date that the financial statements were issued.

Russia and Ukraine

The Company maintains operations in Russia and licenses software and provides related services to customers in Russia and areas of Ukraine that are not under sanction. The Company had net sales of approximately \$44.6 million and \$9.9 million for fiscal 2023 and 2022, respectively, and total assets of approximately \$39.7 million and \$23.4 million as of June 30, 2023 and 2022, respectively, related to operations in Russia.

The Company may be required to cease or suspend operations in Russia or, should the conflict or the effects of sanctions, export control measures and business restrictions worsen, the Company may voluntarily elect to do so. For example, the Company has recently terminated all engineering services in Russia, which may impact the ability to renew existing contracts and provide support to customers. While the Company continues to evaluate the impact, if any, of the various sanctions, export control measures and business restrictions imposed by the United States, other governments, and financial institutions on the ability to do business in Russia and areas of Ukraine that are not under sanction, maintain contracts with vendors and pay employees in Russia, and receive payment from customers in Russia and areas of Ukraine that are not under sanction, there is no assurance that the Company will be able to do so in the future. Any disruption to, or suspension of, the Company's business and operations in Russia would result in the loss of revenue from the business in Russia and would negatively impact growth. The Company may also suffer reputational harm as a result of continued operations in Russia, which may adversely impact sales and other businesses in other countries.

2. Significant Accounting Policies

(a) Revenue Recognition

In accordance with ASC 606, *Revenue from Contracts with Customers*, the Company accounts for a customer contract when both parties have approved the contract and are committed to perform their respective obligations, each party's rights can be identified, payment terms can be identified, the contract has commercial substance, and it is probable that the Company will collect substantially all of the consideration to which they are entitled to. The Company evaluates its contracts with customers to identify the promised goods or services and recognizes revenue for the identified performance obligations at the amount the Company expects to be entitled to in exchange for those goods or services. A performance obligation is a promise in a contract to transfer a distinct good or service to a customer. Revenue is recognized when, or as, performance obligations are satisfied, and control has transferred to the customer.

The Company disaggregates its revenue into three categories: (i) license and solutions, (ii) maintenance and (iii) services and other.

License and solutions

License and solutions revenue is primarily derived from the sale of term software licenses. It also includes revenue derived from the sale of perpetual and term software licenses, along with professional services, sold by OSI Inc. See Note 3, "Revenue from Contracts with Customers" and Note 22, "Segment and Geographic Information," for additional information about the Company's revenues disaggregated by region and type of performance obligation.

Term software license revenue is recognized at a point in time when control transfers to the customer, which generally aligns with the first day of the contractual term.

Prior to the third quarter of fiscal 2023, OSI Inc. software licenses were primarily sold with professional services and hardware to form an integrated solution for the customer. The professional services and hardware sold with the license significantly customized the underlying functionality and usability of the software. As such, neither the license, hardware, nor professional services were considered distinct within the context of the contract and were therefore considered a single performance obligation. Because the integrated solution had no alternative use to the Company and the Company held an

enforceable right to payment, revenue was recognized over time (typically one to two years) using an input measure of progress based on the ratio of actual costs incurred to date to the total estimated cost to complete. For integrated solution contracts executed prior to the third quarter of fiscal 2023, revenue continues to be recognized over time until the implementation is complete.

At the start of the third quarter of fiscal 2023, the Company completed a series of business transformation activities relating to OSI Inc. products and services in conjunction with its ongoing integration activities. As part of a change in the related go-to-market strategy, the Company has invested in tools and processes to simplify and streamline the implementation services to significantly reduce the complexity and interdependency associated with its software. In addition, the Company has identified and trained several third-party implementation service partners to operate autonomously and directly with OSI Inc. customers to implement its products.

Accordingly, effective January 1, 2023 following the completion of these business transformation activities, for all new OSI Inc. contracts, the Company accounts for the OSI Inc. software license, hardware, maintenance, and professional services as separate and distinct performance obligations. Software license revenue is recognized at a point in time when control transfers to the customer, which generally aligns with the first day of the contractual term. Hardware revenue is recognized at the point in time when control transfers to the customer, which generally occurs upon delivery. The recognition of maintenance revenue at OSI Inc. is unchanged and continues to be recognized ratably over the maintenance term as discussed further below. Professional services revenue is recognized over time (typically one to two years) using the proportional performance method by comparing the costs incurred to the total estimated project costs as discussed further below.

Maintenance

Software maintenance revenue is recognized ratably over the maintenance term and includes technical support, software assurance patch management services and the right to receive any when-and-if available updates to the software. For term software licenses, maintenance is included with the license. For perpetual software licenses, maintenance is initially sold with the license and subsequently sold separately, both primarily on an annual basis. Software maintenance does not significantly modify or otherwise depend on other performance obligations within the contracts and therefore is accounted for as a separate performance obligation. For maintenance sold with an integrated solution by OSI Inc., the maintenance term begins once implementation is complete.

Services and other

Services and other revenue is derived from the sale of professional services and training.

Professional service revenue, when not sold as part of an integrated solution by OSI Inc., is provided to customers on a time-and-materials (“T&M”) or fixed-price basis. The obligation to provide professional services is generally satisfied over time, with the customer simultaneously receiving and consuming the benefits as the Company satisfies its performance obligation. Professional service revenue is recognized by measuring progress toward the completion of the Company’s obligations. The Company recognizes professional services revenue for its T&M contracts based upon hours worked at contractually agreed-upon hourly rates. Fixed-price engagements recognize revenue using the proportional performance method by comparing the costs incurred to the total estimated project cost. The use of the proportional performance method depends on the Company’s ability to reliably estimate the costs to complete a project. Historical experience is used as a basis for future estimates to complete current projects. Additionally, the Company believes that costs are the best available measure of performance. Out-of-pocket expenses which are reimbursed by customers are recorded as revenue.

Training services provided to customers include on-site internet-based and customized training. These services are considered separate performance obligations as they do not significantly modify, integrate or otherwise depend on other performance obligations included in a contract. Revenue is recognized as the customer consumes the benefits of the services the Company provides.

Contracts with Multiple Performance Obligations

The Company allocates total contract consideration to each distinct performance obligation in an arrangement on a relative standalone selling price basis. The standalone selling price reflects the price that would be charged for a specific product or service if it was sold separately in similar circumstances and to similar customers.

When two or more contracts are entered into at or near the same time with the same customer, the Company evaluates the facts and circumstances associated with the negotiation of those contracts. Where the contracts are negotiated as a package, the

Company will account for them as a single arrangement and allocate the consideration for the combined contracts among the performance obligations accordingly.

When available, the Company uses directly observable transactions to determine the standalone selling prices for performance obligations. If directly observable data is not available when software licenses are sold together with software maintenance in a bundled arrangement, the Company estimates a standalone selling price for these distinct performance obligations using relevant information, including the Company's overall pricing objectives and strategies, historical pricing data, market consideration and other factors.

Contract Modifications

The Company sometimes enters into agreements to modify previously executed contracts, which constitute contract modifications. The Company assesses each of these contract modifications to determine (i) if the additional products and services are distinct from the products and services in the original arrangement; and (ii) if the amount of consideration expected for the added products and services reflects the standalone selling price of those products and services, as adjusted for contract-specific circumstances. A contract modification meeting both criteria is accounted for as a separate contract. A contract modification not meeting both requirements is considered a change to the original contract and is accounted for on either (i) a prospective basis as a termination of the existing contract and the creation of a new contract or (ii) a cumulative catch-up basis.

Contract Assets and Contract Liabilities

Payment terms and conditions vary by contract type. Terms generally include a requirement of payment annually over the term of the license arrangement. During the majority of each customer contract term, the amount invoiced is generally less than the amount of revenue recognized to date, primarily because the Company transfers control of the performance obligation related to the software license at the inception of the contract term, and the allocation of contract consideration to the license performance obligation is a significant portion of the total contract consideration. Therefore, the Company's contracts often result in the recording of a contract asset throughout the majority of the contract term. The Company records a contract asset when revenue recognized on a contract exceeds the billings.

The Company records accounts receivable when it has the unconditional right to issue an invoice and receive payment regardless of whether revenue has been recognized. If revenue is not yet recognizable and the Company has a right to invoice or has received consideration, a contract liability is recorded to defer the revenue until recognition is appropriate. If revenue is recognizable in advance of the right to invoice, and the right to consideration is conditional on something other than the passage of time, a contract asset is recorded until invoicing occurs.

The Company defers unearned maintenance and service revenue when it has the right to invoice, with recognition of the revenue recognized over the support period. Contract assets and contract liabilities are presented net at the contract level for each reporting period.

Payment Terms

The Company generally receives payment from a customer after the performance obligation related to the term license has been satisfied, and therefore, its contracts with terms greater than one year generally contain a significant financing component. The significant financing component is calculated utilizing an interest rate that derives the net present value of the performance obligations delivered on an upfront basis based on the allocation of consideration. The Company has instituted a customer portfolio approach in assigning interest rates. The rates are determined at contract inception and are based on the credit characteristics of the customers within each portfolio.

Perpetual software licenses, sold along with professional services and hardware as an integrated solution, generally require payments from the customer aligned with progress milestones in the contract. Payment terms on invoiced amounts are typically net 30 days. The Company does not offer return rights for its products and services in the ordinary course of business, and contracts generally do not include customer acceptance clauses.

(b) Management Estimates

The preparation of the consolidated and combined financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that could affect the reported amounts of assets, liabilities, revenue and expenses for the periods presented. Actual results could differ from those estimates.

(c) Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk are principally cash and cash equivalents, contract assets, and accounts receivable. The Company's cash is held in financial institutions and its cash equivalents are invested in money market funds that the Company believes to be of high credit quality.

Concentration of credit risk with respect to contract assets and accounts receivables is limited to certain customers to which the Company makes substantial sales. To reduce risk, the Company assesses the financial strength of the Company's customers. The Company does not require collateral or other security in support of its contract assets and accounts receivables. At June 30, 2023 and 2022, the Company had no customer receivable balances that represented 10% or more of its total accounts receivable.

(d) Cash and Cash Equivalents

Cash and cash equivalents are reflected on the consolidated and combined balance sheets and consist of highly liquid investments with original maturities of three months or less.

(e) Foreign Currency Translation

The determination of the functional currency of subsidiaries is based on the subsidiaries' financial and operational environment. Gains and losses from foreign currency translation related to entities whose functional currency is not the Company's reporting currency are credited or charged to accumulated other comprehensive income included in stockholders' equity in the consolidated and combined balance sheets. In all instances, foreign currency transaction and remeasurement gains or losses are credited or charged to the consolidated and combined statements of operations as incurred as a component of other income (expense), net. There were net foreign currency transaction and remeasurement losses of \$4.1 million in fiscal 2023, gains of \$0.3 million in fiscal 2022, and losses of \$5.5 million in fiscal 2021.

(f) Fair Value Measurement

Accounting Standards Codification (ASC) 820, *Fair Value Measurement*, establishes a formal hierarchy and framework for measuring certain financial statement items at fair value, and requires disclosures about fair value measurements and the reliability of valuation inputs. Under ASC 820, measurement assumes the transaction to sell an asset or transfer a liability occurs in the principal or at least the most advantageous market for that asset or liability. Within the hierarchy, Level 1 instruments use observable market prices for the identical item in active markets and have the most reliable valuations. Level 2 instruments are valued through broker/dealer quotation or through market-observable inputs for similar items in active markets, including forward and spot prices, interest rates and volatilities. Level 3 instruments are valued using inputs not observable in an active market, such as Business-developed future cash flow estimates, and are considered the least reliable.

(g) Business Combinations

Identifying the acquirer in a business combination is based on the concept of 'control'. Normally, where an acquisition is affected by an exchange of equity interests, the shareholders of the entity that issues securities (the legal parent entity) retain the majority holding in the combined group.

The cost of an acquisition is measured as the aggregate of the consideration transferred, which is measured at acquisition date fair value. Any contingent consideration to be transferred by the acquirer will be recognized at fair value at the acquisition date.

Assets and liabilities acquired in business combinations are accounted for using the acquisition method and recorded at their respective fair values. Goodwill represents the excess of consideration paid over the net assets acquired and is assigned to the reporting unit that acquires the business.

The Company uses its best estimates and assumptions to assign fair value to the tangible and intangible assets acquired and liabilities assumed at the acquisition date. The Company's estimates are inherently uncertain and subject to refinement. During the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the fair value of these tangible and intangible assets acquired and liabilities assumed, with the corresponding offset to goodwill. In addition, uncertain tax positions, tax-related valuation allowances and pre-acquisition contingencies are initially recorded in connection with a business combination as of the acquisition date. The Company continues to collect information

and reevaluates these estimates and assumptions quarterly and records any adjustments to the Company's preliminary estimates to goodwill provided that the Company is within the measurement period. Upon the conclusion of the measurement period or final determination of the fair value of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded to the Company's consolidated and combined statement of operations.

Acquisition-related costs are expensed as incurred and included in operating expenses. The majority of acquisition-related costs incurred by Heritage AspenTech incurred prior to or in connection with the closing of the Transaction are not included within the accompanying consolidated and combined statements of operations.

(h) Intangible Assets

Intangible Assets Acquired in a Business Combination

ASC 805, *Business Combinations*, requires the identification of acquired intangible assets as part of a business combination. Acquired intangible assets generally consist of intellectual property such as technology and trademarks, customer relationships and backlog. The methods used to value such intangible assets require the use of estimates including forecast performance discount rates and customer attrition rates. Future results are impacted by the amortization periods adopted and changes to the estimated useful lives would result in different effects on the consolidated and combined statements of operations.

Computer Software Developed for Internal Use

Computer software developed for internal use is capitalized in accordance with ASC 350-40, *Intangibles Goodwill and Other—Internal Use Software*. The Company capitalizes costs incurred to develop internal-use software during the application development stage after determining software technological requirements and obtaining management approval for funding projects probable of completion. In fiscal 2023, 2022 and 2021, there were no capitalized direct labor costs associated with the Company's development of software for internal use.

Computer Software Developed for Sale

Computer software developed for sale is capitalized in accordance with ASC 985-20, *Software - Costs of Software to Be Sold, Leased, or Marketed*. Capitalization of computer software development costs begins upon establishing technological feasibility defined as meeting specifications determined by the program design. Amortization of capitalized computer software development costs is provided on a product-by-product basis using the greater of (a) the amount computed using the ratio that current gross revenue for a product bears to total of current and anticipated future gross revenue for that product or (b) the straight-line method, beginning upon commercial release of the product, and continuing over the remaining estimated economic life of the product, not to exceed three years. Total computer software costs capitalized and total amortization expense charged to operations were not material for fiscal 2023, 2022 or 2021.

Amortization Expense

All of the Company's identifiable finite-lived intangible assets are subject to amortization on a straight-line basis over their estimated useful lives. Each period, the Company evaluates the estimated remaining useful life of its intangible assets and whether events or changes in circumstances warrant a revision to the remaining period of amortization.

Amortization expenses associated with developed technology and capitalized costs relating to computer software developed for sale are included in cost of revenue, while amortization expenses associated with customer relationships and backlog are included in the selling and marketing. Amortization expenses associated with computer software developed for internal use are included in each respective financial statement caption based on which business function the software is attributable to. Each period, the Company evaluated the estimated remaining useful lives of intangible assets to determine whether events or changes in circumstances warrant a revision to the remaining period of amortization. Intangible assets are removed from the accounts when fully amortized and no longer in use.

(i) Property, Equipment and Leasehold Improvements

The Company records investments in leasehold improvements and equipment at cost. Depreciation is recorded using the straight-line method over estimated service lives, which for equipment is three years to 10 years and for leasehold improvements, the remaining term of the lease or the life of the underlying asset, whichever is shorter.

(j) Impairment Assessment

Finite-lived Intangible Assets and Long-lived Assets

The Company evaluates finite-lived intangible assets and long-lived assets for possible impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. This includes but is not limited to significant adverse changes in business climate, market conditions or other events that indicate an asset's carrying amount may not be recoverable. Recoverability of these assets is measured by comparing the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate. If the undiscounted cash flows used in the test for recoverability are less than the carrying amount of these assets, the carrying amount of such assets is reduced to fair value.

Goodwill and Indefinite-lived Intangible Assets

The Company evaluates and tests the recoverability of its: (i) goodwill, and (ii) indefinite-lived intangible assets (which consists entirely of the trademark associated with the Heritage AspenTech acquisition), for impairment at least annually on May 31 of each fiscal year or more often if and when circumstances indicate that goodwill or the indefinite-lived intangible asset may not be recoverable. The Company first assesses qualitative factors to determine whether the existence of events or circumstances indicates that it is more likely than not that the fair value of a reporting unit or fair value of an indefinite-lived intangible asset is less than its carrying amount. If the Company determines based on this assessment that it is more likely than not that the fair value of a reporting unit or fair value of an indefinite-lived intangible asset is less than its carrying amount, the Company performs the impairment test. The first step requires the Company to determine the fair value of the reporting unit or fair value of an indefinite-lived intangible asset and compare it to the carrying amount of the reporting unit, including goodwill, or carrying amount of the indefinite-lived intangible asset. If the fair value exceeds the carrying amount, no impairment loss is recognized. However, if the carrying amount of the reporting unit or indefinite-lived intangible asset exceeds its fair value, the goodwill of the reporting unit is impaired or the indefinite-lived intangible asset is impaired.

Fair value of a reporting unit is determined using a combined weighted average of a market-based approach (utilizing fair value multiples of comparable publicly traded companies) and an income-based approach (utilizing discounted projected cash flows). In applying the income-based approach, the Company would be required to make assumptions about the amount and timing of future expected cash flows, growth rates and appropriate discount rates. The amount and timing of future cash flows would be based on the Company's most recent long-term financial projections. The discount rate the Company would utilize would be determined using estimates of market participant risk-adjusted weighted-average costs of capital and reflect the risks associated with achieving future cash flows.

There were no impairments of intangible assets, long-lived assets or goodwill during fiscal 2023, 2022 and 2021, respectively.

(k) Leases

The Company leases offices and equipment under operating lease arrangements. The Company determines whether an arrangement is, or contains, a lease at contract inception. An arrangement contains a lease if the Company has the right to direct the use of and obtain substantially all of the economic benefits of an identified asset. Right-of-use assets and lease liabilities are recognized at lease commencement based on the present value of lease payments over the lease term. Leases with an initial term of 12 months or less are not recognized on the balance sheet and are recorded as short-term lease expense. The discount rate used to calculate present value is the Company's incremental borrowing rate based on the lease term and the economic environment of the applicable country or region.

Certain leases have renewal options or options to terminate prior to lease expiration, which are included in the measurement of right-of-use assets and lease liabilities when it is reasonably certain they will be exercised. The Company has elected to account for lease and non-lease components as a single lease component for its office facilities. Some lease arrangements include payments that are adjusted periodically based on actual charges incurred for common area maintenance, utilities, taxes and insurance, or changes in an index or rate referenced in the lease. The fixed portion of these payments is included in the measurement of right-of-use assets and lease liabilities at lease commencement, while the variable portion is recorded as variable lease expense. The Company's leases do not contain material residual value guarantees or restrictive covenants.

(l) Derivatives and Hedging

The Company utilizes derivative instruments to manage exposures to foreign currency exchange rate risks. The primary objective of holding derivatives is to reduce the volatility of cash flows associated with changes in foreign currency exchange rates. The Company's derivatives expose it to credit risk to the extent that the counterparties may be unable to meet the terms of the agreement. The Company seeks to mitigate such risks by limiting its counterparties to major financial institutions. In addition, the potential risk of loss with any one counterparty resulting from this type of credit risk is monitored. Management does not expect material losses as a result of defaults by counterparties.

The Company accounts for derivative transactions in accordance with ASC Topic 815, *Derivatives and Hedging*, and recognizes derivatives instruments as either assets or liabilities in the consolidated and combined balance sheet and measures those instruments at fair value. The Company's foreign currency forward contracts as described in Note 17 "Derivatives" do not qualify for hedge accounting. Accordingly, the changes in fair value of the derivative transactions are presented in earnings.

(m) Comprehensive (Loss) Income

Comprehensive (loss) income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive (loss) income and its components for fiscal 2023, 2022 and 2021 are disclosed in the accompanying consolidated and combined statements of comprehensive (loss) income.

(n) Accounting for Stock-Based Compensation

Substantially all stock-based compensation cost is measured at the grant date based on the fair value of the award and is recognized as expense over the requisite service period.

(o) Income Taxes

Deferred income taxes are recognized based on temporary differences between the financial statement and tax bases of assets and liabilities. Deferred tax assets and liabilities are measured using the statutory tax rates and laws expected to apply to taxable income in the years in which the temporary differences are expected to reverse. Valuation allowances are provided against net deferred tax assets if, based upon the available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income and the timing of the temporary differences becoming deductible. Management considers, among other available information, scheduled reversals of deferred tax liabilities, projected future taxable income, limitations of availability of net operating loss carryforwards, and other matters in making this assessment.

The Company does not provide deferred taxes on unremitted earnings of foreign subsidiaries since they intend to indefinitely reinvest either currently or sometime in the foreseeable future. Unrecognized provisions for taxes on undistributed earnings of foreign subsidiaries, which are considered indefinitely reinvested, are not material to its consolidated and combined financial position or results of operations. The Company is continuously subject to examination by the Internal Revenue Service (the "IRS"), as well as various state and foreign jurisdictions. The IRS and other taxing authorities may challenge certain deductions and credits reported by the Company on its income tax returns. In accordance with provisions of ASC 740, an entity should recognize a tax benefit when it is more-likely-than-not, based on the technical merits, that the position would be sustained upon examination by a taxing authority. The amount to be recognized, if the more-likely-than-not threshold was passed, should be measured as the largest amount of tax benefit that is greater than 50 percent likely of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. Furthermore, any change in the recognition, de-recognition or measurement of a tax position should be recorded in the period in which the change occurs. The Company accounts for interest and penalties related to uncertain tax positions as part of the provision for income taxes.

(p) Loss Contingencies

The Company accrues estimated liabilities for loss contingencies arising from claims, assessments, litigation and other sources when it is probable that a liability has been incurred and the amount of the claim assessment or damages can be reasonably estimated. The Company believes it has sufficient accruals to cover any obligations resulting from claims, assessments or litigation that have met these criteria.

(q) Research and Development Expense

The Company charges research and development expenditures to expense as the costs are incurred. Research and development expenses consist primarily of personnel expenses related to the creation of new products, enhancements and engineering changes to existing products and costs of acquired technology prior to establishing technological feasibility.

(r) Net Parent Investment

The net parent investment balance included in the consolidated and combined balance sheets represents Emerson's historical investment in the Industrial Software Business, the Industrial Software Business's accumulated net earnings after income taxes, and the net effect of transactions with Emerson prior to the Transaction.

(s) New Accounting Pronouncements Adopted in Fiscal 2023 and 2022

There were no new accounting pronouncements adopted in fiscal 2023.

Effective October 1, 2021, the Company adopted the following accounting standard updates which had no impact or an immaterial impact on the Company's consolidated and combined financial statements. These included:

- Updates to ASC 805, *Business Combinations*, which clarify the accounting for contract assets and liabilities assumed in a business combination. In general, these updates will result in contract assets and liabilities being recognized at their historical amounts under ASC 606, rather than at fair value in accordance with the general requirements of ASC 805.

- Updates to ASC 740, *Income Taxes*, which require the recognition of a franchise tax that is partially based on income as an income-based tax with any incremental amount as a non-income-based tax. These updates also make certain changes to intra-period tax allocation principles and interim tax calculations.

- Adoption of ASC 321, *Investments - Equity Securities*, ASC 323, *Investments- Equity Method and Joint Ventures*, and ASC 815, *Derivatives and Hedging*, which clarify when equity method of accounting should be applied or discontinued based on observable transactions.

(t) Recently Issued Accounting Pronouncements

Recently issued accounting pronouncement that will be applicable to the Company are not expected to have a material impact on the Company's consolidated and combined financial statements.

3. Revenue from Contracts with Customers**Contract Assets and Contract Liabilities**

The contract assets are subject to credit risk and reviewed in accordance with ASC 326, *Financial Instruments-Credit Losses*. The Company monitors the credit quality of customer contract asset balances on an individual basis, at each reporting date, through credit characteristics, geographic location, and the industry in which they operate. The Company recognizes an impairment on contract assets if, subsequent to contract inception, it becomes probable payment is not collectible. An allowance for expected credit loss reflects losses expected over the remaining term of the contract asset and is determined based upon historical losses, customer-specific factors, and current economic conditions. The potential impact of credit losses on contract assets was immaterial as of June 30, 2023. The Company's contract assets and contract liabilities were as follows as of June 30, 2023 and 2022:

	June 30,	
	2023	2022
	(Dollars in Thousands)	
Contract assets	903,643	857,065
Contract liabilities	(181,553)	(164,408)
	<u>\$ 722,090</u>	<u>\$ 692,657</u>

The majority of the Company's contract balances are related to arrangements where revenue is recognized at a point in time and payments are made according to a contractual billing schedule. The change in the net contract asset balance during

fiscal 2023 was primarily due to greater revenue recognition as compared to billings. Revenue recognized during fiscal 2023 included \$113.8 million that was included in the beginning contract liability balance.

Contract Costs

The Company pays commissions for new product sales and implementation services as well as for renewals of existing contracts. Commissions paid to obtain renewal contracts are not commensurate with the commissions paid for new product sales or implementation services, and therefore, a portion of the commissions paid for new contracts and implementation services relate to future renewals and are therefore deferred and amortized over an estimated period of benefit of four years to eight years.

The Company accounts for new product sales commissions using a portfolio approach and allocates the cost of commissions in proportion to the allocation of transaction price of license and maintenance performance obligations, including assumed renewals. Commissions allocated to the license and license renewal components are expensed at the time the license revenue is recognized. Commissions allocated to maintenance are capitalized and amortized on a straight-line basis over a period of four years to eight years for new contracts, reflecting the Company's estimate of the expected period that they will benefit from those commissions.

Amortization of capitalized contract costs is included in selling and marketing expenses in the Company's statement of operations.

Transaction Price Allocated to Remaining Performance Obligations

The following table includes the aggregate amount of the transaction price allocated as of June 30, 2023 to the performance obligations that are unsatisfied (or partially unsatisfied) at the end of the reporting period:

	Year Ended June 30,							Total
	2024	2025	2026	2027	2028	Thereafter		
	(Dollars in Thousands)							
License and solutions	\$ 173,439	\$ 93,226	\$ 29,501	\$ 7,872	\$ 762	\$ 585	\$ 305,385	
Maintenance	303,462	205,930	153,905	110,455	64,004	29,818	867,574	
Services and other	79,903	17,743	10,519	3,802	2,251	2,456	116,674	
Total	<u>556,804</u>	<u>316,899</u>	<u>193,925</u>	<u>122,129</u>	<u>67,017</u>	<u>32,859</u>	<u>1,289,633</u>	

Disaggregated Revenue Information

The table below reflects disaggregated revenues by business for fiscal 2023, 2022 and 2021:

	Year Ended	Nine Months Ended	Year Ended
	June 30, 2023	June 30, 2022	September 30, 2021
	(Dollars in Thousands)		
Heritage AspenTech	\$ 760,802	\$ 173,810	\$ —
SSE	120,092	88,272	127,388
OSI Inc.	163,284	143,214	173,252
Total	<u>\$ 1,044,178</u>	<u>\$ 405,296</u>	<u>\$ 300,640</u>

The Company did not have any customer that accounted for 10 percent or more of the Company's revenues for fiscal 2023, 2022 and 2021, respectively.

4. Acquisitions

Inmation Software GmbH

On August 29, 2022, the Company completed the acquisition of Inmation Software GmbH (“Inmation”) for total cash consideration of \$87.2 million. The purchase price consisted of \$78.9 million of cash paid at closing and an additional \$8.3 million to be held back until August 2023 as security for certain representations, warranties, and obligations of the sellers. The holdback is recorded in accrued expenses and other current liabilities in the consolidated and combined balance sheets. The total cash acquired from Inmation was approximately \$6.4 million resulting in a net cash payment of \$72.5 million. The Company recognized goodwill of \$63.0 million (none of which is expected to be tax deductible) and identifiable intangible assets of \$31.5 million, primarily consisting of developed technology and customer relationships, with a useful life of approximately five years for developed technology and seven years for customer relationships. The fair values of assets acquired and liabilities assumed represent the preliminary fair value estimates, and are subject to subsequent adjustments as the Company obtains additional information during the measurement period and finalizes its fair value estimates.

Inmation’s revenue and net loss included in the Company’s consolidated and combined income statement from the acquisition date to June 30, 2023 were \$4.9 million and \$5.0 million, respectively. Results included amortization of developed technology and customer relationships of \$4.8 million.

Prior to the closing date, Inmation was considered a related party to AspenTech as Emerson, through one of its subsidiaries, held an equity-method investment in Inmation. At the time of close, \$17.6 million was paid to Emerson in exchange for all of its shares in Inmation, with another \$2.0 million to be paid 12 months after the close.

Heritage AspenTech

On October 10, 2021, Emerson entered into the Transaction with Heritage AspenTech to contribute the Industrial Software Business comprised of OSI and SSE, along with \$6.014 billion in cash, to create AspenTech. On the Closing Date, Emerson owned 55% of the outstanding common shares of AspenTech on a fully diluted basis, while the stockholders of Heritage AspenTech owned the remaining 45%. The acquisition-date fair value of the purchase consideration totaled \$11.19 billion, which was determined as follows (in thousands):

Fair value of Heritage AspenTech common stock (66,662,482 common shares)	\$	11,085,971
Stock-based compensation awards attributable to pre-combination service		102,305
Total purchase consideration	\$	<u>11,188,276</u>

The fair value of the shares of Heritage AspenTech common stock was determined based on the closing market price of Heritage AspenTech common stock on the Closing Date. The Company also replaced Heritage AspenTech equity awards with AspenTech equity awards. As a result, the portion of the aggregate fair-value of the replacement awards attributable to the pre-combination service period was included in the computation of the fair value of consideration transferred. See Note 14, “Stock-Based Compensation”. Of the total cash contribution of \$6.014 billion made by Emerson to the Industrial Software Business, \$5.846 billion was paid in cash to the holders of Heritage AspenTech common stock at \$87.69 per share (on a fully diluted basis), with \$168.3 million of cash remaining on AspenTech’s consolidated and combined balance sheet as of the Closing Date which is not included in the allocation of purchase consideration above. Additionally, the holders of Heritage AspenTech common stock received 27,998,104 shares of AspenTech common stock, with an aggregate fair value of \$5.240 billion.

The following table summarizes the estimated fair value of the assets acquired and liabilities assumed on the Closing Date.

	Amount	
	(Dollars in Thousands)	
Cash and cash equivalents	\$	273,728
Accounts receivable		43,163
Current and non-current contract assets		730,548
Intangible assets		4,390,667
Other net assets acquired		66,753
Total asset acquired (excluding Goodwill)		5,504,859
Accounts payable, accrued expenses, and other current liabilities		56,005
Current and non-current deferred revenue		62,319
Current and non-current borrowings under credit agreement		282,000
Deferred income taxes		1,078,463
Other net liabilities assumed		62,279
Total liabilities assumed		1,541,066
Net identifiable assets acquired		3,963,793
Goodwill		7,224,483
Net assets acquired	\$	11,188,276

Of the \$4.39 billion of acquired intangible assets, \$430.0 million was assigned to registered trademarks that are not subject to amortization and were recognized at fair value on the acquisition date. The remaining \$3.96 billion of acquired intangible assets are being amortized straight-line over their estimated useful lives. The definite-lived intangible assets include acquired developed technology of \$1.35 billion (10-year useful life), customer relationships of \$2.3 billion (15-year useful life), and backlog of \$310.0 million (three-year useful life).

The \$7.2 billion of goodwill is attributable primarily to expected synergies and the assembled workforce. \$34.0 million of the goodwill is expected to be deductible for income tax purposes. During the year ended June 30, 2023, the Company recorded purchase price allocation adjustments that increased goodwill by \$1.7 million.

Heritage AspenTech's revenue and earnings included in the Company's consolidated and combined statement of operations from the acquisition date to the period ending June 30, 2022 are \$173.8 million and \$71.8 million, respectively.

Pro forma Financial Information (Unaudited)

The following unaudited pro forma consolidated financial results of operations are presented as if the Heritage AspenTech acquisition occurred on October 1, 2020. The unaudited pro forma information is presented for informational purposes only and is not indicative of the results of operations that would have been achieved had the acquisition occurred as of that time.

	Nine Months Ended June 30, 2022		Year Ended September 30, 2021	
	(Dollars in Thousands)			
Total revenue	\$	819,098	\$	1,031,065
Net income (loss)	\$	18,193	\$	(55,410)

OSI Inc.

On October 1, 2020, the Industrial Software Business completed the acquisition of OSI Inc. for approximately \$1.589 billion net of cash acquired. The Industrial Software Business recognized goodwill of \$967.4 million (none of which is expected to be tax deductible) and identifiable intangible assets of \$783.4 million, primarily technology, customer relationships, and trademarks with a weighted-average useful life of approximately 11 years.

The purchase price of the OSI Inc. acquisition was allocated to assets and liabilities as follows:

	(Dollars in Thousands)
Accounts receivable	\$ 24,782
Current contract assets	41,454
Other current assets	3,576
Property, equipment and leasehold improvements	7,153
Intangible assets	783,400
Operating lease right-of-use assets and other	28,182
Total assets acquired (excluding Goodwill)	888,547
Accounts payable	1,321
Current contract liabilities	24,041
Accrued expenses and other current liabilities	11,885
Operating lease liability	28,388
Deferred income taxes	192,592
Non-current contract liabilities	7,701
Other non-current liabilities	1,200
Total liabilities assumed	267,128
Net identifiable assets acquired	621,419
Goodwill	967,383
Net assets acquired	\$ 1,588,802

OSI Inc.'s revenue and earnings included in the Company's consolidated and combined income statement from the acquisition date to the first reporting period ending on September 30, 2021 were \$173.3 million and a net loss of \$46.4 million, respectively. The results included first-year pretax acquisition accounting charges related to backlog and deferred revenue of \$30.4 million and \$13.7 million, respectively. Results also included amortization of technology, customer relationships, and trademarks of \$66.5 million.

5. Intangible Assets

Intangible assets consist of the following as of June 30, 2023 and 2022:

	Developed Technology	Trademarks	Customer Relationships and Backlog	Capitalized Software and Other	Total
June 30, 2023:	(Dollars in Thousands)				
Gross carrying amount	\$ 1,903,599	\$ 464,400	\$ 3,082,541	\$ 11,526	\$ 5,462,066
Less: Accumulated amortization	(341,964)	(13,821)	(437,673)	(8,951)	(802,409)
Net carrying amount	\$ 1,561,635	\$ 450,579	\$ 2,644,868	\$ 2,575	\$ 4,659,657
June 30, 2022:	(Dollars in Thousands)				
Gross carrying amount	\$ 1,882,037	\$ 464,400	\$ 3,072,738	\$ 10,149	\$ 5,429,324
Less: Accumulated amortization	(153,758)	(9,379)	(144,888)	(8,518)	(316,543)
Net carrying amount	\$ 1,728,279	\$ 455,021	\$ 2,927,850	\$ 1,631	\$ 5,112,781

Of the total intangible assets net carrying amount of \$4.7 billion at June 30, 2023, \$430.0 million relates to the registered trademarks associated with the Heritage AspenTech acquisition that are not subject to amortization.

The increase in the intangible asset gross carrying amount from June 30, 2022 was primarily due to the Inmation acquisition. See Note 4, "Acquisitions." Total intangible asset amortization expense for fiscal 2023, 2022 and 2021 was \$485.9 million, \$116.7 million and \$120.3 million, respectively. The significant increase in amortization expense for fiscal 2023 was due to a full year of amortization expense associated with the Heritage AspenTech acquisition.

Based on intangible asset balances as of June 30, 2023, expected future amortization expense is as follows:

<u>Year Ended June 30,</u>	<u>Amortization Expense</u>	
	<u>(Dollars in Thousands)</u>	
2024	\$	486,701
2025		473,317
2026		382,641
2027		382,083
2028		370,722
Thereafter		2,134,193
Total	\$	4,229,657

6. Goodwill

The changes in the carrying amount of goodwill during fiscal 2023 and 2022 were as follows:

	<u>Carrying Value</u>	
	<u>(Dollars in Thousands)</u>	
Balance, September 30, 2021	\$	1,044,383
Acquisition of Heritage AspenTech		7,222,799
Foreign currency translation		(373)
Balance, June 30, 2022		8,266,809
Acquisition of Inmation		63,026
Purchase accounting adjustment from Heritage AspenTech acquisition		1,684
Foreign currency translation		(708)
Balance, June 30, 2023	\$	8,330,811

Reporting Units

In accordance with ASC 350, *Intangibles - Goodwill and Other*, the Company determined its reporting units based upon whether discrete financial information is available and if management regularly reviews the operating results of the component. As of June 30, 2022, the Company was comprised of three operating and reportable segments and reporting units: OSI, Inc., SSE and Heritage AspenTech. During the three months ended September 30, 2022, the Company completed certain integration activities and changes to its organizational structure that triggered a change in the composition of its operating and reportable segments. As a result, beginning with the interim period ended September 30, 2022, the Company is now comprised of a single operating and reportable segment. See Note 22 "Segment and Geographic Information" for further information on the change to the Company's operating and reportable segments. In conjunction with the change in operating and reportable segments, the Company also changed the composition of its reporting units. Beginning with the interim period ended September 30, 2022, the Company is now comprised of a single reporting unit. The Company performed goodwill impairment assessments on each reporting unit immediately before and after the change in organizational structure and concluded that there was no goodwill impairment.

Goodwill Impairment Test

The carrying value of the Company's goodwill was \$8.3 billion as of June 30, 2023. The Company performed its annual goodwill impairment test on May 31, 2023, which included a qualitative assessment and evaluation of the relevant events and circumstances that would materially impact the fair value of its reporting unit. Based on this qualitative assessment and evaluation, the Company does not believe it is more likely than not that the fair value of its reporting unit was less than its carrying amount. As such, the Company did not recognize any goodwill impairment losses in fiscal 2023. There were also no impairment losses recognized during fiscal 2022 and 2021.

7. Restructuring Costs

Restructuring expenses were \$0.0 million, \$0.1 million, and \$2.5 million respectively, for 2023, 2022, and 2021.

SSE severance in 2021 related to a restructuring action to reduce 39 positions and transfer responsibilities to Emerson shared-service centers. OSI Inc. restructuring expense in 2021 related mostly to severance and resulted from a reduction in force, mainly in Asia.

8. Leases

The Company has operating leases primarily for corporate offices, and other operating leases for data centers and certain equipment. The Company determines whether an arrangement is or contains a lease based on facts and circumstances present at the inception of the arrangement. The Company recognizes lease expense on a straight-line basis over the lease term. The Company's leases have remaining lease terms of less than one year to approximately 12 years, some of which include options to extend the leases for up to five years, and some of which include the option to terminate the leases upon advanced notice of 60 days or more. If the Company is reasonably certain they will exercise an option to extend or terminate the lease, the time period covered by the extension or termination option is included in the lease term.

Operating lease liabilities and their corresponding right-of-use assets are recorded based on the present value of lease payments over the expected lease term. The interest rate implicit in the lease contracts is typically not readily determinable. As such, the Company utilizes the appropriate incremental borrowing rate, which is the rate incurred to borrow on a collateralized basis over a similar term at an amount equal to the lease payments in a similar economic environment. Certain adjustments to the right-of-use asset may be required for items such as incentives received. The Company has lease agreements with lease and non-lease components, which are accounted for combined as one lease component.

Operating lease costs are recognized on a straight-line basis over the term of the lease. The components of total lease expense for fiscal 2023, 2022, and 2021 were as follows:

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
	(Dollars in Thousands)		
Operating lease expense	\$ 17,417	\$ 4,769	\$ 6,365
Variable lease expense	\$ 813	\$ 518	\$ 797
Short term lease expense	\$ 125	\$ 723	\$ 889

The following table summarizes the balances of the Company's operating lease right-of-use assets and operating lease liabilities as of June 30, 2023 and 2022:

	June 30,	
	2023	2022
	(Dollars in Thousands)	
Operating lease right-of-use assets	\$ 67,642	\$ 78,286
Current operating lease liabilities	\$ 12,928	\$ 7,191
Non-current operating lease liabilities	\$ 55,442	\$ 71,933

The weighted-average remaining lease term for operating leases was nine years and the weighted-average discount rate was 3.0% as of June 30, 2023 and 2022, respectively.

The following table represents the future maturities of the Company's operating lease liabilities as of June 30, 2023:

Year Ending June 30,	(Dollars in Thousands)	
2024	\$	14,409
2025		10,472
2026		7,327
2027		6,578
2028		6,085
Thereafter		32,179
Total lease payments		77,050
Less: imputed interest		(8,680)
	\$	68,370

9. Fair Value

The Company determines fair value by utilizing a fair value hierarchy that ranks the quality and reliability of the information used in its determination. Fair values determined using “Level 1 inputs” utilize unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Fair values determined using “Level 2 inputs” utilize data points that are observable, such as quoted prices, interest rates and yield curves for similar assets and liabilities.

Cash equivalents are reported at fair value utilizing quoted market prices in identical markets, or “Level 1 Inputs.” The Company’s cash equivalents consist of short-term money market instruments.

Equity method investments are reported at fair value calculated in accordance with the market approach, utilizing market consensus pricing models with quoted prices that are directly or indirectly observable, or “Level 2 Inputs.”

The following table summarizes financial assets and liabilities measured and recorded at fair value on a recurring basis in the accompanying consolidated and combined balance sheets as of June 30, 2023 and 2022, segregated by the level of the valuation inputs within the fair value hierarchy utilized to measure fair value:

	Fair Value Measurements at Reporting Date Using,	
	Quoted Prices in Active Markets for Identical Assets (Level 1 Inputs)	Significant Other Observable Inputs (Level 2 Inputs)
	(Dollars in Thousands)	
June 30, 2023		
Cash equivalents	\$ 132,918	\$ —
Equity method investments	—	2,673
June 30, 2022		
Cash equivalents	\$ 2,998	\$ —
Equity method investments	—	1,761

Financial instruments not measured or recorded at fair value in the accompanying consolidated and combined financial statements consist of accounts receivable, accounts payable and accrued liabilities. The estimated fair value of these financial instruments approximates its carrying value. The estimated fair value of the borrowings under the Amended and Restated Credit Agreement (described below in Note 13, “Debt”) approximates its carrying value due to the floating interest rate.

10. Accounts Receivable

The Company's accounts receivable, net of the related allowance for doubtful accounts, were as follows as of June 30, 2023 and 2022:

	June 30,	
	2023	2022
	(Dollars in Thousands)	
Accounts receivable, gross	\$ 129,887	\$ 112,216
Allowance for doubtful accounts	(7,098)	(1,189)
Account receivable, net	<u>\$ 122,789</u>	<u>\$ 111,027</u>

11. Property, Equipment and Leasehold Improvements

Property, equipment and leasehold improvements in the accompanying consolidated and combined balance sheets consist of the following:

	June 30,	
	2023	2022
	(Dollars in Thousands)	
Property, equipment and leasehold improvements, at cost:		
Computer equipment, furniture & fixtures	\$ 26,918	\$ 27,465
Leasehold improvements	8,544	7,158
Construction in progress	1,658	493
Property, equipment and leasehold improvements, at cost	37,120	35,116
Accumulated depreciation	(18,450)	(17,968)
Property, equipment and leasehold improvements, net	<u>\$ 18,670</u>	<u>\$ 17,148</u>

Property and equipment are stated at cost. The Company records depreciation using the straight-line method over their estimated useful lives, as follows:

<u>Asset Classification</u>	<u>Estimated Useful Life</u>
Computer equipment	three years
Furniture and fixtures	10 years
Leasehold improvements	Life of lease or asset, whichever is shorter

Depreciation expense was \$5.5 million, \$3.2 million and \$5.3 million for fiscal 2023, 2022 and 2021, respectively.

12. Accrued Expenses and Other Liabilities

Accrued expenses and other current liabilities in the accompanying consolidated and combined balance sheets consist of the following:

	June 30,	
	2023	2022
	(Dollars in Thousands)	
Compensation-related	\$ 62,162	\$ 62,813
Acquisition related	8,984	5,799
Professional fees	6,265	4,448
Accrued taxes	3,065	4,102
Royalties and outside commissions	654	2,773
Other	18,396	10,188
Total accrued expenses and other current liabilities	<u>\$ 99,526</u>	<u>\$ 90,123</u>

Other non-current liabilities in the accompanying consolidated and combined balance sheets consist of the following:

	June 30,	
	2023	2022
(Dollars in Thousands)		
Uncertain tax positions	\$ 9,139	\$ 3,593
Accrued pension	5,917	1,345
Asset retirement obligations	830	831
Other	3,354	9,791
Total other non-current liabilities	\$ 19,240	\$ 15,560

13. Debt

Bridge Facility

On July 27, 2022, the Company entered into a \$475.0 million senior unsecured bridge facility (the "Bridge Facility") with JPMorgan Chase Bank, N.A. ("JPMorgan"), as Administrative Agent, to finance the Micromine acquisition. The Bridge Facility was entered into under the existing Amended and Restated Credit Agreement dated as of December 23, 2019, with JPMorgan ("Amended and Restated Credit Agreement"). The Company may elect that each incremental borrowing under the Bridge Facility bear interest at a rate per annum equal to (a) the Alternate Base Rate ("ABR"), plus the applicable margin or (b) the Adjusted Term Secured Overnight Financing Rate ("SOFR"), plus the applicable margin.

As consideration for JPMorgan's agreement to act as administrative agent for the Bridge Facility, the Company is required to pay a fee of \$50,000 per annum, payable on the closing date of the loan and every anniversary thereof during the term of the loan.

For the year ended June 30, 2023, the Company paid a total of \$2.4 million in fees to JPMorgan to secure the Bridge Facility.

On December 23, 2022, the Company terminated the Bridge Facility, and at the same time entered into the Emerson Credit Agreement, which will provide for an aggregate term loan commitment of \$630.0 million. There were no amounts outstanding under the Bridge Facility at the time it was terminated. Refer to Note 19, "Related-Party Transactions", for further discussion of the Emerson Credit Agreement.

Amended and Restated Credit Agreement

The Company also has an Amended and Restated Credit Agreement with JPMorgan that provides for a \$200.0 million secured revolving credit facility and a \$320.0 million secured term loan facility.

On January 17, 2023, the Company paid off the outstanding balance of its existing JPMorgan term loan facility of \$264.0 million, plus accrued interest.

There were no amounts outstanding under the revolving credit facility at either June 30, 2023 and 2022. Any outstanding balances of the indebtedness under the revolving credit facility mature on December 23, 2024.

The Amended and Restated Credit Agreement contains customary affirmative and negative covenants, including restrictions on incurrence of additional debt, liens, fundamental changes, asset sales, restricted payments (including dividends) and transactions with affiliates. There are also financial covenants measured at the end of each fiscal quarter including a maximum leverage ratio of 3.50 to 1.00 and a minimum interest coverage ratio of 2.50 to 1.00. As of June 30, 2023, the Company was in compliance with these covenants.

14. Stock-Based Compensation

Emerson Performance Shares and Restricted Stock Units

Certain employees of the Industrial Software Business participate in Emerson stock-based compensation plans, and were granted performance share and restricted stock units. Compensation expense is recognized based on Emerson's cost of the awards under ASC 718, *Compensation- Stock Compensation*. All awards granted under these stock-based compensation plans

are based on Emerson's common stock and are not indicative of the results that the Industrial Software Business would have experienced as a separate and independent business for the periods presented. Stock-based compensation expense reflected in the Company's financial statements relating to these awards was \$1.8 million, \$1.1 million, and \$1.7 million for fiscal 2023, 2022 and 2021, respectively.

Heritage AspenTech Equity Incentive Awards

Pursuant to the terms of the Transaction Agreement, each outstanding option to purchase shares of Heritage AspenTech common stock, whether vested or unvested, that was unexercised as of immediately prior to the Closing Date was converted into an option to acquire shares of AspenTech. Each converted option is subject to the same terms and conditions as applied to the original option. In addition, each outstanding award of restricted stock units with respect to shares of Heritage AspenTech common stock that were unvested as of immediately prior to the Closing Date was converted into an award of restricted stock units with respect to shares of AspenTech. Each converted restricted stock unit is also subject to the same terms and conditions as applied to the original restricted stock unit.

Immediately prior to the Closing Date, Heritage AspenTech had 1,326,860 stock options to purchase common stock (stock options) and 504,386 restricted stock units (RSUs) outstanding, which were converted to 1,165,494 AspenTech stock options and 453,397 AspenTech RSUs after the Closing Date.

ASC 805 requires the Company to determine the fair value of the AspenTech share-based payment awards related to the replacement of the Heritage AspenTech share-based payment awards, and allocate the total fair value based on the services that are attributable to the pre- and post-combination service periods, respectively. The portion that is attributable to the pre-combination service period was considered part of the consideration transferred for Heritage AspenTech and included as part of the purchase price. The portion that is attributable to the post-combination service period is being recognized as stock-based compensation expense in the post-combination consolidated financial statements over the remaining requisite service period.

The fair value of the replacement awards that are attributable to pre- and post-combination services was as follows:

	Pre-combination portion	Post-combination portion
	(Dollars in Thousands)	
Restricted stock units	\$ 22,422	\$ 61,898
Stock options	79,883	34,752
Total	\$ 102,305	\$ 96,650

AspenTech Equity Incentive Awards

Omnibus Plan

On May 16, 2022, the stockholders of the Company approved the Aspen Technology, Inc. 2022 Omnibus Incentive Plan (the "Omnibus Plan"). The Omnibus Plan was previously approved by the Company's board of directors, subject to stockholders' approval. The Omnibus Plan permits the grant of restricted stock, restricted stock units, stock options (incentive stock options and nonqualified stock options), stock appreciation rights, performance awards, cash-based awards and other stock-based awards. A total of 4,564,508 shares of the Company's common stock is available for grants under the Omnibus Plan, subject to adjustment under certain circumstances described in the Omnibus Plan.

Option awards have been granted with an exercise price equal to the market closing price of the Company's stock on the trading day prior to the grant date. Those options generally vest over four years and expire within seven years or 10 years of grant. RSUs generally vest over four years.

Employee Stock Purchase Plan

On May 16, 2022, the stockholders of AspenTech approved the Aspen Technology, Inc. 2022 Employee Stock Purchase Plan (the "ESPP"). The ESPP was previously approved by AspenTech's board of directors, subject to stockholders' approval. A total of 184,010 shares of AspenTech common stock is available for grants under the ESPP, subject to adjustment under certain circumstances described in the ESPP.

The ESPP permits eligible employees to purchase a limited amount of common stock as defined in the ESPP through payroll deductions at a purchase price equal to 85% of the lower of (a) the fair market value of the common stock on the first

trading day of each ESPP offering period and (b) the fair market value of the common stock on the last day of each six-month offering period.

As of June 30, 2023, there were 154,174 shares of common stock available for issuance under the ESPP.

Stock Compensation Accounting

The Company's stock-based compensation is accounted for as awards of equity instruments. Its policy is to issue new shares upon the exercise of vested stock awards.

The Company utilized the Black-Scholes option valuation model for estimating the fair value of options granted. The Black-Scholes option valuation model incorporates assumptions regarding expected stock price volatility, the expected life of the option, the risk-free interest rate, dividend yield and the market value of its common stock. The expected stock price volatility is determined based on its stock's historic prices over a period commensurate with the expected life of the award. The expected life of an option represents the period for which options are expected to be outstanding as determined by historic option exercises and cancellations. The risk-free interest rate is based on the U.S. Treasury yield curve for notes with terms approximating the expected life of the options granted. The expected dividend yield is zero, based on the Company's history and expectation of not paying dividends on common shares. The Company recognized stock-based compensation expense on a straight-line basis, net of forfeitures as they occur, over the requisite service period for time-vested awards.

The Company utilized the Black-Scholes option valuation model with the following weighted average assumptions:

	Year Ended June 30,	
	2023	2022
Risk-free interest rate	3.4 %	3.0 %
Expected dividend yield	None	None
Expected life (in years)	4.8	5.2
Expected volatility factor	38.2 %	36.1 %

The stock-based compensation expense and its classification in the accompanying consolidated and combined statements of operations for fiscal 2023, 2022 and 2021 was as follows:

	Year Ended	Nine Months Ended	Year Ended
	June 30, 2023	June 30, 2022	September 30, 2021
(Dollars in Thousands)			
Recorded as expenses:			
Cost of license and solutions	\$ 3,565	\$ 1,351	\$ —
Cost of maintenance	1,893	344	—
Cost of service and other	1,995	282	—
Selling and marketing	16,202	2,850	—
Research and development	21,790	3,507	—
General and administrative	39,405	7,429	1,744
Total stock-based compensation	<u>\$ 84,850</u>	<u>\$ 15,763</u>	<u>\$ 1,744</u>

A summary of stock option and RSU activity under all equity plans in fiscal 2023 and 2022 is as follows:

	Stock Options				Restricted Stock Units			
	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value (in 000's)	Shares	Weighted Average Grant Date Fair Value		
Outstanding at September 30, 2021	—	\$ —	—	\$ —	—	\$ —	—	—
Issuance of replacement awards	1,165,494	101.44			453,397	166.30		
Issuance of non-replacement awards	76,056	193.55			124,226	193.70		
Settled (RSUs)					(87,930)	188.32		
Exercised	(62,250)	93.32						
Cancelled / Forfeited	(3,447)	138.78			(5,149)	184.62		
Outstanding at June 30, 2022	<u>1,175,853</u>	\$ 120.03	7.06	\$ 75,597	<u>484,544</u>	\$ 188.45		
Granted	208,361	205.46			257,773	201.59		
Settled (RSUs)					(244,161)	193.72		
Exercised	(347,238)	96.12						
Cancelled / Forfeited	(31,150)	178.39			(41,788)	194.48		
Outstanding at June 30, 2023	<u>1,005,826</u>	\$ 144.17	6.44	\$ 32,935	<u>456,368</u>	\$ 192.55		
Exercisable at June 30, 2023	643,086	\$ 125.00	5.42	\$ 29,872				
Vested and expected to vest at June 30, 2023	983,744	\$ 143.36	6.39	\$ 32,719	390,284	\$ 192.37		

The weighted average estimated fair value of option awards granted during fiscal 2023 and 2022 was \$79.02 and \$71.90, respectively.

During fiscal 2023 and 2022, the weighted average grant-date fair value of RSUs granted was \$201.59 and \$193.70, respectively. During fiscal 2023 and 2022, the total fair value of vested shares from RSU grants amounted to \$50.5 million and \$46.6 million, respectively.

As of June 30, 2023, the total future unrecognized compensation cost related to stock options and RSUs was \$23.4 million and \$47.6 million, respectively, and are expected to be recorded over a weighted average period of 2.26 years and 2.54 years, respectively.

During fiscal 2023 and 2022, the weighted average exercise price of stock options granted was \$205.46 and \$193.35, respectively. The total intrinsic value of options exercised during fiscal 2023 and 2022 was \$42.8 million and \$18.7 million, respectively. The Company received \$45.0 million and \$23.0 million in cash proceeds from issuances of shares of common stock during fiscal 2023 and 2022, respectively. The Company paid \$18.0 million and \$16.0 million for withholding taxes on vested RSUs during fiscal 2023 and 2022, respectively.

At June 30, 2023, common stock reserved for future issuance under equity compensation plans was 4.0 million shares.

15. Stock Repurchases

On May 5, 2023, the Company entered into an accelerated share repurchase program ("ASR Program") with JPMorgan to repurchase an aggregate of \$100.0 million of the Company's common stock. Pursuant to the terms of the ASR Program, the Company made an initial payment to JPMorgan and received an initial delivery of 487,626 shares of the Company's common stock, which represents approximately 80% of the total number of shares of the Company's common stock expected to be purchased under the ASR Program. Under the ASR Program, upon settlement, the Company will either receive additional shares of common stock from JPMorgan or be required to deliver additional shares of common stock or cash to JPMorgan. The final number of shares the Company will repurchase will be based on the average of the daily volume-weighted average prices of the Company's common stock during the term of the ASR Program. Cash settlement is not mandatory pursuant to the terms of the ASR Program, and the Company intends to settle the ASR Program with the issuance of shares.

The \$100.0 million payment made to JPMorgan was recognized as a reduction to stockholders' equity, consisting of a \$84.1 million increase in treasury stock, which represents the value of the initial 487,626 shares received upon initial settlement, and a \$15.9 million decrease to additional-paid-in-capital. The amount recognized in additional-paid-in-capital represents the trade-date value of the stock held by JPMorgan pending final settlement of the ASR Program, which is an equity-classified forward purchase contract on the Company's own common stock. The ASR Program settled on August 7, 2023, resulting in an additional delivery of 107,045 shares of the Company's common stock.

16. Net Income Per Share

Basic income per share is determined by dividing net income by the weighted average common shares outstanding during the period. Diluted income per share is determined by dividing net income by diluted weighted average shares outstanding during the period. Diluted weighted average shares reflect the dilutive effect, if any, of potential common shares. To the extent their effect is dilutive, employee equity awards and other commitments to be settled in common stock are included in the calculation of diluted net income per share based on the treasury stock method.

Prior to the Transaction, the Industrial Software Business did not have any shares of common stock outstanding. Accordingly, net loss per share for fiscal 2022 and 2021 has been calculated using weighted average shares outstanding (basic and diluted) assuming the number of shares of common stock issued to Emerson on the closing date of the Transaction were issued on October 1, 2020.

The calculations of basic and diluted net income per share and basic and dilutive weighted average shares outstanding are as follows:

	<u>Year Ended June 30, 2023</u>	<u>Nine Months Ended June 30, 2022</u>	<u>Year Ended September 30, 2021</u>
<i>(Dollars and Shares in Thousands, Except per Share Data)</i>			
Net (loss) income	\$ (107,760)	\$ 53,146	\$ (20,608)
Weighted average shares outstanding	64,621	40,931	36,308
Dilutive impact from:			
Employee equity awards	—	77	—
Dilutive weighted average shares outstanding	<u>64,621</u>	<u>41,008</u>	<u>36,308</u>
Income per share			
Basic	\$ (1.67)	\$ 1.30	\$ (0.57)
Dilutive	\$ (1.67)	\$ 1.30	\$ (0.57)

For fiscal year 2023 and 2022, certain employee equity awards were anti-dilutive based on the treasury stock method. The following employee equity awards were excluded from the calculation of dilutive weighted average shares outstanding because their effect would be anti-dilutive as of June 30, 2023 and 2022:

	<u>Year Ended June 30,</u>	
	<u>2023</u>	<u>2022</u>
	<u>(Shares in Thousands)</u>	
Employee equity awards	1,312	65

17. Derivatives

In connection with the agreement to purchase Micromine, the Company entered into a series of foreign currency forward contracts during fiscal 2023 to mitigate the impact of foreign currency exchange associated with the forecasted payment of the purchase price. On June 21, 2023, the Company terminated all outstanding foreign currency forward contracts. As a result, the Company recognized net realized losses of \$26.2 million for the year ended June 30, 2023, included in other (expense) income, net on the consolidated and combined statements of operations related to these contracts. There are no outstanding forward currency forward contracts, or any other derivative contracts, as of June 30, 2023.

18. Income Taxes

(Loss) income before provision for income taxes consists of the following:

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
(Dollars in Thousands)			
Domestic	\$ (201,620)	\$ 29,905	\$ (86,550)
Foreign	21,054	10,056	20,637
(Loss) income before provision for income taxes	<u>\$ (180,566)</u>	<u>\$ 39,961</u>	<u>\$ (65,913)</u>

The (benefit) for income taxes shown in the accompanying consolidated and combined statements of operations is composed of the following:

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
(Dollars in Thousands)			
Federal—			
Current	\$ 112,181	\$ 59,162	\$ 2,702
Deferred	(184,400)	(70,046)	(48,043)
State—			
Current	6,333	4,385	1,004
Deferred	(7,301)	(10,431)	(4,980)
Foreign—			
Current	9,293	3,465	4,191
Deferred	(8,912)	280	(179)
	<u>\$ (72,806)</u>	<u>\$ (13,185)</u>	<u>\$ (45,305)</u>

The (benefit) for income taxes differs from that based on the federal statutory rate due to the following:

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
(Dollars in Thousands)			
Taxes at U.S. statutory rate (21%)	\$ (37,919)	\$ 8,392	\$ (13,842)
State and local taxes, net of federal tax benefit	(1,762)	(7,003)	(3,141)
Foreign derived intangible income (FDII)	(36,436)	(17,150)	—
Global Intangible Low-Taxed Income (GILTI)	3,027	446	—
Foreign taxes and rate differences	(2,943)	2,669	1,181
Uncertain tax positions	405	(2,556)	(2,522)
Stock-based compensation	4,828	152	—
Return to Provision	4,070	498	—
Tax credits	(396)	(3,385)	(523)
Change in valuation allowance	(5,680)	5,287	(27,953)
Other	—	(535)	1,495
(Benefit) for income taxes	<u>\$ (72,806)</u>	<u>\$ (13,185)</u>	<u>\$ (45,305)</u>

The Company's tax benefit for the fiscal 2023 was favorably impacted primarily by the Foreign-Derived Intangible Income ("FDII") deduction, the benefit from the deduction of state taxes, the difference in foreign tax rates, and the change in valuation allowance on certain jurisdictions, offset by Global Intangible Low-Taxed Income ("GILTI"), stock-based compensation, and return to provision adjustment. Assuming certain requirements are met, the FDII deduction is a benefit for U.S. companies that sell their products or services to customers for use outside the U.S.

Net deferred tax liabilities consist of the following at June 30, 2023 and 2022:

	June 30,	
	2023	2022
(Dollars in Thousands)		
Deferred tax assets:		
Federal, state and foreign credits	\$ 7,171	\$ 10,162
Net operating loss carryforwards	10,720	11,557
Deferred revenue	15,962	11,783
Other reserves and accruals	22,346	23,429
Intangible assets	19,369	19,215
Capitalized research and development	46,693	2,479
Property, leasehold improvements and other basis differences	4,186	5,135
Other temporary differences	2,660	3,615
Total gross deferred tax assets	129,107	87,375
Valuation allowance	(15,995)	(24,110)
Total net deferred tax assets	113,112	63,265
Deferred tax liabilities:		
Intangible assets	(1,005,672)	(1,099,532)
Contract assets and costs	(41,643)	(91,298)
Deferred revenue	(3,315)	(1,092)
Property, leasehold improvements, and other basis differences	(5,820)	(7,634)
Other temporary differences	(3,935)	(4,180)
Total gross deferred tax liabilities	(1,060,385)	(1,203,736)
Net deferred tax (liabilities)	\$ (947,273)	\$ (1,140,471)

Reflected in the deferred tax assets above at June 30, 2023, the Company has foreign net operating loss carryforwards of \$45.3 million, with unlimited carryforwards, federal and state research & development (R&D) credits of \$6.7 million and foreign R&D credits of \$0.5 million which begin to expire in 2027.

The Company's valuation allowance for deferred tax assets was \$16.0 million and \$24.1 million as of June 30, 2023 and 2022, respectively. The significant items of the valuation allowance as of June 30, 2023 are attributable to a reserve against foreign deferred tax assets of \$3.2 million, foreign net operating losses of \$5.7 million and state R&D credits of \$6.4 million.

For fiscal 2023, the Company's income tax provision included amounts determined under the provisions of ASC 740 intended to satisfy additional income tax assessments, including interest and penalties, that could result from any tax return positions for which the likelihood of sustaining the position on audit does not meet a threshold of "more likely than not." Tax liabilities were recorded as a component of their income taxes payable and other non-current liabilities. The ultimate amount of taxes due will not be known until examinations are completed and settled or the audit periods are closed by statutes.

[Table of Contents](#)

At June 30, 2023, the amount of unrecognized tax benefits, excluding interest and penalties is \$7.6 million. Upon being recognized, \$7.6 million would reduce the effective tax rate. A reconciliation of the reserve for uncertain tax positions, excluding interest and penalties, is as follows:

	Year Ended June 30,	
	2023	2022
	(Dollars in Thousands)	
Beginning balance	\$ 6,716	\$ 8,032
Additions for current year tax positions	1,011	396
Additions for prior year tax positions	1,657	1,761
Reductions for prior year tax positions	—	(2,250)
Reductions for settlements with tax authorities	—	—
Reductions for expirations of statute of limitations	(1,823)	(1,223)
Uncertain tax positions, excluding interest and penalties, end of year	\$ 7,561	\$ 6,716

The Company's policy is to recognize interest and penalties related to income tax matters as provision for (benefit from) income taxes. As of June 30, 2023, the Company had approximately \$1.1 million of accrued interest and \$0.5 million of penalties related to uncertain tax positions. The total amount of uncertain tax positions, including interest and penalties, is \$9.1 million. The Company recorded a benefit for interest and penalties of approximately \$(0.2) million during fiscal 2023 mainly due to expirations of statute of limitations. It is reasonably possible as of June 30, 2023 that the liability for unrecognized tax benefits for the uncertain tax position will decrease by approximately \$1.5 million over the next twelve-month period.

The Company is subject to income tax in many jurisdictions outside the United States. The Company is no longer under examination by the taxing authority regarding any U.S. federal income tax returns for fiscal years prior to 2020. Its operations in certain jurisdictions remain subject to examination for tax years 2014 to 2022, some of which are currently under audit by local tax authorities. The resolutions of these audits are not expected to be material to its consolidated and combined financial statements.

19. Related-Party Transactions

The Company utilizes some aspects of Emerson's centralized treasury function to manage the working capital and financing needs of its business operations. This function oversees a cash pooling arrangement which sweeps certain Company cash accounts into pooled Emerson cash accounts on a daily basis. Pooled cash and nontrade balances attributable to Emerson have been presented as receivables from related parties or due to related parties in the consolidated and combined financial statements of the Company.

Before the closing of the Transaction, the Industrial Software Business was charged for costs directly attributable to the SSE business and OSI Inc. and was allocated a portion of Emerson's costs, including general corporate costs, information technology costs, insurance and other benefit costs, and shared service and other costs. All of these costs are reflected in the Company's consolidated and combined financial statements. Management believes the methodologies and assumptions used to allocate these costs are reasonable.

At the closing of the Transaction, Emerson and the Company entered into a transition service agreement ("TSA") for the provision of certain transitional services from Emerson to AspenTech. Pursuant to the TSA, Emerson provides AspenTech and its subsidiaries with certain services, including information technology, human resources and other specified services, as well as access to certain of Emerson's existing facilities. TSA related activities have been recorded as cost of goods sold or operating expenses from related parties and resulting balances have been presented as receivable from or due to related parties in the consolidated and combined financial statements presented.

Receivables from related parties and due to related parties reported in the consolidated and combined balance sheets as of June 30, 2023 and 2022 include the following:

	June 30,	
	2023	2022
	(Dollars in Thousands)	
Interest bearing receivables from related parties	\$ 61,948	\$ 16,122
Trade receivables from related parties	427	819

Interest bearing payables to related parties	21,866	2,028
Trade payables to related parties	153	2,083

Allocations and charges from Emerson are as follows:

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
	(Dollars in Thousands)		
Corporate costs	\$ —	\$ 3,212	\$ 5,536
Information technology	2,949	1,684	1,908
Insurance and other benefits	—	446	1,263
Shared services and other	5,571	10,294	9,300

Corporate costs, human resources, and insurance and other benefits are recorded in general and administrative expenses and information technology, facility charges, and shared services and other are allocated to cost of goods sold and operating expenses based on systematic methods.

Before the closing of the Transaction, OSI Inc. and the SSE business engaged in various transactions to sell software and purchase goods in the ordinary course of business with affiliates of Emerson. At the closing, the Company and Emerson entered into a commercial agreement to allow Emerson to distribute software and services from AspenTech (the "Commercial Agreement"). Pursuant to the Commercial Agreement as amended from time to time in accordance with the Stockholders Agreement, AspenTech will grant Emerson the right to distribute, on a non-exclusive basis, certain (i) existing Heritage AspenTech products, (ii) existing Emerson products being transferred to AspenTech pursuant to the Transaction Agreement and (iii) future AspenTech products as mutually agreed upon, in each case, to end-users through Emerson acting as an agent, reseller or original equipment manufacturer. Commercial Agreement related activities have been recorded as revenues and expenses from related parties and resulting trade balances have been presented as trade receivables from related parties in the consolidated and combined financial statements presented. Revenue from Emerson are as follows:

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended	Year Ended September 30, 2021
	(Dollars in Thousands)			
Revenue from Emerson affiliates	\$ 30	\$ —	\$	2
Purchases from Emerson affiliates	445	2,337		241

Emerson Share Maintenance Rights

Immediately following the closing of the Transaction, Emerson beneficially owned 55% of the fully diluted shares of AspenTech common stock. Emerson has the right to acquire additional equity securities of AspenTech pursuant to pre-agreed procedures and rights in order to maintain its ownership interest. No additional shares of common stock, or any other equity securities of AspenTech, were issued by the Company to Emerson subsequent to the closing of the Transaction through June 30, 2023.

Business combination with related party

The Inmation acquisition completed on August 29, 2022 was considered a related party transaction. Refer to Note 4, "Acquisitions", for further discussion.

Credit agreement with related party

On December 23, 2022, the Company entered into the Emerson Credit Agreement with Emerson, which provides for an aggregate term loan commitment of \$630.0 million. Under the terms of the Agreement, the Company will use the proceeds from borrowings under the Agreement to pay in part the cash consideration for funding the Micromine acquisition and pay the fees and expenses incurred in connection with the Emerson Credit Agreement.

Principal outstanding under the Emerson Credit Agreement bears interest at a rate per annum equal to Term SOFR Rate (as such term is defined in Emerson Credit Agreement) plus an amount ranging from 1.25% to 1.75%.

Any term loan made under the Emerson Credit Agreement is unsecured and matures on the fifth anniversary of the date the term loan is funded. The Company is permitted to prepay the term loan in whole or in part upon provision of notice in accordance with the Emerson Credit Agreement. Upon an event of default (as such term is defined in the Emerson Credit Agreement), the loan may become due and payable in full upon provision of notice in accordance with the Emerson Credit Agreement.

In addition, the Emerson Credit Agreement includes a mandatory prepayment provision if at any time Emerson fails to beneficially own more than 40% of AspenTech common stock for a period of more than 30 consecutive days and Emerson provides us written notice requiring us to prepay the term loan. In such an event, the Company would have no less than either 30 days or 180 days from the date of such notice, depending upon the circumstances giving rise to the decrease in Emerson's ownership interest, to prepay the term loan.

The Emerson Credit Agreement contains affirmative and negative covenants customary for facilities of this type, including restrictions on incurrence of additional debt, liens, fundamental changes, asset sales, restricted payments and transactions with affiliates. The Agreement also contains financial covenants regarding maintenance as of the end of each fiscal quarter of a maximum leverage ratio of 3.50 to 1.00 and a minimum interest coverage ratio of 2.50 to 1.00. As of June 30, 2023, the Company was in compliance with all the loan covenants.

There was no amount outstanding under the Emerson Credit Agreement at June 30, 2023.

On August 18, 2023, the Emerson Credit Agreement was terminated in connection with the termination of the agreement to purchase Micromine. No amounts were outstanding under the Emerson Credit Agreement subsequent to June 30, 2023 through the termination date.

20. Commitments and Contingencies

The Company accrues estimated liabilities for loss contingencies arising from claims, assessments, litigation and other sources when it is probable that a liability has been incurred and the amount of the claim assessment or damages can be reasonably estimated. The Company believes it has sufficient accruals to cover any obligations resulting from claims, assessments or litigation that have met these criteria.

There were no known contingent liabilities (including guarantees, taxes and other claims) that management believes will be material in relation to the Company's consolidated and combined financial statements, nor were there any material commitments outside the normal course of business.

21. Retirement Plans

Most of the Company's U.S. and non-U.S. employees participate in defined contribution plans, including 401(k), profit sharing, and other savings plans that provide retirement benefits. In the United States, the Company maintains a defined contribution retirement plan under Section 401(k) of the Internal Revenue Code (IRC) covering all eligible employees, as defined. Under the plan, a participant may elect to defer receipt of a stated percentage of his or her compensation, subject to limitation under the IRC, which would otherwise be payable to the participant for any plan year. The Company may make discretionary contributions to this plan, including making matching contributions of 50%, up to a maximum of 6% of an employee's pretax contribution. The Company made matching contributions of approximately \$4.7 million, \$1.9 million and \$2.0 million in fiscal 2023, 2022 and 2021, respectively. Additionally, the Company participates in certain government mandated defined contribution plans throughout the world for which the Company complies with all funding requirements. The total expenses related to employees participating in these plans were \$2.7 million, \$2.0 million, and \$5.1 million for fiscal 2023, 2022 and 2021, respectively.

Certain non-U.S. employees participate in Company-specific or statutorily required defined benefit plans. In general, the Company's policy is to fund these plans based on legal requirements, required benefit payments, and other factors. Defined benefit plan expense, benefits paid, and benefit plan contributions made by the Company were not material for all periods presented.

The non-U.S. defined benefit liability was \$8.7 million and \$7.0 million as of June 30, 2023 and 2022, respectively, as the projected benefit obligation and fair value of plan assets were \$13.6 million and \$4.8 million as of June 30, 2023 and \$11.6 million and \$4.6 million as of June 30, 2022, while the deferred actuarial gain in accumulated other comprehensive income was \$0.1 million as of June 30, 2023 and a gain of \$0.8 million as of June 30, 2022.

22. Segment and Geographic Information

Operating segments are defined as components of an enterprise that engage in business activities for which discrete financial information is available and regularly reviewed by the chief operating decision maker in deciding how to allocate resources and to assess performance.

Prior to the Transaction, the Industrial Software Business had two operating and reportable segments: OSI Inc. and the GSS business (subsequently renamed Subsurface Science & Engineering Solutions, or "SSE", after the Closing Date). The Transaction resulted in the creation of a third operating and reportable segment: Heritage AspenTech. During the three months ended September 30, 2022, the Company completed certain integration activities and changes to its organizational structure that triggered a change in the composition of its operating and reportable segments. As a result, beginning with the interim period ended September 30, 2022, the Company is now comprised of a single operating and reportable segment. Accordingly, the Company has restated its operating and reportable segment information for fiscal 2022 and 2021. The Company's chief operating decision maker is its President and Chief Executive Officer.

Geographic Information

Summarized below is information about the Company's geographic operations:

Revenue by Destination

	Year Ended June 30, 2023	Nine Months Ended June 30, 2022	Year Ended September 30, 2021
(Dollars in Thousands)			
Americas	\$ 486,506	\$ 234,383	\$ 182,314
Asia, Middle East and Africa	281,974	85,955	60,300
Europe	275,698	84,958	58,026
Total	<u>\$ 1,044,178</u>	<u>\$ 405,296</u>	<u>\$ 300,640</u>

Americas included revenue in the U.S. of \$387.8 million, \$173.5 million, and \$123.2 million for fiscal 2023, 2022, and 2021, respectively.

	Property, Equipment, and Leasehold Improvements, Net	
	June 30,	
	2023	2022
(Dollars in Thousands)		
Americas	\$ 15,793	\$ 14,591
Asia, Middle East and Africa	1,923	1,154
Europe	954	1,403
Total	<u>\$ 18,670</u>	<u>\$ 17,148</u>

Property, equipment, and leasehold improvements located in the U.S. were \$13.4 million and \$13.0 million, as of June 30, 2023 and 2022, respectively.

23. Transition Period Comparative Data

As discussed in Note 1, this Annual Report on Form 10-K includes financial information for the year ended June 30, 2023, nine-month period ended June 30, 2022, and the year ended September 30, 2021. The Consolidated and Combined Statements of Operations and Cash Flows for the twelve-months ended June 30, 2023 and 2022, are summarized below. All data for the twelve-month period ended June 30, 2022, are derived from the Company's unaudited consolidated and combined financial statements.

(Dollars in Thousands, Except per Share Data)	Twelve-Month Period Ended June 30,	
	2023	2022 <i>(unaudited)</i>
Revenue	\$ 1,044,178	\$ 482,311
Cost of revenue	373,589	199,916
Gross profit	670,589	282,395
Operating expenses	853,654	260,123
(Loss) income from operations	(183,065)	22,272
Other (expense), net	(29,418)	(1,048)
Interest income, net	31,917	3,222
(Loss) income before provision for income taxes	(180,566)	24,446
(Benefit) for income taxes	(72,806)	(17,498)
Net (loss) income	\$ (107,760)	\$ 41,944
Net (loss) income per common share:		
Basic	\$ (1.67)	\$ 1.05
Diluted	\$ (1.67)	\$ 1.05
Weighted average shares outstanding:		
Basic	64,621	39,768
Diluted	64,621	39,845

(Dollars in Thousands)	Twelve-Month Period Ended June 30,	
	2023	2022 <i>(unaudited)</i>
Cash flows from operating activities:		
Net (loss) income	\$ (107,760)	\$ 41,944
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation and amortization	491,419	150,350
Reduction in the carrying amount of right-of-use assets	13,869	7,627
Net foreign currency losses (gains)	4,079	1,232
Net realized loss on settlement of foreign currency forward contracts	26,176	—
Stock-based compensation	84,850	16,131
Deferred tax liability	(192,926)	(84,713)
Provision for bad debts	7,827	853
Other non-cash operating activities	(228)	289
Changes in assets and liabilities:		
Accounts receivable	(25,538)	(4,486)
Contract assets	(21,658)	(82,898)
Contract costs	(10,165)	(4,992)
Lease liabilities	(13,655)	(5,979)
Prepaid expenses, prepaid income taxes, and other assets	7,625	(6,965)
Accounts payable, accrued expenses, income taxes payable and other liabilities	18,315	(25,908)
Contract liabilities	16,979	17,291
Net cash provided by operating activities	299,209	19,776
Cash flows from investing activities:		
Purchase of property, equipment and leasehold improvements	(6,577)	(4,870)
Proceeds from sale of property and equipment	—	91
Payments for business acquisitions, net of cash acquired	(72,498)	(5,572,996)
Net payments for settlement of foreign currency forward contracts	(26,176)	—
Payments for equity method investments	(700)	(24)
Payments for capitalized computer software costs	(366)	(508)
Purchase of other assets	(1,000)	(838)
Net cash (used in) investing activities	(107,317)	(5,579,145)
Cash flows from financing activities:		
Issuance of shares of common stock	36,736	5,702
Repurchases of common stock	(100,000)	—
Payment of tax withholding obligations related to restricted stock	(20,836)	(1,676)
Deferred business acquisition payments	(1,363)	(1,200)
Repayments of amounts borrowed under term loan	(276,000)	(6,000)
Net transfers (to) from Parent Company	(19,933)	5,987,190
Payments of debt issuance costs	(2,375)	—
Net cash (used in) provided by financing activities	(383,771)	5,984,016
Effect of exchange rate changes on cash and cash equivalents	(16,637)	1,419
(Decrease) increase in cash and cash equivalents	(208,516)	426,066
Cash and cash equivalents, beginning of year	449,725	23,659
Cash and cash equivalents, end of year	\$ 241,209	\$ 449,725

24. Subsequent Events

On July 28, 2023, the Company entered into the Plantweb Optics Analytics Assignment and License Agreement with Emerson for the purchase of Emerson's Plantweb Optics Analytics software and the perpetual and royalty-free licensing of other Emerson intellectual property for \$12.5 million, paid on July 28, 2023.

On August 1, 2023, the Company announced that its Board of Directors approved a share repurchase authorization (the "Share Repurchase Authorization"), pursuant to which the Company may repurchase up to \$300.0 million in the aggregate of the Company's outstanding shares of common stock, by means of open market transactions, block transactions, privately negotiated purchase transactions or any other purchase techniques, including 10b5-1 trading plans. The Share Repurchase Authorization will commence after the conclusion of the Company's ASR Program.

On August 1, 2023, the Company announced the termination of the agreement to purchase Micromine. See Note 1, "Organization and Basis of Presentation" for further information.

On August 7, 2023, the Company settled the ASR Program. See Note 15, "Stock Repurchase" for further information.

On August 18, 2023, the Emerson Credit Agreement was terminated. See Note 19, "Related-Party Transactions" for further information.

EXHIBIT INDEX

Exhibit Number	Description	Filed with this Annual Report on Form 10-K
2.1+	Transaction Agreement and Plan of Merger, dated as of October 10, 2021 (the "Transaction Agreement and Plan of Merger"), among AspenTech Corporation (f/k/a Aspen Technology, Inc.), Emerson Electric Co., EMR Worldwide Inc., Aspen Technology, Inc. (f/k/a Emersub CX, Inc.) and Emersub CXI, Inc. (incorporated by reference to our Form 8-K filed on October 12, 2021).	
2.2	Amendment No. 1 to the Transaction Agreement and Plan of Merger (incorporated by reference to our Form 10-Q filed on April 27, 2022).	
2.3	Amendment No. 2 to the Transaction Agreement and Plan of Merger.	X
3.1	Amended and Restated Certificate of Incorporation of Aspen Technology, Inc. (f/k/a Emersub CX, Inc.) (incorporated by reference to our Form 8-K filed on May 17, 2022).	
3.2	Amended and Restated Bylaws of Aspen Technology, Inc. (incorporated by reference to our Form 8-K filed on May 17, 2022).	
4.1	Aspen Technology, Inc. Description of Capital Stock	X
10.1	Stockholders Agreement, dated as of May 16, 2022, among Aspen Technology, Inc., Emerson Electric Co. and EMR Worldwide Inc. (incorporated by reference to our Form 8-K filed on May 17, 2022).	
10.2	Registration Rights Agreement, dated as of May 16, 2022, between EMR Worldwide Inc. and Aspen Technology, Inc. (incorporated by reference to our Form 8-K filed on May 17, 2022).	
10.3	Tax Matters Agreement, dated as of May 16, 2022, between Emerson Electric Co. and Aspen Technology, Inc. (incorporated by reference to our Form 8-K filed on May 17, 2022).	
10.4+	Commercial Agreement, dated as of May 16, 2022, among AspenTech Corporation, Aspen Technology, Inc. and Fisher-Rosemount Systems, Inc. (incorporated by reference to our Form 8-K filed on May 17, 2022).	
10.5	Aspen Technology, Inc. 2022 Employee Stock Purchase Plan (incorporated by reference to our Form 8-K filed on May 17, 2022).	
10.6^	Aspen Technology, Inc. 2022 Omnibus Incentive Plan (incorporated by reference to our Form 8-K filed on May 17, 2022).	
10.7^	Form of Aspen Technology, Inc. Stock Option Grant Agreement (Employee) under the Aspen Technology, Inc. 2022 Omnibus Incentive Plan (incorporated by reference to our Form 10-Q filed on May 2, 2023).	
10.8^	Form of Aspen Technology, Inc. Restricted Stock Unit Grant Agreement (Employee) under the Aspen Technology, Inc. 2022 Omnibus Incentive Plan.	X
10.9^	Form of Aspen Technology, Inc. Performance Stock Unit Grant Agreement (Employee) under the Aspen Technology, Inc. 2022 Omnibus Incentive Plan.	X
10.10^	Form of Aspen Technology, Inc. Restricted Stock Unit Grant Agreement (Director Initial Grant) under Aspen Technology, Inc. 2022 Omnibus Incentive Plan (incorporated by reference to our Form 10-Q filed on May 2, 2023).	
10.11^	Form of Aspen Technology, Inc. Restricted Stock Unit Grant Agreement (Director Annual Grant) under the Aspen Technology, Inc. 2022 Omnibus Incentive Plan (incorporated by reference to our Form 10-Q filed on May 2, 2023).	
10.12^	Aspen Technology, Inc. FY23 Executive Bonus Plan (incorporated by reference to our Form 8-K filed on May 17, 2022).	
10.13^	Form of Aspen Technology, Inc. Executive Retention Agreement (incorporated by reference to our Form 10-Q filed on May 2, 2023).	

Exhibit Number	Description	Filed with this Annual Report on Form 10-K
10.14 [^]	Restated Executive Retention Agreement, dated as of May 16, 2022, between Aspen Technology, Inc. and Antonio J. Pietri (incorporated by reference to our Form 10-Q filed on May 2, 2023).	
10.15 [^]	Form of Aspen Technology, Inc. Indemnification Agreement (incorporated by reference to our Form 10-KT filed on August 25, 2022).	
10.16	Amended and Restated Credit Agreement, dated as of December 23, 2019 (the "Amended and Restated Credit Agreement"), among AspenTech Corporation (f/k/a Aspen Technology, Inc.), as borrower, the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent, joint lead arranger and joint bookrunner, Silicon Valley Bank, as joint lead arranger, joint bookrunner and syndication agent, and Citibank N.A., Citizens Bank, N.A., TD Bank, N.A. and Wells Fargo Bank, N.A., as co-documentation agents.	X
10.17	First Amendment to the Amended and Restated Credit Agreement (incorporated by reference to our Form 10-Q filed on May 2, 2023).	
10.18	Waiver and Second Amendment to the Amended and Restated Credit Agreement.	X
10.19	Borrower Assignment and Accession Agreement to the Amended and Restated Credit Agreement of Aspen Technology, Inc. dates as of May 16, 2022 (incorporated by reference to our Form 8-K filed on May 17, 2022).	
10.20	Third Amendment to the Amended and Restated Credit Agreement (incorporated by reference to our Form 10-Q filed on January 30, 2023)	
10.21 [^]	Form of Proprietary and Confidential Information, Non-Competition and Non-Solicitation Agreement of Aspen Technology, Inc. (incorporated by reference to our Form 10-Q filed on May 2, 2023).	
10.22 [^]	Proprietary and Confidential Information and Non-Competition and Non-Solicitation Agreement, dated as of July 1, 2013, by and between AspenTech Corporation (f/k/a Aspen Technology, Inc.) and Antonio J. Pietri (incorporated by reference to our Form 10-Q filed on May 2, 2023).	
10.23 [^]	Letter agreement, dated as of August 29, 2022, between Aspen Technology, Inc and Frederic G. Hammond (incorporated by reference to our Form 8-K filed on August 31, 2022).	
10.24	System License Agreement, dated as of March 30, 1982, as amended, by and between the Massachusetts Institute of Technology and AspenTech Corporation (f/k/a Aspen Technology, Inc.) (incorporated by reference to our Form 10-Q filed on May 2, 2023).	
21.1	Subsidiaries of Aspen Technology, Inc.	X
23.1	Consent of KPMG LLP	X
31.1	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X
31.2	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X
32.1*	Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X
101.INS	Inline Instance Document	X
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)	X

+ Certain information redacted and replaced with "[***]"

^ Management contract or compensatory plan or arrangement

* The certification attached as Exhibit 32.1 that accompanies this Form 10-K is not deemed filed with the SEC and is not to be incorporated by reference into any filing of Aspen Technology, Inc. under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date of this Form 10-K, irrespective of any general incorporation language contained in such filing.

Item 16. Form 10-K Summary.

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: August 21, 2023

ASPEN TECHNOLOGY, INC.
By: /s/ ANTONIO J. PIETRI
Antonio J. Pietri
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 21, 2023

By: /s/ CHANTELE BREITHAUP
Chantelle Breithaupt
Senior Vice President, Chief Financial Officer and Treasurer
(Principal Financial Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

[Table of Contents](#)

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ ANTONIO J. PIETRI</u> Antonio J. Pietri	President and Chief Executive Officer and Director (Principal Executive Officer)	August 21, 2023
<u>/s/ CHANTELE BREITHAAPT</u> Chantelle Breithaupt	Senior Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)	August 21, 2023
<u>/s/ CHRISTOPHER J. STAGNO</u> Christopher J. Stagno	Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)	August 21, 2023
<u>/s/ JILL D. SMITH</u> Jill D. Smith	Chair of the Board of Directors	August 21, 2023
<u>/s/ PATRICK M. ANTKOWIAK</u> Patrick M. Antkowiak	Director	August 21, 2023
<u>/s/ ROBERT BEAUCHAMP</u> Robert Beauchamp	Director	August 21, 2023
<u>/s/ THOMAS F. BOGAN</u> Thomas F. Bogan	Director	August 21, 2023
<u>/s/ KAREN GOLZ</u> Karen Golz	Director	August 21, 2023
<u>/s/ RAM R. KRISHNAN</u> Ram R. Krishnan	Director	August 21, 2023
<u>/s/ ARLEN R SHENKMAN</u> Arlen R. Shenkman	Director	August 21, 2023
<u>/s/ ROBERT M. WHELAN, JR.</u> Robert M. Whelan, Jr.	Director	August 21, 2023

AMENDMENT NO. 2 TO TRANSACTION AGREEMENT AND PLAN OF MERGER

This AMENDMENT NO. 2 TO TRANSACTION AGREEMENT AND PLAN OF MERGER (this "Amendment"), dated as of May 3, 2022, is by and among Aspen Technology, Inc., a Delaware corporation ("Aspen"), Emerson Electric Co., a Missouri corporation ("Emerson"), EMR Worldwide Inc., a Delaware corporation and a wholly owned subsidiary of Emerson ("Emerson Sub"), Emersub CX, Inc., a Delaware corporation and a wholly owned subsidiary of Emerson ("Newco"), and Emersub CXI, Inc., a Delaware corporation and a wholly owned subsidiary of Newco ("Merger Subsidiary"). Each of Aspen, Emerson, Emerson Sub, Newco and Merger Subsidiary are referred to as a "Party," and collectively, as the "Parties."

WHEREAS, the Parties are parties to that certain Transaction Agreement and Plan of Merger, dated as of October 10, 2021 (the "Original Execution Date") as amended on March 23, 2022 (the "Agreement");

WHEREAS, this Amendment is being delivered pursuant to Section 13.03 of the Agreement which provides that the Agreement may not be amended except by an instrument in writing signed by each of the Parties; and

WHEREAS, the Parties desire to amend certain terms of the Agreement to the extent provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Section 1. Defined Terms. Each capitalized term used herein but not defined herein has the meaning assigned to such term in the Agreement.

Section 2. Amendment to Certain Sections of the Agreement.

(a)

The definition of "Emerson Excluded Assets" in Section 1.01(a) of the Agreement is hereby amended by (i) striking the word "and" that appears at the end of clause (x) thereof, (ii) adding at the end of clause (xi) thereof the word "and" and (iii) adding a new clause (xii) as follows:

(xii) the other property and assets described on Section 1.01(m) of the Emerson Disclosure Schedule;

(b)

The definition of "Automatic Transfer Echo Business Employees" in Section 1.01(a) of the Agreement is hereby amended and restated as follows:

"Automatic Transfer Echo Business Employees" means the Echo Business Employees (other than the Deferred TSA Automatic Transfer Business Employees) who fall within the scope of the Automatic Transfer Regulations and whose employment will automatically transfer at the Effective Time to Newco or one of its Subsidiaries (including an Emerson Contributed Subsidiary) pursuant to the Automatic Transfer Regulations in connection with the Transactions.

(c)

The definition of “Continuing Echo Business Employees” in Section 1.01(a) of the Agreement is hereby amended and restated as follows:

“Continuing Echo Business Employees” means, collectively, (i) the Automatic Transfer Echo Business Employees and the Deferred TSA Automatic Transfer Business Employees who do not expressly object to the transfer of their employment, (ii) the Emerson Contributed Subsidiary Business Employees who are employed by an Emerson Contributed Subsidiary or any Subsidiary of an Emerson Contributed Subsidiary as of immediately prior to the Closing and (iii) the Emerson Offer Business Employees, the Deferred Transfer Business Employees and the Deferred TSA Non-Automatic Transfer Business Employees who accept (or are deemed to accept) an offer of employment from Newco or Aspen or one of their Subsidiaries, in each case of the foregoing clauses (i), (ii) and (iii), who continue as employees of Newco or Aspen or one of their Subsidiaries immediately following the Applicable Transfer Time (or such later time as may be required by Applicable Law).

(d)

The definition of “Emerson Offer Business Employee” in Section 1.01(a) of the Agreement is hereby amended and restated as follows:

“Emerson Offer Business Employee” means any Echo Business Employee who is not an Automatic Transfer Echo Business Employee, a Deferred Transfer Business Employee, a Deferred TSA Automatic Transfer Business Employee, a Deferred TSA Non-Automatic Transfer Business Employee, or an Emerson Contributed Subsidiary Business Employee.

(e)

Section 1.01(a) of the Agreement is hereby amended by adding new definitions as follows:

“Abu Dhabi Conditions” means the closing conditions set forth under the heading “Abu Dhabi Conditions” on Section 7.05(c) of the Emerson Disclosure Schedule.

“Applicable Transfer Time” means, (a) with respect to a Continuing Employee who is either (i) an Emerson Offer Business Employee, (ii) an Aspen Offer Employee, (iii) an Emerson Contributed Subsidiary Business Employee, (iv) an Automatic Transfer Echo Business Employee or (v) an Aspen Employee, the Effective Time, (b) with respect to a Continuing Employee who is a Deferred Transfer Business Employee, in the case (i) the Deferred Transfer Business Employee’s jurisdiction of employment is Malaysia, the effective time of the Deferred Malaysia Closing, (ii) the Deferred Transfer Business Employee’s jurisdiction of employment is Saudi Arabia, the effective time of the Deferred Saudi Closing, (iii) the Deferred Transfer Business Employee’s jurisdiction of employment is Bahrain, the effective time of the Deferred Bahrain Closing, and (iv) the Deferred Transfer Business Employee’s jurisdiction of employment is Abu Dhabi, the effective time of the Deferred Abu Dhabi Closing and (c) with respect to a Continuing Employee who is a Deferred TSA Automatic Transfer Business Employee or a Deferred TSA Non-Automatic Transfer Business Employee, the date such employee ceases to provide services pursuant to the Transition Services Agreement.

“Bahrain Conditions” means the closing conditions set forth under the heading “Bahrain Conditions” on Section 7.05(c) of the Emerson Disclosure Schedule.

“Deferred Abu Dhabi Business” means the Emerson Contributed Assets and Emerson Assumed Liabilities held by the UAE branch of Emerson Process Management Distribution Limited.

“Deferred Abu Dhabi Closing” means the transfer of the Deferred Abu Dhabi Business to Newco or one of its designated Subsidiaries at or after the Closing upon the satisfaction or waiver of Abu Dhabi Conditions.

“Deferred Bahrain Business” means the Deferred Transfer Business Employees employed by Rosemount Tank Gauging (Middle East) SPC and the services provided by such employees.

“Deferred Bahrain Closing” means the transfer of the Deferred Bahrain Business to Newco or one of its designated Subsidiaries at or after the Closing upon the satisfaction or waiver of Bahrain Conditions.

“Deferred Business” means the Deferred Malaysia Business, the Deferred Saudi Business, the Deferred Bahrain Business or the Deferred Abu Dhabi Business, as applicable.

“Deferred Closing” means the Deferred Malaysia Closing, Deferred Saudi Closing, the Deferred Bahrain Closing and Deferred Abu Dhabi Closing, as applicable.

“Deferred Closing Conditions” means the Malaysia Conditions, Saudi Conditions, Bahrain Conditions and Abu Dhabi Conditions, as applicable.

“Deferred Closing Date” means the date of the Deferred Malaysia Closing, the date of the Deferred Saudi Closing, the date of the Deferred Bahrain Closing or the date of the Deferred Abu Dhabi Closing, as applicable.

“Deferred Closing Period Taxes” means, with respect to a Deferred Business, Taxes for the period beginning on the day after the Closing Date and ending on the applicable Deferred Closing Date (the “Deferred Closing Period”) incurred by, or imposed on, such Deferred Business, computed on the basis of apportioning items attributable to each Deferred Business under applicable accounting principles, as if such Deferred Business were a separate legal entity, solely during the Deferred Closing Period that was not part of any Combined Group (as defined in the Tax Matters Agreement) with any Emerson Retained Subsidiary as follows:

- a. with respect to Taxes that are based on or measured by income, sales, use, receipts, or other similar items, the amount of such Taxes attributable to the Deferred Closing Period shall be determined based
-

on a hypothetical closing of the books and records on the close of the Closing Date and a hypothetical closing of the books and records on the close of the applicable Deferred Closing Date; provided that, exemptions, allowances or deductions that are attributable to such Deferred Business under applicable accounting principles and are calculated on an annual basis (including, but not limited to, depreciation and amortization deductions) shall be allocated to the Deferred Closing Period by multiplying the total amount of such exemptions, allowances or deductions for the annual period by a fraction, the numerator of which is the number of calendar days in the Deferred Closing Period, and the denominator of which is the number of calendar days in the annual period (except to the extent otherwise agreed by Emerson and Newco); and

- b. for Taxes other than those described in the preceding clause a, the amount of such Taxes attributable to the Deferred Closing Period shall be determined by multiplying the total amount of such Tax for the entire taxable period by a fraction, the numerator of which is the number of calendar days in the Deferred Closing Period, and the denominator of which is the number of calendar days in the entire taxable period.

“Deferred Malaysia Business” means the Emerson Contributed Assets and Emerson Assumed Liabilities held by Emerson Process Management (Malaysia) Sdn Bhd.

“Deferred Malaysia Closing” means the transfer of the Deferred Malaysia Business to Newco or one of its designated Subsidiaries at or after the Closing upon the satisfaction or waiver of Malaysia Conditions.

“Deferred Saudi Business” means the Emerson Contributed Assets and Emerson Assumed Liabilities held by Emerson Saudi Arabia LLC.

“Deferred Saudi Closing” means the transfer of the Deferred Saudi Business to Newco or one of its designated Subsidiaries at or after the Closing upon the satisfaction or waiver of Saudi Conditions.

“Deferred Transfer Business Employee” means each Echo Business Employee who, as of immediately prior to the Effective Time, is employed by Emerson or any of its Subsidiaries (other than the Emerson Contributed Subsidiaries) in either Saudi Arabia, Bahrain, Abu Dhabi or Malaysia.

“Deferred TSA Automatic Transfer Business Employee” means each Echo Business Employee who (i) as of immediately prior to the Effective Time, is employed by Emerson or any of its Subsidiaries (other than the Emerson Contributed Subsidiaries), (ii) from and after the Effective Time provides services under the Transition Services Agreement and (iii) falls within the scope of the Automatic Transfer Regulations and whose employment will automatically transfer at the Applicable Transfer Time to Newco or one of its Subsidiaries (including an Emerson Contributed Subsidiary) pursuant to the Automatic Transfer Regulations in connection with the cessation of his or her provision of services pursuant to the Transition Services Agreement.

“Deferred TSA Non-Automatic Transfer Business Employee” means each Echo Business Employee (other than any Deferred TSA Automatic Transfer Business Employee) who, (i) as of immediately prior to the Effective Time, is employed by Emerson or any of its Subsidiaries (other than the Emerson Contributed Subsidiaries) and (ii) from and after the Effective Time provides services under the Transition Services Agreement.

“Malaysia Conditions” means the closing conditions set forth under the heading “Malaysia Conditions” on Section 7.05(c) of the Emerson Disclosure Schedule.

“Recipient,” when used in connection with the Specified Agreements, shall have the meaning ascribed to it as set forth on Section 4.14(d) of the Emerson Disclosure Schedule.

“Saudi Conditions” means the closing conditions set forth under the heading “Saudi Conditions” on Section 7.05(c) of the Emerson Disclosure Schedule.

“Specified Agreements” means (a) the Specified License Agreement and (b) any and all other Contracts between Emerson or any of its Affiliates, on the one hand, and the Recipient, on the other hand, in each case, in effect (in whole or in part) as of the Closing Date and any and all amendments, attachments, exhibits, annexes, schedules, extensions and other modifications thereto.

“Specified Amount,” when used in connection with the Specified License Agreement, shall have the meaning ascribed to it as set forth on Section 4.14(d) of the Emerson Disclosure Schedule.

“Specified License Agreement” means the license agreement set forth on Section 4.14(d) of the Emerson Disclosure Schedule.

(f)

Section 2.01 of the Agreement is hereby amended and restated as follows:

The Closing. Except for the Deferred Closings, the closing of the Transactions (the “Closing”) shall take place in New York City at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, 10017 at 10:00 a.m., Eastern time, as soon as possible after (but in any event no later than the second Business Day after) the date the conditions set forth

in Article 10 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted by Applicable Law, waiver of such conditions by the party or parties entitled to the benefit thereof at the Closing) have been satisfied or, to the extent permitted by Applicable Law, waived by the party or parties entitled to the benefit thereof, or at such other place, at such other time or on such other date as Emerson and Aspen may mutually agree (the date on which the Closing occurs, the "Closing Date").

(g)

Section 2.02(a)(ii) of the Agreement is hereby amended by changing the reference to "Section 2.02(a)" therein to "Section 2.02(a)(i)".

(h)

Section 4.03 of the Agreement is hereby amended by striking "and" and adding "(iv) as described in the Deferred Closing Conditions and (v)" after "federal securities laws," therein.

(i)

Each of Sections 4.12, 4.13(a), 4.13(b) and 4.13(c) of the Agreement is hereby amended by adding "and the Deferred Closings" after "after giving effect to the Pre-Closing Restructuring" in each place where such language occurs.

(j)

Section 4.13(d) of the Agreement is hereby amended and restated as follows:

(i)

(1) The properties and assets of Newco, Merger Subsidiary and the Emerson Contributed Subsidiaries ((x) including, after giving effect to the Pre-Closing Restructuring, the Emerson Contributed Assets, but (y) excluding the Emerson Contributed Assets held by all Deferred Businesses, and (z) taking into account any property and services to be provided under the Ancillary Agreements and the Intellectual Property licensed under Section 7.17(b)) constitute in all material respects all of the property and assets that are owned, licensed or controlled by Emerson or any of its Affiliates as of the Closing Date that are reasonably necessary for the conduct of the Echo Business (other than the Deferred Businesses) as conducted as of the date hereof and as of the Closing Date.

(2)

Other than with respect to Intellectual Property, none of the Emerson Excluded Assets are owned, used or held for use primarily in the conduct of the Echo Business.

(ii)

With respect to each Deferred Business, after giving effect to the Deferred Closings, the properties and assets of Newco, Merger Subsidiary and the Emerson Contributed Subsidiaries (including, after giving effect to the Deferred Closings in the applicable jurisdiction, the Emerson Contributed Assets, and taking into account any property and services to

be provided under the Ancillary Agreements and the Intellectual Property licensed under Section 7.17(b)) constitute in all material respects all of the property and assets that are owned, licensed or controlled by Emerson or any of its Affiliates as of the applicable Deferred Closing Date that are reasonably necessary for the conduct of the Echo Business in the jurisdiction of such Deferred Business as conducted as of the date hereof and as of the applicable Deferred Closing Date.

(iii)

The properties and assets of Newco, Merger Subsidiary and the Emerson Contributed Subsidiaries ((x) including, after giving effect to the Pre-Closing Restructuring but without giving effect to the Deferred Closings, the Emerson Contributed Assets and (y) taking into account the Intellectual Property licensed under Section 7.17(b)), together with the Echo Business Employees (excluding the Deferred Transfer Business Employees) and with any property and services to be provided by Emerson and the Emerson Retained Subsidiaries to Newco, Merger Subsidiary or the Emerson Contributed Subsidiaries under the Ancillary Agreements (and if applicable, the Commercial Agreement Term Sheet), comprise all of the assets, personnel and properties that would be necessary and sufficient in all material respects for Newco to conduct the Echo Business (other than the Deferred Businesses) in substantially the same manner as conducted as of the date hereof and as of the Closing Date.

6

(iv)

With respect to each Deferred Business, after giving effect to the Deferred Closings, the properties and assets of Newco, Merger Subsidiary and the Emerson Contributed Subsidiaries ((x) including, after giving effect to the Pre-Closing Restructuring and the applicable Deferred Closing, the Emerson Contributed Assets as of the Closing, (y) including the Emerson Contributed Assets transferred to Newco or its Subsidiaries at the applicable Deferred Closing pursuant to Section 7.05, and (z) taking into account the Intellectual Property licensed under Section 7.17(b)), together with the Echo Business Employees (excluding the Deferred Transfer Business Employees but including any such employee transferred at the applicable Deferred Closing) and with any property and services to be provided by Emerson and the Emerson Retained Subsidiaries to Newco, Merger Subsidiary or the Emerson Contributed Subsidiaries under the Ancillary Agreements (and if applicable, the Commercial Agreement Term Sheet), comprise all of the assets, personnel and properties that would be necessary and sufficient in all material respects for Newco to conduct the Echo Business in the jurisdiction of such Deferred Business in substantially the same manner as conducted as of the date hereof and as of the Closing Date.

(k)

Section 4.14(b) of the Agreement is hereby amended by adding “and the Deferred Closings” after “after giving effect to the Pre-Closing Restructuring” in each of the four places where such language occurs in Section 4.14(b).

(l)

Section 4.14(c) of the Agreement is hereby amended by adding “(excluding any Echo Business Intellectual Property owned by any Deferred Business)” after “all Echo Business Intellectual Property”.

(m)

Section 4.14 of the Agreement is hereby amended by adding the following section “(d)” at the end thereof.

Except as would not reasonably be expected to have, individually or in the aggregate, an Emerson Material Adverse Effect: (i) the Specified Agreements are in writing and true, complete and correct copies of the Specified Agreements have been made available to Aspen, (ii) the Specified Agreements are in full force and effect, (iii) Emerson and its Affiliates have timely paid any and all amounts, including royalties, owed to the Recipient under the Specified Agreements and all amounts payable or paid under the Specified Agreements have been fully reflected in Emerson Carveout Financial Statements, (iv) following Closing, none of Newco or any of its Subsidiaries will be restricted from using, or sublicensing, in connection with the operation of the Echo Business, or assigning to any Affiliates of Newco, any Intellectual Property owned (solely or jointly) by, or licensed to, Newco or its Affiliates as a result of or pursuant to the Specified License Agreement and (v) under the Specified License Agreement, no more than the Specified Amount has been owed to the Recipient during each of the past five (5) years.

(n)

The first paragraph of Section 6.01 of the Agreement is hereby amended by adding “and the Deferred Closings” after “(including with respect to the implementation of the Pre-Closing Restructuring”.

(o)

Section 6.05 of the Agreement is hereby amended by adding the following before “.” at the end of Section 6.05:

; provided that, at Emerson’s and Aspen’s mutual election, the foregoing termination with respect to any Contract or intercompany account relating to a Deferred Business need not occur until at or prior to the applicable Deferred Closing. For the avoidance of doubt, the Parties acknowledge that Newco and/or its applicable Subsidiaries, if any, shall be entitled to all benefits and will bear all Liabilities with respect to such Contracts during the period between the Closing and the applicable Deferred Closing to the same extent as provided for in Section 7.05(e).

(p)

Section 7.01(c) of the Agreement is hereby amended by adding “(it being understood that the Deferred Closings shall not be a breach of this Section 7.01)” after “so as to enable the Merger to occur prior to the End Date”.

(q)

Section 7.05 of the Agreement is hereby amended and restated as follows:

Pre-Closing Restructuring.

(a)

Prior to the Closing, Emerson shall, and shall cause its Affiliates to, at Emerson's sole cost and expense, undertake the restructuring transactions set forth on Exhibit I (the "Pre-Closing Restructuring") in the manner described on such Exhibit I (the "Pre-Closing Restructuring Plan"), including (a) the transfer by Emerson and the Emerson Retained Subsidiaries to an Emerson Contributed Subsidiary of each Emerson Contributed Asset, (b) the assumption by an Emerson Contributed Subsidiary of each Emerson Assumed Liability, (c) the transfer by each Emerson Contributed Subsidiary to Emerson or an Emerson Retained Subsidiary of each asset of such Emerson Contributed Subsidiary that would be an Emerson Excluded Asset were it held by an Emerson Retained Subsidiary and (d) the assumption by Emerson or an Emerson Retained Subsidiary of each Liability of an Emerson Contributed Subsidiary that would be an Emerson Excluded Liability were it a Liability of an Emerson Retained Subsidiary. Notwithstanding the foregoing, Emerson shall not, and shall cause its Affiliates not to, (A) transfer any assets, properties or businesses of any Emerson Contributed Subsidiary to Emerson or any Emerson Retained Subsidiary (other than any asset that would be an Emerson Excluded Asset were it held by an Emerson Retained Subsidiary) or (B) transfer to any Emerson Contributed Subsidiary, or have any Emerson Contributed Subsidiary otherwise assume, any Liabilities of Emerson or any Emerson Retained Subsidiary (other than the Emerson Assumed Liabilities). The Pre-Closing Restructuring shall be consummated in compliance with Applicable Law and pursuant to local share and asset transfer documentation that Aspen has had a reasonable opportunity to review and comment upon (which final documentation shall incorporate such reasonable comments of Aspen); provided that in the event of any conflict or inconsistency between the terms of any such local transfer documentation and the Transaction Documents, the terms of the Transaction Documents shall control in all respects. For the avoidance of doubt, without limiting any rights of Emerson and Newco hereunder, Emerson and Newco shall not, and shall cause their respective Affiliates not to, bring any claim for any cause of action under any such local transfer documentation. For the avoidance of doubt, except as expressly set forth in this Agreement, the Tax Matters Agreement governs all tax related matters between or among the Parties or any of their Subsidiaries with respect to the Pre-Closing Restructuring. The Pre-Closing Restructuring may be amended or modified by Emerson so long as such amendments or modifications would not reasonably be expected, individually or in the aggregate (1) to be material to Newco and its Subsidiaries (after giving effect to the Closing) (including any new material Liability), (2) to prevent or materially delay the consummation of the Transactions, (3) to materially interfere with, prevent or materially delay the ability of Aspen or, following the Closing, Newco or any of its Subsidiaries to perform their obligations under the Transaction Documents or consummate the transactions contemplated thereby, (4) to change in any material way the scope of the Echo Business being transferred to Newco under this Agreement or the allocation of assets and Liabilities contemplated by this Agreement, (5) to impose restrictions on the business of Newco following the Closing (other than pursuant to the Tax Matters Agreement) or (6) to result in material adverse Tax consequences to Aspen, its Affiliates, Newco or any Emerson Contributed Subsidiary that would not be the subject of indemnification by Emerson under the Tax Matters Agreement; provided that, in each case, Emerson shall reasonably in advance consult in good faith with Aspen in connection with, and provide Aspen with written notice of, any such amendments and modifications. Emerson shall keep Aspen reasonably informed, upon request, of the status and details of the Pre-Closing Restructuring.

(b)

Emerson agrees that, as of the Closing, each of the Emerson Contributed Subsidiaries set forth on Section 7.05(b) of the Emerson Disclosure Schedule shall have at least the amount of cash set forth opposite such Emerson Contributed Subsidiary on Section 7.05(b) of the Emerson Disclosure Schedule and such cash shall be used to effect the applicable Deferred Closings. The Parties agree that the purchase price for the applicable Deferred Business shall be the amount of cash set forth opposite such Deferred Business on Section 7.05(b) of the Emerson Disclosure Schedule.

(c)

If one or more of the Malaysia Conditions, the Saudi Conditions, the Bahrain Conditions or the Abu Dhabi Conditions have not been satisfied or waived as of the Closing, then, notwithstanding anything to the contrary in this Agreement, the Deferred Malaysia Business, the Deferred Saudi Business, the Deferred Bahrain Business and the Deferred Abu Dhabi Business, as applicable, shall not be transferred to Newco or its Subsidiaries at the Closing, and the Parties shall work together to effect such transfer as follows: for each Deferred Closing, the applicable Deferred Business shall be transferred to Newco or its Subsidiaries as soon as possible after (but in any event no later than the second Business Day after) the date all of the conditions to the relevant Deferred Closing (other than conditions that by their nature are to be satisfied at such Deferred Closing, but subject to the satisfaction or, to the extent permitted by Applicable Law or the applicable Deferred Closing Conditions, waiver of such conditions by Emerson and Newco at the applicable Deferred Closing) have been satisfied or, to the extent permitted by Applicable Law or the applicable Deferred Closing Conditions, waived by Emerson and Newco, or at such other place, at such other time or on such other date as Emerson and Newco may mutually agree; provided that (i) it is understood and agreed that not all Deferred Closings need to occur contemporaneously, (ii) Emerson and Newco may mutually elect to waive any applicable Deferred Closing Conditions and may further mutually elect not to proceed with consummation of any Deferred Closing, and (iii) to the extent a Deferred Closing shall not have occurred by the date that is eighteen months following the Closing (or such other date as Emerson and Newco may mutually agree), such Deferred Closing shall occur on such date. For the avoidance of doubt, if the Malaysia Conditions, the Saudi Conditions, the Bahrain Conditions or the Abu Dhabi Conditions are satisfied or waived by Emerson and Aspen prior to the Closing, then the Deferred Malaysia Closing, the Deferred Saudi Closing, the Deferred Bahrain Closing and the Deferred Abu Dhabi Closing, respectively, shall occur at the Closing. In no event shall the Deferred Malaysia Closing, the Deferred Saudi Closing, the Deferred Bahrain Closing or the Deferred Abu Dhabi Closing occur prior to the Closing.

(d)

At each Deferred Closing, (i) each of Emerson and Newco shall deliver, or cause to be delivered, to the other party a duly signed counterpart to a local transfer agreement in a form substantially similar to the forms included on Section 7.05(d)(i) of the Emerson Disclosure Schedule to effectuate each of the Deferred Closings, and any other documents to the extent required by Applicable Law and (ii) with respect to each Deferred Closing, Newco shall cause the payment of the cash amount and in such currency, in each case, as set forth opposite such Deferred Closing on Section 7.05(d)(ii) of the Emerson Disclosure Schedule in immediately available funds by wire transfer to such Person and to such account designated by Emerson. In the event of any conflict or inconsistency between the terms of any

such local transfer agreement and the Transaction Documents, the terms of the Transaction Documents shall control in all respects.

(e)

(i)

With respect to each Deferred Business, as of the Effective Time, Emerson shall transfer, assign and convey, and Newco (or its Affiliates) shall acquire and accept all of Emerson's (or its Affiliates') economic rights, benefits, and interests in and to each Deferred Business; provided that, the foregoing shall not entitle Newco or any of its Affiliates to the benefit of any payments (including under any "cost-plus" arrangement) made by Newco or its Affiliates to Emerson or its Affiliates, under the Transition Services Agreement, in respect of the operation of such Deferred Business between the Closing and the applicable Deferred Closing. Newco (or one or more of its Affiliates) shall assume all of Emerson's economic risk, encumbrances and obligations with respect to ownership and management of the Deferred Businesses and the employment of the Deferred Transfer Business Employees. For the avoidance of doubt, such economic rights and interest in and to the Deferred Businesses include all income, profits, and gains arising from, attributable to, or inuring to the benefit of each Deferred Business after the Effective Time through the applicable Deferred Closing Date. Such economic risk, encumbrances and obligations with respect to the Deferred Businesses include the Emerson Assumed Liabilities and include all risk of economic loss with respect to each Deferred Business solely to the extent such Deferred Business is operated by Emerson in the manner described herein. As of the Effective Time, Newco (or its Affiliates) shall, assume the obligations and bear the economic burdens, costs and Liabilities (including (x) any Liability for Deferred Closing Period Taxes with respect to such Deferred Business and (y) the cost of any compensation or benefits (including any base salary, wages, commissions, incentive compensation, health or welfare benefits or other employee benefits, severance or other termination-related payments or benefits) in respect of any Deferred Transfer Business Employee) associated with managing, operating and owning such Deferred Business and the employment of the Deferred Transfer Business Employees solely to the extent the Deferred Business is operated by Emerson in the manner described herein (determined as if such Deferred Business had been transferred to Newco or one of its Subsidiaries on the Closing Date pursuant to the terms of this Agreement, rather than the applicable Deferred Closing Date). Newco shall, subject to Emerson's compliance with the terms hereof, be solely responsible for any Liability arising out of the ownership and management of such Deferred Business in such period consistent with the terms and conditions of this Section 7.05(e). In the event that the transfer of the benefits, obligations, and burdens as contemplated by this Section 7.05(e)(i) is not permitted under Applicable Law or Contract, Emerson and Newco shall work together in good faith to implement an alternative arrangement with equivalent effect as permissible under Applicable Law or Contract with respect to the operation of such Deferred Business until the applicable Deferred Closing.

11

(ii)

Newco and Emerson shall use reasonable best efforts to cooperate in a mutually agreeable arrangement to effect the provisions of Section 7.05(e)(i). With respect to each Deferred Business, for the period between Closing and the applicable Deferred Closing, Newco and Emerson agree that Newco will, after reasonable consultation with the Emerson personnel, direct the operation and management of the Deferred Businesses and shall have the sole authority to undertake any material decision that relate to such Deferred Business, subject to Applicable

Law and provided that Emerson may undertake any such decision to ensure that the Deferred Businesses comply with all policies and procedures that apply to Emerson and its Subsidiaries generally and any decision permitted to be taken by Emerson in Section 7.05(e)(iii)(2) without the consent of Newco; provided that Emerson shall not be responsible for any losses or expenses incurred as a result of Newco's delay in making any decisions in a timely manner. Emerson shall, or cause its Affiliates to, (i) provide Newco and its Affiliates reasonable access to the offices, properties, books, records and personnel of the Deferred Business, during normal business hours and with reasonable prior notice, (ii) furnish such financial and operating data and other information relating to the Deferred Businesses as Newco may reasonably request and (iii) instruct its employees, counsel, financial advisors, auditors and other authorized representatives to reasonably cooperate with Newco and its Affiliates in support of the operation of the Deferred Business. All information furnished pursuant to this Section shall be subject to the Confidentiality Agreement. Any investigation pursuant to this Section shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Emerson.

(iii)

Subject to Section 7.05(e)(ii), with respect to each Deferred Business, from the Closing Date through the applicable Deferred Closing Date:

(1)

Emerson shall, and shall cause its Subsidiaries to, use reasonable best efforts to (A) to conduct such Deferred Business in the ordinary course of business consistent with past practice and in compliance with Applicable Law, (B) maintain and preserve intact such Deferred Business and, to the extent relating to the Deferred Business, their business organizations, their rights, franchises and other authorizations issued by Governmental Authorities and their relationships with their customers, regulators and other Persons with which they have advantageous business relationships (including any employees of the Deferred Businesses), and (C) maintain and keep in good repair (ordinary wear and tear excepted) the material properties, assets and businesses of such Deferred Business; and

12

(2)

Emerson shall not and shall cause its Affiliates not to, without the prior written consent of Newco (x) incur or assume any Liabilities over \$10,000 other than in the ordinary course of business consistent with past practice, or (y) distribute, transfer or sell any assets other than sales of inventory and dispositions of obsolete assets, in each case, in the ordinary course of business consistent with past practice, or except to effect the Deferred Closings in each case of clauses (x) and (y) with respect to such Deferred Business.

(iv)

Without limiting the generality of Section 7.05(e)(i), (A) with respect to each Deferred Business, from and after the Closing Date until the applicable Deferred Closing Date with respect to such Deferred Business, Emerson shall, or shall cause its Affiliates to, fund the ongoing operations and maintenance of such Deferred Business, including any liability for Deferred Closing Period Taxes with respect to such Deferred Business and (B) with respect to each Deferred Transfer Business Employee, from and after the Closing Date until the Applicable Transfer Time, Emerson shall, or shall cause its Affiliates to, fund the cost of any compensation or benefits (including any base salary, wages, commissions, incentive compensation, health or

welfare benefits or other employee benefits, severance or other termination-related payments or benefits) in respect of Deferred Transfer Business Employees (the "Operating Expenses"). Emerson's expenditure of Operating Expenses of each Deferred Business shall be consistent with the ordinary course operations of such Deferred Business consistent with past practice at Aspen's direction and, in the case of the Deferred Transfer Business Employees, subject to the terms of Section 6.01(k) (including, for the avoidance of doubt, any exceptions thereto set forth in Section 6.01 of the Emerson Disclosure Schedule), until the Applicable Transfer Time; provided that Emerson shall not be responsible for any losses or expenses incurred due to Aspen's failure to approve any such Operating Expenses.

(v)

With respect to each Deferred Business, in the event Emerson or any of its Affiliates receives any income, profits, or gains attributable to such Deferred Business, or any property with respect to such Deferred Business, on or after the Effective Time, it will do so as custodian or, to the fullest extent permissible under Applicable Law, in trust for and on behalf of Newco. All such income, profits, gains or property (together with interest thereon at an arm's length rate from the date of receipt) received by Emerson shall be offset against the Operating Expenses funded by Emerson with respect to the applicable Deferred Business and (i) the net amount shall be paid to Newco on the applicable Deferred Closing Date (taking into account the net result of the benefits and liabilities set forth in Section 7.05(e)(i)) and (ii) to the extent that the Operating Expenses are greater than such income, profits, gains or property received by Emerson or there is otherwise insufficient cash of the Deferred Business to reimburse Emerson for the Operating Expenses (taking into account the net result of the benefits and liabilities set forth in Section 7.05(e)(i)), such Operating Expenses shall be paid by Newco to Emerson on the applicable Deferred Closing Date. Emerson shall and shall cause its Affiliates to furnish such financial and operating data and other supporting information as Newco may reasonably request to support the calculation of the net amount (including the Operating Expenses as set out above).

13

(vi)

Without limiting any Party's obligations under Section 7.01, but subject to the terms thereof, with respect to each Deferred Business, from the Closing Date until the applicable Deferred Closing, each Party shall use its reasonable best efforts to execute and deliver all documents, certificates, agreements or other writings, and take such other actions as may be reasonably requested by the other Party in furtherance of the transfer of each Deferred Business to Newco (or one or more of its Subsidiaries).

(vii)

For all Tax purposes, the Parties will cooperate to characterize the arrangements adopted in connection with each Deferred Closing consistent with one another and in a manner consistent with the principles set forth in this Section 7.05(e).

(viii)

Solely for the period between the Closing Date and the Deferred Closing Date with respect to each Deferred Business, Newco (on behalf of itself and its Subsidiaries) hereby grants Emerson or any of the Emerson Retained Subsidiaries a non-exclusive, limited, royalty-free, non-transferable license to use the Echo Business Intellectual Property

owned by Newco or any of the Emerson Contributed Subsidiaries, to the extent licensable, solely for use in the conduct of such Deferred Business in a manner contemplated by Section 7.05(e)(ii).

(ix)

With respect to each Deferred Business, from and after the Closing Date until the applicable Deferred Closing Date, Emerson and Newco shall, and shall cause their respective Affiliates to, use reasonable best efforts to cooperate with each other and to facilitate and expedite the identification and resolution of any issues arising with respect to such Deferred Business at the earliest practicable dates. Such reasonable best efforts and cooperation shall include, but are not limited to (i) keeping each other reasonably informed of communications from and to personnel of relevant Governmental Authorities and (ii) conferring with each other regarding contacts with and response to personnel of such Governmental Authorities and the content of any such contacts or responses prior to making any such contacts or responses, in each case with respect to any material matter.

(r)

Section 7.06 of the Agreement is hereby amended and restated as follows:

Third-Party Approval and Permits.

(a)

Except with respect to Consents which are addressed in Section 7.01, subject to the terms and conditions of this Agreement, prior to the Closing or the Deferred Closing as applicable, (i) each of Aspen and Emerson shall, and shall cause its respective Affiliates to, use its reasonable best efforts to obtain, as promptly as practicable, all Consents required to be obtained from any third party that are necessary to (x) consummate the Transactions (including, to the extent Aspen does not replace, renew, refinance or refund the indebtedness under the Aspen Credit Agreement, the Aspen Credit Agreement Consents) and (y) in the case of Emerson and its Affiliates, transfer and assign the Emerson Contributed Assets to Newco or one of the Emerson Contributed Subsidiaries and otherwise complete the Pre-Closing Restructuring and the Deferred Closings, in each case, pursuant to Section 7.05, and (ii) each of Aspen and Emerson shall, and shall cause its respective Affiliates to, use its reasonable best efforts to provide all notices and otherwise take all actions necessary to transfer any transferable Aspen Permits and Emerson Permits, respectively, or reissue or obtain any replacement Aspen Permits and Emerson Permits, respectively, in each case, to the extent necessary to consummate the Transaction (including, in the case of Emerson, for Newco and the Emerson Contributed Subsidiaries to operate, as of the Closing Date, the Echo Business).

14

(b)

Without limiting the foregoing, Section 7.05 or Section 10.03(a)(i), to the extent permitted by Applicable Law, in the event any Consent required to be obtained from any third party or Governmental Authority in connection with the transfer of any Emerson Contributed Asset or Emerson Excluded Asset has not been obtained by the Closing or the applicable Deferred Closing, then this Agreement (or the applicable transfer instrument) shall not constitute an agreement to sell, assign, transfer or convey such asset. The party contemplated to be transferring or causing to be transferred such asset (the "Transferring Party") shall hold in

trust for the party to whom such asset is contemplated to be transferred under this Agreement (the "Transferee"), and shall promptly forward to the Transferee any income, proceeds and other monies received in respect of, the relevant Emerson Contributed Asset or Emerson Excluded Asset, as applicable, and Transferee will promptly pay, perform or discharge when due any Liabilities arising thereunder, in each case, until such time as the required Consent is obtained and the transfer is effectuated. To the extent not prohibited by the relevant Emerson Contributed Asset or Emerson Excluded Asset, as applicable, or under Applicable Law, (i) the Transferring Party agrees to use reasonable best efforts to provide the Transferee with the economic benefits of any such Emerson Contributed Asset or Emerson Excluded Asset, as applicable, and the Transferee agrees to assume and bear all costs and Liabilities thereunder, in each case, in a manner to place the Transferring Party and Transferee in a substantially similar position as if such Emerson Contributed Asset or Emerson Excluded Asset, as applicable, had been assigned or transferred at the Closing or the applicable Deferred Closing, (ii) the parties agree to use reasonable best efforts to enter into and cooperate in arrangements with each other and the relevant third party intended to transitionally allow the Transferring Party to operate with or under the relevant Emerson Contributed Asset or Emerson Excluded Asset, as applicable, so that the Transferee can receive or incur the relevant benefits and Liabilities of such Emerson Contributed Asset or Emerson Excluded Asset, as applicable, until the expiration or renewal thereof in a manner to place the Transferring Party and the Transferee in a substantially similar position as if such Emerson Contributed Asset or Emerson Excluded Asset, as applicable, had been assigned or transferred at the Closing or the applicable Deferred Closing and (iii) the Transferring Party agrees to perform all applicable obligations under such Emerson Contributed Asset or Emerson Excluded Asset, as applicable, and enforce, at the request and for the account of the Transferee, or allow the Transferee and its Affiliates to enforce, in a commercially reasonable manner, any rights in respect of such Emerson Contributed Asset or Emerson Excluded Asset, as applicable. Except for as otherwise provided in Section 7.05, upon obtaining any such requisite Consent, the relevant Emerson Contributed Asset or Emerson Excluded Asset, as applicable, shall promptly be transferred and assigned to the Transferee at no additional cost to Newco or any of its Subsidiaries.

(s)

Section 7.08 of the Agreement is hereby amended by replacing "If following the Closing," with "If, following the Closing and the applicable Deferred Closings,".

(t)

Section 7.12(b) of the Agreement is hereby amended by replacing "no later than twelve months from the Closing Date (the "Transition Period")" with "no later than twenty-four (24) months from the Closing Date (or, with respect to the Deferred Businesses, as soon as reasonably practicable following the Deferred Closing, but in any event no later than twenty-four (24) months from the applicable Deferred Closing Date) (the "Transition Period")".

(u)

Section 7.12(e) of the Agreement is hereby amended by replacing "twelve months after the Closing" with "twelve (12) months after the Closing" and replacing "during the twelve month period following the Closing" with "during the twelve (12)-month period following the Closing".

(v)

Section 8.01 of the Agreement is hereby amended and restated as follows:

Emerson Contributed Subsidiary Business Employee, Emerson Offer Business Employees, Deferred Transfer Business Employees and Deferred TSA Transfer Business Employees. Newco shall (or shall cause the Subsidiaries of Newco to) (i) continue the employment as of the Closing of each Emerson Contributed Subsidiary Business Employee and (ii) within a reasonable period of time (but not fewer than fifteen Business Days) prior to the Applicable Transfer Time, make an offer to employ each Emerson Offer Business Employee, each Deferred Transfer Business Employee and each Deferred TSA Non-Automatic Transfer Business Employee which such offer of employment shall be contingent upon the occurrence of the Closing and effective as of the Applicable Transfer Time and that (A) in each case provides for terms consistent with the terms of this Article 8, and (B) in the case of each Deferred Transfer Business Employee and each Deferred TSA Non-Automatic Transfer Business Employee, with terms and conditions of employment substantially comparable to the terms and conditions of employment applicable to such Deferred Transfer Business Employee or such Deferred TSA Non-Automatic Transfer Business Employee, as applicable, as of immediately prior to the date of such employment offer. If it is agreed between the parties that an Emerson Offer Business Employee, a Deferred Transfer Business Employee or a Deferred TSA Non-Automatic Transfer Business Employee, as applicable, should be employed by Aspen or one of its Subsidiaries with effect from the Applicable Transfer Time (each an "Aspen Offer Employee"), Aspen shall (or shall cause its appropriate Subsidiary to) within a reasonable period of time (but not fewer than fifteen Business Days if practicable) prior to the Applicable Transfer Time, make an offer to employ such Aspen Offer Employee (x) on terms consistent with the terms of this Article 8 and (y) with terms and conditions of employment substantially comparable to the terms and conditions of employment applicable to such Aspen Offer Employee as of immediately prior to the date of such employment offer, which such offer of employment shall be contingent upon the occurrence of the Closing and effective as of the Applicable Transfer Time (each such offer, and "Aspen Qualifying Offer"). Unless a written acceptance of an offer of employment is required by Applicable Law, any Emerson Offer Business Employee, Deferred Transfer Business Employee or Deferred TSA Non-Automatic Transfer Business Employee, as applicable, who does not expressly reject Newco's (or as it may be, Aspen's) offer of employment prior to the Applicable Transfer Time and actually commences employment with Newco (or Aspen) or one of its Subsidiaries immediately following the Applicable Transfer Time (or such later time as may be required by Applicable Law) shall be deemed for purposes of this Agreement to have accepted such offer as of the Applicable Transfer Time. Effective as of immediately prior to the Applicable Transfer Time (or such later time as may be required by Applicable Law), Emerson shall, or shall cause its applicable Subsidiary to, terminate the employment of any Emerson Offer Business Employee, any Deferred Transfer Business Employee or any Deferred TSA Non-Automatic Transfer Business Employee, as applicable, who does not accept an offer of employment from Newco or its applicable Subsidiary (or, if applicable, Aspen or its applicable Subsidiary). Emerson shall be solely liable, and shall reimburse Newco (or Aspen) or its applicable Subsidiary for any severance, statutory or other termination-related payments or benefits paid or provided by Newco (or Aspen) or its applicable Subsidiary to any such Emerson Offer Business Employee, Deferred Transfer Business Employee or Deferred TSA Non-Automatic Transfer Business Employee who does not accept such offer of employment made in accordance with this Section 8.01; provided, however, that solely to the extent the parties determine pursuant to this Section 8.01 that Aspen or one of its Subsidiaries shall employ any applicable Aspen Offer Employee, Newco shall be solely liable, and shall reimburse Emerson or its applicable Subsidiary for any severance, statutory or other termination-related payments or benefits paid or provided by Emerson or its applicable Subsidiary to any such Aspen Offer Employee who does not receive an Aspen Qualifying Offer.

(w)

Section 8.02 of the Agreement is hereby amended and restated as follows:

Automatic Transfer Echo Business Employees and Deferred TSA Automatic Transfer Business Employees. Each of Emerson, Aspen and Newco intend that the Automatic Transfer Regulations will apply to the employment of each of the Automatic Transfer Echo Business Employees and the Deferred TSA Automatic Transfer Business Employees and the transfer of each such Automatic Transfer Echo Business Employee's or such Deferred TSA Automatic Transfer Business Employee's employment contract from Emerson and its applicable Subsidiaries to Newco and its Subsidiaries, effective as of the Applicable Transfer Time. If any such Automatic Transfer Echo Business Employees or such Deferred TSA Automatic Transfer Business Employee do not transfer automatically pursuant to the Automatic Transfer Regulations, Newco shall, or shall cause the relevant Subsidiary of Newco to, make an offer to employ such employee in accordance with Section 8.01 as soon as reasonably practicable following such determination and such employee shall constitute an Emerson Offer Business Employee or a Deferred TSA Non-Automatic Transfer Business Employee, respectively, for purposes of this Agreement.

(x)

Section 8.03 of the Agreement is hereby amended and restated as follows:

Retained Automatic Transfer Employees. If the contract of employment of any individual who is not an Automatic Transfer Echo Business Employee, an Emerson Offer Business Employee, a Deferred Transfer Business Employee, a Deferred TSA Automatic Transfer Business Employee, or a Deferred TSA Non-Automatic Transfer Business Employee transfers to Newco or any of its Subsidiaries pursuant to the Automatic Transfer Regulations in connection with the consummation of the transactions contemplated by the Transaction Documents, or any such individual asserts that this is the case, Newco, Aspen or their Subsidiaries shall notify Emerson as soon as reasonably practicable after becoming aware and may, where relevant, terminate the employment of such individual no later than twenty-eight days after such individual's contract of employment transfers to Newco and Emerson will indemnify and hold harmless Newco, Aspen and their Subsidiaries, as applicable, for fifty percent of the aggregate Liabilities arising from, or relating to, (a) the employment of the individual up to the date of any such termination, (b) the termination by Newco, Aspen or any of their Subsidiaries of the contract of employment of such individual, and (c) all other Liabilities Newco, Aspen or their Subsidiaries may incur pursuant to the Automatic Transfer Regulations (including any Liability for failure to consult) in relation to such individual.

(y)

Section 8.04 of the Agreement is hereby amended and restated as follows:

Maintenance of Compensation and Benefits. Subject, and in addition, to the requirements imposed by Applicable Law (including, in the case of Automatic Transfer Echo Business Employees and Deferred TSA Automatic Transfer Business Employees, the Automatic

Transfer Regulations), for a period of 12 months following the Closing Date, Newco shall provide, or shall cause its Subsidiaries to provide, Continuing Employees who remain employed by Newco and its Subsidiaries following the Applicable Transfer Time with (i) at least the same base salary or wage rate and target annual cash bonus opportunity as provided to such Continuing Employee as of immediately prior to the Applicable Transfer Time and (ii) employee benefits (excluding defined benefit pension benefits, retiree health or welfare benefits, severance or other termination-related compensation or benefits, equity-based compensation or change in control, transaction or retention bonuses (collectively, the "Excluded Benefits")) that are substantially comparable to in the aggregate to the employee benefits (other than the Excluded Benefits) provided to such Continuing Employees under Aspen Benefits Plans (in the case of Continuing Aspen Employees) or Echo Business Benefit Plans (in the case of Continuing Echo Business Employees), as applicable, as of immediately prior to the Applicable Transfer Time; provided that in the case of any Continuing Employee whose terms and conditions of employment are subject to a collective bargaining agreement, Newco shall provide for such continued employment to be on such terms and conditions as may be required under that collective bargaining agreement.

(z)

Section 8.05 of the Agreement is hereby amended and restated as follows:

Service Credit. Subject, and in addition, to the requirements imposed by Applicable Law (including, in the case of Automatic Transfer Echo Business Employees and Deferred TSA Automatic Transfer Business Employees, the Automatic Transfer Regulations), from and after the Applicable Transfer Time, with respect to any "employee benefit plan" (as defined under Section 3(3) of ERISA, whether or not subject to ERISA) maintained by Newco or any of its Subsidiaries ("Newco Benefit Plans") in which any Continuing Employee becomes a participant following the Applicable Transfer Time, for purposes of determining eligibility to participate, vesting and level of benefits (but not for benefit accrual purposes, except for purposes of severance and paid time off), (i) each Continuing Aspen Employee's service with Aspen and its Subsidiaries (as well as service with any predecessor employer, to the extent recognized by Aspen or any of its Subsidiaries prior to the Applicable Transfer Time) shall be treated as service with Newco and its Subsidiaries and (ii) each Continuing Echo Business Employee's service with Emerson or any of its Subsidiaries (as well as service with any predecessor employer, to the extent recognized by Emerson or any of its Subsidiaries prior to the Applicable Transfer Time) shall be treated as service with Newco and its Subsidiaries, in each case (A) to the same extent such service was recognized under an analogous Aspen Benefit Plan or Echo Business Benefit Plan, respectively, and (B) to the extent that such recognition would not result in any duplication of benefits. With respect to any Newco Benefit Plans that are health or welfare benefit plans in which any Continuing Employee (and his or her eligible dependents participates) from and after the Applicable Transfer Time, (i) Newco shall waive, or shall cause its Subsidiaries to waive, any preexisting conditions limitations or exclusions, actively at work requirements and waiting periods, except to the extent that such items would not have been satisfied or waived under an analogous Aspen Benefit Plan (in the case of Continuing Aspen Employees) or Echo Business Benefit Plan (in the case of Continuing Echo Business Employees), as applicable, as of immediately prior to the Applicable Transfer Time, and (ii) Newco shall recognize, or shall cause its Subsidiaries to recognize, all co-payments, deductibles and similar expenses and out-of-pocket maximums incurred by each Continuing Employee (and his or her eligible dependents) prior to the Applicable Transfer Time during the plan year in which Applicable Transfer Time occurs for purposes of satisfying any comparable deductible and co-payment limitations and out-of-pocket requirements under the Newco Benefit Plans, to the extent recognized under an analogous Aspen Benefit Plan (in the case of Continuing Aspen Employees) or Echo Business Benefit Plan (in the case of Continuing Echo Business Employees), as applicable, as of immediately prior to the Applicable Transfer Time.

(aa)

Section 8.07 of the Agreement is hereby amended by replacing “prior to the Effective Time” with “prior to the Applicable Transfer Time”.

(bb)

Section 8.08 of the Agreement is hereby amended by replacing “effective as of the Closing” with “effective as of the Applicable Transfer Time”.

(cc)

Section 8.10 of the Agreement is hereby amended by replacing “on or after the Closing” with “on or after the Applicable Transfer Time” and replacing “prior to the Closing” with “prior to the Applicable Transfer Time”.

(dd)

Section 8.15 of the Agreement is hereby amended and restated as follows:

Newco Omnibus Incentive Plan; Assumption of Agreements. In the event that Aspen and Emerson mutually determine in good faith that Continuing Echo Business Employees will not be eligible to receive awards under the Aspen 2016 Omnibus Incentive Plan following the Closing, then, prior to the Aspen Stockholder Meeting, Newco shall approve and adopt an incentive equity plan, the principal terms of which are substantially similar to the Aspen 2016 Omnibus Incentive Plan and the final form of which (including any changes to the terms of the Aspen 2016 Omnibus Incentive Plan and the aggregate number of shares of Newco Stock to be reserved for issuance under such incentive equity plan) shall be mutually agreed to in good faith by Aspen and Emerson (the “Omnibus Incentive Plan”), and the parties shall cause such Omnibus Incentive Plan to be submitted for applicable stockholder approval. As soon as practicable following the Closing Date, Newco shall (if such stockholder approval is obtained) file an effective registration statement on Form S-8 (or other applicable form) with respect to the Newco Stock issuable under the Omnibus Incentive Plan (to the extent applicable, as adjusted by the Aspen Equity Award Exchange Ratio), and Newco shall use reasonable best efforts to maintain the effectiveness of such registration statement(s) (and maintain the current status of the prospectus or prospectuses contained therein) for so long as awards granted pursuant to the Omnibus Incentive Plan remain outstanding. From and after the Effective Time, Newco shall assume and agree to perform the agreements set forth on Section 8.16 of the Aspen Disclosure Schedule, subject to the terms of such applicable agreements.

(ee)

Section 8.16 of the Agreement is hereby amended and restated as follows:

Echo Business Employee Census. Emerson shall update Sections 1.01(c), 1.01(d) and 1.01(e) of the Emerson Disclosure Schedule at reasonable intervals before the Closing and, solely

with respect to the Deferred Transfer Business Employees, the Deferred TSA Automatic Transfer Business Employees, and the Deferred TSA Non-Automatic Transfer Business Employees, before the Applicable Transfer Time (each, a "Census Update Time") (it being understood that the last such Census Update Time shall occur no later than five Business Days prior to the Closing Date (or, in the case of the Deferred Transfer Business Employees, the Deferred TSA Automatic Transfer Business Employees, and the Deferred TSA Non-Automatic Transfer Business Employees, the Applicable Transfer Time); provided, however, that any updates to the foregoing sections of the Emerson Disclosure Schedule at any Census Update Time (a) shall not add any individual to Section 1.01(c) of the Emerson Disclosure Schedule unless such individual (i) was primarily employed in or dedicated to the Echo Business as of the date of this Agreement or (ii) becomes primarily employed in or dedicated to the Echo Business following the date of this Agreement in the ordinary course of business consistent with past practice, (b) shall not add any individual to Section 1.01(e) or remove any individual from Section 1.01(c) of the Emerson Disclosure Schedule who is primarily employed in or dedicated to the Echo Business (other than any individual who ceases to be primarily employed in or dedicated to the Echo Business in the ordinary course of business consistent with past practice) and (c) shall not update Section 1.01(d) of the Emerson Disclosure Schedule without Aspen's prior consent (which consent shall not be unreasonably withheld, delayed or conditioned); provided, further, that, in connection with any such updates to such sections of the Emerson Disclosure Schedule in accordance with sub-clauses (a) and (b) above, at any applicable Census Update Time, Emerson shall provide such updated schedules to Aspen for its prior review and Aspen shall have the right to provide reasonable comments on such proposed updates (which will be considered by Emerson in good faith). Notwithstanding anything to the contrary herein, Emerson may update Sections 1.01(c), 1.01(d) and 1.01(e) of the Emerson Disclosure Schedule in order to (A) reflect the hiring or termination of individuals, subject to the restrictions set forth in Section 6.01(k)(iv), and (B) to add the Dutch Emerson Employees in accordance with Section 8.18, if applicable. For the avoidance of doubt, any individual listed on Section 1.01(e) of the Emerson Disclosure Schedule shall not constitute an Echo Business Employee.

(ff)

Section 8.19 of the Agreement is hereby amended and restated as follows:

Echo Business Employee Retention Program.

(a)

On or promptly following the Applicable Transfer Time, but in any event no later than five (5) Business Days after the Applicable Transfer Time, Newco shall implement the retention program for the Continuing Echo Business Employees set forth on Section 8.19(a) of the Emerson Disclosure Schedule (including by making all applicable grants thereunder).

(b)

On or promptly following the Effective Time, but in any event no later than five (5) Business Days after the Effective Time, Emerson shall implement the retention program set forth on Section 8.19(b) of the Emerson Disclosure Schedules for the Non-Transferring TSA Employees (including by making all applicable grants thereunder), the cost of which shall be the sole responsibility of Newco and which shall constitute Emerson Assumed Liabilities.

(gg)

A new Section 8.20 of the Agreement is hereby added as follows:

Treatment of Liabilities for Non-Transferring TSA Employees, Deferred TSA Automatic Transfer Business Employees, and Deferred TSA Non-Automatic Transfer Business Employees. Notwithstanding anything to the contrary herein, with respect to (i) the individuals listed in Section 1.01(e) to the Emerson Disclosure Schedule (other than the first four individuals listed thereon) (and such other individuals as may be mutually agreed by the Parties) (such individuals, collectively, the “Non-Transferring TSA Employees”) (who, for the avoidance of doubt, shall not constitute Echo Business Employees), and (ii) the Deferred TSA Automatic Transfer Business Employees and the Deferred TSA Non-Automatic Transfer Business Employees, Newco shall be solely liable for, and shall reimburse Emerson or its applicable Subsidiary for, (A) the cost of any compensation and benefits (including any base salary, wages, commissions, incentive compensation, health or welfare benefits and other employee benefits) payable in respect of the period during which such Non-Transferring TSA Employees, Deferred TSA Automatic Transfer Business Employees, or Deferred TSA Non-Automatic Transfer Business Employees, as applicable, are providing services pursuant to the Transition Services Agreement, and (B) subject to Emerson’s obligations pursuant to Section 8.01 in respect of severance costs related to Deferred TSA Non-Automatic Transfer Business Employees who do not accept an offer of employment from Newco, any severance, statutory or other termination-related payments or benefits paid or provided consistent with past practice, by Emerson or its applicable Subsidiary to any such Non-Transferring TSA Employee or Deferred TSA Non-Automatic Transfer Business Employee, in each case which shall constitute Emerson Assumed Liabilities (clauses (A) and (B) collectively, the “TSA Employee Costs”). For the avoidance of doubt, the reimbursement by Newco of the TSA Employment Costs hereunder shall be without duplication of any amounts paid by Newco to Emerson under the Transition Services Agreement.

(hh)

Section 9.01 of the Agreement is hereby amended by replacing “use reasonable its best efforts” with “use its reasonable best efforts”.

(ii)

Section 9.02 of the Agreement is hereby amended by adding “or the Deferred Closings,” after “incurred with respect to the Pre-Closing Restructuring,”.

(jj)

The first paragraph of Section 10.01 of the Agreement is hereby amended by adding “(excluding the Deferred Closings)” after “to consummate the Transactions”.

(kk)

The first paragraph of Section 10.02 of the Agreement is hereby amended by adding “(excluding the Deferred Closings)” after “to consummate the Transactions”.

(ll)

The first paragraph of Section 10.03 of the Agreement is hereby amended by adding “(excluding the Deferred Closings)” after “to consummate the Transactions”.

(mm)

Section 10.03(d) of the Agreement is hereby amended by changing “Section 7.05” to “Section 7.05(a)”.

21

(nn)

Section 12.02 of the Agreement is hereby amended by deleting “and” at the end of subsection (a), adding “; and” at the end of subsection (b), and adding the following new subsection (c):

any Liability to the extent resulting from or arising in connection with (i) the legal ownership and operation of each Deferred Business from and after the Effective Time by Emerson or its Affiliates or (ii) the employment, or termination of employment, of each Deferred Transfer Business Employee from and after the Effective Time, in each case in the manner required by Section 7.05(e) (including any Liabilities related to (x) any compensation or benefits (including any base salary, wages, commissions, incentive compensation, health or welfare benefits or other employee benefits, severance or other termination-related payments or benefits) in respect of any Deferred Transfer Business Employee or (y) the employment or termination of employment of any Deferred Transfer Business Employee); provided that this Section 12.02(c) does not apply to any Liability as a result of or related to gross negligence or willful misconduct on the part of Emerson or its Affiliates. For the avoidance of doubt, this Section 12.02(c) shall not limit the generality of Newco’s assumption of Emerson Assumed Liabilities.

(oo)

Section 13.02 of the Agreement is hereby amended and restated as follows:

Survival of Representations, Warranties and Agreements. The representations, warranties, covenants and agreements contained herein and in any certificate or other writing delivered pursuant hereto shall not survive the Effective Time, except for (a) the representations and warranties set forth in Section 3.11, Section 4.09, Section 4.13(d)(i) and Section 4.13(d)(iii), which shall survive the Closing until the date that is eighteen months after the Closing Date, (b) and the representations and warranties set forth in Section 4.13(d)(ii) and Section 4.13(d)(iv), which shall survive the Closing, with respect to each Deferred Business, until the date that is eighteen months after the applicable Deferred Closing Date and (c) such covenants or agreements that by their terms are to be performed (in whole or in part) after the Effective Time, which shall survive the Closing until fully performed in accordance with their terms. For clarity, covenants and agreements under Section 12.01(a) and 12.02 shall survive indefinitely. Any claim for indemnification under Article 12 asserted in writing prior to the expiration of any such survival period as provided in this Section 13.02 shall have been timely made for purposes of this Section 13.02 such that the representation, warranty, covenant, agreement or obligation that is the subject of such claim, to the extent of such claim only, shall survive until such claim has been fully and finally resolved in accordance with the terms of this Agreement.

Section 3. Amendment to the Emerson Disclosure Schedule.

(a)

The content of Annex 1.01(c)(i) to the Emerson Disclosure Schedule is hereby amended and replaced in its entirety with the content of Schedule 1 hereto.

(b)

The content of Section 1.01(e) of the Emerson Disclosure Schedules is hereby amended and replaced in its entirety with the content of Schedule 2 hereto.

(c)

The Emerson Disclosure Schedules are amended hereby by adding a new Section 1.01(m) thereof which shall have the text as set forth on Schedule 3 hereto.

(d)

The Emerson Disclosure Schedules are amended hereby by adding a new Section 4.14(d) thereof which shall have the text as set forth on Schedule 4 hereto.

(e)

Section 6.05 of the Emerson Disclosure Schedules is hereby amended by adding new Items 3 and 4 which shall have the text as set forth on Schedule 5 hereto.

(f)

The Emerson Disclosure Schedules are amended hereby by adding a new Section 7.05 thereof which shall have the text as set forth on Schedule 6 hereto.

(g)

The content of Annex 4.14(a)-1 to the Emerson Disclosure Schedules is hereby amended and replaced in its entirety with the content of Schedule 7 hereto.

(h)

The content of Annex 4.14(a)-2 to the Emerson Disclosure Schedules is hereby amended and replaced in its entirety with the content of Schedule 8 hereto.

(i)

The Emerson Disclosure Schedules are hereby amended by renaming Section 8.19 of the Emerson Disclosure Schedules as Section 8.19(a) of the Emerson Disclosure Schedules.

(j)

The Emerson Disclosure Schedules are hereby amended by adding a new Section 8.19(b) thereof which shall have the text as set forth on Schedule 9 hereto.

Section 4. Amendment to Exhibits. Each of Exhibit B (Form of Stockholders Agreement), Exhibit C (Form of Tax Matters Agreement), Exhibit D (Form of Transition Services Agreement) and Exhibit I (Pre-Closing Restructuring Plan) is hereby amended and replaced in its entirety with the content of Exhibit B-1, Exhibit C-1, Exhibit D-1 and Exhibit I-1, respectively, hereto.

Section 5. Conforming Section References. All references and cross-references in the Agreement shall be revised as necessary to be consistent with the revisions to the Agreement set forth in this Amendment.

Section 6. Effect of Amendment. From and after the date hereof, each reference in the Agreement to "this Agreement," "hereof," "hereunder" or words of like import referring to the Agreement (or any schedule thereof) shall be deemed a reference to the Agreement (and such schedule) as amended hereby. The Parties agree that all references in the Agreement to "the date hereof" or "the date of this Agreement" shall refer to the Original Execution Date. Except as and to the extent expressly modified by this Amendment, the Agreement is not otherwise being amended, modified or supplemented. The Agreement shall remain in full force and effect in accordance with its terms.

Section 7. Other Provisions. This Amendment hereby incorporates the provisions of Sections 1.02 (Other Definitional and Interpretive Provisions), 13.03 (Amendments and Waivers), 13.05 (Disclosure Schedules), 13.06 (Binding Effect; Benefit; Assignment), 13.07 (Governing Law), 13.08 (Jurisdiction), 13.09 (Counterparts; Effectiveness); 13.10 (Entire Agreement), 13.11 (Severability) and 13.12 (Specific Performance) of the Agreement as if fully set forth herein, mutatis mutandis.

[Signature Page Follows]

23

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

ASPEN TECHNOLOGY, INC.

By: /s/ Antonio J. Pietri
Name: Antonio J. Pietri
Title: President and Chief Executive Officer

EMERSON ELECTRIC CO.

By: /s/ Vincent M. Servello
Name: Vincent M. Servello
Title: Vice President

EMR WORLDWIDE INC.

By: /s/ Vincent M. Servello
Name: Vincent M. Servello
Title: Vice President

EMERSUB CX, INC.

By: /s/ Vincent M. Servello
Name: Vincent M. Servello
Title: Vice President

EMERSUB CXI, INC.

By: /s/ Vincent M. Servello
Name: Vincent M. Servello
Title: Vice President

[Signature Page to Amendment No. 2 to the Transaction Agreement and Plan of Merger]

Exhibit B-1

[Form of Stockholders Agreement]

[TABLE OF CONTENTS](#)

EXHIBIT B-1

FORM OF STOCKHOLDERS AGREEMENT

dated as of

[•]

among

ASPEN TECHNOLOGY, INC.,

EMERSON ELECTRIC CO.

and

EMR WORLDWIDE INC.

1

[TABLE OF CONTENTS](#)

TABLE OF CONTENTS

PAGE

ARTICLE I

DEFINITIONS

Section 1.1.	Certain Definitions	4
Section 1.2.	Other Terms	8

ARTICLE II

TERM

Section 2.1.	Term and Termination	9
------------------------------	--------------------------------------	-------------------

ARTICLE III

CORPORATE GOVERNANCE MATTERS

Section 3.1.	Initial Board Composition	9
Section 3.2.	Subsequent Board Composition	10
Section 3.3.	Committees of the Company Board	11
Section 3.4.	Emerson Agreement to Vote	12
Section 3.5.	Chief Executive Officer	12
Section 3.6.	Consent Rights	12
Section 3.7.	Modifications to Business Strategy	14

ARTICLE IV

OTHER AGREEMENTS

Section 4.1.	Confidentiality	15
Section 4.2.	Restrictions on Transferability and Acquisitions	16
Section 4.3.	Preemptive Rights	17
Section 4.4.	Percentage Maintenance Rights	19
Section 4.5.	Related Party Transactions	20
Section 4.6.	Non-Compete	20
Section 4.7.	No Solicitation of Employees	21
Section 4.8.	Intercompany Agreements	21

Section 4.9.	Corporate Opportunity	21
Section 4.10.	Nasdaq	22

ARTICLE V

FINANCIAL AND OTHER INFORMATION

Section 5.1.	Annual, Quarterly and Monthly Financial Information; Emerson's Operating Reviews	23
Section 5.2.	Emerson Public Filings	23
Section 5.3.	Other Financial Reporting and Compliance Matters	24
Section 5.4.	Production of Witnesses; Records; Cooperation	26
Section 5.5.	Privilege	26

[TABLE OF CONTENTS](#)

	PAGE
ARTICLE VI	
DISPUTE RESOLUTION	
Section 6.1.	General Provisions 26
Section 6.2.	Consideration by Senior Executives 27
Section 6.3.	Attorneys' Fees and Costs 27
ARTICLE VII	
MISCELLANEOUS	
Section 7.1.	Corporate Power 27
Section 7.2.	Governing Law 27
Section 7.3.	Notices 27

Section 7.4.	Severability	28
Section 7.5.	Entire Agreement; No Other Representations and Warranties	29
Section 7.6.	Assignment; No Third-Party Beneficiaries	29
Section 7.7.	Amendment; Waiver	29
Section 7.8.	Interpretations	29
Section 7.9.	Exercise of Rights	29
Section 7.10.	Privileged Matters	30
Section 7.11.	Counterparts; Electronic Transmission of Signatures	31
Section 7.12.	Specific Performance	31

SCHEDULE 4.5(B) RELATED PARTY TRANSACTIONS POLICY

SCHEDULE 4.5(C) PRE-AGREED PROCEDURES

SCHEDULE 7.10(A)

SCHEDULE 7.10(E)

[TABLE OF CONTENTS](#)

STOCKHOLDERS AGREEMENT

STOCKHOLDERS AGREEMENT, dated [•] (this “Agreement”), among Emerson Electric Co., a Missouri corporation (“Emerson Parent”), EMR Worldwide Inc., a Delaware corporation and wholly owned subsidiary of Emerson Parent (“Emerson”), and Aspen Technology, Inc., a Delaware corporation (formerly known as Emersub CX, Inc.) (the “Company”).

WITNESSETH:

WHEREAS, pursuant to that certain Transaction Agreement and Plan of Merger, dated as of October 10, 2021, and amended as of March [•], 2022 and [•], 2022, among Emerson Parent, Aspen Technology, Inc., a Delaware corporation (“Old Aspen Tech”), the Company, Emersub CXI, Inc., a Delaware corporation, and Emerson (as further amended from time to time, the “Transaction Agreement”), Emerson Parent and Old Aspen Tech combined the Echo Business (as defined in the Transaction Agreement) with Old Aspen Tech and effected the Transactions (as defined herein);

WHEREAS, pursuant to the Transactions, Emerson holds Company Common Stock (as defined herein); and

WHEREAS, Emerson Parent, Emerson and the Company desire to enter into this Agreement in order to (i) set forth certain of their rights, duties and obligations as a result of the Transactions, (ii) provide for the governance of the Company and (iii) set forth rights and restrictions on certain activities in respect of the Company Common Stock, corporate governance, and other related corporate matters.

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

ARTICLE I
DEFINITIONS

Section 1.1. Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

“Action” means any action, claim, suit, or proceeding, in each case by or before any arbitrator or Governmental Authority.

“Affiliate” means, with respect to any Person, any other Person who, as of the relevant time for which the determination of affiliation is being made, directly or indirectly controls, is controlled by or is under common control with such Person; provided that no then-member of the Emerson Group shall be deemed to be an Affiliate of any then-member of the Company Group for purposes of this Agreement and no then-member of the Company Group shall be deemed to be an Affiliate of any then-member of the Emerson Group for purposes of this Agreement.

“Applicable Law” means, with respect to any Person, any U.S., non-U.S. or transnational, federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement (including any stock exchange listing requirements) enacted, adopted, promulgated or applied by a Governmental Authority, that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“beneficially own” means, with respect to Company Common Stock, having “beneficial ownership” of such stock for purposes of Rule 13d-3 or 13d-5 promulgated under the Exchange Act, without giving effect to the limiting phrase “within sixty days” set forth in Rule 13d-3(1)(i). The terms “beneficial owner” and “beneficial ownership” shall have correlative meanings.

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“Closing” has the meaning ascribed thereto in the Transaction Agreement.

“Common Equivalents” means (i) with respect to Company Common Stock, shares of Company Common Stock, (ii) with respect to any securities that are convertible into or exchangeable for Company Common Stock, the shares of Company Common Stock issuable in respect of the conversion or exchange of such securities into

[TABLE OF CONTENTS](#)

Company Common Stock, (iii) with respect to any options, warrants or other rights to acquire Company Common Stock, the shares of Company Common Stock issuable thereunder and (iv) with respect to any shares of Company Common Stock subject to restrictions, including the risk of forfeiture or repurchase or voting restrictions, such shares of Company Common Stock.

“Company Board” means the board of directors of the Company.

“Company Business” means the business of developing, marketing and selling industrial software; provided that the Company Business expressly excludes the businesses set forth in clauses (ii) and (iii) of the definition of the Emerson Permitted Business.

“Company Common Stock” means the shares of common stock, par value \$0.0001 per share, of the Company and any securities issued in respect thereof, or in substitution therefor, in connection with any stock split, dividend or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization.

“Company Covered Employees” means any Continuing Aspen Employees (as defined in the Transaction Agreement) or any Continuing Echo Business Employees (as defined in the Transaction Agreement).

“Company Group” means the Company and, as of the relevant time for which the determination of Company Group is being made, each Subsidiary of the Company.

“Company Independent Director” means each director of the Company who (i) is an Independent Director and (ii) (A) is not an executive officer or employee of any Emerson Group member and (B) would not be a director described under Clauses (A) through (F) of Rule 5605(a)(2) of the Nasdaq listing rules in relation to Emerson Parent assuming Emerson Parent were the “Company” thereunder.

“Company Securities” means (i) the Company Common Stock, (ii) any preferred stock of the Company, (iii) any other capital stock issued by the Company and (iv) any securities convertible into or exchangeable for, or options, warrants or other rights to acquire, Company Common Stock or any other capital or preferred stock issued by the Company.

“Emerson Annual Statements” means the audited annual financial statements and annual reports to shareholders of any Emerson Group member.

“Emerson Contributed Subsidiaries” has the meaning ascribed thereto in the Transaction Agreement.

“Emerson Covered Employees” means any individual employed by Emerson Parent or any of its Subsidiaries (x) in Emerson’s Automation Solutions business or (y) who assists in the provision of any Service (as defined in the Transition Services Agreement) under the Transition Services Agreement.

“Emerson Director” means a member of the Company Board who is an Emerson Designee.

“Emerson Group” means, at any given time, Emerson Parent and each Person (other than any then-member of the Company Group) that is then a Subsidiary of Emerson Parent.

“Emerson Fully-Diluted Ownership Percentage” means, as of any time, the percentage of the then-outstanding Company Common Stock (as determined on a Common Equivalents basis) beneficially owned by the members of the Emerson Group as of such time, calculated on a Fully-Diluted basis.

“Emerson Ownership Percentage” means, as of any time, the percentage of the then-outstanding Company Common Stock beneficially owned by the members of the Emerson Group as of such time.

“Emerson Permitted Business” means (i) any and all of the business activities contemplated under the Intercompany Commercial Agreements, including acting as an agent or reseller of the Company’s products or services, and the Transition Services Agreement (as defined in the Transaction Agreement), (ii) the business of developing, marketing and selling control or hardware-connected technology software products, including software and technology intended for control engineering tools, device level applications, alarm management, distributed control systems (“DCS”), historian, subsystem interfaces, operator environments, human machine interface engineering and runtime, reporting and trending, IO controllers, programmable logic controllers (PLC), SCADA (non-power), protection and prediction systems, embedded advanced control, embedded batch, AMS machinery management, control system diagnostics and system health monitoring, tank management

[TABLE OF CONTENTS](#)

solutions, sensor-based corrosion and erosion solutions, DCS or skid-based blending & transfer solutions, custody transfer solutions, valves diagnostic solutions, connected solution – instruments and Plantweb Insight and (iii) the Emerson Retained Businesses and any natural enhancements or extensions thereof (including by further investments therein).

“Emerson Retained Businesses” means Emerson’s and its Subsidiaries’ software businesses as of immediately after the Closing, including DeltaV, Ovation, ESI, Geofields, Syncade, Zedi, Progea, Bio-G, Fluxa, AMS Device Manager, Mimic, AgileOps, Inmation, PlantWeb Optics, and KNet.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“First Trigger” means the members of the Emerson Group ceasing to beneficially own more than fifty percent (50%) of the outstanding Company Common Stock.

“First Trigger Date” means the date that is forty-five (45) days following the earliest of (x) the date on which the Company notifies Emerson in writing of the First Trigger, (y) the date on which Emerson makes an amendment to its Schedule 13D filing under the Exchange Act to disclose the First Trigger and (z) the date on which the General Counsel or Chief Financial Officer of Emerson Parent gains actual knowledge (and not constructive, imputed or other similar concepts of knowledge) of the First Trigger; provided that if on such first date members of the Emerson Group beneficially own more than fifty percent (50%) of the outstanding Company Common Stock (and at no point during such forty-five (45) day period beneficially owned less than forty-five percent (45%) of the outstanding Company Common Stock), the First Trigger and the First Trigger Date shall be deemed to not have occurred for all purposes under this Agreement. For the avoidance of doubt, if at any point during such forty-five (45) day period, members of the Emerson Group beneficially own less than forty-five percent (45%) of the outstanding Company Common Stock, the First Trigger Date shall occur regardless of any subsequent acquisition by members of the Emerson Group of additional shares of Company Common Stock.

“Fourth Trigger Date” means the date on which members of the Emerson Group cease to beneficially own at least ten percent (10%) of the outstanding Company Common Stock.

“Fully-Diluted” means, without duplication, all outstanding shares of Company Common Stock, all shares of Company Common Stock issuable in respect of all outstanding securities convertible into or exchangeable for Company Common Stock, all shares of Company Common Stock issuable in respect of all outstanding options, warrants or other rights to acquire Company Common Stock (regardless of whether the issuance is subject to vesting or other restrictions) and all outstanding shares of Company Common Stock that are subject to restrictions, including the risk of forfeiture or repurchase or voting restrictions (regardless of whether the restrictions are still in force).

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental, regulatory, self-regulatory or administrative authority, organization, department, court, agency or official, including any political subdivision thereof.

“Group” means the Emerson Group or the Company Group, as the context requires.

“Independent Director” means a director of the Company who is independent under Nasdaq listing rules; provided that it is understood and agreed that the fact that an individual is an employee, officer or director of a member of the Emerson Group with the Emerson Group may not be the sole basis for the Company Board to determine that such person has a relationship that would interfere with his or her exercise of independent judgment in carrying out the responsibilities of a director under Nasdaq listing rules.

“Intercompany Commercial Agreements” means any and all Contracts (as defined in the Transaction Agreement) between any member of the Company Group, on the one hand, and any member of the Emerson Group, on the other hand, for the provision or receipt of goods, products or services (including software), in each case, as amended, modified or supplemented from time to time. Intercompany Commercial Agreements shall include the Commercial Agreement (as defined in the Transaction Agreement) as it may be amended from time to time but shall exclude this Agreement and the other Transaction Documents.

[TABLE OF CONTENTS](#)

“Nasdaq” means The NASDAQ Stock Market LLC, or any successor thereto, or, any other stock exchange or quotation system on which the Company Common Stock is traded.

“Parties” means Emerson Parent, Emerson and the Company.

“Percentage Maintenance Share” means, with respect to any transaction in which Company Securities are issued or proposed to be issued or sold (the “Percentage Maintenance Issued Shares”), a number of other shares of Company Common Stock or other Company Securities, as applicable (which, for the avoidance of doubt, are not the Percentage Maintenance Issued Shares), such that, after taking into account the total number of outstanding

shares of Company Common Stock (on a Common Equivalents and Fully-Diluted basis) immediately after giving effect to such issuance or sale (including the number of shares of Company Common Stock or such other Company Securities acquired by Emerson assuming it exercised its right to buy its full Percentage Maintenance Share with respect to such transaction), the Emerson Fully-Diluted Ownership Percentage would be, assuming Emerson acquired such number of Company Securities, equal to the Emerson Fully-Diluted Ownership Percentage immediately prior to such issuance or sale.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Pro Rata Portion” means, with respect to any Company Securities issued or proposed to be issued or sold in connection with any transaction (the “Pro Rata Issued Shares”), the number of such Pro Rata Issued Shares (calculated on a Common Equivalents and Fully-Diluted basis) such that, after taking into account the total number of outstanding shares of Company Common Stock (on a Common Equivalents and Fully-Diluted basis) immediately after giving effect to such issuance or sale, the Emerson Fully-Diluted Ownership Percentage would be, assuming Emerson acquired such number of Company Securities, equal to the Emerson Fully-Diluted Ownership Percentage immediately prior to such issuance or sale.

“Related Party Transaction” means any transaction between any member of the Company Group, on the one hand, and any member of the Emerson Group, or, solely in their capacity as such, any director, officer, employee or “associate” (as defined in Rule 12b-2 promulgated under the Exchange Act) of any member of the Emerson Group, on the other hand.

“Representatives” means, with respect to any Person (other than an individual), such Person’s directors, officers, employees and other agents and representatives (including legal counsel and outside advisors).

“RPT Committee” means an ad-hoc committee formed by the Company Board from time to time consisting of at least two (2) directors of the Company, provided that all members of an RPT Committee must be Company Independent Directors who are designated by a majority of the Independent Directors.

“SEC” means the Securities and Exchange Commission.

“Second Trigger” means the members of the Emerson Group ceasing to beneficially own more than forty percent (40%) of the outstanding Company Common Stock.

“Second Trigger Date” means the date that is forty-five (45) days following the earliest of (x) the date on which the Company notifies Emerson in writing of the Second Trigger, (y) the date on which Emerson makes an amendment to its Schedule 13D filing under the Exchange Act to disclose the Second Trigger and (z) the date on which the General Counsel or Chief Financial Officer of Emerson Parent gains actual knowledge (and not constructive, imputed or other similar concepts of knowledge) of the Second Trigger; provided that if on such first date members of the Emerson Group beneficially own more than forty percent (40%) of the outstanding Company Common Stock (and at no point during such forty-five (45) day period beneficially owned less than thirty-five percent (35%) of the outstanding Company Common Stock), the Second Trigger and the Second Trigger Date shall be deemed to not have occurred for all purposes under this Agreement. For the avoidance of doubt, if at any point during such forty-five (45) day period, members of the Emerson Group beneficially own less than thirty-five percent (35%) of the outstanding Company Common Stock, the Second Trigger Date shall occur regardless of any subsequent acquisition by members of the Emerson Group of additional shares of Company Common Stock.

“sole discretion” means being entitled to consider only such interests and factors as the Person making such determination desires, including solely its own interests, without having any duty or obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Company or any other Person.

[TABLE OF CONTENTS](#)

“Subsidiary” means, with respect to any Person, (i) any entity (A) of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing

similar functions are directly or indirectly owned by such Person or (B) of which a majority of the equity interests are directly or indirectly owned by such Person or (ii) in the case of a partnership, of which such Person is the general partner; provided that, for purposes of this Agreement no member of the Company Group shall be a Subsidiary of Emerson Parent or Emerson.

“Third Trigger” means the members of the Emerson Group ceasing to beneficially own at least twenty percent (20%) of the outstanding Company Common Stock.

“Third Trigger Date” means the date that is forty-five (45) days following the earliest of (x) the date on which the Company notifies Emerson in writing of the Third Trigger, (y) the date on which Emerson makes an amendment to its Schedule 13D filing under the Exchange Act to disclose the Third Trigger and (z) the date on which the General Counsel or Chief Financial Officer of Emerson Parent gains actual knowledge (and not constructive, imputed or other similar concepts of knowledge) of the Third Trigger; provided that if on such first date members of the Emerson Group beneficially own at least twenty percent (20%) of the outstanding Company Common Stock (and at no point during such forty-five (45) day period beneficially owned less than seventeen and a half percent (17.5%) of the outstanding Company Common Stock), the Third Trigger and the Third Trigger Date shall be deemed to have not occurred for all purposes under this Agreement. For the avoidance of doubt, if at any point during such forty-five (45) day period, members of the Emerson Group beneficially own less than seventeen and a half percent (17.5%) of the outstanding Company Common Stock, the Third Trigger Date shall occur regardless of any subsequent acquisition by members of the Emerson Group of additional shares of Company Common Stock.

“Transaction Documents” means, collectively, this Agreement, the Transaction Agreement and the other Ancillary Agreements (as defined in the Transaction Agreement).

“Transactions” has the meaning ascribed thereto in the Transaction Agreement.

“Transfer” means to sell, transfer, assign or otherwise dispose of any Company Common Stock, including by means of a hedge, swap or other derivative, and excluding, for the avoidance of doubt, (i) any sale, transfer, assignment or other transaction involving any equity interests of Emerson or any of its Affiliates, or any sale of or merger or consolidation involving Emerson or any of its Affiliates, (ii) subject to Section 3.4, the provision of a proxy in connection with any annual or special meeting of the stockholders of the Company and (iii) the tender of Company Common Stock in any tender or exchange offer that is approved by the Company Board prior to the consummation thereof. “Transferred” and “Transferring” shall have correlative meanings.

“Wholly Owned Subsidiary” means, with respect to any Person, a Subsidiary of such Person where all of the equity interests of such Subsidiary are directly or indirectly owned by such Person, except for any de minimis ownership by another Person to the extent required by non-U.S. rules under Applicable Law.

Section 1.2. Other Terms. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated.

Term	Section
Agreement	Preamble
Audit Committee	3.2(e)
Company	Preamble
Company Auditors	5.3(d)(ii)
Company Confidential Information	4.1(a)
Company Public Documents	5.3(b)
Compensation Committee	3.1
Compliance Audit	5.3(g)
Compliance Program	5.3(g)

Disclosure Committee	5.3(f)
Dispute	6.1(a)
Emerson	Preamble
Emerson Auditors	5.3(d)(ii)

[TABLE OF CONTENTS](#)

<u>Term</u>	<u>Section</u>
Emerson Confidential Information	4.1(b)
Emerson Designee	3.2(a)
Emerson Law Firms	7.10(a)
Emerson Parent	Preamble
Emerson Public Filings	5.2
Election Period	4.3(c)
Initial Notice	6.2
Issuance Notice	4.3(b)
Lead Independent Director	3.2(i)
Lockup Period	4.2(a)
M&A Committee	3.3(a)
Nominating & Governance Committee	3.2(e)
Non-Emerson Designee	3.2(e)
Non-Emerson Director	3.2(e)
Non-Privileged Deal Communications	7.10(c)
Old Aspen Tech	Preamble
Old Aspen Tech Board	3.1(i)
Old Aspen Tech Chair	3.1(i)
Other Committees	3.3(d)(i)
Other Stockholders	4.2(c)
Percentage Maintenance Share	4.3(b)

Pre-Agreed Procedures	4.5(c)(i)
Pre-Closing Related Party Transactions	4.5(a)
Privilege	5.5
Privileged Communications	7.10(a)
Privileged Deal Communications	7.10(b)
Proposed Purchase Price	4.3(b)(ii)
Related Party Transactions Policy	4.5(b)
Representatives	4.1(a)
Response	6.2
Significant Subsidiary	3.6(a)(i)
Standstill Period	4.2(b)(i)
Transaction Agreement	Preamble

ARTICLE II TERM

Section 2.1. **Term and Termination.** This Agreement is effective as of the date hereof and shall terminate automatically (a) on the Fourth Trigger Date or (b) in the event that the Emerson Group beneficially owns 100% of the outstanding Company Securities (other than prong (iv) of the definition thereof). Notwithstanding the foregoing, the provisions of Section 4.1, Section 4.9, Section 5.4, Section 5.5, Article VI and Article VII, and the definitions contained herein that are used therein, shall survive the termination of this Agreement.

ARTICLE III CORPORATE GOVERNANCE MATTERS

Section 3.1. **Initial Board Composition.** Effective as of the Closing, the Company Board shall initially consist of nine (9) members comprised of (i) five directors designated by Emerson as follows: (A) Jill D. Smith (the "Old Aspen Tech Chair"), the chair of the Old Aspen Tech board of directors (the "Old Aspen Tech Board") as of the date of the Transaction Agreement, who shall be the initial chair of the Company Board, (B) one director designated by Emerson, and (C) three (3) directors designated by Emerson after consultation with the Old Aspen Tech Chair (it being understood that, as of the date of the Transaction Agreement, it was Emerson's expectation that the persons in this clause (C) would be (x) members of the Old Aspen Tech Board or

[TABLE OF CONTENTS](#)

(y) Independent Directors) (for the avoidance of doubt, the persons in this clause (i) are Emerson Designees), (ii) the Chief Executive Officer of Old Aspen Tech immediately prior to the Closing, and (iii) three (3) directors that are Independent Directors designated by Old Aspen Tech, and reasonably acceptable to Emerson, which directors shall have been designated by Old Aspen Tech prior to the designation of any director (other than the Old Aspen Tech Chair) by Emerson pursuant to this Section 3.1. Effective as of the Closing, the initial chair of the Compensation Committee of the Company Board (the "Compensation Committee") shall be designated by Old Aspen Tech.

Section 3.2. Subsequent Board Composition.

(a) From and after the date hereof, the Company shall take all action to cause the Company Board, at any time (including if the size of the Company Board is increased or decreased), to be comprised of: (i) prior to the Third Trigger Date, a number of persons designated by Emerson (each person so designated by Emerson, an “Emerson Designee”) equal to the Emerson Ownership Percentage (expressed as a fraction) multiplied by the total authorized number of directors of the Company Board at such time (including as constituted immediately following any increase in size of the Company Board to comply with this Section 3.2), rounded up to the nearest whole person (but in no event less than a majority of the members on the Company Board until the Second Trigger Date) and (ii) following the Third Trigger Date, one Emerson Designee.

(b) The Company shall cause each Emerson Designee to be included in the slate of nominees recommended by the Company Board to holders of Company Common Stock for election (including at any annual or special meeting of stockholders held for the election of directors) and shall use its best efforts to cause the election of each such Emerson Designee, including soliciting proxies in favor of the election of such persons.

(c) In the event that any Emerson Director shall cease to serve as a director for any reason, the vacancy resulting therefrom shall be filled by the Company Board with a substitute Emerson Designee.

(d) The Company hereby agrees to take, at any time and from time to time, all actions necessary to facilitate the removal and replacement of any Emerson Director upon the written request of Emerson.

(e) From and after the date hereof, in the event of a vacancy on the Company Board upon the death, resignation, retirement, disqualification, removal from office or other cause of any director who was not an Emerson Director (each such person, a “Non-Emerson Director”), the Nominating & Governance Committee of the Company Board (the “Nominating & Governance Committee”) shall have the sole right to fill such vacancy or designate a person for nomination for election to the Company Board to fill such vacancy (such person, a “Non-Emerson Designee”) in accordance with Applicable Law; provided that, until the Third Trigger Date, (i) the then-current Chief Executive Officer of the Company shall be included for nomination at any annual or special meeting of the Company at which directors are elected and (ii) each Non-Emerson Designee (other than the then-current Chief Executive Officer of the Company) shall be a Company Independent Director and shall meet all other requirements under Applicable Law for membership on the Audit Committee of the Company Board (the “Audit Committee”) and one of which such Non-Emerson Designees shall also be an “audit committee financial expert” under Item 407(d)(5) of Regulation S-K. For the avoidance of doubt, the Company Board shall at all times include at least three Company Independent Directors.

(f) For so long as the Emerson Ownership Percentage is greater than fifty percent (50%), to the extent permitted by Applicable Law, if so requested by Emerson, the Company shall avail itself of available “Controlled Company” exemptions to the corporate governance listing standards of Nasdaq (in whole or in part, as requested by Emerson).

(g) Subject to Applicable Law, each Emerson Director shall keep confidential any information about the Company and its Affiliates he or she receives as a result of being a director of the Company Board, provided such Emerson Director is permitted to disclose to the Emerson Group, Representatives of the Emerson Group and such Emerson Director’s advisors information about the Company and its Affiliates that he or she receives as a result of being a director. Notwithstanding any duty otherwise existing under Applicable Law or in equity, to the fullest extent permitted by Applicable Law, no Emerson Director shall have any duty to disclose to the Company or the Company Board or any committee of the Company Board

[TABLE OF CONTENTS](#)

(or subcommittee thereof) confidential information of Emerson or any Affiliates of Emerson in such Emerson Director’s possession even if it is material and relevant information to the Company, the Company Board or any committee of the Company Board (or subcommittee thereof) and, in any case, such Emerson Director shall

not be liable to the Company, any of its stockholders or any other Person for breach of any duty (including the duty of loyalty or any other fiduciary duties) as a director by reason of such lack of disclosure of such confidential information.

(h) Until the Second Trigger Date, (i) Emerson shall have the right to nominate a member of the Company Board as the chair of the Company Board and the Company shall cause the Company Board to take all actions necessary to cause such person to become the chair of the Company Board, and (ii) the Company shall take, at any time and from time to time, all actions necessary to cause the Company Board to remove and replace the chair of the Company Board with another member of the Company Board upon the written request of Emerson.

(i) Until the Second Trigger Date, if at any time the chair of the Company Board is not an Independent Director, to the extent the Company Board designates a director to be the "lead independent director" (the "Lead Independent Director") (i) Emerson shall have the right to nominate a member of the Company Board who is an Independent Director to be the Lead Independent Director and the Company shall cause the Company Board to take all actions necessary to cause such person to become the Lead Independent Director, and (ii) the Company shall take, at any time and from time to time, all actions necessary to cause the Company Board to remove and replace the Lead Independent Director with another member of the Company Board who is an Independent Director upon the written request of Emerson.

(j) For the avoidance of doubt, Emerson shall have the right, in its sole discretion, to waive any and all of the rights granted to it under this Section 3.2, by delivery of written notice to the Company in accordance with Section 7.3.

Section 3.3. Committees of the Company Board.

(a) The Company Board shall have the following committees: an Audit Committee, a Nominating & Governance Committee, the Compensation Committee, until the Third Trigger Date an M&A Committee of the Company Board (the "M&A Committee"), and such other committees as determined by the Company Board. All references to committees in this Section 3.3 shall include any subcommittees of such committees. Until the Third Trigger Date, Emerson shall have the right to review and approve the charter for each committee and subcommittee of the Company Board (other than any RPT Committee).

(b) Audit Committee. The Company shall cause the Audit Committee to consist solely of three (3) directors, all of whom shall (i) be Company Independent Directors and (ii) meet all other requirements of Applicable Law and the Nasdaq listing rules for membership on the Audit Committee. Until the Third Trigger Date, Emerson shall be entitled to designate one non-voting observer who is entitled to attend meetings of the Audit Committee (which non-voting observer need not be a member of the Company Board).

(c) M&A Committee. The M&A Committee shall be an advisory committee that will consist of up to four (4) directors. Until the Third Trigger Date, Emerson shall be entitled to appoint one member of the M&A Committee and designate one non-voting observer who is entitled to attend meetings of the M&A Committee (which non-voting observer need not be a member of the Company Board). The M&A Committee shall, among other things, (i) review the Company's strategy regarding mergers, acquisitions, investments and dispositions with management periodically and (ii) review all proposed mergers, acquisitions, investments or dispositions of assets or businesses (it being understood that (x) ordinary course capital expenditures which are otherwise unrelated to any acquisition or disposition of a business shall not be within the purview of the M&A Committee and (y) the charter for the M&A Committee shall permit the M&A Committee to establish materiality thresholds for transactions as to which the M&A Committee will not review, which thresholds shall be approved by Emerson).

(d) Other Committee Composition. Until the Third Trigger Date, (i) the Company shall take all action to cause the number of Emerson Directors on all committees and subcommittees of the Company Board other than the Audit Committee, M&A Committee and any RPT Committee (such committees and subcommittees, the "Other Committees") at any time (including if the size of such Other Committee is

TABLE OF CONTENTS

increased or decreased, to the extent permitted hereunder) to be equal to the Emerson Ownership Percentage (expressed as a fraction) multiplied by the total authorized number of members of such Other Committee at such time (including as constituted immediately following any increase of such committee or subcommittee to comply with this Section 3.3 to the extent permitted hereunder), rounded up to the nearest whole person, (ii) Emerson shall have the right to designate which Emerson Director(s) will serve on each Other Committee and (iii) Emerson shall have the right to designate the chair of each Other Committee; provided that (A) until the Second Trigger Date, in no event shall the number of Emerson Directors on any Other Committee be less than a majority of the members of such Other Committee, and (B) following the Second Trigger Date, (1) the number of Emerson Directors on each Other Committee calculated pursuant to the foregoing shall be rounded down to the nearest whole person, but in no event be less than one member and (2) if (x) Emerson Transfers in any transaction or series of related transactions five percent (5%) or more of the Company Common Stock outstanding at such time (other than to an Emerson Affiliate) or (y) at any time, none of the Emerson Directors is an officer or employee of any member of the Emerson Group, then this Section 3.3(d) shall be of no further force and effect.

Section 3.4. Emerson Agreement to Vote. Emerson Parent shall, and shall cause each member of the Emerson Group to, (a) cause their respective Company Common Stock to be present for quorum purposes at any Company stockholder meeting, and (b) vote in favor of all Non-Emerson Designees nominated in accordance with this Agreement.

Section 3.5. Chief Executive Officer. As of the Closing, the Chief Executive Officer of the Company shall be Antonio J. Pietri.

Section 3.6. Consent Rights.

(a) Until the Second Trigger Date, the Company shall not, and shall cause the other members of the Company Group not to, directly or indirectly, do any of the following without the prior written consent of Emerson:

(i) any merger, consolidation, reorganization, conversion or any other business combination involving the Company, or sale of all or substantially all of the consolidated assets of the Company;

(ii) any acquisition (including by merger, consolidation, acquisition of stock or assets or otherwise) of any businesses, assets, operations or securities comprising a business (other than capital expenditures) with a value in excess of \$50,000,000 in any transaction or series of related transactions;

(iii) any redemption, repurchase, cancellation or other acquisition or any offer to redeem, repurchase, cancel or otherwise acquire Company Securities or any equity or equity-linked securities of any Subsidiary of the Company that is a "significant subsidiary" as defined in Rule 1-02 of Regulation S-X under the Exchange Act (a "Significant Subsidiary"), other than (A) repurchases of Company Common Stock of no more than \$50,000,000 in any 12-month period and that are approved by the Company Board or (B) repurchases of equity or equity-linked securities of any Wholly Owned Subsidiary of the Company by the Company or any of its Wholly Owned Subsidiaries;

(iv) the declaration or payment of a cash or other dividend or any other distribution on the Company Securities or any equity or equity-linked securities of any Significant Subsidiary other than to the Company or one of its Wholly Owned Subsidiaries;

(v) any recapitalization, reclassification, spin-off or combination of any Company Securities or any equity or equity-linked securities of any Significant Subsidiary, other than a recapitalization, reclassification or combination of equity or equity-linked securities of a Wholly Owned Subsidiary of the Company (and solely involving Wholly Owned Subsidiaries of the Company) that remains a Wholly Owned Subsidiary of the Company after the consummation of such transaction and that does not have any adverse tax consequences to the Emerson Group;

(vi) any sale, transfer, lease, pledge, abandonment or other disposition or exclusive license (in each case of the foregoing, including by merger, consolidation, reorganization, conversion, joint venture, sale of stock or assets or otherwise) of any assets, businesses, interests, properties, securities or

[TABLE OF CONTENTS](#)

Persons in with a value in excess of \$25,000,000 in any transaction or series of related transactions in any 12-month period, other than (A) sales of inventory or services or dispositions of obsolete assets in each case in the ordinary course of business or (B) to the Company or any of its Wholly Owned Subsidiaries;

(vii) without limiting any other provision of this Agreement, any incurrence, assumption, guarantee, repurchase or other creation of indebtedness for borrowed money (including through the issuance of debt securities) in an aggregate principal amount in excess of \$25,000,000 on a consolidated basis in any 12-month period, excluding (A) any indebtedness in respect of a revolving debt facility in existence as of the date hereof or which has previously been approved pursuant to this Section 3.6(a)(vii) and (B) any indebtedness solely among the Company and its Wholly Owned Subsidiaries;

(viii) any initiation, adoption or public proposal of a voluntary liquidation, dissolution, receivership, bankruptcy or other insolvency proceeding involving the Company or any Significant Subsidiary, other than a liquidation or dissolution of any Wholly Owned Subsidiary of the Company;

(ix) any establishment, adoption, amendment or termination of any equity incentive plan or arrangement;

(x) any issuance, delivery or sale, or authorization of the issuance, delivery or sale, of Company Securities or any equity or equity-linked securities of any Subsidiary of the Company, other than (A) pursuant to equity incentive plans and arrangements previously approved pursuant to this Section 3.6 and by the Company Board, (B) to the Company or one of its Wholly Owned Subsidiaries and (C) in the case of issuance of securities by any Subsidiary of the Company located outside of the United States, de minimis issuances required by Applicable Law;

(xi) any termination of the employment of the Chief Executive Officer of the Company or any appointment of a new Chief Executive Officer of the Company;

(xii) any amendment to the organizational documents (whether by merger, consolidation or otherwise) of the Company or any Significant Subsidiary, other than any such amendment to the organizational documents of any Wholly Owned Subsidiary of the Company that does not disproportionately and adversely affect Emerson in its capacity as an indirect stockholder of such Subsidiary as compared to other indirect stockholders of such Subsidiary;

(xiii) any establishment, adoption, material amendment or termination of any disclosure controls and procedures of the Company; and

(xiv) authorize, agree or commit to do any of the foregoing.

(b) Following the Second Trigger Date until the Third Trigger Date, the Company shall not, and shall cause the other members of the Company Group not to, directly or indirectly, do any of the following without the prior written consent of Emerson:

(i) any merger, consolidation, reorganization, conversion or any other business combination involving the Company, or sale of all or substantially all of the consolidated assets of the Company;

(ii) any sale, transfer, lease, pledge, abandonment or other disposition or exclusive license (in each case of the foregoing, including by merger, consolidation, reorganization, conversion, joint venture, sale of stock or assets or otherwise) of any assets, businesses, interests, properties, securities or Persons with a value in excess of \$25,000,000 in any transaction or series of related transactions in any 12-month period, other than (A) sales of inventory or services or dispositions of obsolete assets in each case in the ordinary course of business or (B) to the Company or any of its Wholly Owned Subsidiaries;

(iii) any initiation, adoption or public proposal of a voluntary liquidation, dissolution, receivership, bankruptcy or other insolvency proceeding involving the Company;

(iv) any material amendment to the organizational documents (whether by merger, consolidation or otherwise) of the Company;

TABLE OF CONTENTS

(v) any establishment, adoption, material amendment or termination of any disclosure controls and procedures of the Company; and

(vi) authorize, agree or commit to do any of the foregoing.

(c) Following the Third Trigger Date until the Fourth Trigger Date, the Company shall not, and shall cause the other members of the Company Group not to, directly or indirectly, do any of the following without the prior written consent of Emerson:

(i) any initiation, adoption or public proposal of a voluntary liquidation, dissolution, receivership, bankruptcy or other insolvency proceeding involving the Company;

(ii) any amendment to the organizational documents (whether by merger, consolidation or otherwise) of the Company that disproportionately and adversely affects Emerson in its capacity as a stockholder of the Company as compared to other stockholders of the same class of securities of the Company; and

(iii) authorize, agree or commit to do any of the foregoing.

(d) The Company shall provide reasonable advance notice and reasonably detailed information of any action (including copies of any related presentations and definitive agreements) for which it seeks Emerson's prior written consent pursuant to this Section 3.6 and shall provide all other information reasonably and promptly requested by Emerson and its Representatives in connection with any such actions; provided that, in each case, the Company shall not be required to provide any information if providing such information would (i) violate Applicable Law, (ii) result in the loss of attorney-client privilege with respect to such information or (iii) result in the disclosure of Trade Secrets (as defined in the Transaction Agreement); provided further that the Company shall use commercially reasonable efforts to provide such information in a way that would not violate such Applicable Law or result in such loss or disclosure. Emerson shall inform the Company in writing as to whether or not consent is granted pursuant to this Section 3.6 no later than thirty (30) days (provided that, in the case of any requested consent pursuant to Section 3.6(a)(iii), (a)(iv), (a)(xiii) and (a)(xiv) (solely as it relates to the foregoing), and Section 3.6(b)(v) and (b)(vi) (solely as it relates to the foregoing), this shall be no later than fifteen (15) days) following the date on which the Company provides Emerson with the information regarding the transaction for which Emerson's consent is requested, and, for the avoidance of doubt, Emerson shall be deemed to have consented to such transaction if Emerson does not provide a written statement that the requested consent has been denied within such time period. Emerson Parent shall make its Chief Executive Officer reasonably available to the Company for the purpose of responding to such requests.

(e) The dollar amounts set forth in Sections 3.6(a)(ii), (a)(iii), (a)(vi) and (a)(vii) and Sections 3.6(b)(ii) shall be increased by (i) on December 31, 2025, by the percentage increase in the Consumer Price Index published by the U.S. Bureau of Labor Statistics (the "CPI") on December 31, 2025 as compared to the CPI on December 31, 2022, (ii) on December 31, 2028, by the percentage increase in the CPI on December 31, 2028 as compared to the CPI on December 31, 2025, and (iii) every three years from December 31, 2028, *mutatis mutandis*.

Section 3.7. Modifications to Business Strategy.

(a) Until the First Trigger Date, the Company shall not, and shall cause the other members of the Company Group not to, directly or indirectly, without the prior written consent of Emerson, modify the business strategy, or modify or expand the scope or nature of the business or other activities, of the Company or any of its Subsidiaries beyond the Company Business (which for the purposes of this provision includes control

or hardware-connected technology software products for, and software and technology intended for, historian), or authorize, agree or commit to do any of the foregoing.

(b) The Company shall provide reasonable advance notice and reasonably detailed information of any action (including copies of any related presentations and definitive agreements) for which it seeks Emerson's prior written consent pursuant to this Section 3.7 and shall provide all other information reasonably and promptly requested by Emerson and its Representatives in connection with any such actions; provided that, in each case, the Company shall not be required to provide any information if providing such information would (i) violate Applicable Law, (ii) result in the loss of attorney-client privilege with respect to such

[TABLE OF CONTENTS](#)

information or (iii) result in the disclosure of Trade Secrets (as defined in the Transaction Agreement); provided further that the Company shall use commercially reasonable efforts to provide such information in a way that would not violate such Applicable Law or result in such loss or disclosure. Emerson shall inform the Company in writing as to whether or not consent is granted pursuant to this Section 3.7 no later than thirty (30) days following the date on which the Company provides Emerson with the information regarding the action for which Emerson's consent is requested, and, for the avoidance of doubt, Emerson shall be deemed to have consented to such transaction if Emerson does not provide a written statement that the requested consent has been denied within such time period. Emerson Parent shall make its Chief Executive Officer reasonably available to the Company for the purpose of responding to such requests.

ARTICLE IV
OTHER AGREEMENTS

Section 4.1. Confidentiality.

(a) From the date hereof until the date that is three (3) years following the Fourth Trigger Date, subject to Section 4.1(c) and except as contemplated by this Agreement, any Transaction Document or any Intercompany Commercial Agreement, Emerson Parent shall not, shall cause the other members of the Emerson Group and its and such other members' directors and officers not to, and shall use its reasonable best efforts to cause it and such other members' employees and other agents and representatives (including legal counsel and outside advisors) not to, directly or indirectly, disclose any Company Confidential Information to any Person; provided that Company Confidential Information may be disclosed:

- (i) to any other member of the Emerson Group;
- (ii) to any Representative of any member of the Emerson Group in the normal course of the performance of such Representative's duties or to any financial institution providing credit to any member of the Emerson Group;
- (iii) to any Person to whom any member of the Emerson Group is contemplating a Transfer of Company Common Stock; provided that such Transfer would not be in violation of the provisions of this Agreement and such potential transferee is advised of the confidential nature of such information and agrees to be bound by a confidentiality agreement consistent with the provisions hereof;
- (iv) to any regulatory authority or ratings agency to which any member of the Emerson Group or any of its Affiliates is subject or with which it has regular dealings; provided that such authority or agency is advised of the confidential nature of such information; or
- (v) if the prior approval or written consent of the Company Board (not to be unreasonably withheld, conditioned or delayed) shall have been obtained.

Nothing contained herein shall prevent the use (subject, to the extent possible, to a protective order) of Company Confidential Information in connection with the assertion or defense of any claim by or against any

member of the Emerson Group or the Company Group, any Affiliates thereof, any Non-Emerson Designee, any Non-Emerson Director, any Emerson Designee or any Emerson Director.

For purposes of this Section 4.1(a), any confidential information relating to the Company Group furnished to any member of the Emerson Group in connection with this Agreement, the Transition Services Agreement, the other Transaction Documents or the Intercompany Commercial Agreements is hereinafter referred to as "Company Confidential Information." "Company Confidential Information" does not include information that (i) is or becomes generally available to the public, other than as a result of a breach of this Section 4.1(a), (ii) was or became available to any member of the Emerson Group from a source other than a member of the Company Group or a Representative thereof on behalf of the Company Group or (iii) is developed independently by a member of the Emerson Group without reference to the Company Confidential Information; provided that, in the case of clause (ii), the source of such information was not known by such member of the Emerson Group to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any member of the Company Group with respect to such information.

(b) From the date hereof until the date that is three (3) years following the Fourth Trigger Date, subject to Section 4.1(c) and except as contemplated by this Agreement, any Transaction Document or any Intercompany Commercial Agreement, the Company shall not, shall cause the other members of the

[TABLE OF CONTENTS](#)

Company Group and its and such other members' directors and officers not to, and shall use its reasonable best efforts to cause it and such other members' employees and other agents and representatives (including legal counsel and outside advisors) not to, directly or indirectly, disclose any Emerson Confidential Information to any Person; provided that Emerson Confidential Information may be disclosed:

- (i) to any other member of the Company Group;
- (ii) to any Representative of any member of the Company Group in the normal course of the performance of such Representative's duties or to any financial institution providing credit to any member of the Company Group;
- (iii) to any regulatory authority or ratings agency to which any member of the Company Group or any of its Affiliates is subject or with which it has regular dealings; provided that such authority or agency is advised of the confidential nature of such information; or
- (iv) if the prior approval or written consent of Emerson (not to be unreasonably withheld, conditioned or delayed) shall have been obtained.

Nothing contained herein shall prevent the use (subject, to the extent possible, to a protective order) of Emerson Confidential Information in connection with the assertion or defense of any claim by or against any member of the Emerson Group or the Company Group, any Affiliates thereof, any Non-Emerson Designee or any Non-Emerson Director.

For purposes of this Section 4.1(b), any confidential information relating to the Emerson Group furnished to any member of the Company Group in connection with this Agreement, the Transition Services Agreement, the other Transaction Documents or the Intercompany Commercial Agreements is hereinafter referred to as "Emerson Confidential Information." "Emerson Confidential Information" does not include information that (i) is or becomes generally available to the public, other than as a result of a breach of this Section 4.1(b), (ii) was or became available to any member of the Company Group from a source other than a member of the Emerson Group or a Representative thereof on behalf of the Emerson Group or (iii) is developed independently by a member of the Company Group without reference to the Emerson Confidential Information; provided that, in the case of clause (ii), the source of such information was not known by such member of the Company Group to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any member of the Emerson Group with respect to such information.

(c) If Emerson or any of its Affiliates or Representatives, on the one hand, or the Company or any of its Affiliates or Representatives, on the other hand, are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) by any Governmental Authority or pursuant to Applicable Law to disclose or provide any Company Confidential Information or Emerson Confidential Information, respectively, the Person receiving such request or demand or subject to such requirement, or so required by Applicable Law, shall use commercially reasonable efforts to provide the other Party with written notice of such request, demand or requirement as promptly as practicable under the circumstances so that such other Party shall have an opportunity to seek an appropriate protective order. The Party receiving such request or demand or subject to such requirement agrees to take, and cause its Representatives to take, at the requesting Party's expense, all commercially reasonable steps necessary to obtain confidential treatment by the recipient. Subject to the foregoing, the Party that received such request or demand or is subject to such requirement may thereafter disclose or provide any Company Confidential Information or Emerson Confidential Information, as the case may be, to the extent required by such Applicable Law (as so advised by counsel) or such Governmental Authority.

Section 4.2. Restrictions on Transferability and Acquisitions.

(a) Lockup. For a period of two (2) years beginning on the date hereof (the "Lockup Period"), no member of the Emerson Group shall Transfer any Company Common Stock to any Person that is not a controlled Affiliate of Emerson Parent, unless approved by an RPT Committee; provided that Section 4.2(a) shall be of no further force or effect from and after the Third Trigger Date.

(b) Standstill.

(i) For a period of two (2) years beginning on the date hereof (the "Standstill Period"), Emerson Parent shall not, and shall cause the other members of the Emerson Group not to, directly or

[TABLE OF CONTENTS](#)

indirectly, in any manner, effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or otherwise participate in or knowingly encourage, any acquisition of Company Common Stock (including in derivative form) or any tender or exchange offer, merger, consolidation, business combination or other similar transaction involving the Company or any other member of the Company Group that would result in the Emerson Ownership Percentage being greater than the Emerson Ownership Percentage as of the date hereof; provided that Emerson Parent shall be permitted to make a private proposal to the Company Board that would not reasonably be expected to require the Company or any other member of the Company Group to make any public announcement or other disclosure. The foregoing shall not prohibit:

(A) Emerson Parent or any other member of the Emerson Group from acquiring Company Common Stock by way of stock splits, stock dividends, reclassifications, recapitalizations or other distributions by the Company to all holders of Company Common Stock on a pro rata basis; or

(B) acquisitions by Emerson Parent or any other member of the Emerson Group of Company Common Stock (A) approved by an RPT Committee, (B) pursuant to the exercise of the preemptive rights set forth in Section 4.3 or the percentage maintenance rights set forth in Section 4.4, (C) pursuant to the Pre-Agreed Procedures or (D) of no more than five (5%) of the outstanding Company Common Stock in the aggregate (as measured as of the date hereof) during the Standstill Period in the open market.

(c) Buyout Transaction. Until the Second Trigger Date, any proposal by any member of the Emerson Group to acquire in a transaction or series of related transactions reasonably expected to result in the acquisition of all of the Company Common Stock held by stockholders other than the Emerson Group (the "Other Stockholders") must either be (as elected by Emerson in its sole discretion) (i) subject to review, evaluation and prior written approval of an RPT Committee, or (ii) submitted for approval to the stockholders

of the Company, with a non-waivable condition that a majority of the Company Common Stock held by Other Stockholders approve the transaction (or equivalent tender offer condition).

(d) Competitors. Following the Second Trigger Date, Emerson Parent shall not, and shall cause the other members of the Emerson Group not to, Transfer, in a single transaction or in a series of transactions, more than ten percent (10%) of the then-outstanding Company Common Stock to any Person who is engaged in any business that engages in the Company Business (other than a member of the Company Group or a member of the Emerson Group), unless approved by an RPT Committee.

(e) Company Obligations. The Company shall not adopt any stockholder rights plan, "poison pill" or similar arrangement, or adopt any anti-takeover provisions under its organizational documents, that would trigger any right, obligation or event as a result of any Transfer of Company Common Stock by any member of the Emerson Group.

Section 4.3. Preemptive Rights.

(a) To the extent permitted under Nasdaq rules, the Company hereby grants to Emerson the right until the Second Trigger Date to purchase up to its Pro Rata Portion of any Company Securities that the Company may from time to time propose to issue or sell to any Person; provided that, without limiting the Pre-Agreed Procedures, in the case Company Securities are proposed to be issued (in whole or in part) as consideration in any merger, consolidation, reorganization, conversion, joint venture or any other business combination, or any acquisition (including by merger, consolidation, acquisition of stock or assets or otherwise) of any businesses, assets, operations or securities comprising a business (any such transaction, an "M&A Transaction"), Emerson shall only be entitled to purchase a number of such Company Securities up to its Percentage Maintenance Share.

(b) Without limiting Emerson's rights pursuant to Section 3.6, the Company shall give written notice to Emerson (an "Issuance Notice") of any proposed issuance or sale described in Section 4.3(a) within five (5) Business Days following any meeting of the Company Board or any committee of the Company Board (or subcommittee thereof) at which any such issuance or sale is approved or, if the approval of the Company Board or any committee of the Company Board (or subcommittee thereof) is not required in

TABLE OF CONTENTS

connection with such issuance or sale, no less than thirty (30) days prior to the date of the proposed issuance or sale. The Issuance Notice shall, if applicable, be accompanied by a written offer from any prospective purchaser seeking to purchase Company Securities and shall set forth the material terms and conditions of the proposed issuance or sale, including:

(i) the number and class of the Company Securities to be issued or sold and the percentage of the outstanding shares of capital stock of the Company such issuance or sale would represent;

(ii) the proposed issuance or sale date, which shall be at least thirty (30) days from the date of receipt by Emerson of the Issuance Notice; and

(iii) (x) in the case of an issuance for cash (other than a public offering of Company Securities) or offer from a prospective third party for cash, the proposed purchase price in cash per Company Security and (y) in all other cases (including a public offering of Company Securities), the Company's calculation of the purchase price based on the Pre-Agreed Procedures (such proposed purchase price in clause (x) or (y), the "Proposed Purchase Price").

(c) For a period of thirty (30) days (such period, as it may be extended pursuant to the proviso of this sentence, the "Election Period") following the receipt by Emerson of an Issuance Notice, Emerson shall have the right to elect irrevocably to purchase up to its Pro Rata Portion of the Company Securities (or, to the extent applicable as set forth in the proviso of Section 4.3(a), a number of Company Securities up to its Percentage Maintenance Share) at the Proposed Purchase Price by delivering a written notice to the Company; provided

that, following receipt of an Issuance Notice, Emerson may agree upon a different Proposed Purchase Price with an RPT Committee in accordance with the Related Party Transactions Policy in which case (i) Emerson shall purchase up to its Pro Rata Portion of the Company Securities (or, to the extent applicable as set forth in the proviso of Section 4.3(a), a number of Company Securities up to its Percentage Maintenance Share) at such other Proposed Purchase Price and (ii) the Election Period shall be tolled for so long as Emerson and an RPT Committee are working in good faith to agree on a Proposed Purchase Price until such time as Emerson and such RPT Committee agree on the Proposed Purchase Price. If, at the termination of the Election Period, Emerson shall not have delivered such notice to the Company, Emerson shall be deemed to have waived all of its rights under this Section 4.3 with respect to the purchase of the Company Securities referred to in the Issuance Notice. The closing of any purchase by Emerson shall be consummated concurrently with the consummation of the issuance or sale described in the Issuance Notice; provided that the closing of any purchase by Emerson may be extended beyond the closing of the transaction in the Issuance Notice to the extent necessary to (x) obtain any required approval of a Governmental Authority or (y) to the extent stockholder approval is required under the Nasdaq rules, in which case the Company and Emerson shall use their respective reasonable best efforts to obtain any such approval(s); provided that the Emerson Ownership Percentage and the Emerson Fully-Diluted Ownership Percentage shall at all times during this period be calculated as if Emerson shall have exercised its rights pursuant to this Section 4.3 in full and as if all remaining shares described in the Issuance Notice shall have been issued or sold, until such time that (i) such sale to Emerson is consummated, (ii) in the case of a required approval of a Governmental Authority, there is a final, non-appealable court order prohibiting Emerson from acquiring such Company Securities, (iii) in the case stockholder approval is required under the Nasdaq rules, such stockholder vote shall have occurred and such sale to Emerson not be approved or (iv) Emerson determines not to exercise such rights.

(d) Upon the expiration of the Election Period, the Company shall be free to sell such Company Securities referenced in the Issuance Notice that Emerson has not elected irrevocably to purchase on terms and conditions no more favorable to the purchasers thereof than those offered to Emerson in the Issuance Notice delivered in accordance with Section 4.3(b); provided that if such sale is not consummated within thirty (30) days of the expiration of the Election Period, then any further issuance or sale of such Company Securities shall again be subject to this Section 4.3.

(e) For the avoidance of doubt, the provisions of this Section 4.3 shall terminate on the Second Trigger Date. Notwithstanding anything to the contrary in this Agreement, this Section 4.3 shall not apply with respect to the issuance or sale of Other Company Securities (as defined in the Pre-Agreed Procedures) which shall be subject to the terms and conditions of the Pre-Agreed Procedures.

[TABLE OF CONTENTS](#)

(f) In all cases where Emerson has the right to purchase Company Securities up to its Percentage Maintenance Share pursuant to this Agreement (including Schedule 4.5(c)), following the issuance or sale of the applicable Company Securities that triggers such Percentage Maintenance Share, the Emerson Ownership Percentage and the Emerson Fully-Diluted Ownership Percentage shall at all times be calculated as if Emerson shall have exercised such right in full and as if any Company Securities not yet issued or sold to the third party shall have been issued or sold, until the earlier of (i) the termination of the period for Emerson to elect to exercise such right if Emerson shall not have elected to exercise such right and (ii) the consummation of Emerson's exercise of such right, at which time the Emerson Ownership Percentage and the Emerson Fully-Diluted Ownership Percentage shall be calculated in accordance with the definitions thereof.

Section 4.4. Percentage Maintenance Share.

(a) Following the Second Trigger Date, to the extent permitted under Nasdaq rules, with respect to any Company Securities that the Company may from time to time issue or sell to any Person, the Company hereby grants to Emerson the right to purchase Company Securities up to its Percentage Maintenance Share in connection with such transaction.

(b) Without limiting Emerson's rights pursuant to Section 3.6, the Company shall give written notice to Emerson (a "Maintenance Notice") of any issuance or sale of described in Section 4.4(a) within five (5) Business Days following such issuance or sale. The Maintenance Notice shall set forth the material terms and conditions of such issuance or sale, including:

- (i) the number and class of the Company Securities issued or sold and the percentage of the outstanding shares of capital stock of the Company such issuance or sale represented;
- (ii) the Percentage Maintenance Share with respect to such issuance or sale; and
- (iii) the Proposed Purchase Price.

(c) For a period of 30 days (such period, as it may be extended pursuant to the proviso of this sentence, the "Maintenance Election Period") following the receipt by Emerson of a Maintenance Issuance Notice, Emerson shall have the right to elect irrevocably to purchase up to its Percentage Maintenance Share at the Proposed Purchase Price by delivering a written notice to the Company; provided that, following receipt of a Maintenance Issuance Notice, Emerson may agree upon a different Proposed Purchase Price with an RPT Committee in accordance with the Related Party Transactions Policy in which case (i) Emerson shall purchase up to its Percentage Maintenance Share at such other Proposed Purchase Price and (ii) the Maintenance Election Period shall be tolled for so long as Emerson and an RPT Committee are working in good faith to agree on a Proposed Purchase Price until such time as Emerson and such RPT Committee agree on the Proposed Purchase Price. If, at the termination of the Maintenance Election Period, Emerson shall not have delivered such notice to the Company, Emerson shall be deemed to have waived all of its rights under this Section 4.4 with respect to the purchase of the Company Securities referred to in the Maintenance Issuance Notice. The closing of any purchase by Emerson shall be consummated promptly following Emerson's delivery of such notice; provided that the closing of any purchase by Emerson may be extended to the extent necessary to (x) obtain any required approval of a Governmental Authority or (y) to the extent stockholder approval is required under the Nasdaq rules, in which case the Company and Emerson shall use their respective reasonable best efforts to obtain any such approval(s); provided that the Emerson Ownership Percentage and the Emerson Fully-Diluted Ownership Percentage shall at all times during this period be calculated as if Emerson shall have exercised its rights pursuant to this Section 4.4 in full and as if any Company Securities not yet issued or sold to the third party described in the Maintenance Notice shall have been issued or sold, until such time that (i) such sale to Emerson is consummated, (ii) in the case of a required approval of a Governmental Authority, there is a final, non-appealable court order prohibiting Emerson from acquiring such Company Securities, (iii) in the case stockholder approval is required under the Nasdaq rules, such stockholder vote shall have occurred and such sale to Emerson not be approved or (iv) Emerson determines not to exercise such rights.

[TABLE OF CONTENTS](#)

(d) For the avoidance of doubt, the provisions of this Section 4.4 shall be in effect following the Second Trigger Date. Notwithstanding anything to the contrary in this Agreement, this Section 4.4 shall not apply with respect to the issuance or sale of Other Company Securities (as defined in the Pre-Agreed Procedures) which shall be subject to the terms and conditions of the Pre-Agreed Procedures.

Section 4.5. Related Party Transactions.

(a) All transactions and agreements entered into at or prior to the Closing that would have been Related Party Transactions if they were entered into after the Closing (including any proposed Related Party Transactions contemplated by the Transaction Documents) between any member of the Company Group, on the one hand, and any member of the Emerson Group, on the other hand (the "Pre-Closing Related Party Transactions") shall not be subject to any further approval of the Company Board or any committee or subcommittee of the Company Board (including by an RPT Committee), including with respect to any implementation of the terms of the Pre-Closing Related Party Transactions (including, to the extent applicable, any negotiation of one or more long-form agreements reflecting the terms of the Commercial Agreement Term

Sheet (as defined in the Transaction Agreement); provided that, any material amendments to, material modifications or terminations (other than as a result of expiration or non-renewal) of, or material waivers, material consents or material elections under any Pre-Closing Related Party Transactions shall require the prior written approval of an RPT Committee, subject to and consistent with the Related Party Transactions Policy (as defined below).

(b) For so long as the Emerson Ownership Percentage is at least 20%, except as set forth in Section 4.5(c), all Related Party Transactions shall be governed by the policy set forth on Schedule 4.5(b) (as it may be amended from time to time pursuant to Section 7.7(a), the "Related Party Transactions Policy").

(c) The Related Party Transactions Policy shall not (i) apply to any transaction pursuant to Section 4.2(c), Section 4.3 or pursuant to the policies and procedures set forth on Schedule 4.5(c) (as may be amended from time to time, the "Pre-Agreed Procedures"), (ii) apply to any Related Party Transaction that is not a Material Related Party Transaction (as defined in the Related Party Transactions Policy) or (iii) limit Emerson's rights and the Company's obligations with respect to Section 3.6.

(d) Emerson shall have the right, but not the obligation, to participate in the transactions set forth in the Pre-Agreed Procedures to the extent set forth therein in accordance with the policies and procedures set forth therein, and the Company shall take all action such that Emerson shall be able to so participate if it so elects to the extent set forth therein.

Section 4.6. Non-Compete.

(a) Until the First Trigger Date, Emerson Parent will not, and will not permit any of the other members of the Emerson Group to, own, manage or operate any business that engages in the Company Business anywhere in the world except:

(i) ownership by Emerson Parent or any of the other members of the Emerson Group of less than an aggregate of 10% of the total equity ownership of a Person engaged in the Company Business; and

(ii) acquisitions by Emerson Parent or any of the other members of the Emerson Group of any business or Person that is engaged in the Company Business so long as no more than 20% of such business or Person's revenues (based on such business or Person's latest annual consolidated financial statements prior to such acquisition) are attributable to the Company Business; provided that Emerson Parent and the other members of the Emerson Group may acquire a diversified business or Person having more than 20% of such business or Person's revenues (based on such business or Person's latest annual consolidated financial statements prior to such acquisition) attributable to the Company Business as long as Emerson Parent or the applicable member of the Emerson Group divest the portion attributable to the Company Business in excess of such 20% threshold within 18 months following consummation of such acquisition.

[TABLE OF CONTENTS](#)

(b) Notwithstanding the foregoing, in no event will this Agreement restrict or limit Emerson Parent or any member of the Emerson Group from owning, managing or operating any business that engages in the Emerson Permitted Business anywhere in the world.

Section 4.7. No Solicitation of Employees. For a period of twelve (12) months beginning on the date hereof, each of the Company and Emerson Parent shall obtain the prior written consent of the other before such Party or any of its Affiliates, directly or indirectly, solicits the employment of, in the case of the Company, any Emerson Covered Employee and, in the case of Emerson Parent, any Company Covered Employee, or make or extend any offer of employment to, or hire, employ or engage (including as a consultant or any similar role), in the case of the Company, any Emerson Covered Employee and, in the case of Emerson Parent, any Company Covered Employee. This Section 4.7 shall cease to apply with respect to an Emerson Covered Employee or a Company Covered Employee, six months after the date on which their employment with, in the case of an Emerson Covered Employee,

the Emerson Group and, in the case of a Company Covered Employee, the Company Group, is terminated. Nothing in this Section 4.7 shall restrict or prevent either Party or any of its Affiliates from making generalized solicitations or searches for employees by the use of advertisements in the media of any form (including trade media) or by engaging search firms that are not instructed to solicit, hire or engage in the case of the Company, Emerson Covered Employees and, in the case of Emerson Parent, Company Covered Employees.

Section 4.8. Intercompany Agreements. If the Emerson Ownership Percentage is not in excess of forty percent (40%) for a consecutive period of six (6) months or more, each of the Company (on behalf of the applicable member of the Company Group) and Emerson Parent (on behalf of the applicable member of the Emerson Group) shall have the right to terminate any Intercompany Commercial Agreement upon written notice to the other.

Section 4.9. Corporate Opportunity.

(a) General. In recognition and anticipation (i) that the Company will not be a Wholly Owned Subsidiary of Emerson and that Emerson will be a significant stockholder of the Company, (ii) that directors, officers or employees of Emerson may serve as directors or officers of the Company, (iii) that, subject to any contractual arrangements that may otherwise from time to time be agreed to between Emerson and the Company including this Agreement (including Section 4.6), the other Transaction Documents and the Intercompany Commercial Agreements, Emerson may engage in the same, similar or related lines of business as those in which the Company, directly or indirectly, may engage or other business activities that overlap with or compete with those in which the Company, directly or indirectly, may engage, (iv) that Emerson may have an interest in the same areas of corporate opportunity as the Company, and (v) that, as a consequence of the foregoing, it is in the best interests of the Company that the respective rights and duties of the Company and of Emerson, and the duties of any directors or officers of the Company who are also directors, officers or employees of Emerson, be determined and delineated in respect of any transactions between, or opportunities that may be suitable for both, the Company, on the one hand, and Emerson, on the other hand, this Section 4.9 shall to the fullest extent permitted by Applicable Law regulate and define the conduct of certain of the business and affairs of the Company in relation to Emerson and the conduct of certain affairs of the Company as they may involve Emerson and its directors, officers or employees, and the power, rights, duties and liabilities of the Company and its officers, directors and stockholders in connection therewith.

(b) Certain Agreements and Transactions Permitted. The Company has entered into this Agreement, and, subject to this Agreement, may from time to time enter into and perform one or more agreements (including the Intercompany Commercial Agreements) (or modifications or supplements to pre-existing agreements) with Emerson pursuant to which the Company, on the one hand, and Emerson, on the other hand, agree to engage in transactions of any kind or nature with each other or agree to compete, or to refrain from competing or to limit or restrict their competition, with each other, including to allocate and to cause their respective directors, officers or employees (including any who are directors, officers or employees of both) to allocate opportunities between or to refer opportunities to each other. Subject to this Section 4.9, and except as otherwise agreed in writing by the Company and Emerson, no such agreement, or the performance thereof by the Company or Emerson shall, to the fullest extent permitted by Applicable Law, be considered contrary to (i) any fiduciary duty that Emerson may owe to the Company or to any stockholder or other owner of an equity interest in the Company by reason of Emerson being a controlling

[TABLE OF CONTENTS](#)

or significant stockholder of the Company or participating in the control of the Company or (ii) any fiduciary duty owed by any director or officer of the Company who is also a director, officer or employee of Emerson to the Company, or to any stockholder thereof. Subject to Section 4.9(d), to the fullest extent permitted by Applicable Law, Emerson, as a stockholder of the Company, or as a participant in control of the Company, shall not have or be under any fiduciary duty to refrain from entering into any agreement or participating in any transaction referred to above, and no director or officer of the Company who is also a director, officer or employee of Emerson shall have or be under any fiduciary duty to the Company to refrain from acting on

behalf of the Company or of Emerson in respect of any such agreement or transaction or performing any such agreement in accordance with its terms.

(c) Business Activities. Except as otherwise set forth herein (including Section 4.6) or otherwise agreed in writing between the Company and Emerson, and subject to Section 4.9(d), Emerson shall to the fullest extent permitted by Applicable Law have no duty to refrain from (i) engaging in the same or similar activities or lines of business as the Company or (ii) doing business with any client, customer or vendor of the Company, and (except as provided in Section 4.9(d) below) neither Emerson nor any officer, director or employee thereof shall, to the fullest extent permitted by Applicable Law, be deemed to have breached its fiduciary duties, if any, to the Company solely by reason of Emerson's engaging in any such activity. Subject to Section 4.9(d), except as otherwise agreed in writing between the Company and Emerson, in the event that Emerson acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Company and Emerson, Emerson shall to the fullest extent permitted by Applicable Law not be liable to the Company or its stockholders for breach of any fiduciary duty as a stockholder of the Company by reason of the fact that Emerson acquires or seeks such corporate opportunity for itself, directs such corporate opportunity to another Person, or otherwise does not communicate information regarding such corporate opportunity to the Company, and the Company to the fullest extent permitted by Applicable Law renounces any interest or expectancy in such business opportunity and waives any claim that such business opportunity constituted a corporate opportunity that should have been presented to the Company.

(d) Corporate Opportunities. Except as otherwise agreed in writing between the Company and Emerson, in the event that a director or officer of the Company who is also a director, officer or employee of Emerson acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Company and Emerson, such director or officer shall to the fullest extent permitted by Applicable Law have fully satisfied and fulfilled his or her fiduciary duty with respect to such corporate opportunity, and the Company to the fullest extent permitted by Applicable Law renounces any interest or expectancy in such business opportunity and waives any claim that such business opportunity constituted a corporate opportunity that should have been presented to the Company, if such director or officer acts in a manner consistent with the following policy:

(i) such a corporate opportunity offered to any individual who is a director but not an officer or employee of the Company and who is also a director, officer or employee of Emerson shall belong to the Company only if such opportunity is expressly offered to such person solely in his or her capacity as a director of the Company and otherwise shall belong to Emerson; and

(ii) such a corporate opportunity offered to any individual who is an officer or employee of the Company and also is a director, officer or employee of Emerson shall belong to the Company unless such opportunity is expressly offered to such person in his or her capacity as a director, officer or employee of Emerson, in which case such opportunity shall belong to Emerson.

(e) Certain Definitions. For purposes of this Section 4.9, (1) "corporate opportunities" include business opportunities that the Company is financially able to undertake, which are, from their nature, in the line of the Company's business, are of practical advantage to it and are ones in which the Company, but for Section 4.9(c)-(d), would have an interest or a reasonable expectancy, (2) "Emerson" shall mean Emerson and each other member of the Emerson Group and (3) the "Company" shall mean the Company and each other member of the Company Group.

Section 4.10. Nasdaq. The Company Common Stock shall be listed on The NASDAQ Stock Market LLC, or any successor thereto.

Unless otherwise expressly provided herein, each of the covenants and agreements in this Article V shall terminate on the Third Trigger Date.

Section 5.1. Annual, Quarterly and Monthly Financial Information; Emerson's Operating Reviews.

(a) The Company shall deliver to Emerson Parent such financial, tax and accounting information and materials as Emerson Parent may reasonably request, including the following:

(i) within seven (7) Business Days following each calendar month-end, a monthly reporting package including an unaudited balance sheet of the Company as of the end of such month and the related statements of earnings, comprehensive income, stockholders' equity and cash flows, and reasonable supporting schedules and account detail for the month and year-to-date period on Emerson Parent's year-end basis, in accordance with GAAP, and setting forth in comparative form the figures for the corresponding periods of the previous fiscal year;

(ii) no later than the third (3rd) Monday of January, April, July, and October, forecast statements of earnings, cash flow, balance sheet and stockholders' equity, and reasonable supporting schedules and analysis for the current fiscal quarter and the next three fiscal quarters; and

(iii) No later than the fifteenth (15th) calendar day of August, a forecast for the next four fiscal quarters (Emerson Parent's fiscal year-end basis), including statements of earnings, cash flow, balance sheet and stockholders' equity, and supporting schedules and analysis by quarter, for the next fiscal year.

(b) On a quarter-end basis, no later than ten (10) Business Days following the end of a fiscal quarter, the Company shall deliver a discussion and analysis by management of the Company's and its Subsidiaries' consolidated financial condition and results of operations for the requisite quarterly and year-to-date periods on Emerson Parent's fiscal year basis (as applicable), and other information reasonably required to comply with Emerson Parent's SEC reporting requirements. The Company shall provide Emerson Parent an opportunity to meet with management of the Company to discuss such information required to be delivered by this Section 5.1 upon reasonable notice during normal business hours.

(c) No later than five (5) Business Days prior to the day the Company publicly files its Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the SEC, the Company shall deliver to Emerson Parent the substantially final form of its Annual Report on Form 10-K or Quarterly Report on Form 10-Q, together with the form of all certifications required by Applicable Law by each of the Chief Executive Officer and Chief Financial Officer of the Company and, with respect to the Annual Report on Form 10-K, the form of opinion the Company's independent certified public accountants expect to provide thereon.

Section 5.2. Emerson Public Filings. The Company shall cooperate, and cause its accountants to cooperate, with Emerson Parent to the extent reasonably requested by Emerson Parent in the preparation of Emerson Parent's press releases, public earnings releases, Quarterly Reports on Form 10-Q, Annual Reports to Shareholders, Annual Reports on Form 10-K, any Current Reports on Form 8-K and any amendments thereto and any other proxy, information and registration statements, reports, notices, prospectuses and any other filings made by any member of the Emerson Group with the SEC, any national securities exchange or otherwise made publicly available (collectively, "Emerson Public Filings"). The Company shall provide to Emerson Parent all information that Emerson Parent reasonably requests in connection with any such Emerson Public Filings or that is required to be disclosed therein under any Applicable Law. The Company agrees to provide such information in a timely manner, but no later than ten (10) Business Days following each quarter-end date. If and to the extent reasonably requested by Emerson Parent, the Company shall diligently and promptly review all drafts of such Emerson Public Filings and prepare in a diligent and timely fashion any portion of such Emerson Public Filing pertaining to the Company or the other members of the Company Group. Prior to any printing or public release of any Emerson Public Filing, an appropriate executive officer of the Company, shall, if requested by Emerson Parent, confirm to the best of such officer's knowledge that the information provided by the Company relating to the Company Group in such Emerson Public Filing is accurate, true and correct in all material respects. Unless

required by Applicable Law or GAAP or interpretations thereof, without the prior consent of Emerson Parent, the Company shall not publicly release any financial or other information that conflicts with the information with respect to the Company, any Affiliate of the Company or the Company Group that is provided by the Company for any Emerson Public Filing.

Section 5.3. Other Financial Reporting and Compliance Matters.

(a) Other Information. The Company shall provide to Emerson Parent such other information of the Company and the other members of the Company Group reasonably requested by Emerson, in a timely manner, in connection with its equity ownership in the Company.

(b) Public Information and SEC Reports. The Company shall timely file and consult with Emerson Parent in preparing reports, notices and proxy and information statements to be sent or made available by the Company to its security holders, all regular, periodic and other reports filed under Sections 13, 14 and 15 of the Exchange Act by the Company and all registration statements and prospectuses (including all financial statements contained therein) to be filed by the Company with the SEC or any securities exchange pursuant to the listed company manual (or similar requirements) of such exchange (collectively, "Company Public Documents"). Emerson Parent shall have the right to review and comment on any proposed Company Public Document reasonably in advance of the date the same are printed for distribution to the Company's stockholders, sent to the Company's stockholders or filed with the SEC, whichever is earliest. The Company shall consider any such comments in good faith and deliver to Emerson Parent, no later than the date the same are printed for distribution to the Company's stockholders, sent to the Company's stockholders or filed with the SEC, whichever is earliest, final copies of all Company Public Documents (except to the extent publicly available via the SEC's EDGAR system). The Company shall file on a date reasonably determined by Emerson Parent, (x) its Quarterly Report on Form 10-Q with the SEC and (y) its Annual Report on Form 10-K with the SEC, unless the Company is otherwise required by Applicable Law. The Parties shall cooperate in preparing all press releases and other statements to be made available by the Company or any other member of the Company Group to the public, including information concerning material developments in the business, properties, results of operations, financial condition or prospects of the Company or any other member of the Company Group. Emerson shall have the right to review and comment on, reasonably in advance, but no later than five (5) Business Days of public release or release to financial analysts or investors (1) all press releases and other statements to be made available by the Company or any other member of the Company Group to the public that relate to financial or accounting matters and (2) all reports and other information prepared by the Company or any other member of the Company Group for release to financial analysts or investors. The Company shall consider any such comments in good faith. No press release, report, registration, information or proxy statement, prospectus or other document which refers, or contains information with respect, to any member of the Emerson Group shall be filed with the SEC or otherwise made public or released to any financial analyst or investor by the Company or any of its Subsidiaries without the prior written consent of Emerson Parent (which consent shall not be unreasonably withheld, conditioned or delayed) with respect to those portions of such document that contain information with respect to any member of the Emerson Group, except as may be required by Applicable Law (in such cases the Company shall use its reasonable best efforts to notify the relevant member of the Emerson Group and to obtain such member's consent before making such a filing with the SEC or otherwise making any such information public).

(c) Earnings Releases. The Company shall publicly release its financial results for each annual and quarterly period on or before the first Tuesday of the second month following the quarter end for the quarter to which such results relate.

(d) Audit.

(i) Coordination of Auditors. The Company will not change auditors without the prior written consent of Emerson Parent.

(ii) Access to Personnel and Working Papers. The Company will request the independent certified public accountants of the Company (the "Company Auditors") to make available to the independent certified public accountants of Emerson Parent (the "Emerson Auditors") both the personnel who performed or are performing the annual audit of the Company and, consistent with customary professional practice and courtesy of such auditors with respect to the furnishing of work

[TABLE OF CONTENTS](#)

papers, work papers related to the annual audit of the Company, in all cases within a reasonable time before the Company Auditors' opinion date, so that the Emerson Auditors are able to perform the procedures they consider necessary to take responsibility for the work of the Company Auditors as it relates to the Emerson Auditors' report on the Emerson Annual Statements, all within sufficient time to enable Emerson to meet its timetable for the printing, filing and public dissemination of the Emerson Annual Statements.

(e) Operating Review Process. Until the Second Trigger Date, upon Emerson Parent's request, the Company's Chief Executive Officer and all other relevant members of the Company's senior management requested by Emerson Parent shall meet with members of Emerson Parent's senior management at least four times a fiscal year to discuss matters relating to Emerson's investment in the Company, including with respect to reviews of the Company's operations, affairs, finances or results and the Company's business plan and strategy; provided that following the Second Trigger Date and until the Third Trigger Date, (i) such meetings shall be held at least twice a fiscal year and (ii) if none of the Emerson Directors is a director, officer or employee of Emerson or any member of the Emerson Group, the Company will not be required to discuss the Company's business plan and strategy at such meetings.

(f) Disclosure Committee. The Company shall establish a committee (the "Disclosure Committee") consisting of members of the Company Board or management of the Company to, among other things, assist in preparing the disclosures required under Applicable Law. Emerson shall be entitled to appoint one individual as a non-voting observer to the Disclosure Committee who is entitled to attend meetings of the Disclosure Committee (which non-voting observer need not be a member of the Company Board).

(g) Compliance. Emerson Parent will be permitted to conduct internal audits on the Company Group to assess the Company Group's internal controls over financial reporting as well as perform risk assessments on the Company Group's controls over financial reporting processes. Such internal audits shall be conducted upon reasonable prior written notice to the Company, and any such audit shall not occur more than two (2) times during any twelve (12)-month period, unless reasonably justified. The Company will implement internal control changes as reasonably proposed by Emerson Parent, provided that following the Second Trigger Date and until the Third Trigger Date, the foregoing shall not apply and instead the Company Board shall determine if the Company will implement any internal control changes reasonably proposed by Emerson Parent. Emerson may, from time to time and at any time, request an audit ("Compliance Audit") of the Company's compliance programs, policies and procedures (the "Compliance Program"). Each Compliance Audit shall be conducted upon reasonable prior written notice to the Company, and any such Compliance Audit shall not occur more than two (2) times during any twelve (12)-month period, unless reasonably justified. In the event of a Compliance Audit, the Company shall (i) provide such information reasonably requested by Emerson relating to the Compliance Program, (ii) make available during normal business hours its Representatives upon Emerson's reasonable request and (iii) implement any changes to the Compliance Program as reasonably proposed by Emerson Parent; provided that following the Second Trigger Date and until the Third Trigger Date, the foregoing Section 5.3(g)(iii) shall not apply and instead the Company Board shall determine if the Company will implement any changes reasonably proposed by Emerson Parent to the Compliance Program.

(h) Notice of Certain Events.

(i) The Company shall promptly notify Emerson Parent after the Company becomes aware (but no later than two (2) Business Days after it becomes so aware) of any ethics allegations involving violations of law, members of senior management or financial reporting issues, any material investigations (internal or external), or audit or Action regarding or involving any member of the Company Group. The Company shall keep Emerson Parent reasonably apprised of the status of each such allegation, investigation, audit or Action, consult with Emerson Parent with respect thereto and consider in good faith any comments or suggestions from Emerson Parent. In addition, Emerson Parent shall have the right to assume the defense of, and appoint legal counsel for, any such allegation, investigation, audit or Action which, if resolved

adversely, could reasonably be expected (in Emerson Parent's judgment) to result in significant reputational, injunctive or declaratory relief or financial harm to Emerson.

[TABLE OF CONTENTS](#)

(ii) The Company shall notify Emerson Parent of any non-material amendment of any disclosure controls and procedures of the Company.

Section 5.4. Production of Witnesses; Records; Cooperation.

(a) Except in the case of an adversarial Action by one Party against another Party, each of Emerson and the Company shall use its reasonable efforts to make available to each other Party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action in which the requesting Party may from time to time be involved. The requesting Party shall bear all costs and expenses in connection therewith.

(b) Without limiting the foregoing, Emerson and the Company shall cooperate and consult to the extent reasonably necessary with respect to any Actions other than an adversarial Action by one Party against another Party.

(c) The obligation of Emerson and the Company to provide witnesses pursuant to this Section 5.4 is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to provide as witnesses officers without regard to whether the witness or the employer of the witness could assert a possible business conflict (subject to the exception set forth in the first sentence of Section 5.4(a)).

(d) In connection with any matter contemplated by this Section 5.4, Emerson and the Company will enter into a mutually acceptable joint defense agreement so as to maintain to the extent practicable any applicable attorney-client privilege, work product immunity or other applicable privileges or immunities of any member of any Group.

Section 5.5. Privilege. The provision of any information pursuant to this Article V shall not be deemed a waiver of any privilege, including privileges arising under or related to the attorney-client privilege or any other applicable privilege (a "Privilege"). Neither the Company or any member of the Company Group nor Emerson or any member of the Emerson Group will be required to provide any information pursuant to this Article V if the provision of such information would serve as a waiver of any Privilege afforded such information.

ARTICLE VI
DISPUTE RESOLUTION

Section 6.1. General Provisions.

(a) Any dispute, controversy or claim arising out of, in connection with, or relating to this Agreement, or the validity, interpretation, breach or termination thereof (a "Dispute"), shall be resolved in accordance with the procedures set forth in this Article VI, which shall be the sole and exclusive procedures for the resolution of any such Dispute except as set forth in Section 6.1(g) and Section 7.12.

(b) Commencing with an Initial Notice (as defined in Section 6.2), all communications between the Parties or their Representatives in connection with the attempted resolution of any Dispute shall be deemed to have been delivered in furtherance of a Dispute settlement and shall be exempt from discovery and production, and shall not be admissible in evidence for any reason (whether as an admission or otherwise), in any proceeding for the resolution of the Dispute.

(c) The Parties expressly waive and forego any right to trial by jury.

(d) The specific procedures set forth below, including the time limits referenced therein, may be modified by agreement of the Parties in writing.

(e) All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the procedures specified in this Article VI are pending. The Parties will take such action, if any, required to effectuate such tolling.

(f) The Parties hereby irrevocably submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or, solely if such court lacks subject matter jurisdiction, any other state court or federal court having subject matter jurisdiction located within the State of Delaware in connection with any such

[TABLE OF CONTENTS](#)

Dispute, and each Party hereby irrevocably agrees that all claims in respect of any such Dispute or any suit, action or proceeding related thereto may be heard and determined solely in such courts. The Parties hereby irrevocably waive, to the fullest extent permitted by Applicable Law, any objection that they may now or hereafter have to the laying of venue of any such Dispute brought in such courts or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such Dispute may be enforced in other jurisdictions by suit, on the judgment or in any other manner provided by Applicable Law.

(g) To the extent a Dispute under this Agreement is not resolved pursuant to Section 6.2 herein, a Party may bring such a Dispute in court solely in accordance with Section 6.1(f) of this Agreement. For the avoidance of doubt, unless pursuant to Section 7.12, a Party may not bring a Dispute in court without first following the procedures set forth in Section 6.2.

Section 6.2. Consideration by Senior Executives. The Parties shall attempt in good faith to resolve any Dispute by negotiation at a meeting between the Chief Executive Officer of Emerson Parent, on the one hand, and the Chief Executive Officer of the Company, on the other hand. Either Party may initiate the negotiation process by providing a written notice to the other (the "Initial Notice"). Fifteen (15) days after delivery of the Initial Notice, the receiving Party shall submit to the other a written response (the "Response"). The Initial Notice and the Response shall include (i) a statement of the Dispute and of the providing Party's position and (ii) the name and title of any person that will represent that Party and of any other person who will accompany such person. Such meeting may be in person or by telephone within ten (10) Business Days of the date of the Response to seek a resolution of the Dispute.

Section 6.3. Attorneys' Fees and Costs. Each Party will bear its own attorneys' fees and costs incurred in connection with the resolution of any Dispute in accordance with this Article VI.

ARTICLE VII
MISCELLANEOUS

Section 7.1. Corporate Power.

(a) Each of Emerson Parent and Emerson represents on behalf of itself and the Company represents on behalf of itself, as follows:

(i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; and

(ii) this Agreement has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms thereof.

Section 7.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 7.3. Notices. All notices, requests and other communications to any Party hereunder shall be in writing (including facsimile transmission and electronic mail ("e-mail")) transmission, so long as a receipt of such e-mail is requested and received) and shall be given:

If to Emerson Parent or Emerson, to:

Emerson Electric Co.
8000 West Florissant Avenue
P.O. Box 4100
St. Louis, MO 63136
Attention [name]
Facsimile No.: [number]
E-mail: [address]

27

[TABLE OF CONTENTS](#)

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

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Attention: Phillip R. Mills
Marc O. Williams
Cheryl Chan
Facsimile No.: (212) 701-5800
E-mail: phillip.mills@davispolk.com
marc.williams@davispolk.com
cheryl.chan@davispolk.com

If to the Company, to:

Aspen Technology, Inc.
20 Crosby Drive
Bedford, MA 01703
Attention: SVP and General Counsel
Email: legalnotices@aspentech.com

with copies to (which shall not constitute notice):

Aspen Technology, Inc.
20 Crosby Drive
Bedford, MA 01703
Attention: President and CEO
Email: legalnotices@aspentech.com

and

Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston Street
Boston, MA 02116
Attention: Graham Robinson
Chadé Severin
Facsimile No.: (617) 573-4822
Email: graham.robinson@skadden.com
chade.severin@skadden.com

or to such other address or facsimile number as such Party may hereafter specify for the purpose by notice to the other Party. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt.

Section 7.4. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no

way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

[TABLE OF CONTENTS](#)

Section 7.5. Entire Agreement; No Other Representations and Warranties.

(a) This Agreement (including the annexes hereto) and the Transaction Documents constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter hereof and thereof.

(b) Each Party hereby acknowledges and agrees that, except for any representations and warranties made by the other Party as set forth in Section 7.1, neither the other Party nor any other Person is making or has made any representations or warranty, expressed or implied, at law or in equity, with respect to or on behalf of the other Party, or the accuracy or completeness of any information regarding the other Party in any form in expectation of or in connection with this Agreement.

Section 7.6. Assignment; No Third-Party Beneficiaries. No Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other Party except that Emerson Parent and Emerson may assign this Agreement to a member of the Emerson Group or in connection with a Transfer of Company Common Stock in accordance with this Agreement. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

Section 7.7. Amendment; Waiver.

(a) Any provision of this Agreement (including any Schedule, the Related Party Transactions Policy and the Pre-Agreed Procedures) may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party or, in the case of a waiver, by the Party against whom the waiver is to be effective; provided that any material amendment or material modification of this Agreement (including any Schedule, the Related Party Transactions Policy and the Pre-Agreed Procedures) shall require the prior written approval of an RPT Committee; provided further that any material waiver of any or all of the Company's rights granted under this Agreement shall require the prior written approval of an RPT Committee.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 7.8. Interpretations. The words "hereby," "herewith," "hereof," "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The table of contents, captions, headings and the division of this Agreement into Articles, Sections and other subdivisions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement unless otherwise specified. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," whether or not they are in fact followed by those words or words of like import. "Writing," "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic

media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to a particular statute or law shall be deemed also to include any Applicable Law. The sign "\$" and the term "dollars" means the lawful currency of the United States of America. References to "or" mean "and/or" unless the context otherwise requires.

Section 7.9. Exercise of Rights. The exercise of any right under this Agreement by Emerson Parent or Emerson shall be made in each such Person's sole discretion, subject to Applicable Law and any express limitations set forth in this Agreement.

TABLE OF CONTENTS

Section 7.10. Privileged Matters.

(a) Each of the Parties agrees, on its own behalf and on behalf of its directors, officers, employees and Affiliates, that the law firms listed on Schedule 7.10(a) (the "Emerson Law Firms") may serve as counsel to Emerson and the other members of the Emerson Group, on the one hand, and the Emerson Contributed Subsidiaries, on the other hand, in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the Transactions, and that, following consummation of the Transactions, the Emerson Law Firms may serve as counsel to any member of the Emerson Group or any director, officer, employee or Affiliate of any member of the Emerson Group, in connection with any litigation, claim or obligation arising out of or relating to this Agreement, the other Transaction Documents or the Transactions notwithstanding such representation. In connection with any representation expressly permitted pursuant to the prior sentence, the Company hereby irrevocably waives and agrees not to assert, and agrees to cause the other members of the Company Group to irrevocably waive and not to assert any conflict of interest arising from or in connection with (i) prior representation of the Emerson Contributed Subsidiaries by the Emerson Law Firms, and (ii) representation of any member of the Emerson Group prior to and after the Closing by the Emerson Law Firms. As to any privileged attorney-client communications between the Emerson Law Firms and any Emerson Contributed Subsidiary prior to the Closing (collectively, the "Privileged Communications"), the Company, together with any of its Affiliates, successors or assigns, agrees that no such party may use or rely on any of the Privileged Communications in any action against or involving any of the Parties after the Closing.

(b) The Company further agrees, on behalf of itself and on behalf of the other members of the Company Group, that all privileged communications in any form or format whatsoever between or among the Emerson Law Firms, on the one hand, and Emerson, any other member of the Emerson Group or the Emerson Contributed Subsidiaries, or any of their respective directors, officers, employees or other representatives, on the other hand, that relate to the negotiation, documentation and consummation of the Transactions, any alternative transactions to the Transactions presented to or considered by Emerson Parent, any other member of the Emerson Group or the Emerson Contributed Subsidiaries, or any dispute arising under this Agreement or the other Transaction Documents, unless finally adjudicated to not be privileged by a court of law (collectively, the "Privileged Deal Communications"), shall remain privileged after the Closing and that the Privileged Deal Communications and the expectation of client confidence relating thereto shall belong solely to Emerson Parent, shall be controlled by Emerson Parent, and shall not pass to or be claimed by the Company or any other member of the Company Group. The Company agrees that it will not, and that it will cause the other members of the Company Group not to, (i) access or use the Privileged Deal Communications, (ii) seek to have any member of the Emerson Group waive the attorney-client privilege or any other privilege, or otherwise assert that the Company or any other member of the Company Group has the right to waive the attorney-client privilege or other privilege applicable to the Privileged Deal Communications, or (iii) seek to obtain the Privileged Deal Communications or Non-Privileged Deal Communications (as defined below) from any member of the Emerson Group or the Emerson Law Firms.

(c) The Company further agrees, on behalf of itself and on behalf of the other members of the Company Group, that all communications in any form or format whatsoever between or among any of the Emerson Law Firms, Emerson Parent, any other member of the Emerson Group or the Emerson Contributed Subsidiaries, or any of their respective directors, officers, employees or other Affiliates or Representatives that relate to the negotiation, documentation and consummation of the Transactions, any alternative transactions to the Transactions presented to or considered by Emerson Parent, any other member of the Emerson Group or the Emerson Contributed Subsidiaries, or any dispute arising under this Agreement and that are not Privileged Deal Communications (collectively, the "Non-Privileged Deal Communications"), shall also belong solely to Emerson Parent, shall be controlled by Emerson Parent and ownership thereof shall not pass to or be claimed by the Company or any other member of the Emerson Group.

(d) Notwithstanding the foregoing, in the event that a dispute arises between the Company or any other member of the Company Group, on the one hand, and a third party other than Emerson Parent, any other member of the Emerson Group or their respective Affiliates, on the other hand, then the Company or such other member of the Company Group may assert the attorney-client privilege to prevent the disclosure

[TABLE OF CONTENTS](#)

of the Privileged Deal Communications to such third party; provided that to the extent such dispute relates to this Agreement, the other Transaction Documents or the Transactions, none of the Company or any other member of the Company Group may waive such privilege without the prior written consent of Emerson Parent. If the Company or any other member of the Company Group is legally required to access or obtain a copy of all or a portion of the Privileged Deal Communications, then the Company shall promptly (and, in any event, within three (3) Business Days) notify Emerson Parent in writing (including by making specific reference to this Section 7.10(d)) so that Emerson Parent can, at its sole cost and expense, seek a protective order, and the Company agrees to use commercially reasonable efforts to assist therewith.

(e) This Section 7.10 shall apply mutatis mutandis with respect to the representation by the law firms listed on Schedule 7.10(e) of any member of the Company Group and any successors thereof.

Section 7.11. Counterparts; Electronic Transmission of Signatures. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Until and unless each Party has received a counterpart hereof signed by the Party hereto, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 7.12. Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any federal court located in the State of Delaware or any Delaware state court, in addition to any other remedy to which they are entitled at law or in equity. Each Party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

[The remainder of this page has been intentionally left blank;
the next page is the signature page.]

[TABLE OF CONTENTS](#)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

EMERSON ELECTRIC CO.

By: _____
Name:
Title:

EMR WORLDWIDE INC.

By: _____
Name:
Title:

ASPEN TECHNOLOGY, INC.

By: _____
Name:
Title:

[Form of Stockholders Agreement]

[TABLE OF CONTENTS](#)

SCHEDULE 4.5(c)
PRE-AGREED PROCEDURES

Reference is made to the Stockholders Agreement among Aspen Technology, Inc. a Delaware corporation, Emerson Electric Co., a Missouri corporation and EMR Worldwide Inc., a Delaware corporation dated [•] (as it may be amended from time to time, the "Stockholders Agreement"). Capitalized terms utilized but not defined herein shall have the meanings given to them in the Stockholders Agreement.

"Other Company Securities" means: (i) Earnout Shares and (ii) Equity Awards.

ARTICLE I
PROPOSED PURCHASE PRICE

1. In the case of any issuance or sale of Company Securities (other than an issuance for cash (other than a public offering of Company Securities) or offer from a prospective third party for cash) subject to Section 4.3 or
-

Section 4.4 of the Stockholders Agreement, the Proposed Purchase Price (as contemplated by Section 4.3(b)(iii) and Section 4.4(b)(iii) of the Stockholders Agreement) in connection with such issuance or sale shall be as follows (unless (x) Emerson elects to propose a different purchase price or procedure which is agreed to by an RPT Committee or (y) to the extent Article III of this Schedule 4.5(c) is applicable, Emerson exercises its rights pursuant to Article III of this Schedule 4.5(c) (and the exercise of such rights is approved as set forth in Article III of this Schedule 4.5(c)) in which case Article III of this Schedule 4.5(c) shall apply):

- a. in the case of Company Common Stock issued or proposed to be issued (in whole or in part) as consideration in any M&A Transaction (including as any earnout, holdback, escrow or contingent payment (such Company Common Stock, the “Earnout Shares”)), a purchase price per share of Company Common Stock that is the lowest of (i) the average of the daily volume weighted average price of Company Common Stock on Nasdaq (as reported by Bloomberg L.P. or, if not reported therein, in another authoritative source selected in good faith by the Company Board) for the twenty (20) consecutive trading days (the “20-Day VWAP”) ending on and including the last trading day prior to the signing of any definitive agreement with respect to, such transaction, (ii) the closing trading price of Company Common Stock on Nasdaq (as reported by Bloomberg L.P. or, if not reported therein, in another authoritative source selected in good faith by the Company Board) (the “Spot Price”) on the last trading day prior to the signing of any definitive agreement with respect to, such transaction, (iii) the 20-Day VWAP ending on and including the last trading day prior to the consummation of such transaction and (iv) the Spot Price on the last trading day prior to the consummation of such transaction; provided that in the case of any Earnout Shares, Emerson shall only have the right to buy shares of Company Common Stock up to its Percentage Maintenance Share as such Earnout Shares are actually issued (but at the same purchase price as set forth in this clause (a)).
- b. in the case of a public offering of Company Securities, a purchase price per Company Security that is equal to the per Company Security price at which the underwriting bank(s) sells the portion of the offering sold to Persons other than members of the Emerson Group; provided that if such price is more than ten percent (10%) less than the-then current trading price of such Company Security, Emerson shall have the ability to request to purchase more than its Pro Rata Portion or Percentage Maintenance Share, as applicable, of such Company Securities in which case the Company and the applicable underwriting bank(s) shall have the ability to allocate accordingly and, for the avoidance of doubt, such allocation decision by the Company and such banks shall not be subject to the approval of an RPT Committee; and
- c. in all other cases (other than Equity Awards and Closing Equity Awards) in which (i) Company Common Stock is issued or sold or proposed to be issued or sold (including upon the conversion or exchange of any other Company Security), at a purchase price per share of Company Common Stock that is the lowest of (A) the 20-Day VWAP ending on and including the last trading day prior to the signing of any definitive agreement with respect to, such issuance, (B) the Spot Price on the last trading day prior to the signing of any definitive agreement with respect to, such issuance, (C) the 20-Day VWAP ending on and including the last trading day prior to the consummation of such issuance and (D) the Spot Price on the last trading day prior to the consummation of such issuance, and (ii) any other Company Security is issued or sold, at a purchase price proposed by an RPT Committee.

[TABLE OF CONTENTS](#)

ARTICLE II
Equity Awards

1. To the extent permitted under Nasdaq rules, the Company hereby grants to Emerson, with respect to each fiscal quarter of the Company after the date of the Stockholders Agreement: (i) the right to purchase shares of Company Common Stock up to its Equity Award Percentage Maintenance Share in connection with the issuance, grant or sale by the Company of restricted stock units, restricted shares, performance units or similar securities or rights (“RSUs”) issued, granted or sold during such fiscal quarter after the date of the Stockholders
-

Agreement, (ii) the right to purchase shares of Company Common Stock up to its Equity Award Percentage Maintenance Share in connection with the issuance, grant or sale by the Company of stock options, warrants, stock appreciation rights, calls, subscriptions or similar securities or rights to acquire Company Common Stock (“Options”) issued, granted or sold during such fiscal quarter after the date of the Stockholders Agreement and (iii) the right to purchase Company Securities up to its Equity Award Percentage Maintenance Share in connection with the issuance, grant or sale of Company Securities pursuant to any “at the market” program or other similar mechanism (“ATM Program Securities”) during such fiscal quarter after the date of the Stockholders Agreement. The Company Common Stock or other Company Securities that Emerson has the right to purchase pursuant to this Section 1 of this Article II are the “Equity Awards”. For purposes of this Article II, “Equity Award Percentage Maintenance Share” means, with respect to any fiscal quarter of the Company after the date of the Stockholders Agreement, a number of shares of Company Common Stock or other Company Securities, as applicable as specified in this Section 1 of this Article II, such that, after taking into account the total number of outstanding Company Securities (on a Fully-Diluted basis) at the end of such fiscal quarter after giving effect to RSUs, Options or ATM Program Securities issued or sold during such fiscal quarter (including the Equity Award Percentage Maintenance Share in full) and excluding any other issuances or sales of Company Securities by the Company during the fiscal quarter and excluding any purchases, dispositions or sales of Company Securities by members of the Emerson Group during the fiscal quarter (but for the avoidance of doubt including the Equity Award Percentage Maintenance Share in full), the Emerson Fully-Diluted Ownership Percentage would be, assuming Emerson acquired such number of shares of Company Common Stock or other Company Securities, equal to the Emerson Fully-Diluted Ownership Percentage at the start of such fiscal quarter.

2. Without limiting Emerson’s rights pursuant to Section 3.6 of the Stockholders Agreement, the Company shall provide written notice to Emerson within five (5) Business Days after the end of each fiscal quarter of the Company after the date of the Stockholders Agreement (the “Quarterly Issuance Notice”). The Quarterly Issuance Notice for any fiscal quarter shall set forth (w) (A) the number of RSUs or Options issued, granted or sold during such fiscal quarter and the number of shares of Company Common Stock issuable thereunder and (B) the number, type and price of ATM Program Securities issued, granted or sold during such fiscal quarter, (x) the Percentage Maintenance Share with respect to such issuances, grants and sales described in the preceding clause (w) for such fiscal quarter (the aggregate amount of Company Common Stock and other Company Securities that Emerson is entitled to purchase pursuant to such Quarterly Issuance Notice, the “Quarterly Offered Securities”), (y) the Specified Purchase Price for each Quarterly Offered Security and (z) supporting detailed calculations of, and related documentation for, all such amounts.
 - a. “Specified Purchase Price” means:
 - (i) in the case of any Company Common Stock that Emerson has the right to buy in connection with the issuance, grant or sale of an RSU or an Option, a per share price equal to the Spot Price on the last trading day of the fiscal quarter in which such RSU or Option was issued, granted or sold; and
 - (ii) in the case of any ATM Program Security that Emerson has the right to buy, a per share price equal to the weighted average of the price at which all ATM Program Securities were issued during the fiscal quarter in which such Company ATM Program Securities were issued.
3. For a period of forty-five (45) days (such period, as it may be extended pursuant to the proviso of this sentence, the “Quarterly Election Period”) following the receipt by Emerson of a Quarterly Issuance Notice, Emerson shall have the right to elect irrevocably to purchase all or a portion of the Quarterly Offered Securities at the applicable Specified Purchase Prices noted in the Quarterly Issuance Notice by delivering a written notice to the Company; provided that, following receipt of a Quarterly Issuance Notice, with respect

[TABLE OF CONTENTS](#)

to any or all of the Quarterly Offered Securities, Emerson may agree upon a different applicable Specified Purchase Price with an RPT Committee in accordance with the Related Party Transactions Policy in which case

- (i) Emerson shall purchase such Quarterly Offered Securities at such other applicable Specified Purchase Price and (ii) the Quarterly Election Period shall be tolled for so long as Emerson and an RPT Committee are working in good faith to agree on such other applicable Specified Purchase Price until such time as Emerson and such RPT Committee agree on such other applicable Specified Purchase Price. If, at the termination of the Quarterly Election Period, Emerson shall not have delivered such notice to the Company, Emerson shall be deemed to have waived all of its rights under this Article II with respect to the purchase of the Quarterly Offered Securities for such fiscal quarter.
4. The closing of any purchase by Emerson pursuant to this Article II shall be consummated promptly following Emerson's delivery of such notice; provided that the closing of any such purchase by Emerson may be extended (i) to the extent necessary to obtain any required approval of a Governmental Authority or (ii) to the extent Company stockholder approval is required under the Nasdaq rules, in which case the Company and Emerson shall use their respective reasonable best efforts to obtain such approval(s) and after receipt of such approval(s), the Company and Emerson shall consummate such closing; and provided further that the Emerson Ownership Percentage and the Emerson Fully Diluted Ownership Percentage shall at all times during this period be calculated as if Emerson shall have exercised its rights pursuant to this Article II in full until such time that (i) such sale to Emerson is consummated, (ii) in the case of a required approval of a Governmental Authority, there is a final, non-appealable court order prohibiting Emerson from acquiring such Company Securities, (iii) in the case Company stockholder approval is required under the Nasdaq rules, such stockholder vote shall have occurred and such sale to Emerson not be approved or (iv) Emerson determines not to exercise its right pursuant to this Article II.
 5. For the avoidance of doubt, without limiting any of Emerson's rights in the Stockholders Agreement, Emerson shall not have any rights pursuant to Section 4.3 or Section 4.4 of the Stockholders Agreement to buy its Pro Rata Portion or Percentage Maintenance Share of Company Common Stock that are issued upon the exercise or vesting of (i) RSUs or Options described in this Article II at the time of such issuance or (ii) RSUs or Options granted prior to the Closing.

ARTICLE III M&A TRANSACTION

1. This Article III shall apply from the date of the Stockholders Agreement until the Second Trigger Date.
2. Without limiting Section 3.6, 4.3 or 4.4 of the Stockholders Agreement or Article I of this Schedule 4.5(c), in the event the Company desires to enter into any definitive agreement for any M&A Transaction and proposes to obtain any financing for such transaction (including an M&A Transaction in which Company Common Stock is proposed to be issued (in whole or in part) as consideration for such M&A Transaction), the Company shall provide the terms of such M&A Transaction and required financing, a copy of any draft definitive agreement relating to such M&A Transaction, and any other information reasonably requested by Emerson, no later than thirty (30) days prior to the entry into such definitive agreement, and Emerson shall have the right (but not the obligation) to provide a percentage of such financing equal to or greater than the Emerson Fully-Diluted Ownership Percentage (but no more than 100%) at its election: (i) in exchange for additional Company Common Stock, (ii) pursuant to a credit agreement, promissory note, bond or other debt instrument (a "Debt Instrument") issued by a member of the Company Group or (iii) pursuant to a Debt Instrument which is, entirely or partially, permitted to be accounted for as equity in accordance with GAAP (as defined in the Transaction Agreement) at the date of issuance (a "Hybrid Instrument") issued by a member of the Company Group, in each case, in accordance with the terms set forth in Section 2(a), Section 2(b) and Section 2(c), respectively, of this Article III, or, at Emerson's election, as otherwise agreed by an RPT Committee.
 - a. In the case of clause (i) above, the price per share of Company Common Stock shall be the product of (1) the lower of (x) the 20-Day VWAP ending on and including the last trading day prior to the signing of any definitive agreement with respect to, such transaction and (y) the Spot Price on the last trading day prior to the signing of any definitive agreement with respect to, such transaction and (2) 0.95.
 - b. In the case of clause (ii) above, Emerson shall propose the collateral or security required for such Debt Instrument, if any, and the applicable interest rate of such Debt Instrument shall be the greater of

TABLE OF CONTENTS

- (1) (x) the observable (or imputed) yield on publicly traded Debt Instruments of similar terms issued by any member of the Company Group plus (y) 50 basis points and (2) the greater of the average and median of the interest rates proposed in at least two (2) indications for acquisition debt on similar security terms that are received from commercial or investment banks by Emerson. For the avoidance of doubt, any Debt Instrument in accordance with the foregoing terms shall not be subject to the approval of an RPT Committee with respect to any other terms of such Debt Instrument.
- c. in the case of clause (iii), (1) Emerson shall propose the collateral or security required for such Hybrid Instrument, if any, (2) the applicable interest rate of such Hybrid Instrument shall be the greater of the average and median of the interest rates proposed in at least two (2) indications for acquisition debt on similar security terms that are received from commercial or investment banks by Emerson and (3) the applicable conversion price of such Hybrid Instrument shall be the greater of the average and median of the conversion prices proposed in at least two (2) indications for acquisition debt on similar security terms that are received from commercial or investment banks by Emerson. For the avoidance of doubt, any Hybrid Instrument in accordance with the foregoing terms shall not be subject to the approval of an RPT Committee with respect to any other terms of such Hybrid Instrument.
3. Emerson shall notify the Company if it elects to provide any such financing, the structure of any such financing if it so elects, and the terms of such financing in accordance with this Article III if it so elects, no later than twenty (20) days after receipt of notice from the Company regarding such M&A Transaction and financing. For the avoidance of doubt, it shall be a breach by the Company of the Stockholders Agreement if the Company obtains any financing for any M&A Transaction without following the procedures set forth in this Article III and providing Emerson with an opportunity to provide such financing as set forth herein.
4. Notwithstanding anything to the contrary herein, the financing that Emerson elects to provide pursuant to this Article III shall be subject to the approval of an RPT Committee and, if not so approved, Emerson shall not provide such financing pursuant to this Article III; provided that, for the avoidance of doubt, if such financing is not so approved, Emerson shall continue to have all of its other rights under the Stockholders Agreement, including pursuant to Section 4.3 and 4.4 of the Stockholders Agreement and the other provisions of this Schedule 4.5(c). For the avoidance of doubt, any transaction consummated pursuant to Section 2 of this Article III, if completed in accordance with the terms and procedures set forth herein including the approval of an RPT Committee, shall not be otherwise subject to the Related Party Transactions Policy (or any other related party, conflict of interest or similar policy or procedure of any member of the Company Group).

ARTICLE IV
CURE PERIODS

1. For a period of forty-five (45) days beginning on the date on which Emerson notifies the Company of the Deconsolidation Trigger (such period, the "Consolidation Cure Period"), Emerson shall have the right, upon notice to the Company, to elect to purchase a number of shares of Company Common Stock such that the Emerson Ownership Percentage at the end of the Consolidation Cure Period shall be up to fifty-five percent (55%), at a price per share of Company Common Stock equal to the lower of (x) the 20-Day VWAP ending on and including the last trading day prior to the beginning of the Consolidation Cure Period and (y) the Spot Price on the last trading day prior to the beginning of the Consolidation Cure Period; provided that this Section 1 of this Article IV shall be of no further force and effect on the date that is six months following the end of Emerson's first full fiscal year for which the Emerson Group does not consolidate the Company's financial statements with the Emerson Group's financial statements in accordance with GAAP.
- a. "Deconsolidation Trigger" means the members of the Emerson Group no longer being required (or in good faith, after consultation with accounting advisors, believing they will no longer be required) to consolidate the Company's financial statements with the Emerson Group's financial statements in accordance with GAAP.
-

2. For a period of forty-five (45) days beginning on the earliest of (x) the date on which the Company notifies Emerson in writing of the First Trigger, (y) the date on which Emerson makes an amendment to its Schedule 13D filing under the Exchange Act to disclose the First Trigger and (z) the date on which the General Counsel or Chief Financial Officer of Emerson Parent gains actual knowledge (and not constructive, imputed or other similar concepts of knowledge) of the First Trigger (such period, the "First Cure Period"),

TABLE OF CONTENTS

Emerson shall have the right, upon notice to the Company, to elect to purchase a number of shares of Company Common Stock such that the Emerson Ownership Percentage at the end of such First Cure Period shall be up to fifty-five percent (55%), at a price per share of Company Common Stock equal to the lower of (x) the 20-Day VWAP ending on and including the last trading day of the First Cure Period and (y) the Spot Price on the last trading day of the First Cure Period.

3. For a period of forty-five (45) days beginning on the earliest of (x) the date on which the Company notifies Emerson in writing of the Second Trigger, (y) the date on which Emerson makes an amendment to its Schedule 13D filing under the Exchange Act to disclose the Second Trigger and (z) the date on which the General Counsel or Chief Financial Officer of Emerson Parent gains actual knowledge (and not constructive, imputed or other similar concepts of knowledge) of the Second Trigger (such period, the "Second Cure Period"), Emerson shall have the right, upon notice to the Company, to elect to purchase a number of shares of Company Common Stock such that the Emerson Ownership Percentage at the end of such Second Cure Period shall be up to fifty-five percent (55%), at a price per share of Company Common Stock equal to the lower of (x) the 20-Day VWAP ending on and including the last trading day of the Second Cure Period and (y) the Spot Price on the last trading day of the Second Cure Period.
4. For a period of forty-five (45) days beginning on the earliest of (x) the date on which the Company notifies Emerson in writing of the Third Trigger, (y) the date on which Emerson makes an amendment to its Schedule 13D filing under the Exchange Act to disclose the Third Trigger and (z) the date on which the General Counsel or Chief Financial Officer of Emerson Parent gains actual knowledge (and not constructive, imputed or other similar concepts of knowledge) of the Third Trigger (such period, the "Third Cure Period"), Emerson shall have the right, upon notice to the Company, to elect to purchase a number of shares of Company Common Stock such that the Emerson Ownership Percentage at the end of such Third Cure Period shall be up to twenty percent (20%), at a price per share of Company Common Stock equal to the lower of (x) the 20-Day VWAP ending on and including the last trading day of the Third Cure Period and (y) the Spot Price on the last trading day of the Third Cure Period.
5. The closing of any purchase by Emerson pursuant to this Article IV shall be consummated promptly following Emerson's delivery of the notice to the Company pursuant to Section 1, Section 2, Section 3 or Section 4 of this Article IV; provided that the closing of any such purchase by Emerson may be extended (i) to the extent necessary to obtain any required approval of a Governmental Authority or (ii) to the extent Company stockholder approval is required under the Nasdaq rules, in which case the Company and Emerson shall use their respective reasonable best efforts to obtain such approval(s) and after receipt of such approval(s), the Company and Emerson shall consummate such closing; provided that the Emerson Ownership Percentage and the Emerson Fully-Diluted Ownership Percentage shall at all times during this period be calculated as if Emerson shall have exercised its rights pursuant to this Article IV in full until such time that (i) such sale to Emerson is consummated, (ii) in the case of a required approval of a Governmental Authority, there is a final, non-appealable court order prohibiting Emerson from acquiring such Company Securities, (iii) in the case Company stockholder approval is required under the Nasdaq rules, such stockholder vote shall have occurred and such sale to Emerson not be approved or (iv) Emerson determines not to exercise its rights pursuant to this Article IV.

Exhibit C-1

[Form of Tax Matters Agreement]

TABLE OF CONTENTS

Exhibit C-1

TAX MATTERS AGREEMENT

between

EMERSON ELECTRIC CO.,
on behalf of itself
and the members
of the Emerson Group

and

ASPEN TECHNOLOGY, INC.,
on behalf of itself
and the members
of the Newco Group

Dated as of [•]

TABLE OF CONTENTS

TABLE OF CONTENTS

	PAGE
Section 1. Definitions	1
Section 2. Sole Tax Sharing Agreement	5
Section 3. Liability for Taxes	5
Section 4. Preparation and Filing of Tax Returns	7
Section 5. Apportionment of Earnings and Profits and Tax Attributes	8
Section 6. Utilization of Tax Attributes	9
Section 7. Certain Tax Benefits	10

Section 8.	Certain Tax Elections	10
Section 9.	Certain Representations and Covenants	10
Section 10.	Indemnities	14
Section 11.	Payments	15
Section 12.	Guarantees	15
Section 13.	Communication and Cooperation	15
Section 14.	Audits and Contests	16
Section 15.	Deferred Business Tax Matters	17
Section 16.	Notices	17
Section 17.	Costs and Expenses	18
Section 18.	Effectiveness; Termination and Survival	18
Section 19.	Specific Performance	18
Section 20.	Construction	19
Section 21.	Entire Agreement; Amendments and Waivers	19
Section 22.	Governing Law	20
Section 23.	Jurisdiction	20
Section 24.	WAIVER OF JURY TRIAL	20
Section 25.	Dispute Resolution	20
Section 26.	Counterparts; Effectiveness; Third-Party Beneficiaries	21
Section 27.	Successors and Assigns	21
Section 28.	Authorization	21
Section 29.	Change in Tax Law	21
Section 30.	Performance	21

[TABLE OF CONTENTS](#)

TAX MATTERS AGREEMENT

This TAX MATTERS AGREEMENT (the “Agreement”) is entered into as of [•] between Emerson Electric Co., a Missouri corporation (“Emerson”), on behalf of itself and the members of the Emerson Group, as defined below and Aspen Technology, Inc., a Delaware corporation (formerly known as Emersub CX, Inc.) (“Newco,” and together with Emerson, the “Parties”), on behalf of itself and the members of the Newco Group, as defined below.

WITNESSETH:

WHEREAS, pursuant to the Tax laws of various jurisdictions, certain members of the Newco Group presently file certain Tax Returns on an affiliated, consolidated, combined, unitary, fiscal unity or other group basis (including as permitted by Section 1501 of the Internal Revenue Code of 1986, as amended (the "Code")) with certain members of the Emerson Group;

WHEREAS, Aspen Technology, Inc. ("Aspen"), Emerson, EMR Worldwide Inc. ("Emerson Sub"), Newco and Emersub CXI, Inc. ("Merger Subsidiary") have entered into a Transaction Agreement, dated as of October 10, 2021 (the "Transaction Agreement"), pursuant to which the Pre-Closing Restructuring, the Emerson Contributions and the Merger Exchange, the Deferred Closings and other related transactions will be consummated;

WHEREAS, Emerson and its Subsidiaries have consummated, prior to the Effective Time, the Pre-Closing Restructuring, which except as provided in Section 7.05 of the Transaction Agreement was consummated in the form depicted in Exhibit I to the Transaction Agreement, pursuant to which, among other things, (i) Roxar AS, an aksjeselskap organized in Norway ("Roxar AS"), will elect to be classified as disregarded as separate from its owner for U.S. federal income tax purposes (the "Roxar AS Conversion"), (ii) Aegir Norge Holdings AS, an aksjeselskap organized in Norway ("Aegir"), will elect to be classified as disregarded as separate from its owner for U.S. federal income tax purposes (the "Aegir Conversion"), (iii) Roxar AS will contribute 100% of the Equity Interests in Roxar Services AS ("Roxar Services"), an aksjeselskap organized in Norway, to Roxar Software Solutions AS, an aksjeselskap organized in Norway ("Roxar Software" and such contribution, the "Roxar Services Contribution"), (iv) Roxar AS will distribute 100% of the Equity Interests of Roxar Software to Aegir, (v) Aegir will distribute 100% of the Equity Interests of Roxar Software to Emerson Electric Nederland BV, a private limited company organized in the Netherlands ("EENBV"), (vi) EENBV will distribute 100% of the Equity Interests in Roxar Software to Emerson International Holding Co. Ltd., a private limited company organized in the United Kingdom ("EIHCL" and such distribution, the "Roxar Software Distribution"), (vii) EIHCL will contribute 100% of the Equity Interests in Roxar Software to Paradigm B.V., a private limited company organized in the Netherlands ("Paradigm BV" and such contribution, the "Roxar Software Contribution"), and (viii) EIHCL will distribute 100% of the Equity Interests in Paradigm BV to Rutherford Acquisitions Ltd., a private limited company organized in the United Kingdom ("RAL") (such distribution, the "Paradigm Distribution" and together with the Roxar Software Distribution, the "Distributions");

WHEREAS, the Pre-Closing Restructuring, the Emerson Contributions and the Merger Exchange are intended to qualify for the Intended Tax Treatment; and

WHEREAS, Emerson and Newco desire to set forth their agreement on the rights and obligations of Emerson and Newco and the members of the Emerson Group and the Newco Group respectively, with respect to (a) the administration and allocation of U.S. federal, state, local and non-U.S. Taxes incurred in Taxable periods beginning prior to the Closing Date, (b) Taxes resulting from the Pre-Closing Restructuring, the Deferred Closings, the Emerson Contributions and the Merger Exchange and transactions effected in connection therewith and (c) various other Tax matters.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

Section 1. Definitions. (a) As used in this Agreement:

"Active Trade or Business" means (i) with respect to the Roxar Software Distribution, the Roxar Software Business, as defined on Schedule A-1 and (ii) with respect to the Paradigm Distribution, the Paradigm Software Business, as defined on Schedule A-2 and the Roxar Software Business, as defined on Schedule A-1.

[TABLE OF CONTENTS](#)

"Closing of the Books Method" means the apportionment of items between portions of a Taxable period based on a closing of the books and records on the close of the Closing Date (in the event that the Closing Date is not the

last day of the Taxable period, as if the Closing Date were the last day of the Taxable period), subject to adjustment for items accrued on the Closing Date that are properly allocable to the Taxable period following the Closing, as determined by Emerson in its reasonable discretion, after consultation with Newco; provided that exemptions, allowances or deductions that are calculated on an annual basis (including, but not limited to, depreciation and amortization deductions) will be allocated between the period ending at the close of the Closing Date and the period beginning after the Closing Date in proportion to the number of days in each Taxable period.

“Combined Group” means any group that filed or was required to file (or will file or be required to file) a Tax Return on an affiliated, consolidated, combined, unitary, fiscal unity or other group basis (including as permitted by Section 1501 of the Code).

“Combined Tax Return” means a Tax Return filed in respect of U.S. federal, state, local or non-U.S. income Taxes for a Combined Group.

“Company” means Emerson or Newco (or the appropriate member of each of their respective Groups), as appropriate.

“Deferred Closing Taxes” means any Taxes incurred with respect to any Deferred Closing (other than, for the avoidance of doubt, Deferred Closing Period Taxes).

“Emerson Contributed Subsidiary Carried Item” means any Tax Attribute of an Emerson Contributed Subsidiary, or any Tax Return required to be filed by or with respect to a Deferred Business, in each case that may or must be carried from one Taxable period to another prior Taxable period, or carried from one Taxable period to another subsequent Taxable period, under the Code or other Applicable Law.

“Emerson Contributed Subsidiary Non-Emerson Group Tax Return” means any Tax Return required to be filed by an Emerson Contributed Subsidiary that is not a Combined Tax Return with any member of the Emerson Group.

“Emerson Disqualifying Action” means (a) any action (or the failure to take any action) within its control by any member of the Emerson Group (including entering into any agreement, understanding or arrangement or any negotiations with respect to any transaction or series of transactions), (b) any event (or series of events) involving the capital stock of Emerson or any assets of any member of the Emerson Group or (c) any breach by any member of the Emerson Group of any representation, warranty or covenant made by it in this Agreement, that, in each case, would negatively affect clause (v) of the Intended Tax Treatment; provided, however, that the term “Emerson Disqualifying Action” shall not include any action expressly described in or contemplated by any Transaction Document or that is undertaken pursuant to the Pre-Closing Restructuring, the Deferred Closings, the Emerson Contributions or the Merger Exchange.

“Emerson Group” shall mean Emerson and each of its direct and indirect Subsidiaries immediately after the Closing, including any predecessors or successors thereto, other than those entities comprising the Newco Group; provided, that prior to any Deferred Closing (and not thereafter), the Emerson Group shall include the applicable Deferred Business. For the avoidance of doubt, any reference herein to the “members” of the Emerson Group shall include Emerson.

“Equity Interests” means any stock or other securities treated as equity for Tax purposes, options, warrants, rights, convertible debt, or any other instrument or security that affords any Person the right, whether conditional or otherwise, to acquire stock or to be paid an amount determined by reference to the value of stock.

“Final Determination” means (i) with respect to U.S. federal income Taxes, (A) a “determination” as defined in Section 1313(a) of the Code (including, for the avoidance of doubt, an executed IRS Form 906) or (B) the execution of an IRS Form 870-AD (or any successor form thereto), as a final resolution of Tax liability for any Taxable period, except that a Form 870-AD (or successor form thereto) that reserves the right of the taxpayer to file a claim for refund or the right of the IRS to assert a further deficiency shall not constitute a Final Determination with respect to the item or items so reserved; (ii) with respect to Taxes other than U.S. federal income Taxes, any final determination of liability in respect of a Tax that, under Applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise; (iii) with respect to any Tax, any final disposition by reason of the expiration of the applicable statute of limitations (giving effect to any

[TABLE OF CONTENTS](#)

extension, waiver or mitigation thereof); or (iv) with respect to any Tax, the payment of such Tax by any member of the Emerson Group or any member of the Newco Group, whichever is responsible for payment of such Tax under Applicable Law, with respect to any item disallowed or adjusted by a Taxing Authority; provided, in the case of this clause (iv), that the provisions of [Section 14](#) hereof have been complied with, or, if such section is inapplicable, that the Company responsible under this Agreement for such Tax is notified by the Company paying such Tax that it has determined that no action should be taken to recoup such disallowed item, and the other Company agrees with such determination.

“Group” means, as the context requires, the Emerson Group or the Newco Group or either or both of them.

“Income Tax” means any Tax imposed on, or measured by reference to, net income or gains (and any franchise Tax or other Tax in connection with doing business imposed in lieu thereof) or any similar Tax, and any related penalties, interest, or other additions in respect thereto.

“Income Tax Return” means any Tax Return in respect of an Income Tax.

“Indemnitee” means a Person that is entitled to seek indemnification from another Person pursuant to the provisions of [Section 10](#).

“Intended Tax Treatment” means the qualification of (i) the Aegir Conversion as a tax-free liquidation for purposes of Sections 332 and 337 of the Code; (ii) the Roxar AS Conversion as a tax-free liquidation for purposes of Sections 332 and 337 of the Code; (iii) the Roxar Services Contribution and the Roxar Software Distribution, taken together, (x) as a reorganization described in Sections 355(a) and 368(a)(1)(D) of the Code, (y) as a transaction in which the stock distributed thereby is “qualified property” for purposes of Sections 355(c) and 361(c) of the Code and (z) as a transaction in which EENBV, Roxar Software and EIHCL recognize no income or gain for U.S. federal income Tax purposes pursuant to Sections 355, 361 and 1032 of the Code; (iv) the Roxar Software Contribution and the Paradigm Distribution, taken together, (x) as a reorganization described in Sections 355(a) and 368(a)(1)(D) of the Code, (y) as a transaction in which the stock distributed thereby is “qualified property” for purposes of Sections 355(c) and 361(c) of the Code and (z) as a transaction in which EIHCL, Paradigm BV and RAL recognize no income or gain for U.S. federal income Tax purposes pursuant to Sections 355, 361 and 1032 of the Code; and (v) the Emerson Contributions and the Merger Exchange, taken together, as a transfer governed by Section 351 of the Code.

“Newco Disqualifying Action” means (a) any action (or the failure to take any action) within its control by any member of the Newco Group after the Closing (including entering into any agreement, understanding or arrangement or any negotiations with respect to any transaction or series of transactions), (b) any event (or series of events) after the Closing involving the capital stock of Newco or any assets of any member of the Newco Group or (c) any breach by any member of the Newco Group after the Closing of any representation, warranty or covenant made by it in this Agreement, that, in each case, would negatively affect the Intended Tax Treatment; provided, however, that the term “Newco Disqualifying Action” shall not include any Non-Dilutive Equity Issuance or any action expressly described in or contemplated by any Transaction Document or that is undertaken pursuant to the Pre-Closing Restructuring, the Deferred Closings, the Emerson Contributions or the Merger Exchange.

“Newco Group” means Newco and each of its direct and indirect Subsidiaries immediately after the Closing (including the Emerson Contributed Subsidiaries) and any predecessors or successors thereto, other than those entities comprising the Emerson Group; provided, that following any Deferred Closing (and not prior thereto), the Newco Group shall include the applicable Deferred Business. For the avoidance of doubt, any reference herein to the “members” of the Newco Group shall include Newco.

“Non-Dilutive Equity Issuance” means a sale or other issuance to any Person of any Equity Interests of Newco if, in connection with such sale or issuance, the percentage of the outstanding Equity Interests of Newco held directly or indirectly by Emerson (measured by voting power and value, as determined for purposes of Section 355(e) of the Code) is not reduced, directly or indirectly, on a net basis, taking into account any other transaction or series of transactions effected in connection with such sale or issuance (including, for the avoidance of doubt, any sale or other issuance of Equity Interests of Newco to Emerson or any of its Subsidiaries); provided, that, Emerson

and Newco shall cooperate with each other with respect to the sequencing of any transaction or series of transactions effected in connection with such sale or issuance so that Emerson will

[TABLE OF CONTENTS](#)

acquire Equity Interests of Newco simultaneously with, or prior to, the issuance of such Equity Interests of Newco to any Person other than Emerson; and provided, further, that, if such simultaneous or prior issuance to Emerson does not occur, then the sale or other issuance to any such other Person shall not be a “Non-Dilutive Equity Issuance” for purposes of this Agreement.

“OSI” means Open Systems International, Inc., a Delaware corporation.

“Paradigm Group” means Paradigm BV and Roxar Software and each of their direct and indirect Subsidiaries immediately after the Closing.

“Paradigm SAG” shall mean the “separate affiliated group,” as defined in Section 355(b)(3) of the Code, with respect to Paradigm BV.

“Person” has the meaning set forth in Section 7701(a)(1) of the Code.

“Post-Closing Period” means any Taxable period beginning after the Closing Date and the post-Closing portion of any Straddle Period.

“Pre-Closing Emerson Combined Group” means any Combined Group for a Pre-Closing Period that includes at least one member of the Emerson Group and at least one Emerson Contributed Subsidiary.

“Pre-Closing Emerson Combined Tax Return” means any Combined Tax Return for a Pre-Closing Emerson Combined Group.

“Pre-Closing Period” means any Taxable period ending on or before the Closing Date and the pre-Closing portion of any Straddle Period.

“Pre-Closing Restructuring Taxes” means any Taxes incurred with respect to the Pre-Closing Restructuring, including as a result of the failure of the Intended Tax Treatment of any portion of the Pre-Closing Restructuring.

“Separate Tax Return” means any Tax Return filed or required to be filed by, or with respect to, a member of the Emerson Group or a member of the Newco Group that is not a Combined Tax Return.

“Specified Tax Elections” means the Tax elections set forth on Schedule B.

“Straddle Period” means a Taxable period that includes (but does not end on) the Closing Date.

“Tax Advisor” means a nationally-recognized law firm or accounting firm retained by Emerson to provide the Tax Opinion.

“Tax Attribute” means a net operating loss, net capital loss, unused investment credit, unused foreign tax credit, excess charitable contribution, unused general business credit, alternative minimum tax credit or any other Tax Item that could reduce a Tax liability.

“Tax Item” means any item of income, gain, loss, deduction, credit, recapture of credit or any other item that can increase or decrease Taxes paid or payable.

“Tax Opinion” shall mean the legal opinion delivered to Emerson by the Tax Advisor with respect to certain U.S. federal income Tax consequences of the Pre-Closing Restructuring and the Emerson Contributions.

“Tax Proceeding” means any Tax audit, dispute, examination, contest, litigation, arbitration, action, suit, claim, cause of action, review, inquiry, assessment, hearing, complaint, demand, investigation or proceeding (whether administrative, judicial or contractual).

“Tax Refund” means any Tax refund, or credit in lieu thereof.

“Tax Representation Letters” means the representations provided by Newco and Emerson to the Tax Advisor in connection with the rendering by the Tax Advisor of the Tax Opinion.

“Taxing Authority” means any Governmental Authority (domestic or foreign), including, without limitation, any state, municipality, political subdivision or governmental agency, responsible for the imposition, assessment, administration, collection, enforcement or determination of any Tax.

TABLE OF CONTENTS

“Transfer Taxes” means all U.S. federal, state, local or non-U.S. sales, use, privilege, transfer, documentary, stamp, duties, real estate transfer, controlling interest transfer, recording and similar Taxes and fees (including any penalties, interest or additions thereto).

“Wind-Down Entity” means each of (i) Paradigm Geotechnology (Egypt) S.A.E., a sharikat al-mossahamah organized under the laws of Egypt; (ii) Paradigm Geophysical Italy SRL, a società a responsabilità limitata organized under the laws of Italy; (iii) Paradigm Geophysical de Venezuela C.A., a compañía anónima organized under the laws of Venezuela; (iv) Paradigm Geophysical (KL) Sdn. Bhd., a sendirian berhad organized under the laws of Malaysia; (v) Paradigm Geophysical (Nigeria) Limited, a private company limited by shares organized under the laws of Nigeria; (vi) Paradigm Kazakhstan LLP, a limited liability partnership organized under the laws of Kazakhstan; and (vii) Roxar Services OOO, an obshchestvo s ogranichennoy otvetstvennostyu organized under the laws of Russia.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Due Date	Section 11(a)
Final Allocation	Section 5(b)
OSI Acquisition	Section 9(c)(i)
OSI Acquisition Date	Section 9(c)(i)
OSI Covered Tax Period	Section 9(c)(i)
OSI Pass-Through Tax Contest	Section 9(c)(ii)
OSI Pass-Through Tax Return	Section 9(c)(i)
OSI Sellers	Section 9(c)(iii)
Past Practices	Section 4(e)(i)
Paradigm Software Business	Schedule A-2
Proposed Allocation	Section 5(b)
PTI	Section 5(b)
Roxar Software Business	Schedule A-1
Specified OSI Refunds	Section 9(c)(iii)

Spinco	Section 9(a)(i)
Tax Arbiter	Section 25
Tax Refund Recipient	Section 7(c)

(c) All capitalized terms used but not defined herein shall have the same meanings as in the Transaction Agreement. Any term used in this Agreement which is not defined in this Agreement or the Transaction Agreement shall, to the extent the context requires, have the meaning assigned to it in the Code or the applicable Treasury Regulations thereunder (as interpreted in administrative pronouncements and judicial decisions) or in comparable provisions of Applicable Law.

Section 2. Sole Tax Sharing Agreement. Any and all existing Tax sharing agreements or arrangements, written or unwritten, between any member of the Emerson Group, on the one hand, and any Emerson Contributed Subsidiary or Deferred Business, on the other hand, if not previously terminated, shall be terminated as of the Closing Date without any further action by the parties thereto. Following the Closing, no member of the Emerson Group, Deferred Business or any Emerson Contributed Subsidiary shall have any further rights or liabilities thereunder, and this Agreement shall be the sole Tax sharing agreement between the members of the Emerson Group, on the one hand, and the members of the Newco Group (including the Emerson Contributed Subsidiaries and, following the applicable Deferred Closing, the Deferred Businesses), on the other hand.

Section 3. Liability for Taxes.

(a) General Liability for Taxes.

(i) Emerson Tax Liability. Except as provided in Section 3(c) and Section 3(a)(ii)(A), Emerson shall be liable for all Taxes reported, or required to be reported, on any Pre-Closing Emerson Combined Tax Return;

[TABLE OF CONTENTS](#)

(ii) Newco Tax Liability. Except as provided in Section 3(a)(i) and Section 3(c), Newco shall be liable for:

(A) all Taxes reported, or required to be reported, on any Pre-Closing Emerson Combined Tax Return to the extent any such Pre-Closing Emerson Combined Tax Return includes any Tax Items required to be paid by or with respect to any Emerson Contributed Subsidiary or the Echo Business attributable to any Post-Closing Period, as determined in accordance with Section 3(b);

(B) all Taxes reported, or required to be reported, on any Emerson Contributed Subsidiary Non-Emerson Group Tax Return; and

(C) all Taxes attributable to any Emerson Contributed Subsidiary or a Deferred Business that is not required to be reported on a Tax Return.

(b) Allocation Conventions. For purposes of Section 3(a):

(i) The amount of any Tax of any Emerson Contributed Subsidiary with respect to a Straddle Period that is based on or measured by income, sales, use, receipts, or other similar items shall be allocated between the Pre-Closing Period and the Post-Closing Period based on the Closing of the Books Method as of the end of the Closing Date; provided, however, that if Applicable Law does not permit an Emerson Contributed Subsidiary to close its Taxable year on the Closing Date, the Tax attributable to the operations of such Emerson Contributed Subsidiary for any Pre-Closing Period shall be the Tax computed using a hypothetical closing of the books consistent with the Closing of the Books Method (except to the extent otherwise agreed upon by Emerson and Newco).

(ii) The amount of any Tax of any Emerson Contributed Subsidiary with respect to a Straddle Period other than Taxes described in Section 3(b)(i) shall be allocated between the Pre-Closing Period and the Post-Closing Period by multiplying the total amount of such Tax for the entire Straddle Period by a fraction, the numerator of which is the number of calendar days in the Straddle Period ending on, and including, the Closing Date, and the denominator of which is the number of calendar days in the entire Straddle Period, and allocating the result to the Pre-Closing Period and the remainder of such Tax to the Post-Closing Period.

(iii) Notwithstanding the provisions of Section 3(b)(i), any Tax Item of an Emerson Contributed Subsidiary arising from a transaction engaged in outside the ordinary course of business on the Closing Date after the Closing shall be allocable to the Post-Closing Period, and any such transaction by or with respect to Newco or any member of the Newco Group occurring after the Closing shall be treated for all Tax purposes (to the extent permitted by Applicable Law) as occurring at the beginning of the day following the Closing Date in accordance with the principles of Treasury Regulations Section 1.1502-76(b) (assuming no election is made under Treasury Regulations Section 1.1502-76(b)(2)(ii) (relating to a ratable allocation of a year's Tax Items)); provided that, for the avoidance of doubt, the foregoing shall not include any action expressly described in or contemplated by any Transaction Document or that is undertaken pursuant to the Pre-Closing Restructuring, any Deferred Closing, the Emerson Contributions or the Merger Exchange.

(c) Special Liability Rules. Notwithstanding any other provision in this Section 3, liability for the following Taxes shall be as follows:

(i) Pre-Closing Restructuring Transfer Taxes. Emerson shall be liable for 100% of Transfer Taxes with respect to the Pre-Closing Restructuring.

(ii) Pre-Closing Restructuring Taxes. Any liability for Pre-Closing Restructuring Taxes shall be allocated in a manner consistent with Section 10(a)(iii) and Section 10(b)(vi).

(iii) Deferred Closing Taxes. Emerson shall be liable for 100% of Deferred Closing Taxes.

(iv) Taxes Covered by Transaction Documents. Subject to the preceding clauses of this Section 3(c), any liability or other matter relating to Taxes that is specifically addressed in any Transaction Document shall be allocated or governed as provided in such Transaction Document.

TABLE OF CONTENTS

Section 4. Preparation and Filing of Tax Returns.

(a) Emerson Prepared Tax Returns. Emerson shall prepare and file, or cause to be prepared and filed, all Pre-Closing Emerson Combined Tax Returns. To the extent any Pre-Closing Emerson Combined Tax Return reflects operations of an Emerson Contributed Subsidiary for a Taxable period that includes the Closing Date, Emerson shall include in such Pre-Closing Emerson Combined Tax Return the results of such Emerson Contributed Subsidiary on the basis of the Closing of the Books Method to the extent permitted by Applicable Law.

(b) Newco Prepared Tax Returns. Newco shall prepare and file, or cause to be prepared and filed, any Emerson Contributed Subsidiary Non-Emerson Group Tax Return and any other Tax Return of any member of the Newco Group that is not a Pre-Closing Emerson Combined Tax Return.

(c) Provision of Information; Timing. Newco shall maintain all necessary information for Emerson (or any of its Affiliates) to file any Tax Return that Emerson is required or permitted to file under this Section 4, and shall provide to Emerson all such necessary information in accordance with the Emerson Group's past practice. Emerson shall maintain all necessary information for Newco (or any of its Affiliates) to file any Tax Return that Newco is required or permitted to file under this Section 4, and shall provide Newco with all such necessary information in accordance with the Emerson Group's past practice.

(d) **Right to Review.** The Party responsible for preparing (or causing to be prepared) any Tax Return under this Section 4 shall make such Tax Return and related workpapers available for review by the other Party, if requested, to the extent (i) such Tax Return relates to Taxes for which the requesting Party would be liable under Section 3, or (ii) such Tax Return relates to Taxes for which the requesting Party would reasonably be expected to have a claim for a Tax Refund under this Agreement. The Party responsible for preparing (or causing to be prepared) the relevant Tax Return shall (x) use its reasonable best efforts to make such portion of such Tax Return available for review as required under this paragraph sufficiently in advance of the due date for the filing of such Tax Return (taking into account any applicable extensions) to provide the requesting Party with a meaningful opportunity to analyze and comment on such Tax Return and (y) use reasonable best efforts to reflect on such Tax Return any reasonable comments provided by the requesting Party at least twenty (20) Business Days prior to filing, taking into account the Person responsible for payment of the Tax (if any) reported on such Tax Return and whether the amount of Tax liability of the requesting Party with respect to such Tax Return is material. The Parties shall consult and attempt in good faith to resolve any issues arising out of the review of such Tax Return.

(e) **Special Rules Relating to the Preparation of Tax Returns.**

(i) **General Rule.** Except as provided in this Section 4(e)(i), Newco shall prepare (or cause to be prepared) any Tax Return, with respect to Taxable periods (or portions thereof) ending prior to or on the Closing Date, for which it is responsible under this Section 4 in accordance with past practices, accounting methods, elections or conventions ("Past Practices") used by the members of the Emerson Group prior to the Closing Date with respect to such Tax Return, to the extent permitted by Applicable Law, and otherwise as reasonably determined by Emerson.

(ii) **Consistency with Intended Tax Treatment.** All Tax Returns that include any member of the Emerson Group or any member of the Newco Group shall be prepared in a manner that is consistent with the Intended Tax Treatment, unless otherwise required by a "determination" within the meaning of Section 1313(a) of the Code (or any analogous provision of Applicable Law).

(iii) **Emerson Contributed Subsidiary Non-Emerson Group Tax Returns.** With respect to any Emerson Contributed Subsidiary Non-Emerson Group Tax Return, Newco and the other members of the Newco Group shall include Tax Items in such Tax Return in a manner that is consistent with the inclusion of such Tax Items in any related Tax Return for which Emerson is responsible to the extent liability for such Tax Items is allocated in accordance with this Agreement.

(iv) **Certain Determinations with respect to Pre-Closing Emerson Combined Tax Returns.** Emerson shall be entitled in its reasonable discretion (i) to determine whether any Emerson Contributed Subsidiary is required under Applicable Law to be included in any Pre-Closing Emerson Combined Group and (ii) to elect to include any Emerson Contributed Subsidiary in any Pre-Closing Emerson Combined Group if the inclusion of such Emerson Contributed Subsidiary in such Pre-Closing Emerson

[TABLE OF CONTENTS](#)

Combined Tax Return is elective under Applicable Law, except where such an election would be binding on Newco for a Taxable period beginning after the Closing in which case such determination shall be made by Emerson in its reasonable discretion after consultation with Newco. Newco shall cause each Emerson Contributed Subsidiary to execute and file such consents, elections and other documents as may be required by Applicable Law or reasonably requested by Emerson in connection with the filing of any Pre-Closing Emerson Combined Tax Return.

(v) **Preparation of Transfer Tax Returns.** The Company required under Applicable Law to file any Tax Returns in respect of Transfer Taxes shall prepare and file (or cause to be prepared and filed) such Tax Returns; provided, that Emerson shall prepare and file (or cause to be prepared and filed) all Tax Returns in respect of Transfer Taxes with respect to the Deferred Closings. If required by Applicable Law,

Emerson and Newco shall, and shall cause their respective Affiliates to, cooperate in preparing and filing, and join the execution of, any such Tax Returns.

(vi) If either Party reasonably determines that any member of the Newco Group may be required to file a Combined Tax Return with at least one member of the Emerson Group for a Post-Closing Period, the Parties shall cooperate in good faith to (A) determine whether such member of the Newco Group is required to file such a Combined Tax Return and (B) provide procedures that govern (I) the preparation and filing of such Tax Returns, (II) the allocation of the liability for Taxes reported on or otherwise due in respect of such Tax Returns, (III) the control and participation rights in any Tax Proceedings with respect to such Tax Returns and (IV) other related matters.

(f) Payment of Taxes. Emerson shall pay (or cause to be paid) to the proper Taxing Authority the Tax shown as due on any Tax Return for which a member of the Emerson Group is responsible for filing under this [Section 4](#), and Newco shall pay (or cause to be paid) to the proper Taxing Authority the Tax shown as due on any Tax Return for which a member of the Newco Group is responsible for filing under this [Section 4](#). If any member of the Emerson Group is required to make a payment to a Taxing Authority for Taxes for which Newco is liable under [Section 3](#), Newco shall pay the amount of such Taxes to Emerson in accordance with [Section 10](#) and [Section 11](#). If any member of the Newco Group is required to make a payment to a Taxing Authority for Taxes for which Emerson is liable under [Section 3](#), Emerson shall pay the amount of such Taxes to Newco in accordance with [Section 10](#) and [Section 11](#).

Section 5. Apportionment of Earnings and Profits and Tax Attributes.

(a) Any Tax Attributes arising in a Pre-Closing Period that are subject to allocation among members of a Combined Group shall be allocated among (and the benefits and burdens of such Tax Attributes will inure to) the members of the Emerson Group and the Emerson Contributed Subsidiaries in accordance with the Code, Treasury Regulations, and any Applicable Law, as determined by Emerson in its reasonable discretion.

(b) Emerson shall in good faith, based on information reasonably available to it, advise Newco in writing, as soon as reasonably practicable after Newco's reasonable request following the Closing, of Emerson's estimate of any earnings and profits, previously taxed earnings and profits (within the meaning of Section 959 of the Code ("PTI")), Tax Attributes, Tax basis, overall foreign loss or other consolidated, combined or unitary attribute to be allocated or apportioned to any Emerson Contributed Subsidiary under Applicable Tax Law (the "Proposed Allocation"). Newco shall have thirty (30) days to review the Proposed Allocation and provide Emerson any comments with respect thereto. If Newco either provides no comments or provides comments to which Emerson agrees in writing, such resulting determination will become final (the "Final Allocation"). If Newco provides comments to the Proposed Allocation and Emerson does not agree, the Final Allocation will be determined in accordance with [Section 25](#). All members of the Emerson Group and Newco Group shall prepare all Tax Returns in accordance with the Final Allocation. In the event of any adjustment to the earnings and profits, PTI, Tax Attributes, Tax basis, overall foreign loss or other consolidated, combined or unitary attributes, Emerson shall promptly advise Newco in writing of such adjustment. For the avoidance of doubt, Emerson shall not be liable to any member of the Newco Group for any failure of any determination under this [Section 5\(b\)](#) to be accurate under Applicable Law.

(c) Except as otherwise provided herein, to the extent that the amount of any earnings and profits, PTI, Tax Attributes, Tax basis, overall foreign loss or other consolidated, combined or unitary attribute

[TABLE OF CONTENTS](#)

allocated to members of the Emerson Group or an Emerson Contributed Subsidiary pursuant to [Section 5\(b\)](#) is later reduced or increased by a Taxing Authority or as a result of a Tax Proceeding, such reduction or increase shall be allocated to the Company to which such earnings and profits, Tax Attributes, Tax basis, overall foreign loss or other consolidated, combined or unitary attribute was allocated pursuant to this [Section 5](#), as agreed by the Parties in good faith.

Section 6. Utilization of Tax Attributes.

(a) Amended Returns. Any amended Tax Return or claim for a Tax Refund with respect to any member of the Newco Group may be made only by the Party responsible for preparing the original Tax Return with respect to such member of the Newco Group pursuant to Section 4. If Newco reasonably determines that it is necessary or appropriate to amend a Separate Tax Return of an Emerson Contributed Subsidiary, or desires to claim a Tax Refund with respect to any such Tax Return, Emerson shall cooperate in good faith with Newco to amend such Tax Return or claim such Tax Refund; provided, that such amendment or claim shall be made only if the benefit of amending such Tax Return or claiming such Tax Refund is reasonably expected to materially outweigh the cost of such action, as determined by Emerson in its reasonable discretion; and provided, further, that Newco shall bear the out-of-pocket expenses of such amendment of such Tax Return and/or claim of such Tax Refund.

(b) No Carryback Election. The Parties hereby agree, except as provided in Section 6(c), (i) not to make or cause to be made any election to claim in any Pre-Closing Emerson Combined Tax Return an Emerson Contributed Subsidiary Carried Item from a Post-Closing Period and (ii) to elect, to the extent permitted by Applicable Law, to forgo the right to carry back any Emerson Contributed Subsidiary Carried Item from a Post-Closing Period to a Pre-Closing Emerson Combined Tax Return.

(c) Emerson Contributed Subsidiary Carrybacks.

(i) If Newco reasonably determines that an Emerson Contributed Subsidiary is required by Applicable Law to carry back any Emerson Contributed Subsidiary Carried Item from a Post-Closing Period to a Pre-Closing Emerson Combined Tax Return, it shall notify Emerson in writing of such determination at least sixty (60) days prior to filing the Tax Return on which such carryback will be reflected. Such notification shall include a description in reasonable detail of the basis for any expected Tax Refund and the amount thereof. If Emerson disagrees with such determination, the Parties shall resolve their disagreement pursuant to the procedures set forth in Section 25. The Emerson Group shall, at the request of Newco and at Newco's expense, file or cooperate in good faith in the filing of any amended Tax Returns reflecting such carryback or claims for Tax Refund with respect to such carryback (unless such filing, (x) assuming it is accepted, could reasonably be expected to change the Tax liability of Emerson or any of its Affiliates for any Taxable period or (y) is not reasonably expected to provide a material benefit to Newco, as reasonably determined by Emerson).

(ii) If an Emerson Contributed Subsidiary Carried Item from a Post-Closing Period is carried back to a Pre-Closing Emerson Combined Tax Return pursuant to Section 6(c)(i), Emerson shall be required to make a payment to the Newco Group in an amount equal to the Tax Refund in respect of such Emerson Contributed Subsidiary Carried Item in accordance with Section 7(c).

(d) Emerson Contributed Subsidiary Carryforwards. If a portion or all of any Emerson Contributed Subsidiary Carried Item is allocated to a member of a Combined Group pursuant to Section 5, and is carried forward to an Emerson Contributed Subsidiary Non-Emerson Group Tax Return, any Tax benefits arising from such carryforward shall be retained by the Newco Group.

(e) Unified Loss Rules Election. Emerson shall make a timely and valid election pursuant to Treasury Regulations Section 1.1502-36(d)(6)(i)(A) to reduce the basis of the stock of any Emerson Contributed Subsidiaries to which such election applies, to the extent necessary to prevent any attribute reduction pursuant to Treasury Regulations Section 1.1502-36(d)(6). Emerson shall not make an election pursuant to Treasury Regulations Section 1.1502-36(d)(6)(i)(B) or (C) to reattribute any of the Emerson Contributed Subsidiaries' tax attributes to Emerson, without the prior written consent of Newco.

[TABLE OF CONTENTS](#)

Section 7. Certain Tax Benefits.

(a) Emerson Tax Refunds. Emerson shall be entitled to any Tax Refunds (including, in the case of any refund received, any interest actually received on or in respect thereof) received by any member of the Emerson Group or any Emerson Contributed Subsidiary, other than any Tax Refunds to which Newco is entitled pursuant to Section 7(b) (or, with respect to any Emerson Contributed Subsidiary Carried Item, Section 6). Newco shall not be entitled to any Tax Refunds received by any member of the Emerson Group or any Emerson Contributed Subsidiary, except as set forth in Section 7(b) (or, with respect to any Emerson Contributed Subsidiary Carried Item, Section 6).

(b) Newco Tax Refunds. Newco shall be entitled to any Tax Refunds (including, in the case of any refund received, any interest actually received on or in respect thereof) received by any member of the Emerson Group or any member of the Newco Group after the Closing Date (i) with respect to any Tax for which a member of the Newco Group is liable under this Agreement (including, for the avoidance of doubt, any amounts allocated to Newco pursuant to Section 3(c)(ii)) or (ii) resulting from an Emerson Contributed Subsidiary Carried Item to the extent provided in Section 6.

(c) Payments in Respect of Tax Refunds. A Company receiving (or realizing) a Tax Refund to which another Company is entitled hereunder (a "Tax Refund Recipient") shall pay over the amount of such Tax Refund (including interest received from the relevant Taxing Authority, but net of any Taxes imposed with respect to such Tax Refund and any other reasonable costs associated therewith) within thirty (30) days of receipt thereof (or from the due date for payment of any Tax reduced thereby); provided, however, that the other Company, upon the request of such Tax Refund Recipient, shall repay the amount paid to the other Company (plus any penalties, interest or other charges imposed by the relevant Taxing Authority) to the extent that, as a result of a subsequent Final Determination, a Tax Refund that gave rise to such payment is subsequently disallowed or required to be repaid to the relevant Taxing Authority.

(d) Corresponding Tax Benefits. Without duplication of Section 10(d), if any adjustment with respect to Taxes for which one Party is responsible under this Agreement makes allowable to the other Party any reduction in Taxes payable by the other Party or any other Tax benefit to such other Party which would not, but for such adjustment, be allowable, then the other Party (i) shall use commercially reasonable efforts to actually realize such Tax reduction or other Tax benefit, and (ii) shall pay over to the first Party such Tax reduction or other Tax benefit as and when actually realized, determined on a "with and without" basis, at the time the Tax Return which reflects such Tax reduction or other Tax benefit is filed.

Section 8. Certain Tax Elections. With respect to any Tax election (x) which, if made, would bind one or more members of the Emerson Group, on the one hand, and one or more members of the Newco Group, on the other hand, including the Specified Tax Elections, or (y) if made by one or more members of one Group would be effective only if the same election is made by one or more members of the other Group, Emerson shall be entitled in its reasonable discretion, after consultation with Newco, to determine whether the Emerson Group or the Newco Group shall make such Tax election, and no member of the Newco Group shall make any such Tax election without the prior written consent of Emerson (which may be granted or withheld in the reasonable discretion of Emerson, after consultation with Newco). If Emerson determines that any such Tax election shall be made, or agrees to make such election, in each case in accordance with this Section 8, Newco and Emerson shall, and shall cause the members of the Newco Group and the Emerson Group, as appropriate, to cooperate in making such election.

Section 9. Certain Representations and Covenants.

(a) Representations.

(i) Newco and each other member of the Newco Group represents that as of the date hereof, and covenants that as of the Closing Date, except as contemplated by the Transaction Documents, there is no plan or intention:

(A) to contribute or otherwise transfer any equity interests in Roxar Software or Roxar Services to an entity treated as a corporation for U.S. federal income tax purposes;

TABLE OF CONTENTS

(B) to liquidate Roxar Software or Paradigm BV (together, the “Spinco” and each a “Spinco”) or to merge, consolidate or amalgamate any Spinco with any other Person subsequent to the Closing, unless, in the case of a merger, consolidation or amalgamation, such Spinco is the survivor of the merger, consolidation or amalgamation);

(C) to sell, transfer or otherwise dispose of, directly or indirectly, any material asset of any member of the Paradigm Group (except for any Wind-Down Entity) to a Person other than a member of the Paradigm SAG subsequent to the Closing, except (A) dispositions in the ordinary course of business, (B) any cash paid to acquire assets in arm’s length transactions, (C) transactions that are disregarded for U.S. federal income Tax purposes, and (D) mandatory or optional repayment or prepayment of indebtedness;

(D) to take or fail to take any action in a manner that is inconsistent with any representations furnished by Newco to the Tax Advisor in the Tax Representation Letters;

(E) to repurchase stock of either of the Spinco;

(F) to enter into any negotiations, agreements, or arrangements with respect to transactions or events (including stock issuances, pursuant to the exercise of options or otherwise, option grants, the adoption of, or authorization of shares under, a stock option plan, capital contributions, or acquisitions, but not including the Distributions) that could reasonably be expected to cause the Distributions to be treated as part of a plan (within the meaning of Section 355(e) of the Code) pursuant to which one or more Persons acquire directly or indirectly stock of the Spinco representing a 50% or greater interest (within the meaning of Section 355(d)(4) of the Code) in either Spinco; provided, that the Parties agree, for the avoidance of doubt, that a Non-Dilutive Equity Issuance is not such a transaction or event; or

(G) to cease to continue the active conduct of any Active Trade or Business, or to substantially reduce the business activity of any Active Trade or Business.

(b) Covenants.

(i) Neither Emerson nor Newco shall, nor shall permit any other member of the Emerson Group or the Newco Group to, take or fail to take any action that constitutes an Emerson Disqualifying Action or a Newco Disqualifying Action, as applicable.

(ii) Neither Emerson nor Newco shall, nor shall permit any other member of the Emerson Group or the Newco Group to, take or fail to take any action that is inconsistent with any representations furnished by Emerson or Newco to the Tax Advisor in the Tax Representation Letters.

(iii) During the two-year period following the Closing Date:

(A) each Spinco shall (x) maintain its status as a company engaged in the applicable Active Trade or Business for purposes of Section 355(b)(2) of the Code, (y) not engage in any transaction that would result in it ceasing to be a company engaged in the applicable Active Trade or Business for purposes of Section 355(b)(2) of the Code, taking into account Section 355(b)(3) of the Code for purposes of each of clauses (x) and (y) hereof, and (z) not dispose of or permit a member of the Paradigm Group to dispose of, directly or indirectly, any interest in a member of the Paradigm Group (except for any Wind-Down Entity) to a Person other than a member of the Paradigm SAG subsequent to the Closing or permit any such member of the Paradigm Group to make or revoke any election under Treasury Regulations Section 301.7701-3; provided, that this clause (z) shall not prohibit an election under Treasury Regulations Section 301.7701-3 (I) to treat a member of the Paradigm Group as a disregarded entity or partnership for U.S. federal income Tax purposes, to the extent such entity is wholly owned by one or more members of the Paradigm Group or (II) to treat a member of the Paradigm Group as a corporation for U.S. federal income Tax purposes, to the extent such election is treated under Treasury Regulations Section 301.7701-3(g)(1) as a contribution of assets to a corporation that is or becomes a member of the Paradigm SAG;

(B) neither Spinco shall repurchase any of its Equity Interests;

TABLE OF CONTENTS

(C) neither Spinco shall, or shall agree to, merge, consolidate or amalgamate with any other Person, unless such Spinco is the survivor of the merger, consolidation or amalgamation;

(D) Newco shall not cease to own, indirectly, 100% of the Equity Interests in either Spinco;

(E) Newco shall not, and shall not permit any other member of the Newco Group to, or to agree to, sell or otherwise issue to any Person, any Equity Interests of Newco; provided, however, that Newco may issue Equity Interests to the extent such issuances (I) satisfy Safe Harbor VIII (relating to acquisitions in connection with a person's performance of services) or Safe Harbor IX (relating to acquisitions by a retirement plan of an employer) of Treasury Regulations Section 1.355-7(d) or (II) constitute a Non-Dilutive Equity Issuance;

(F) Newco shall not, and shall not permit any other member of the Newco Group to (I) solicit any Person to make a tender offer for, or otherwise acquire or sell, the Equity Interests of Newco, (II) participate in or support any unsolicited tender offer for, or other acquisition, issuance or disposition of, the Equity Interests of Newco or (III) approve or otherwise permit any proposed business combination or any transaction which, in the case of clauses (I) or (II), individually or in the aggregate, together with any transaction occurring within the four-year period beginning on the date which is two years before the Closing Date and any other transaction which is part of a plan or series of related transactions (within the meaning of Section 355(e) of the Code) that includes the Distributions, could result in one or more Persons acquiring (except for acquisitions that otherwise satisfy Safe Harbor VIII (relating to acquisitions in connection with a person's performance of services) or Safe Harbor IX (relating to acquisitions by a retirement plan of an employer) of Treasury Regulations Section 1.355-7(d) directly or indirectly any stock in either Spinco (or any successor thereto); provided, that the Parties agree, for the avoidance of doubt, that a Non-Dilutive Equity Issuance shall not be prohibited by this Section 9(b)(iii)(F); provided further that any clarification of, or change in, the statute or regulations promulgated under Section 355(e) of the Code that has effect retroactive to a Taxable period that includes the Closing Date shall be incorporated in the restrictions in this clause (iii) and the interpretation thereof;

(G) Newco shall not, and shall not permit any other member of the Newco Group to, amend its certificate of incorporation (or other organizational documents), or take any other action, whether through a stockholder vote or otherwise, affecting the voting rights of the Equity Interests of Newco or either Spinco (including, without limitation, through the conversion of one class of Equity Interests of Newco or either Spinco into another class of Equity Interests of Newco or such Spinco); and

(H) Newco shall not, and shall not permit any member of the Newco Group to, contribute or otherwise transfer any equity interests in Roxar Software or Roxar Services to an entity treated as a corporation for U.S. federal income Tax purposes.

(iv) Neither Emerson nor Newco shall take or fail to take, or permit any other member of the Emerson Group or the Newco Group, respectively, to take or fail to take, any action if such action or failure, as applicable, prevents the Intended Tax Treatment or could reasonably be expected to result in Tax treatment that is inconsistent with the Intended Tax Treatment; provided that, with respect to Emerson and the Emerson Group, this covenant shall apply only with respect to clause (v) of the definition of "Intended Tax Treatment".

(v) Without the prior written consent of Emerson (not to be unreasonably withheld, conditioned or delayed), before October 1, 2022, Newco will not, directly or indirectly, cause or permit (A) the sale, exchange, transfer or other disposition of the shares of Paradigm BV, Roxar Software or Roxar Services by the regarded owner (for U.S. federal income tax purposes) thereof as of the Closing Date, or (B)

Paradigm BV, Roxar Software or Roxar Services to engage in any merger, liquidation, reorganization or similar transaction, unless, in each case, such action does not constitute a triggering event pursuant to Treasury Regulations Section 1.367(a)-8(k), as reasonably determined by Emerson,

[TABLE OF CONTENTS](#)

after notice by and consultation with Newco at least 30 days prior to the taking by Newco of any such action; provided, that the Parties shall reasonably cooperate to file any new gain recognition agreement to the extent necessary to cause any such action to qualify as a triggering event exception pursuant to Treasury Regulations Section 1.367(a)-8(k).

(c) Certain Newco Covenants with respect to OSI.

(i) Newco will not cause or permit OSI or any of its Subsidiaries or any Affiliate of Newco to (i) file or amend or otherwise modify any Tax Return of OSI or its Subsidiaries if (A) OSI or such Subsidiary was treated as an S corporation or disregarded entity for purposes of such Tax Return on or prior to October 1, 2020 (the "OSI Acquisition" and such date, the "OSI Acquisition Date") and (B) the results of operations reflected on such Tax Return would also be reflected on a Tax Return of any owner of OSI prior to the OSI Acquisition, that relates in whole or in part to any taxable period (or portion thereof) beginning prior to the OSI Acquisition Date (such taxable period, an "OSI Covered Tax Period," and such Tax Return, an "OSI Pass-Through Tax Return"), (ii) make or change any U.S. federal or state election or accounting method or practice with respect to any OSI Pass-Through Tax Return, or that has retroactive effect to, any OSI Covered Tax Period, (iii) voluntarily approach any Tax authority with respect to any OSI Pass-Through Tax Return attributable to an OSI Covered Tax Period or (iv) extend or waive the statute of limitations or other period for the assessment of any Tax with respect to any OSI Pass-Through Tax Return with respect to any OSI Covered Tax Period in each case, without the prior written consent of Emerson;

(ii) Newco shall promptly notify Emerson in writing upon receipt by Newco, any member of the Newco Group or any of Newco's Affiliates of notice of any pending or threatened U.S. federal, state, local or foreign Tax audits, examinations or assessments relating to any OSI Pass-Through Tax Return for any OSI Covered Tax Period (an "OSI Pass-Through Tax Contest"). OSI's sellers' representative (whom Emerson shall identify to Newco) shall have the sole right to represent the interests of OSI or its Subsidiaries in any OSI Pass-Through Tax Contest, and to employ counsel of its choice at its expense.

(iii) Newco shall pay or cause to be paid to, or as directed by and on behalf of, Emerson the amount of any refund set forth on Schedule C (the "Specified OSI Refunds") received by Newco or any of the Newco Group members promptly following receipt thereof; provided, that, prior to the payment of any Specified OSI Refund by Newco to Emerson, (i) Newco shall inform Emerson of the receipt of any Specified OSI Refund and (ii) Emerson shall certify to Newco that (x) Emerson is obligated to pay the entire amount of such Specified OSI Refund to certain persons that Emerson shall therein specify (the "OSI Sellers"), and (y) unless Emerson has directed Newco to pay such Specified OSI Refund on behalf of Emerson to the OSI Sellers, Emerson shall, promptly following its receipt of the payment of the amount of such Specified OSI Refund from Newco, so pay the entire amount of such Specified OSI Refund to the OSI Sellers. Newco shall cause the applicable Emerson Contributed Subsidiary to request a refund (rather than a credit in lieu of a refund) with respect to all Specified OSI Refunds.

(d) Newco Covenants Exceptions. Notwithstanding the provisions of [Section 9\(b\)](#), Newco and the other members of the Newco Group may:

(i) pay cash to acquire assets in arm's length transactions, engage in transactions that are disregarded for U.S. federal Tax purposes, and make mandatory or optional repayments or prepayments of indebtedness; or

(ii) take any action that would reasonably be expected to be inconsistent with the covenants contained in Section 9(b), if: (A) Newco notifies Emerson of its proposal to take such action and Newco and Emerson obtain a ruling from the IRS to the effect that such action will not affect the Intended Tax Treatment, provided that Newco agrees in writing to bear any expenses associated with obtaining such a ruling and, provided further that the Newco Group shall not be relieved of any liability under Section 10(a) of this Agreement by reason of seeking or having obtained such a ruling; (B) Newco notifies Emerson of its proposal to take such action and obtains an unqualified opinion of counsel (I) from a Tax advisor recognized as an expert in U.S. federal income Tax matters and reasonably acceptable to Emerson, (II) on which Emerson may rely and (III) to the effect that,

TABLE OF CONTENTS

assuming the Pre-Closing Restructuring, the Emerson Contributions and the Merger Exchange otherwise (without taking into account the action contemplated by this paragraph) qualify for the Intended Tax Treatment, such action "will" not affect the Intended Tax Treatment, provided that the Newco Group shall not be relieved of any liability under Section 10(a) of this Agreement by reason of having obtained such an opinion ; or (C) Newco obtains the prior written consent of Emerson to take such action, provided that the Newco Group shall not be relieved of any liability under Section 10(a) of this Agreement by reason of having obtained such consent.

Section 10. Indemnities.

(a) Newco Indemnity to Emerson. Newco and each other member of the Newco Group shall jointly and severally indemnify Emerson and the other members of the Emerson Group against, and hold them harmless, without duplication, from:

(i) any Tax liability for which Newco is liable pursuant to Section 3;

(ii) any Tax liability attributable to a breach, after the Closing, by Newco or any other member of the Newco Group of any representation, covenant or provision contained in this Agreement (including, for the avoidance of doubt, any Taxes resulting from any breach for which the conditions set forth in Section 9(d) are satisfied);

(iii) any Pre-Closing Restructuring Taxes attributable to a Newco Disqualifying Action (including, for the avoidance of doubt, any Taxes resulting from any action for which the conditions set forth in Section 9(d)(ii) are satisfied); and

(iv) all liabilities, costs, expenses (including, without limitation, reasonable expenses of investigation and attorneys' fees and expenses), losses, damages, assessments, settlements or judgments arising out of or incident to the imposition, assessment or assertion of any Tax liability or damage described in clauses (i), (ii) or (iii), including those incurred in the contest in good faith in appropriate proceedings relating to the imposition, assessment or assertion of any such Tax, liability or damage.

(b) Emerson Indemnity to Newco. Emerson and each other member of the Emerson Group will jointly and severally indemnify Newco and the other members of the Newco Group against, and hold them harmless, without duplication, from:

(i) any Tax liability for which Emerson is liable pursuant to Section 3;

(ii) any Taxes imposed on any member of the Newco Group under Treasury Regulations Section 1.1502-6 (or similar or analogous provision of state, local or foreign law) as a result of any Emerson Contributed Subsidiary being or having been a member of a Combined Group on or before the Closing Date;

(iii) any Taxes imposed on any member of the Newco Group under any provision of state, local or foreign law similar or analogous to Treasury Regulations Section 1.1502-6 as a result of such member

being or having been a member of a Combined Group with any member of the Emerson Group on or after the Closing Date;

(iv) all amounts required to be paid by any Emerson Contributed Subsidiary under any Tax Sharing Agreement to which such Emerson Contributed Subsidiary is or was a party or is or was otherwise subject on or prior to the Closing Date;

(v) any Tax liability attributable to a breach, after the Closing, by Emerson or any other member of the Emerson Group of any representation in this Agreement or any covenant or provision contained in this Agreement or the Transaction Agreement;

(vi) any Pre-Closing Restructuring Taxes, other than any Pre-Closing Restructuring Taxes for which Newco and each other member of the Newco Group are obligated to indemnify Emerson and the members of the Emerson Group under Section 10(a)(iii); and

(vii) all liabilities, costs, expenses (including, without limitation, reasonable expenses of investigation and attorneys' fees and expenses), losses, damages, assessments, settlements or judgments

TABLE OF CONTENTS

arising out of or incident to the imposition, assessment or assertion of any Tax liability or damage described in clauses (i) through (vi), including those incurred in the contest in good faith in appropriate proceedings relating to the imposition, assessment or assertion of any such Tax, liability or damage.

(c) Discharge of Indemnity. Newco, Emerson and the members of their respective Groups shall discharge their obligations under Section 10(a) or Section 10(b) hereof, respectively, by paying the relevant amount in accordance with Section 11, within thirty (30) Business Days of demand therefor or, to the extent such amount is required to be paid to a Taxing Authority prior to the expiration of such thirty (30) Business Days, at least ten (10) Business Days prior to the date by which the demanding party is required to pay the related Tax liability. Any such demand shall include a statement showing the amount due under Section 10(a) or Section 10(b), as the case may be. Notwithstanding the foregoing, if any member of the Newco Group or any member of the Emerson Group disputes in good faith the fact or the amount of its obligation under Section 10(a) or Section 10(b), then no payment of the amount in dispute shall be required until any such good faith dispute is resolved in accordance with Section 25 hereof; provided, however, that any amount not paid within thirty (30) Business Days of demand therefor shall bear interest as provided in Section 11.

(d) Corresponding Tax Benefits. If an indemnification obligation of any member of the Emerson Group or any member of the Newco Group, as the case may be, under this Section 10 arises in respect of an adjustment that makes allowable to an Indemnitee any reduction in Taxes payable by the Indemnitee or other Tax benefit which would not, but for such adjustment, be allowable, then any such indemnification obligation shall be an amount equal to (i) the amount otherwise due but for this Section 10(d), minus (ii) the reduction in actual cash Taxes payable by the Indemnitee in the Taxable year in which such indemnification obligation arises, determined on a "with and without" basis.

Section 11. Payments.

(a) Timing. All payments to be made under this Agreement (excluding, for the avoidance of doubt, any payments to a Taxing Authority described herein) shall be made in immediately available funds. Except as otherwise provided, all such payments will be due thirty (30) Business Days after the receipt of notice of such payment or, where no notice is required, thirty (30) Business Days after the fixing of liability or the resolution of a dispute (the "Due Date"). Payments shall be deemed made when received. Any payment that is not made on or before the Due Date shall bear interest at the rate equal to the "prime" rate as published on such Due Date in the Wall Street Journal, Eastern Edition, for the period from and including the date immediately following the Due Date through and including the date of payment. With respect to any payment required to be made

under this Agreement, Emerson has the right to designate, by written notice to Newco, which member of the Emerson Group will make or receive such payment.

(b) No Duplicative Payment. It is intended that the provisions of this Agreement shall not result in a duplicative payment of any amount required to be paid under the Transaction Agreement or any other Transaction Document, and this Agreement shall be construed accordingly.

Section 12. Guarantees. Emerson and Newco, as the case may be, each hereby guarantees and agrees to otherwise perform the obligations of each other member of the Emerson Group or the Newco Group, respectively, under this Agreement.

Section 13. Communication and Cooperation.

(a) Consult and Cooperate. Emerson and Newco shall consult and cooperate (and shall cause each other member of their respective Groups to consult and cooperate) fully at such time and to the extent reasonably requested by the other party in connection with all matters subject to this Agreement. Such cooperation shall include, without limitation:

(i) the retention, and provision on reasonable request, of any and all information including all books, records, documentation or other information pertaining to Tax matters relating to the Newco Group (or, in the case of any Tax Return of the Emerson Group, the portion of such return that relates to Taxes for which the Newco Group may be liable or earnings and profits, PTI, Tax Attributes, Tax basis, overall foreign loss or other consolidated, combined or unitary attribute that may be allocated to

[TABLE OF CONTENTS](#)

a member of the Newco Group, in each case pursuant to this Agreement), any necessary explanations of information, and access to personnel, until one year after the expiration of the applicable statute of limitation (giving effect to any extension, waiver or mitigation thereof);

(ii) the execution of any document that may be necessary (including to give effect to Section 14) or helpful in connection with any required Tax Return or in connection with any audit, proceeding, suit or action; and

(iii) the use of the parties' commercially reasonable efforts to obtain any documentation from a Governmental Authority or a third party that may be necessary or helpful in connection with the foregoing.

(b) Provide Information. Except as set forth in Section 14, Emerson and Newco shall keep each other reasonably informed with respect to any material development relating to the matters subject to this Agreement.

(c) Tax Attribute Matters. Emerson and Newco shall promptly advise each other with respect to any proposed Tax adjustments that are the subject of an audit or investigation, or are the subject of any proceeding or litigation, and that may affect any Tax liability or any Tax Attribute (including, but not limited to, basis in an asset or the amount of earnings and profits) of any member of the Newco Group or any member of the Emerson Group, respectively.

(d) Confidentiality and Privileged Information. Any information or documents provided under this Agreement shall be kept confidential by the party receiving the information or documents, except as may otherwise be necessary in connection with the filing of required Tax Returns or in connection with any audit, proceeding, suit or action. Without limiting the foregoing (and notwithstanding any other provision of this Agreement or any other agreement), (i) no member of the Emerson Group or Newco Group, respectively, shall be required to provide any member of the Newco Group or Emerson Group, respectively, or any other Person access to or copies of any information or procedures other than information or procedures that relate to Newco, the business or assets of any member of the Newco Group, or matters for which Newco or Emerson Group, respectively, has an obligation to indemnify under this Agreement, and (ii) in no event shall any member of the

Emerson Group or the Newco Group, respectively, be required to provide any member of the Newco Group or Emerson Group, respectively, or any other Person access to or copies of any information if such action could reasonably be expected to result in the waiver of any privilege. Notwithstanding the foregoing, in the event that Emerson or Newco, respectively, determines that the provision of any information to any member of the Newco Group or Emerson Group, respectively, could be commercially detrimental or violate any law or agreement to which Emerson or Newco, respectively, is bound, Emerson or Newco, respectively, shall not be required to comply with the foregoing terms of this Section 13(d) except to the extent that it is able, using commercially reasonable efforts, to do so while avoiding such harm or consequence (and shall promptly provide notice to Emerson or Newco, to the extent such access to or copies of any information is provided to a Person other than a member of the Emerson Group or Newco Group (as applicable)).

Section 14. Audits and Contests.

(a) Notice. Each of Emerson or Newco shall promptly notify the other in writing upon the receipt of any notice of Tax Proceeding from the relevant Taxing Authority or upon becoming aware of an actual or potential Tax Proceeding by a Taxing Authority that may affect the liability of any member of the Newco Group or the Emerson Group, respectively, for Taxes under Applicable Law or this Agreement; provided, that a Party's right to indemnification under this Agreement shall not be limited in any way by a failure to so notify, except to the extent that the indemnifying Party is prejudiced by such failure.

(b) Emerson Control. Notwithstanding anything in this Agreement to the contrary, Emerson shall have the right to control all matters relating to any Tax Proceeding relating to any Pre-Closing Emerson Combined Tax Return. Emerson shall have absolute discretion with respect to any decisions to be made, or the nature of any action to be taken, with respect to any Tax Proceeding described in the preceding sentence; provided, however, that to the extent that any Tax Proceeding is reasonably likely to (A) give rise to an indemnity obligation of Newco under Section 10 hereof or (B) affect the allocation of earnings and profits, PTI, Tax Attributes, Tax basis, overall foreign loss or other consolidated, combined or unitary

TABLE OF CONTENTS

attribute that may be allocated to a member of the Newco Group pursuant to Section 5 hereof, (i) Emerson shall keep Newco informed of all material developments and events relating to any such Tax Proceeding described in this proviso, and (ii) other than with respect to any Tax Proceeding relating to any Pre-Closing Emerson Combined Tax Return, at its own cost and expense, Newco shall have the right to participate in (but not to control) the defense of any such Tax Proceeding.

(c) Newco Control. Newco shall have the right to control all matters relating to any Tax Proceeding relating to any Emerson Contributed Subsidiary Non-Emerson Group Tax Return and any Tax attributable to any Emerson Contributed Subsidiary or Deferred Business that is not required to be reported on a Tax Return, other than any Tax Proceeding relating to Pre-Closing Restructuring Taxes or Deferred Closing Taxes. Newco shall have absolute discretion with respect to any decisions to be made, or the nature of any action to be taken, with respect to any Tax Proceeding described in the preceding sentence; provided, however, that to the extent that any such Tax Proceeding is reasonably likely to give rise to an indemnity obligation of Emerson under Section 10 hereof, (i) Newco shall keep Emerson informed of all material developments and events relating to any such Tax Proceeding described in this proviso, (ii) at its own cost and expense, Emerson shall have the right to participate in (but not to control) the defense of any such Tax Proceeding, and (iii) Newco shall not settle or compromise any such contest without Emerson's prior written consent (which shall not be unreasonably withheld, conditioned or delayed).

(d) Pre-Closing Restructuring Taxes and Deferred Closing Taxes. Emerson shall have the right to control any Tax Proceeding relating to Pre-Closing Restructuring Taxes and Deferred Closing Taxes; provided, that Emerson shall keep Newco fully informed of all material developments and, other than with respect to any Tax Proceeding relating to any Pre-Closing Emerson Combined Return (which shall be governed by Section

14(b)), shall permit Newco, at its own cost and expense, a reasonable opportunity to participate in the defense of the matter.

Section 15. Deferred Business Tax Matters. Notwithstanding that pursuant to Section 7.05(e) of the Transaction Agreement the Newco Group is intended to be treated as having the economic rights, benefits, and interests, and assuming the economic risk, encumbrances, and obligations, in each case, with respect to the ownership of each Deferred Business as of the Effective Time, the Parties agree to treat the Emerson Group (or the applicable member(s) thereof) as the owner of each Deferred Business during the applicable Deferred Closing Period for all applicable Tax purposes. Each of Emerson and Newco shall, and shall cause their respective Affiliates to, file all applicable Tax Returns in a manner consistent with this Section 15, and shall not take any contrary Tax position, except to the extent required pursuant to a "determination" under Section 1313(a) of the Code (or similar result or outcome under state, local or non-U.S. Tax law).

Section 16. Notices. Any notice, instruction, direction or demand under the terms of this Agreement required to be in writing shall be duly given upon delivery, if delivered by hand, facsimile transmission, email transmission, or mail, to the following addresses:

if to Emerson or the Emerson Group, to:

Emerson Electric Co.

[•]

Attention: [•]

Email: [•]

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

Davis Polk & Wardwell LLP

450 Lexington Avenue

New York, New York 10017

Attention: Michael Mollerus

Email: michael.mollerus@davispolk.com

[TABLE OF CONTENTS](#)

if to Newco or the Newco Group, to:

Aspen Technology, Inc.

[•]

Attention: [•]

Email: [•]

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

Skadden, Arps, Slate, Meagher & Flom LLP

500 Boylston Street

Boston, Massachusetts 02116

Attention: Graham Robinson

Moshe Spinowitz

Chadé Severin

E-mail: graham.robinson@skadden.com

moshe.spinowitz@skadden.com

chade.severin@skadden.com

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 17. Costs and Expenses. The Party that prepares any Tax Return shall bear the costs and expenses incurred in the preparation of such Tax Return. Except as expressly set forth in this Agreement or the Transaction Agreement, (i) each Party shall bear the costs and expenses incurred pursuant to this Agreement to the extent the costs and expenses are directly allocable to a liability or obligation allocated to such Party and (ii) to the extent a cost or expense is not directly allocable to a liability or obligation, it shall be borne by the Party incurring such cost or expense. For purposes of this Agreement, costs and expenses shall include, but not be limited to, reasonable attorneys' fees, accountants' fees and other related professional fees and disbursements.

Section 18. Effectiveness; Termination and Survival. Except as expressly set forth in this Agreement, as between Emerson and Newco, this Agreement shall become effective upon the consummation of the Closing. All rights and obligations arising hereunder shall survive until they are fully effectuated or performed; provided that, notwithstanding anything in this Agreement to the contrary, this Agreement shall remain in effect and its provisions shall survive for one year after the full period of all applicable statutes of limitation (giving effect to any extension, waiver or mitigation thereof) and, with respect to any claim hereunder initiated prior to the end of such period, until such claim has been satisfied or otherwise resolved.

Section 19. Specific Performance. Each Party to this Agreement acknowledges and agrees that damages for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and irreparable harm would occur. In recognition of this fact, each Party agrees that, if there is a breach or threatened breach, in addition to any damages, the other nonbreaching Party to this Agreement, without posting any bond, shall be entitled to seek and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent

injunction, attachment, or any other equitable remedy which may then be available to obligate the breaching Party (i) to perform its obligations under this Agreement or (ii) if the breaching Party is unable, for whatever reason, to perform those obligations, to take any other actions as are necessary, advisable or appropriate to give the other Party to this Agreement the economic effect which comes as close as possible to the performance of those obligations (including transferring, or granting liens on, the assets of the breaching party to secure the performance by the breaching party of those obligations).

TABLE OF CONTENTS

Section 20. Construction. In this Agreement, unless the context clearly indicates otherwise:

- (a) words used in the singular include the plural and words used in the plural include the singular;
- (b) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
- (c) except as otherwise clearly indicated, reference to any gender includes the other gender;
- (d) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation";
- (e) reference to any Article, Section, Exhibit or Schedule means such Article or Section of, or such Exhibit or Schedule to, this Agreement, as the case may be, and references in any Section or definition to any clause means such clause of such Section or definition;
- (f) the words "herein," "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;
- (g) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;
- (h) reference to any law (including statutes and ordinances) means such law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;
- (i) relative to the determination of any period of time, "from" means "from and including," "to" means "to and including" and "through" means "through and including";
- (j) the titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement;
- (k) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States; and
- (l) any capitalized term used in an Exhibit or Schedule but not otherwise defined therein shall have the meaning set forth in this Agreement.

Section 21. Entire Agreement; Amendments and Waivers.

- (a) Entire Agreement.
 - (i) This Agreement and the other Transaction Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof and thereof. No representation, inducement, promise, understanding, condition or warranty not set forth herein or in the other Transaction Documents has been made or relied upon by any party

hereto or any member of their Group with respect to the transactions contemplated by the Transaction Documents. This Agreement is an "Ancillary Agreement" as such term is defined in the Transaction Agreement and shall be interpreted in accordance with the terms of the Transaction Agreement in all respects, provided that in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Transaction Agreement, the terms of this Agreement shall control in all respects.

(ii) THE PARTIES ACKNOWLEDGE AND AGREE THAT NO REPRESENTATION, WARRANTY, PROMISE, INDUCEMENT, UNDERSTANDING, COVENANT OR AGREEMENT HAS BEEN MADE OR RELIED UPON BY ANY PARTY OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE OTHER TRANSACTION DOCUMENTS. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMER SET FORTH IN THE PRECEDING SENTENCE, NEITHER EMERSON NOR ANY OF ITS AFFILIATES HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES IN ANY PRESENTATION OR WRITTEN

[TABLE OF CONTENTS](#)

INFORMATION RELATING TO THE ECHO BUSINESS GIVEN OR TO BE GIVEN IN CONNECTION WITH THE CONTEMPLATED TRANSACTIONS OR IN ANY FILING MADE OR TO BE MADE BY OR ON BEHALF OF EMERSON OR ANY OF ITS AFFILIATES WITH ANY GOVERNMENTAL AUTHORITY, AND NO STATEMENT MADE IN ANY SUCH PRESENTATION OR WRITTEN MATERIALS, MADE IN ANY SUCH FILING OR CONTAINED IN ANY SUCH OTHER INFORMATION SHALL BE DEEMED A REPRESENTATION OR WARRANTY HEREUNDER OR OTHERWISE. NEWCO ACKNOWLEDGES THAT EMERSON HAS INFORMED IT THAT NO PERSON HAS BEEN AUTHORIZED BY EMERSON OR ANY OF ITS AFFILIATES TO MAKE ANY REPRESENTATION OR WARRANTY IN RESPECT OF THE ECHO BUSINESS OR IN CONNECTION WITH THE CONTEMPLATED TRANSACTIONS, UNLESS IN WRITING AND CONTAINED IN THIS AGREEMENT OR IN ANY OF THE OTHER TRANSACTION DOCUMENTS TO WHICH THEY ARE A PARTY.

(b) Amendments and Waivers.

(i) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each of Emerson and Newco, or in the case of a waiver, by the Party against whom the waiver is to be effective.

(ii) No failure or delay by any Party (or the applicable member of such Party's Group) in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 22. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 23. **Jurisdiction.** The Parties agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Chancery Court of the State of Delaware and any state appellate court therefrom within the State of Delaware (or if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any federal or state court sitting in the State of Delaware and any federal or state appellate court therefrom), and each of the Parties hereto hereby irrevocably consents to the exclusive jurisdiction of such courts in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party

anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 16 shall be deemed effective service of process on such Party.

Section 24. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 25. Dispute Resolution. In the event of any dispute relating to this Agreement, the Parties shall work together in good faith to resolve such dispute within thirty (30) days. In the event that such dispute is not resolved, upon written notice by a Party after such thirty (30)-day period, the matter shall be referred to a U.S. Tax counsel or other Tax advisor of recognized national standing (the "Tax Arbiter") that will be jointly chosen by Emerson and Newco; provided, however, that, if Emerson and Newco do not agree on the selection of the Tax Arbiter after five (5) days of good faith negotiation, the Tax Arbiter shall consist of a panel of three U.S. Tax counsel or other Tax advisor of recognized national standing with one member chosen by Emerson, one member chosen by Newco, and a third member chosen by mutual agreement of the other members within the following ten (10)-day period. Each decision of a panel Tax Arbiter shall be made by majority vote of the members. The Tax Arbiter may, in its discretion, obtain the services of any third party necessary to assist it in resolving the dispute. The Tax Arbiter shall furnish written notice to the Parties to the dispute of its resolution of the dispute as

[TABLE OF CONTENTS](#)

soon as practicable, but in any event no later than ninety (90) days after acceptance of the matter for resolution. Any such resolution by the Tax Arbiter shall be binding on the Parties, and the Parties shall take, or cause to be taken, any action necessary to implement such resolution. All fees and expenses of the Tax Arbiter shall be shared equally by the Parties to the dispute.

Section 26. Counterparts; Effectiveness; Third-Party Beneficiaries. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Party hereto. Until and unless each Party has received a counterpart hereof signed by the other Party hereto, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Except for Section 13(d) and the indemnification and release provisions of Section 10, neither this Agreement nor any provision hereof is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the Parties hereto and their respective successors and permitted assigns.

Section 27. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided that neither Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other Party hereto. If any Party or any of its successors or permitted assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of such Party shall assume all of the obligations of such Party under the Transaction Documents.

Section 27. Authorization. Each of Emerson and Newco hereby represents and warrants that it has the power and authority to execute, deliver and perform this Agreement, on its behalf and on behalf of each member of its Group, that this Agreement has been duly authorized by all necessary corporate action on the part of such Party and each member of its Group, that this Agreement constitutes a legal, valid and binding obligation of each such Party and each member of its Group, and that the execution, delivery and performance of this Agreement by such Party and each member of its Group does not contravene or conflict with any provision or law or of its charter or bylaws or any agreement, instrument or order binding on such Party or member of its Group.

Section 28. Change in Tax Law. Any reference to a provision of the Code, Treasury Regulations or any other Applicable Law shall include a reference to any applicable successor provision of the Code, Treasury Regulations or other Applicable Law.

Section 29. Performance. Each party shall cause to be performed all actions, agreements and obligations set forth herein to be performed by any member of such party's Group.

[SIGNATURE PAGE FOLLOWS]

21

[TABLE OF CONTENTS](#)

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the day and year first written above.

EMERSON ELECTRIC CO., on its
own behalf and on behalf of the
members of the Emerson Group

By: _____

Name: [•]

Title: [•]

ASPEN TECHNOLOGY, INC.
(formerly known as Emersub CX,
Inc.) on its own behalf and on behalf
of the members of the Newco Group

By: _____

Name: [•]

Title: [•]

[SIGNATURE PAGE TO THE TAX MATTERS AGREEMENT]

22

Exhibit D-1

CONFIDENTIAL

[FORM OF] TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this "Agreement"), is dated as of [_____] (the "Effective Date"), by and between Emerson Electric Co., a Missouri corporation (together with its Affiliates, "Emerson"), and Emersub CX, Inc., a Delaware corporation ("Newco"). Each of Emerson and Newco are referred to as a "Party," and collectively, as the "Parties."

PRELIMINARY STATEMENT

WHEREAS, the Parties, Aspen Technology, Inc., EMR Worldwide Inc. and Emersub CXI, Inc. have entered into a Transaction Agreement and Plan of Merger, dated as of October 10, 2021, as amended on March [•], 2022 and [•], 2022 (as may be further amended from time to time, the "Transaction Agreement");

WHEREAS, capitalized terms used herein but not defined shall have the meanings ascribed to them in the Transaction Agreement; and

WHEREAS, pursuant to the Transaction Agreement, Emerson and Newco have agreed to enter into this Agreement on the Closing Date in order to provide for the provision of certain transitional services by Emerson to Newco and by Newco to Emerson (each of Emerson and Newco in its capacity as the recipient of services, the "Recipient" and each of Emerson and Newco in its capacity as the provider of services, the "Provider") in connection with the contribution of the Echo Business by Emerson to Newco, upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, conditions, and agreements hereinafter expressed, the Parties agree as follows:

1. Services to be Provided.

- (a) During the Transition Period (as defined below) (or such shorter periods as may be specified in Schedule [A-1], Schedule [A-2] and Schedule [B]), respectively, attached to this Agreement and incorporated herein (each, a "TSA Schedule" and together, the "TSA Schedules") with respect to any Services), (i) Emerson shall provide (or cause to be provided by an Affiliate or a third-party provider (each, a "Subcontractor")) to Newco the services described on Schedule [A-1] and Schedule [A-2] (collectively, and together with the Emerson Facility Services (as defined below), the "Emerson Services") and (ii) Newco shall provide (or cause to be provided by an Affiliate or a Subcontractor) to Emerson the services described on Schedule [B] (the "Newco Services" and together with the Emerson Services, or either of the Newco Services or Emerson Services, as the context requires, the "Services"); provided, however, that, without the Recipient's prior written consent, not to be unreasonably withheld, conditioned or delayed, the Provider shall not cause a third-party Subcontractor to provide any Service if doing so would result in an increase in the aggregate Service Charges and out-of-pocket costs for such Service of more than ten percent (10%) compared to the Service Charges and out-of-pocket costs applicable to such Service as set forth in the applicable TSA Schedule; provided, further, that the Provider shall remain ultimately responsible for ensuring that the obligations set forth in this Agreement are satisfied with respect to any Service provided by any Subcontractor. The Services shall only be made available for, and the Recipient shall only be entitled to utilize the Services for, the benefit of the operation of, in the case Newco is the Recipient, the Echo Business and natural extensions or evolutions thereof and, in the case Emerson is the Recipient, the businesses of Emerson and the Emerson Retained Subsidiaries (the "Emerson Business") and natural extensions or evolutions thereof. Services will not be provided in any location or jurisdiction to the extent the provision of any or all of the Services to an unrelated legal entity or business is illegal; provided,

however, that in any such event, the Provider as promptly as commercially practicable shall notify the Recipient, and the Parties shall use their commercially reasonable efforts to develop, at the Recipient's

¹ Note to Draft: Prior to the Closing, Emerson and Aspen shall cooperate in good faith to finalize the TSA Schedules reflecting Service Charges generally reflecting Provider's actual costs and the exhibits to the Transition Services Agreement as soon as reasonably practicable after the signing of the Transaction Agreement.

reasonable cost and expense (subject to the Recipient's prior written approval), a work-around arrangement that is reasonably acceptable to the Recipient; provided, further, that in any such event, the Provider as promptly as commercially practicable shall use commercially reasonable efforts to perform, at the Recipient's reasonable cost and expense (subject to the Recipient's prior written approval), such Services through alternative means in accordance with Applicable Laws, and if not practicable, the Parties shall use commercially reasonable efforts, at the Recipient's reasonable cost and expense (subject to the Recipient's prior written approval), to minimize the impact, and negotiate in good faith to provide, at the Recipient's reasonable cost and expense (subject to the Recipient's prior written approval), a commercially reasonable alternative arrangement reasonably acceptable to the Recipient. The standard for such Services shall be as set forth in Section 3.

- (b) If a service (i) was provided by Emerson or an Emerson Retained Subsidiary (or a third party on its or their behalf) to the Echo Business during the twelve (12) months prior to the Closing, (ii) cannot reasonably be obtained by Newco from a third party and (iii) is not included in Schedule [•] (Excluded Services) (any such service, an "Omitted Service"), Newco may submit a written notice describing such service to Emerson within six (6) months after the Effective Date (or, for Omitted Services that are performed on a quarterly, annual or other cyclical basis, within sixty (60) days after such Omitted Service would have been provided under the first of such cycle to occur following the Effective Date). Promptly following receipt of such written notice, Emerson shall commence providing such Omitted Service under the terms of this Agreement, such Omitted Service shall be promptly documented in writing by the Parties as an amendment to the applicable TSA Schedule and such Omitted Service shall be included in the Services. For the avoidance of doubt, the Service Charges applicable to any Omitted Service will be reasonably determined consistent with the methodology used to determine the Service Charges for similar Services.
 - (c) The Provider will notify the Recipient and in good faith use reasonable efforts to obtain any Consents from any third party that may be required in connection with the performance of the Provider's obligations hereunder, including the provision of the Services, in each case, with each Party bearing fifty percent (50%) of any out-of-pocket third-party costs and expenses associated with obtaining the applicable Consents; provided that in the event any necessary Consents cannot be obtained by the Provider despite its commercially reasonable efforts, the Provider as promptly as commercially practicable shall inform the Recipient, and the Parties shall develop and implement a commercially reasonable alternative arrangement reasonably acceptable to the Recipient, with each Party bearing fifty percent (50%) of any set-up costs for such arrangement.
 - (d) Management of, and control over, the provision of the Services provided hereunder (including the determination or designation at any time of the equipment, employees and other resources of the Provider, its Affiliates or any Subcontractor to be used in connection with the provision of such Services) shall reside solely with the Provider. Without limiting the generality of the foregoing, except as provided in the TSA Schedules, all labor matters relating to any employees of the Provider, its Affiliates and any Subcontractor shall be within the exclusive control of such entity, and the Recipient shall not have any rights with respect to such matters. Except as provided in the TSA Schedules, the Provider shall be solely responsible for the payment of all salary and benefits and all Taxes (including income tax, social security taxes, unemployment compensation, workers' compensation tax, other employment taxes or withholdings) and premiums and remittances with respect to employees used to provide any Services hereunder.
 - (e) All procedures, methods, systems, strategies, tools, equipment, facilities and other resources used by the Provider, its Affiliates, or any Subcontractor in connection with the provision of Services (other than any
-

such items being the property of the Recipient that are provided by the Recipient to the Provider to facilitate the Provider's provision of the Services to the Recipient) hereunder shall remain the property of the Provider, its Affiliates or such Subcontractor and shall at all times be under the sole direction and control of the Provider, its Affiliates or such Subcontractor. The Recipient may not resell, license the use of or otherwise permit the use by others of any Services, except with the prior written consent of the Provider. Notwithstanding the foregoing, all property, including all Intellectual Property, materials, equipment, samples, third-party licenses (or Intellectual Property licensed thereunder), software, hardware, servers and Confidential Information, (i) disclosed or provided by the Recipient to

the Provider, its Affiliates or Subcontractors pursuant to this Agreement, together with Intellectual Property or data output generated by or on behalf of the Provider for the Recipient in the performance of the Services to the extent exclusively relating to, with respect to Newco in its capacity as the Recipient, the Echo Business, and with respect to Emerson in its capacity as the Recipient, the Emerson Business, as conducted during the Transition Period, is and shall remain the exclusive property of the Recipient or its Affiliates and its suppliers, as applicable, and (ii) (x) disclosed or provided by Newco in its capacity as the Recipient to Emerson, its Affiliates or Subcontractors pursuant to this Agreement to the extent relating to the Emerson Business or otherwise not exclusively relating to the Echo Business or (y) disclosed or provided by Emerson to Newco in its capacity as the Recipient, its Affiliates or Subcontractors pursuant to this Agreement, other than Intellectual Property generated by or on behalf of Emerson for Newco in its capacity as the Recipient in the performance of the Services to the extent exclusively relating to the Echo Business as conducted during the Transition Period, in each case, is and shall remain the exclusive property of Emerson or its Affiliates and its suppliers, as applicable. Subject to the terms of this Agreement, each Party hereby grants to the other Party a non-exclusive, worldwide, fully paid-up, royalty-free, non-transferable (except in accordance with Section 18(g)) license, without the right to sublicense (except as necessary to receive the Services or to subcontract the provision of Services in accordance with Section 1(a)), solely during the Transition Period, to use, reproduce, modify, create derivative works of, perform, display, transmit and otherwise exploit any Intellectual Property (other than Trademarks) provided pursuant to this Agreement solely to perform or receive the Services, as applicable.

- (f) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 1(e), NO LICENSES OR ANY OTHER RIGHT, TITLE OR INTEREST IN OR TO ANY INTELLECTUAL PROPERTY ARE GRANTED TO EITHER PARTY OR ANY OF ITS AFFILIATES UNDER THIS AGREEMENT, WHETHER BY IMPLICATION, ESTOPPEL, EXHAUSTION OR OTHERWISE, AND EACH PARTY RETAINS AND RESERVES ANY AND ALL RIGHT, TITLE AND INTEREST NOT EXPRESSLY GRANTED UNDER THIS AGREEMENT.

2. Consideration for Services.

- (a) The Recipient shall pay to the Provider the fees for each Service (or category of Services, as applicable) as set forth on the applicable TSA Schedule (including, for the avoidance of doubt, as adjusted in connection with any extension pursuant to Section 9(a)) (collectively, the "Service Charges," and each, a "Service Charge"). During the Transition Period, the amount of a Service Charge for any Service (or category of Services, as applicable) shall not increase, except to the extent such costs and amounts increase for, in the case Emerson is the Provider, the Emerson Business, and, in the case Newco is the Provider, the Echo Business, using the same service at the same location or changes in actual compensation and benefits costs. Where Service Charges are calculated on a per headcount basis, the Provider understands and agrees that headcount may fluctuate in the ordinary course of business; provided that, if the Recipient provides updates to the applicable headcount no later than five (5) days before any calendar month of the Transition Period, the Provider shall adjust the applicable Service Charges effective as of such calendar month. The Recipient will be charged for the then-current headcount for the invoiced period. Actual, documented out-of-pocket costs paid to any third-party provider that is providing goods or services used by the Provider in providing the Services (e.g., license costs for software) will be an incremental cost to the Recipient in addition to the Service Charges, and will be charged to the Recipient at the actual third-party cost
-

allocated to the Services in a manner consistent with past practice; provided, however, that the Recipient's prior written approval shall be required with respect to any out-of-pocket costs exceeding twenty five thousand dollars (\$25,000). Notwithstanding the foregoing, for the avoidance of doubt, Emerson shall bear all costs and expenses associated with building or setting up the Transition Environment (as described in Schedule [A-1]) and the Service Charges to be paid by Newco in its capacity as the Recipient shall reflect the costs and expenses associated with Newco's connection to and Echo's operation of the Transition Environment in connection with the provision and receipt of the Services.

- (b) The Provider shall deliver invoices to the Recipient on a monthly basis reflecting charges for the preceding month. the Provider agrees to afford the Recipient, upon reasonable notice, access to such information, records and documentation of the Provider as the Recipient may reasonably request in order to verify any invoices and charges for Services hereunder or additional out-of-pocket costs as set forth in Section 2(a).
 - (c) The Recipient shall pay the amount (other than amounts it disputes in good faith) of such invoice in U.S. dollars by wire transfer to the Provider within thirty (30) days of the date of receipt of such invoice to the account specified by the Provider and payment of the disputed amount (if and to the extent required) shall be made promptly after resolution of such dispute in accordance with this Section 2(c); provided that, at the Provider's option, with respect to Services rendered outside the United States, payments may be required to be made in local currency, subject to the Recipient's consent (not to be unreasonably withheld). If the Recipient fails to pay such amount by such date, the Recipient shall be obligated to pay to the Provider, in addition to the amount due, interest at the prime rate as published in The Wall Street Journal, Eastern Edition in effect on such date, compounded monthly, accruing from the date the payment was due through the date of actual payment. If the Recipient disputes in good faith the amount reflected on any invoice, the Recipient shall promptly, but in any event within sixty (60) days of the date of receipt of such invoice, specify in writing the portion that it disputes and the basis for that dispute. If the Recipient has disputed an amount in connection with the payment of an invoice in accordance with the foregoing, or if the Recipient provides written notice to the Provider challenging whether the Service Charges set forth on an invoice rendered by the Provider pursuant to Section 2(b) accurately reflect the Services provided hereunder within sixty (60) days of the receipt of such invoice, then, in either case, the Parties shall comply with the following process: (i) the appropriate representatives from the finance divisions of the Parties shall promptly meet to review and attempt to resolve the matter; (ii) if the matter is still not resolved, then the Service Coordinators (as defined below) of the Parties shall meet and shall use reasonable efforts to resolve the dispute; and (iii) if the matter is still not resolved within ten (10) days of referral to the Service Coordinator, then the Parties shall undertake the procedures set forth in Section 18(b) hereof.
 - (d) Except as set forth in Section 2(c), the Recipient shall pay the full amount of the Service Charges and shall not set-off, counterclaim or otherwise withhold any amount owed to the Provider under this Agreement on account of any obligation owed by the Provider to the Recipient that has not been finally adjudicated, settled or otherwise agreed upon by the Parties in writing.
 - (e) Incremental to any other payments, fees or charges in this Agreement, the Recipient shall pay any Taxes imposed on, or payable with respect to, the provision of Services, including all applicable sales, use, value added and similar Taxes, but excluding Taxes based on the Provider's net income or assets.
 - (f) All amounts payable under this Agreement shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by Applicable Law. If deduction or withholding is required by Applicable Law on the payment of any amount under this Agreement, the amount of the payment due from the Party required to make such payment shall be increased to an amount which, after any withholding or deduction, leaves an amount equal to the payment which would have been due if no such deduction or withholding were required. The Recipient shall withhold (or cause to be withheld) such taxes, levies or charges and pay (or cause to be paid) such withheld amounts over to the applicable taxing
-

authority in accordance with the requirements of Applicable Law and provide the Provider with an official receipt confirming payment. The Provider shall, prior to the date of any payment to be made pursuant to this Agreement, at the request of the Recipient, use commercially reasonable efforts to provide the Recipient with any certificate or other documentary evidence (i) required by any Tax Law or (ii) which the Provider is entitled by any Tax Law to provide in order to reduce the amount of any Taxes that may be deducted or withheld from such payment and the Recipient agrees to accept and act in reliance on any such duly and properly executed or other applicable documentary evidence. Each Party shall reasonably cooperate and use commercially reasonable efforts to minimize or eliminate any withholding Tax liability.

3. Standard for Service. Except as otherwise provided in this Agreement or the TSA Schedules, the Provider agrees to perform each Service such that the nature, quality, standard of care, level of priority and the service level at which such Service is performed are not materially less than the nature, quality, standard of

4

care, level of priority and service level at which substantially the same service was performed by or on behalf of, in the case Emerson is the Provider, to the Echo Business, and in the case Newco is the Provider, Newco or the Emerson Contributed Subsidiaries to the Emerson Business, during the twelve (12) months prior to the Closing Date (or, if not so previously provided, then substantially the same as that applicable to similar services provided by, in the case Emerson is the Provider, Emerson to the Emerson Retained Subsidiaries, and in the case Newco is the Provider, by Newco to its Subsidiaries). Without limiting the foregoing, in the event there is any restriction on the Provider under an existing contract with a third party that would restrict the nature, quality or standard of care applicable to delivery of a Service to be provided by the Provider to the Recipient, the Provider shall promptly provide notice to the Recipient of such restriction and the Parties shall reasonably cooperate in good faith to mutually agree on alternative arrangements or procedures to allow the Provider to provide such Service in a manner as close as possible to the standards described in this Section 3. The Provider shall not be responsible for any inability to provide a Service or any delay in doing so to the extent that such inability or delay is caused by the failure of the Recipient to timely provide the information, access or other cooperation necessary for the Provider to provide such Service. Without limiting the Provider's obligation to provide the Services in accordance with the standards set forth in, and subject to, this Section 3, the Provider may supplement, modify, substitute or otherwise alter any of the Services from time to time in a manner that is generally consistent with supplements, modifications, substitutions or alterations made for similar services provided or otherwise made available by the Provider; provided that no such alteration adversely affects, in the case Emerson is the Provider, the Echo Business or natural expansions or extensions thereof, and in the case Newco is the Provider, the Emerson Business or natural expansions or extensions thereof, in any material respect. The Recipient may request to modify the terms and conditions relating to the performance of a previously agreed-upon Service in order to resolve issues that were not apparent as of the Effective Date, which may include, among other things, new procedures or processes for providing such Service (a "Service Modification"). In each such case, the Service Coordinators shall discuss such potential changes and determine possible scope impact on the Services. If the Service Modification is a change to the Service that does not materially and adversely affect the Provider's costs or ability to provide, or cause to be provided, such Service, the Provider shall promptly, at the Recipient's reasonable cost and expense, implement such Service Modification. In the event the Recipient desires a Service Modification that would materially and adversely affect the Provider's costs or ability to provide, or cause to be provided, the applicable Service, the Provider shall consider approving such Service Modifications in good faith, such approval not to be unreasonably withheld, conditioned or delayed.

4. Cooperation for Statutory and Tax Filings. Newco undertakes and agrees to cooperate in accordance with the standard for Services described in Section 3 to enable Emerson to complete in a timely manner any and all statutory and Tax filings required to be filed by Emerson and/or its Affiliates pursuant to the Transaction Agreement that include any information related to the Echo Business. Newco will provide and, as applicable, cause its employees and its Affiliates and their employees to provide, all such reasonable cooperation to Emerson, its Affiliates and their respective representatives with respect to such filings as is reasonably requested, including preparing or causing to be prepared (to the extent consistent with past practices) and furnishing or causing to be furnished records, information, work papers, reports and other documents as
-

requested by Emerson, its Affiliates or their respective representatives and causing Continuing Echo Business Employees who possess relevant knowledge to make themselves available for consultation with respect to the foregoing; provided that notwithstanding anything to the contrary in this Section 4, Newco will only be obligated to cause any Person to cooperate with Emerson pursuant to this Section 4 if and for so long as Newco is capable of directing the actions of such Person.

5. Migration Assistance. Within sixty (60) days after the date hereof, the Parties shall jointly develop a detailed plan for (a) separating and conveying any assets (including data) held by Emerson or its Affiliates that are to be, or that have been, assigned to Newco, in each case, pursuant to the Transaction Agreement and (b) migrating the Services and all related information and customer accounts, to the Recipient or its designee in an efficient, low-risk and low-disruption manner to both Parties (such plan, as mutually agreed to by the Parties, the "Migration Plan"). Each Party shall perform all of its respective obligations in the Migration Plan. Such plan shall include, at a minimum, key milestones and dependencies required by each Party to complete its own obligations.

5

6. Disaster Recovery & Business Continuity. During the Transition Period, Emerson shall implement and maintain (i) information technology security requirements and policies and (ii) disaster recovery and other business continuity systems and processes, in the case Emerson is the Provider, that are substantially the same as Emerson maintains for the Emerson Retained Subsidiaries and, in the case Newco is the Provider, that are substantially the same as Newco maintains for its Subsidiaries.
 7. Force Majeure. No Party shall be responsible for a delay in delivery of or any failure to perform any Service if prohibited by Applicable Law or caused by an act of god or public enemy, war, terrorism, cyber-attack, government acts or regulations, fire, flood, embargo, quarantine, pandemic, epidemic, unusually severe weather or other cause similar to the foregoing, in each case which is beyond its reasonable control (each, a "Force Majeure Event"); provided, however, that such Party notifies the other Party as soon as reasonably practicable, in writing, upon learning of the occurrence of the Force Majeure Event. Subject to compliance with the foregoing provision, a Party's obligations hereunder (except its payment obligations in respect of Services already provided) shall be postponed for such time as its performance is suspended or delayed on account of the Force Majeure Event, and upon the cessation of the Force Majeure Event, such Party will use commercially reasonable efforts to resume its performance hereunder.
 8. Confidential and Proprietary Information and Rights. Newco and Emerson each acknowledge that any information provided to or coming into the possession of the other pursuant to this Agreement will be governed by the confidentiality provisions of the Stockholders Agreement, mutatis mutandis (as applicable hereto, the "Confidentiality Obligations"); provided, however, that notwithstanding any contrary provisions of the confidentiality provisions of the Stockholders Agreement, the Confidentiality Obligations of the Parties shall remain in effect for five (5) years after the Closing Date, except that the Confidentiality Obligations of the Parties with respect to the protection of confidential information that is source code or that otherwise constitutes or is treated as of the Closing by the disclosing Party as a trade secret shall remain in effect perpetually.
 9. Transition Period and Termination.
 - (a) The term of this Agreement (the "Transition Period") shall commence on the Closing Date and continue with respect to each of the Services for the term thereof (the "Service Term"), which Service Term shall, unless otherwise agreed to by Emerson and Newco in any TSA Schedule, terminate twelve months following the Closing Date; provided that except as otherwise specified on any TSA Schedule, the Recipient may, upon written notice prior to the expiration of the applicable Service Term, extend any Service Term by up to an additional six (6) months (i.e., for any twelve (12)-month Service Term, up to eighteen (18) months from the Effective Date) at the same Service Charges applicable to the initial Service Term (such Service Charge, as adjusted in accordance with Section 2(a), the "Base Charge"), and for up to a second additional six (6) month period (i.e., for any twelve (12)-month Service Term, up to twenty-
-

four (24) months from the Effective Date) at Services Charges reflecting: (i) the Base Charge for the nineteenth (19th) month after the Effective Date, (ii) one hundred and ten percent (110%) of the Base Charge for the twentieth (20th) month after the Effective Date, (iii) one hundred and eleven percent (111%) of the Base Charge for the twenty-first (21st) month after the Effective Date, (iv) one hundred and twelve percent (112%) of the Base Charge for the twenty-second (22nd) month after the Effective Date, (v) one hundred and fourteen percent (114%) of the Base Charge for the twenty-third (23rd) month after the Effective Date and (vi) one hundred and fifteen percent (115%) in the twenty-fourth (24th) month after the Effective Date; provided, further, that except as otherwise specified on any TSA Schedule, (i) the Recipient may terminate one or more of the Services it receives at any time and for any reason on not less than thirty (30) days' prior written notice to the Provider and (ii) both Parties may terminate this Agreement with respect to one or more Services immediately upon mutual agreement; provided, further, that the termination date of the Emerson Facility Services shall be as described in Section 12(b) hereof.

- (b) Notwithstanding the foregoing, each Party reserves the right to immediately terminate this Agreement by written notice to the other Party in the event that the other Party materially breaches this Agreement and such breach remains uncured for thirty (30) days after receipt of written notice from the non-breaching Party.

6

-
- (c) Upon the effective date of termination of any Service pursuant to this Agreement, the Provider will have no further obligation to provide the terminated Service, and the Recipient will have no obligation to pay any future Service Charges relating to any such Service; provided that the Recipient shall remain obligated to the Provider for the Service Charges and any other fees, costs and expenses owed and payable in accordance with the terms of this Agreement in respect of Services provided prior to the effective date of termination. Upon the effective date of termination of any Service pursuant to this Agreement, the Provider shall reduce for the next monthly billing period the amount of the Service Charge for the category of Services in which the terminated Service was included (such reduction to reflect the elimination of all costs incurred in connection with the terminated Service to the extent the same are not required to provide other Services to the Recipient), and, upon request of the Recipient, the Provider shall provide the Recipient with documentation and/or information regarding the calculation of the amount of the reduction. In connection with termination of any Service, the provisions of this Agreement not relating solely to such terminated Service shall survive any such termination. The termination of any license of any Emerson Facility pursuant to this Agreement will be treated in a corresponding manner under this Section 9(c).
- (d) The failure of either Party to terminate this Agreement for breach of any term or condition shall not constitute a waiver of such breach and shall not affect such Party's right to terminate this Agreement by reason of subsequent breaches of the same or other terms or conditions.
- (e) Any termination of this Agreement with respect to any one or more Services shall not terminate this Agreement with respect to any other Service then being provided pursuant to this Agreement, except as otherwise specified on the applicable TSA Schedule.

10. Limitation of Liability; Exclusion of Warranties.

- (a) Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NO PARTY HERETO SHALL BE LIABLE FOR (I) ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, EXCEPT TO THE EXTENT THAT THE OTHER PARTY IS REQUIRED TO PAY ANY SUCH AMOUNTS TO A THIRD PARTY, IN EACH CASE ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT OR ANY OF THE SERVICES PROVIDED HEREUNDER (INCLUDING DELIVERABLES ASSOCIATED THEREWITH), INCLUDING PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, OR (II) THE FURNISHING, PERFORMANCE, OR USE OF ANY GOODS OR SERVICES SOLD OR PERFORMED PURSUANT HERETO, WHETHER BASED UPON AN
-

ACTION OR CLAIM IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), BREACH OF WARRANTY, OR OTHERWISE, EXCEPT IN THE CASE OF THIS CLAUSE (II) FOR THE WILLFUL BREACH, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SUCH PARTY OR ITS AFFILIATES OR REPRESENTATIVES. FURTHER, THE LIABILITY OF EMERSON TO NEWCO FOR ANY LOSS OR DAMAGE ARISING IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED FIVE (5) TIMES THE TOTAL AMOUNT BILLED OR BILLABLE TO NEWCO IN ITS CAPACITY AS RECIPIENT UNDER THIS AGREEMENT, AND THE LIABILITY OF NEWCO TO EMERSON FOR ANY LOSS OR DAMAGE ARISING IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED FIVE (5) TIMES THE TOTAL AMOUNT BILLED OR BILLABLE TO EMERSON IN ITS CAPACITY AS RECIPIENT UNDER THIS AGREEMENT.

- (b) Obligation to Correct. Without limiting any rights or remedies of the Recipient, in the event of any breach of this Agreement by the Provider with respect to any material error or defect in the provision of any individual Service, the Provider shall promptly, after the Provider's Service Coordinator becomes aware of such error or defect, notify the Recipient and, at the Recipient's request, correct such error or defect or re-perform such Service in a timely manner as promptly as practical after the Recipient's request at the expense of the Provider.
- (c) Exclusion of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE TSA SCHEDULES, (A) THE SERVICES, (B) THE LICENSES IN SECTION 1(e) AND (C) THE RIGHTS GRANTED HEREUNDER ARE, IN EACH CASE, PROVIDED AND GRANTED "AS-IS" WITH NO OTHER WARRANTIES, AND EMERSON AND NEWCO EACH EXPRESSLY

DISCLAIMS ANY OTHER WARRANTIES UNDER OR ARISING AS A RESULT OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY OTHER WARRANTY WHATSOEVER; PROVIDED, THAT NEITHER THIS DISCLAIMER NOR ANY OTHER PROVISION OF THIS AGREEMENT SHALL IN ANY WAY LIMIT ANY REPRESENTATIONS AND WARRANTIES OF ANY PERSON UNDER THE TRANSACTION AGREEMENT, STOCKHOLDERS AGREEMENT OR ANY OTHER ANCILLARY AGREEMENT IN EACH CASE RELATED THERETO.

- 11. Access to Records and Properties. The Recipient shall, during normal business hours and with reasonable prior notice, provide the Provider with access to its books and records pertaining to in the case Newco is the Recipient, the Echo Business, and in the case Emerson is the Recipient, the Emerson Business, solely for the purposes of the Provider's provision of the Services and solely to the extent necessary for the Provider to provide the Services. The Recipient shall also provide the Provider with physical access to computer and communications equipment at the applicable facilities in order to maintain or service such equipment and associated software, including such access for a reasonable time following the termination of this Agreement, in each case, to the extent reasonably necessary for the provision of the Services.
 - 12. Access to Emerson Facilities. Emerson, in its capacity as the Provider, hereby grants to Newco or an Affiliate thereof a limited right to use and access premises at any facility identified as an "Emerson Facility" on Schedule [A-1] and, without additional charge, to continue to use furniture and equipment at any such facility (an "Emerson Facility") for substantially the same purposes as used by the Echo Business in the twelve (12) months prior to the Effective Date (all such rights, the "Emerson Facility Services"). Schedule [A-1] sets forth a description of each Emerson Facility and all costs as to which Newco or an Affiliate is required to reimburse Emerson on a proportionate basis based on the metric used to allocate such costs during the twelve (12) months prior to the Effective Date (e.g., headcount or rentable square feet occupied by Newco or its Affiliates). At each Emerson Facility, Emerson shall, in addition to providing access to and the right to use such facility, provide to the personnel of Newco and its Affiliates the facility-related ancillary services reasonably necessary to support Newco's office work policies with respect to in-office attendance, but in any event, not less than the services provided to the Echo Business during the twelve (12) months prior to the Closing at the Emerson Facility (e.g.,
-

reception, general maintenance and janitorial services, heat and air-conditioning and use of the mailroom) and Emerson shall provide, or cause to be provided each Emerson Facility subject to the following terms and conditions:

- (a) Newco shall, and shall cause its Affiliates to, permit only Newco and its Affiliates' respective authorized personnel, contractors, invitees or licensees to use the Emerson Facility, except as otherwise permitted by Emerson in writing;
- (b) Newco shall, and shall cause its Affiliates and their respective personnel, contractors, invitees or licensees to, vacate the Emerson Facility at or prior to the earliest of (x) the expiration date of the lease relating to the Emerson Facility as set forth in Schedule [A-1], (y) the expiration or termination of this Agreement and (z) the date set forth in Schedule [A-1], unless provided in Schedule [A-1] with respect to such space², and upon such expiration, Newco or its Affiliate shall deliver over to Emerson any portion of the Emerson Facility utilized by Newco or its Affiliates in substantially the same repair and condition as existed on the Effective Date, ordinary wear and tear and damage by casualty or condemnation excepted; provided, however, that in the event that a third-party lease for an Emerson Facility specifies otherwise, the Party vacating such Emerson Facility shall deliver over such Facility in such repair and condition (taking into account the date that Newco began its occupation of such Emerson Facility such that Newco shall only bear any costs or expenses associated with delivering over such Facility in substantially the same repair and condition as existing on the Effective Date and Emerson shall bear all incremental costs and expenses reasonably incurred by Newco in delivering over such Facility in the repair and condition as set forth in the third-party lease) as set forth in the third-party lease; provided, further, that in the event that Newco shall fail to deliver over such Emerson

² Note to Draft: Parties to discuss entering into a lease or sublease for certain spaces where a longer term arrangement may be contemplated.

Facility in such repair and condition as required by this Agreement and/or a third-party lease, Emerson may undertake reasonable actions to establish such condition and repair, and shall be reimbursed for its reasonable costs associated with delivering over such Facility in substantially the same repair and condition as existing on the Effective Date.

- (c) Newco agrees that Newco or its Affiliates shall not make and shall cause their respective personnel, contractors, invitees and licensees to refrain from making, any alterations or improvements to any Emerson Facility, except as otherwise permitted by Emerson in writing; provided, however, that Newco or its Affiliates shall not require Emerson consent in connection with non-structural cosmetic changes or other immaterial alterations or improvements.
 - (d) Emerson and its Affiliates, and the landlord in respect of the third-party lease in which the applicable Emerson Facility is located, shall have (i) such access as provided in the applicable lease and (ii) otherwise reasonable access to Newco's and its Affiliates' space at the Emerson Facility from time to time as reasonably necessary in accordance with past practice;
 - (e) Newco agrees to maintain, and to cause its Affiliates to maintain, commercially appropriate and customary levels (in no event less than what is required by the landlord of the tenant under the relevant third-party lease) of property and liability insurance in respect of the premises occupied in each Emerson Facility and the activities conducted thereon; provided for any Emerson Facility, to the extent Newco reimburses Emerson for an allocable share of property insurance costs in respect of a property insurance policy for such Emerson Facility, Newco shall not be required to maintain a separate policy of property insurance.
 - (f) Newco shall, and shall cause its Affiliates and their respective personnel, contractors, invitees and licensees to, comply with (i) all Applicable Laws relating to their use or occupation of any Emerson Facility including those relating to environmental, health and workplace safety matters, (ii) Emerson's generally applicable site rules, regulations, policies and procedures (if any) which have been provided in writing to Newco as of the Effective Date and (iii) any applicable requirements of such third-party lease
-

governing any Emerson Facility which have been provided to Newco in writing as of the Effective Date;
and

- (g) The rights granted in this Section 12 shall be in the nature of a limited right and shall not create a leasehold or other estate or possessory right in any of Newco or its Affiliates or their respective representatives, contractors, invitees or licensees, with respect to any Emerson Facility and, except as expressly provided herein, shall not include any right of sub-license or sub-leasehold to any third party.
 - (h) Notwithstanding anything herein to the contrary, where required by local law or otherwise beneficial to the Parties, the provision of Emerson Facility Services or access to an Emerson Facility may be separately documented in a sublease or other document (as reasonably agreed by the Parties) with material terms substantively consistent with those described in this Agreement (with such modifications as are reasonably required to comply with local law requirements).
13. Reports. The Provider shall cause to be provided to the Recipient in connection with the Services being provided by the Provider (in accordance with Section 3 hereof) the same reports (whether generated internally or by any third party) that were provided in the ordinary course prior to the Effective Date in the same form as provided in the ordinary course prior to the Effective Date and at the same frequency, to the extent such report directly relates or directly pertains to a Service and the costs and expenses for the provision of such reports shall be included in the corresponding Service Charge. Upon written request by the Recipient, the Provider shall provide (consistent with the standards set forth in Section 3 hereof), at the Recipient's reasonable cost and expense, any reports necessary for the Recipient or its Affiliates to satisfy any filing deadlines with Governmental Authorities.
 14. Record-Keeping. The Provider shall maintain complete and accurate records of the Services performed by or on behalf of the Provider and its Affiliates under this Agreement during the Transition Period and for one (1) year following the Transition Period. Such records may be used by the Provider's Service Coordinator to resolve any dispute pursuant to Section 18(b).
 15. Controls and Compliance. The Provider will operate any IT control processes in accordance with the Provider's internal control standards. If a material IT control deficiency affecting the Services is identified in

the normal course of business operations for a previously working internal control administered by the Provider, Emerson and Newco will reasonably cooperate in good faith to determine the root cause and potential remediation of the deficiency, with any such remediation to be at the Provider's reasonable cost and expense.

16. Covenants. Emerson and Newco will not, and will use reasonable efforts to ensure that their respective employees, officers, directors, Affiliates and agents do not, make any use of or attempt to gain access to any part of the other Party's business systems and communications networks or to any data or information of the other Party or its Affiliates not specifically made available to that Party under this Agreement. Emerson and Newco shall not introduce (i) any code, program, or script (devices) that, upon the occurrence or the non-occurrence of any event, will disable any system or application; (ii) to or through the other Party's "network," any worm, virus, trap door, back door or any other contaminant or disabling devices; or (iii) any form of breach of security, data corruption or interruption into the other Party's "network." If a Party has violated this covenant, then in addition to any rights and remedies (including damages) to which the non-breaching Party or its Affiliates may be entitled at law or in equity, the breaching Party will, to the non-breaching Party's reasonable satisfaction, promptly take all commercially reasonable action to implement all necessary procedures to prevent the reoccurrence of any such violation; failing which, the non-breaching Party may terminate this Agreement upon thirty (30) days' written notice (such notice to describe the breach in reasonable detail); provided, however, that the breaching Party shall have the opportunity to cure during the thirty (30)-day notice period, to the non-breaching Party's reasonable satisfaction, any such violation.
 17. Indemnification. Each Party (the "Indemnitor") shall indemnify, defend and hold harmless the other Party and its Affiliates, and its and their respective directors, officers, agents, employees, successors and assigns (the "Indemnitee") against, any Damages arising from or relating to third-party claims arising from or relating to
-

the gross negligence, willful misconduct or fraud of the Indemnitor or any of its Affiliates in connection with this Agreement. This Section 17 shall not apply with respect to Taxes other than any Taxes that represent Damages arising from any non-Tax claim. Section 12.03 (Third-Party Claim Procedures) of the Transaction Agreement shall apply, mutatis mutandis, to any indemnification hereunder.

18. General Provisions.

- (a) Notice. All notices, requests and other communications to any Party shall be in writing (including facsimile transmission and electronic mail (“email”) transmission, so long as a receipt of such email is requested and received) and shall be given to the address, facsimile number or email address specified for notices in Section 13.01 of the Transaction Agreement or to such other address or facsimile number as such Party may hereafter specify for the purpose by notice to the other Party. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. Eastern time on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt.
- (b) Dispute Resolution. Newco, on the one hand, and Emerson, on the other hand, shall by written notice to the other, appoint respective principal points of contact (each, a “Service Coordinator”) who shall be responsible for the day-to-day implementation or monitoring (as applicable) of the Services, including attempted resolution of any issues that may arise during the performance of the Parties’ obligations under this Agreement. In addition, Emerson will appoint an executive sponsor (the “Emerson Executive Sponsor”) by written notice to Newco, and Newco will appoint an executive sponsor (the “Newco Executive Sponsor”) by written notice to Emerson. In the event that the Service Coordinators are unable to resolve any issues regarding the performance of the Services hereunder after a period of ten (10) days (the “Disputed Issues”), the Disputed Issues may be referred to a separation management committee (the “Separation Management Committee”), which shall be at least four (4) persons and solely comprised of an equal number of members of Emerson’s and Newco’s management teams responsible for acquisition integration. If the Separation Management Committee is unable to reach resolution on any Disputed Issues after a period of seven (7) days, such Disputed Issues shall be submitted to the Emerson Executive Sponsor and Newco Executive Sponsor for resolution within seven (7) days and any unresolved disputes after such seven (7) day period, the Parties may pursue an Action in accordance with Section 18(l); provided, however, that nothing herein

shall prevent or limit either Party’s right to seek temporary, preliminary or permanent equitable, including injunctive, relief. Without limiting the foregoing, any resolution of such Disputed Issues agreed to in writing by the Emerson Executive Sponsor and the Newco Executive Sponsor shall be considered final and binding upon the Parties. For the avoidance of doubt, unless otherwise directed in writing by the Recipient, the Provider shall continue to provide all Services during the pendency of any dispute hereunder. Unless otherwise mutually agreed to by the Parties, all communications relating to the Services shall be directed first, to the Service Coordinators and second, to the Separation Management Committee. The initial Service Coordinators shall be set forth on Exhibit [A] attached hereto and the Parties may replace their respective Service Coordinator(s) at any time by providing written notice to the other Party. Each Party may replace its members on the Separation Management Committee at any time by providing written notice to the other Party, and each of Emerson and Newco may replace the Emerson Executive Sponsor and the Newco Executive Sponsor, respectively, at any time by providing written notice to the other Party.

- (c) Injunctive Relief. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any federal court located in the State of Delaware or any Delaware state court, in addition to any other remedy to which they are entitled at law or in equity.
-

Each Party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

- (d) No Partnership, Joint-Venture Or Agency Created. The relationship of Emerson and Newco shall be that of independent contractors only. Nothing in this Agreement shall be construed as making one Party a partner, joint-venturer, agent or legal representative of the other Party or otherwise as having the power or authority to bind the other Party in any manner.
- (e) Entire Agreement. The TSA Schedules are incorporated into this Agreement, and this Agreement together with the TSA Schedules, the Transaction Agreement and the other Transaction Documents embody the entire agreement and understanding between the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter hereof and thereof. In the event of any conflict between this Agreement and the Transaction Agreement, the terms of the Transaction Agreement shall control.
- (f) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.
- (g) Assignment; Binding Agreement. This Agreement and various rights and obligations arising hereunder shall inure to the benefit of and be binding upon the Parties and their successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be transferred, delegated or assigned by Emerson without the prior written consent of Newco, or by Newco without the prior written consent of Emerson (which consents shall not be unreasonably withheld, conditioned or delayed).
- (h) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party shall have received a counterpart hereof signed by the other Party. Until and unless each Party has received a counterpart hereof signed by the other Party, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

-
- (i) Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such cost or expense.
 - (j) Headings; Interpretation. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. Each reference in this Agreement to a Section, Exhibit or Schedule, unless otherwise indicated, shall mean a Section of this Agreement or an Exhibit or a Schedule attached to this Agreement, respectively. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. References herein to "days," unless otherwise indicated, are to consecutive calendar days. The words "hereof," "herein," "hereto" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions, headings and the division of this Agreement into Sections and other subdivisions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the
-

plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any Contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law,” “laws” or to a particular statute or law shall be deemed also to include any Applicable Law. Both Parties have participated substantially in the negotiation and drafting of this Agreement and agree that no ambiguity herein should be construed against the draftsman. References to a “corporation” or “company” shall be construed so as to include any corporation, company, or other body corporate, wherever and however incorporated or established.

- (k) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.
- (l) Submission to Jurisdiction. The Parties agree that any Action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by either Party or any of its Affiliates or against either Party or any of its Affiliates) shall be brought in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court, and each of the Parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such Action in any such court or that any such Action brought in any such court has been brought in an inconvenient forum. Process in any such Action may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 18(a) shall be deemed effective service of process on such Party.
- (m) Amendment and Waiver. Any provision of this Agreement may be amended or waived only if such amendment or waiver is in writing and signed, in the case of an amendment, by each of the Parties, or in the case of a waiver, by the Party against whom the waiver is to be effective. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
- (n) Disclosure Generally. All TSA Schedules attached hereto are incorporated herein and expressly made part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any of the TSA Schedules attached hereto or in any agreement contemplated hereby shall be deemed to refer to this entire Agreement, including all TSA Schedules.

12

-
- (o) No Third-Party Beneficiaries or Other Rights. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person other than the Parties and their respective successors and assigns.
 - (p) Personal Data. To the extent the Provider is processing any Personal Data (as defined in Exhibit [•]³) on behalf of the Recipient in connection with the provision of the Services, the terms and conditions of the Data Protection Agreement attached hereto as Exhibit [•] shall apply.
 - (q) Survival. The Parties hereby acknowledge and agree that the obligations of each Party set forth in Sections 1(e), 1(f), 4, 7, 8, 8, 10, 14, 16, 17 hereof and this Section 18 shall survive any termination of this Agreement.

[Signature page follows]

³ Note to Draft: Exhibit to be agreed upon prior to Closing.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed as of the day and year first above written.

Emerson Electric Co.

By: _____

Name: _____

Title: _____

Emersub CX, Inc.

By: _____

Name: _____

Title: _____

[Signature Page—Transition Services Agreement]

DESCRIPTION OF ASPEN TECHNOLOGY INC. CAPITAL STOCK

The following information constitutes the "Description of Securities" required by Item 202(a) of Regulation S-K. References herein to "we," "our," "us," or "our company" refer to Aspen Technology, Inc., a Delaware corporation. The following information summarizes the material terms of our common and preferred stock, as well as relevant provisions of our charter and bylaws and the Delaware General Corporation Law. For a complete description of the terms of our common and preferred stock, please refer to our charter and bylaws. In certain circumstances, the terms of such capital stock are subject to the terms of our Stockholders Agreement with Emerson (the "Stockholders Agreement"). While the terms summarized below will apply generally to any shares of common or preferred stock that we may offer in the future, we will describe the particular terms of any series of these securities in more detail in the applicable prospectus relating to the offering of these securities. The terms of any common or preferred stock that we offer pursuant to a prospectus may differ from the terms described below, and any such additional or different terms will be set forth in that prospectus.

Authorized Capital Stock

Our authorized capital stock consists of 630 million shares of stock, consisting of 600 million shares of common stock, par value \$0.0001 per share ("Common Stock") and 30 million shares of preferred stock, par value \$0.0001 per share ("Preferred Stock"). Shares of our Common Stock and Preferred Stock shall be uncertificated unless our board determines that some or all shares shall be certificated.

Common Stock

Voting Rights

Holders of Common Stock are entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Except as otherwise required by law, holders of Common Stock (as such) are not entitled to vote on any amendment to our charter that relates solely to the terms of one or more outstanding classes or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of one or more other such classes or series, to vote thereon pursuant to our charter or the General Corporation Law of the State of Delaware ("DGCL").

Our bylaws provide that, subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specific circumstances under a certificate filed pursuant to the DGCL, a nominee for director of our board of directors (the "Board") will be elected by a majority of the votes cast with respect to that nominee's election at any meeting of stockholders for the election of directors at which a quorum is present. However, if as of the 10th day preceding the date we first mail our notice of meeting for such meeting to our stockholders, the number of nominees for director exceeds the number of directors to be elected, the directors will be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. Any director or the entire Board may be removed from office at any time with or without cause by the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of capital stock entitled to vote or pursuant to the terms of the Stockholders Agreement with respect to the parties to such agreement and any rights of holders of any series of Preferred Stock.

Our bylaws provide that, except as otherwise required by law, our charter, our bylaws, or any law, rule or regulation applicable to us or our securities, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the votes cast at the meeting at which a quorum is present on the subject matter will be the act of the stockholders. If Emerson and its affiliates beneficially own in the aggregate at least 20% of the voting power of all of the then-outstanding shares of our capital stock, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken by consent of stockholders without a meeting; provided that, if Emerson and its affiliates do not beneficially own at least 20% of the voting power of all of the then-outstanding shares of our capital stock, then any action required or permitted to be taken at any annual or special meeting of stockholders may be taken upon the vote of stockholders at an annual or special meeting duly noticed and called in

accordance with the DGCL and our charter and may not be taken by consent of stockholders without a meeting (except pursuant to the rights of holders of any series of Preferred Stock).

Our charter may be amended in any manner permitted by the DGCL.

Dividend Rights

The Board may, subject to limitations contained in the DGCL, the charter and the Stockholders Agreement, declare and pay dividends to holders of our capital stock, which dividends may be paid either in cash, in property or in shares of capital stock.

Liquidation Rights

On the liquidation, dissolution or winding up, whether voluntary or involuntary, the holders of Common Stock will be entitled to share in the net assets and funds of our company available after the payment of all debts and other liabilities and subject to the prior rights of any outstanding Preferred Stock.

Preemptive Rights and Percentage Maintenance Share

The charter does not provide the holders of Common Stock with preemptive rights. The Stockholders Agreement, however, provides that until the Second Trigger Date (as defined in the Stockholders Agreement), to the extent permitted under NASDAQ rules and subject to certain exceptions, Emerson will have the right to purchase its pro rata portion of any equity securities that we propose to issue or sell or, in the case of equity securities to be issued as consideration in any merger, consolidation, reorganization, conversion, joint venture or any other business combination, or any acquisition, the right to purchase a number of equity securities up to its percentage maintenance share. Following the Second Trigger Date, to the extent permitted under NASDAQ rules and subject to certain exceptions, Emerson will have the right to purchase up to its percentage maintenance share of our equity securities in connection with any issuance or sale thereof.

There will be no redemption or sinking fund provisions applicable to the Common Stock.

Preferred Stock

Blank Check Preferred Stock

Under the charter, the Board has the authority to issue Preferred Stock in one or more classes or series, and, subject to limitations prescribed by law, to fix for each class or series the voting powers and the distinctive designations, powers, preferences and rights, and the qualifications, limitations or restrictions thereof, as may be stated and expressed in the resolution or resolutions adopted by the Board providing for the issuance of such class or series as may be permitted by the DGCL, including dividend rights, dividend rates, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices and liquidation preferences of, and the number of shares constituting each such class or series and the designation thereof, without any further vote or action by our stockholders.

Our charter provides that the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of our capital stock entitled to vote thereon, irrespective of the provisions of Section 242(b)(2) of the DGCL, subject to obtaining a vote of the holders of any classes or series of Preferred Stock, if such a vote is required pursuant to the terms of the charter (including any rights of holders of any series of Preferred Stock).

Exclusive Venue

Our charter requires, to the fullest extent permitted by law, that (i) any derivative action or proceeding brought on the company's behalf, (ii) any action asserting a claim for or based on a breach of a duty (including any fiduciary duty) owed by any of our current or former directors, officers or other employees, or stockholders to us or our stockholders, including a claim alleging the aiding and abetting of such a breach of a fiduciary duty, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or our charter or our bylaws, (iv) any action

asserting a claim related to, involving or against us governed by the internal affairs doctrine, or (v) any action asserting an “internal corporate claim” as that term is defined in Section 115 of the DGCL, will have to be brought only in the Court of Chancery in the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, the Superior Court of the State of Delaware, or, if the Superior Court of the State of Delaware, also does not have jurisdiction, the United States District Court for the District of Delaware), unless the Board otherwise approves in writing the selection of an alternate forum. Unless the Board otherwise approves in writing the selection of an alternative forum, the federal district courts of the United States of America will, to the fullest extent permitted by law, be the sole and exclusive forum for any complaint asserting a cause of action arising under the Securities Act.

Anti-Takeover Effects of Provisions of the Charter and Bylaws

Authorized but Unissued Shares

The authorized but unissued shares of Common Stock and Preferred Stock are available for future issuance without stockholder approval, subject to any limitations imposed by the listing standards of NASDAQ and the Stockholders Agreement. These additional shares may be used for a variety of corporate finance transactions, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved Common Stock and Preferred Stock could make more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or otherwise.

Anti-Takeover

We elect not to be subject to Section 203 of the DGCL. However, our charter provides that if a person (other than (a) Emerson and any direct transferees of our voting stock from Emerson or its affiliates, and their respective affiliates or successors or any “group,” or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, and (b) any person whose ownership of shares in excess of the 15% limit described in this paragraph is the result of any action taken solely by us) acquires 15% or more of the voting stock, or is an affiliate or associate of us and was the owner of 15% or more of the outstanding voting stock at any time within the three year period immediately prior to the date of determination, such person becomes an “interested stockholder” and may not engage in certain “business combinations” with us for a period of three years from the time such person became an interested stockholder, unless: (1) the Board approved either the business combination or the transaction which resulted in such person becoming an interested stockholder, (2) upon consummation of the transaction which resulted in such person becoming an interested stockholder, the interested stockholder owned at least 85% of the voting power of all of the then-outstanding shares of capital stock at the time the transaction commenced (excluding voting stock owned by directors who are also officers and certain employee stock plans), or (3) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66⅔% of the voting power of all of the then-outstanding shares of our capital stock which is not owned by the interested stockholder.

Requirements for Advance Notification of Stockholder Meetings, Nominations and Proposals

Except as otherwise required by law, our bylaws provide that nominations of persons for election to the Board or the proposal of other business to be transacted by the stockholders at an annual meeting of stockholders may be made only (a) pursuant to the notice of meeting (or any supplement thereto), (b) by or at the direction of the Board or any committee thereof, (c) as may be provided in the certificate of designations for any class or series of Preferred Stock, (d) pursuant to the Stockholders Agreement or (e) by any stockholder who delivers timely notice in proper form and the other required information to our secretary and who is a stockholder of record at the time of giving of such notice and at the time of the annual meeting and who is entitled to vote at the meeting. Our bylaws provide that special meetings of the stockholders (1) may be called only by the Board, the chair of the Board, the president, or our secretary and (2) shall be called by our secretary upon written request of the holders of 20% of the voting power of all of the then-outstanding shares of our capital stock entitled to vote on the matter or matters to be brought before the proposed special meeting. Our bylaws prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers or changes in control of our company or its management.

Corporate Opportunities and Transactions with Controlling Stockholder

In recognition and anticipation that directors, officers or employees of Emerson may serve as directors or officers of our company, that Emerson may engage in the same, similar or related lines of business as us, and that Emerson may have an interest in the same areas of corporate opportunity as us, the Stockholders Agreement provides for the allocation of certain transactions and corporate opportunities between us and Emerson. Specifically, except as otherwise agreed by us and Emerson (including in the Stockholders Agreement) and, subject to the limitations set forth in the non-compete provisions in the Stockholders Agreement, Emerson and the other members of the Emerson group will be permitted to engage in some of the same or similar activities or lines of business as us or to do business with any of our client, customer or vendor.

The Stockholders Agreement provides that in the event that Emerson acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both us and Emerson, Emerson shall to the fullest extent permitted by applicable law not be liable to us or our stockholders for breach of any fiduciary duty as a stockholder of us by reason of the fact that Emerson acquires or seeks such corporate opportunity for itself, directs such corporate opportunity to another person, or otherwise does not communicate information regarding such corporate opportunity to us. We to the fullest extent permitted by applicable law renounce any interest or expectancy in such business opportunity and waive any claim that such business opportunity constituted a corporate opportunity that should have been presented to us.

The Stockholders Agreement provides that, except as otherwise agreed in writing between us and Emerson, in the event that a director or officer of us who is also a director, officer or employee of Emerson acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both us and Emerson, such director or officer will to the fullest extent permitted by applicable law have fully satisfied and fulfilled his or her fiduciary duty with respect to such corporate opportunity. We to the fullest extent permitted by applicable law renounce any interest or expectancy in such business opportunity and waive any claim that such business opportunity constituted a corporate opportunity that should have been presented to us, if such director or officer acts in a manner consistent with the following policy:

- such a corporate opportunity offered to any individual who is a director but not an officer or employee of us and who is also a director, officer or employee of Emerson will belong to us only if such opportunity is expressly offered to such person solely in his or her capacity as a director of us and otherwise will belong to Emerson; and
- such a corporate opportunity offered to any individual who is an officer or employee of us and also is a director, officer or employee of Emerson will belong to us unless such opportunity is expressly offered to such person in his or her capacity as a director, officer or employee of Emerson, in which case such opportunity will belong to Emerson.

Our charter provides that any person acquiring or holding any interest in any shares of our capital stock will be deemed to have notice of and consented to these provisions of the Stockholders Agreement regarding corporate opportunities.

Transfer Agent and Registrar

American Stock Transfer & Trust Company, LLC is the transfer agent and registrar for the Common Stock.

Listing of Common Stock

The Common Stock has been approved for trading and quotation on the NASDAQ stock market under the symbol "AZPN."

Aspen Technology, Inc.
2022 Omnibus Incentive Plan

Notice of Grant of Restricted Stock Units

Aspen Technology, Inc., a Delaware corporation (the "Company"), hereby grants to the Participant named below restricted stock units of the Company on the terms set forth below, and further subject to the terms and conditions of the 2022 Omnibus Incentive Plan ("Plan") and of the Restricted Stock Unit Agreement under the Plan, copies of which are attached hereto and incorporated herein by reference. The RSUs will be eligible to vest in accordance with the vesting schedule set forth below.

Participant: <Participant Name>

Participant ID: <Emp ID>

Grant Date: <Grant Date>

Number of RSUs Granted: <Number of RSU Awards Granted>

Vesting Schedule: 6.25% vesting over a 16 quarterly vesting period

By accepting this grant online, I hereby acknowledge that I have read these Terms and Conditions, and those set forth in the Restricted Stock Unit Agreement and the Plan, and agree to all terms and conditions set forth herein and therein.

Participant:

_____ I accept. <Electronic Signature>
<Acceptance Date>

Aspen Technology, Inc.
Terms and Conditions of Restricted Stock Unit Agreement
Granted Under 2022 Omnibus Incentive Plan

1. Grant of Award.

These terms and conditions, together with the notice of grant attached hereto (“Notice”), evidence the grant by Aspen Technology, a Delaware corporation (the “Company”), on the grant date set forth in the Notice (the “Grant Date”) to the individual named in the Notice (the “Participant”) of Restricted Stock Units of the Company (individually, an “RSU” and collectively, the “RSUs” or the “Award”) on the terms provided herein and in the Notice and in the Company’s 2022 Omnibus Incentive Plan (the “Plan”). Each RSU represents the right to receive one share of the common stock, \$0.0001 par value per share, of the Company (“Common Stock”) as provided in this Agreement. The shares of Common Stock that are issuable upon vesting of the RSUs are referred to in this Agreement as “Shares.”

2. Vesting; Forfeiture.

(a) The RSUs shall vest according to the schedule set forth on the Notice.

(b) Except as otherwise provided in the Plan, by the Board of Directors or pursuant to a written employment or severance or similar agreement between the Company and the Participant, if the Participant’s employment with the Company terminates for any reason, any portion of this Award that is not vested as of the date of such termination shall be forfeited. For purposes of this Agreement, employment with the Company shall include employment with a parent or subsidiary of the Company.

3. Distribution of Shares.

The Company will distribute to the Participant (or to the Participant’s estate in the event that his or her death occurs after a vesting date but before distribution of the corresponding Shares), as soon as administratively practicable (not more than 74 days) after each vesting date (each such date of distribution hereinafter referred to as a “Settlement Date”), all of the vested Shares represented by RSUs that vested before the applicable Settlement Date. If a Settlement Date occurs during a period during which the Participant may not trade in securities of the Company because the Company’s insider trading policy imposes a trading blackout on the Participant, then the Settlement Date shall be delayed until such trading blackout has ended, to the extent permitted by 409A, but in no event past March 15 of the year following the year in which the vesting date related to such Settlement Date occurs, unless the Company deducts and retains in its sole discretion from the Shares to be distributed upon the Settlement Date, such number of Shares as is equal in value to the Company’s statutory withholding obligations with respect to the income recognized by Participant upon the lapse of the forfeiture provisions set forth in the Agreement (based on statutory withholding rates for Federal and state tax purposes, including payroll taxes, that are applicable to such income), and to pay the required amounts to the relevant taxing authorities. The Company shall not be obligated to issue to the Participant the Shares upon the vesting of any RSU (or otherwise) unless the issuance and delivery of such Shares shall comply with all relevant provisions of law and other legal requirements including, without limitation, any applicable federal or state securities laws and the requirements of any stock exchange upon which shares of Common Stock may then be listed. The Settlement Date may be delayed in the event the Company reasonably anticipates that the issuance of the Shares related to such Settlement Date would constitute a violation of federal securities laws or other applicable law. If the Settlement Date is delayed by the provisions of the foregoing sentence, the Settlement Date shall occur at the earliest date at which the Company reasonably anticipates issuing the Shares related to such Settlement Date will not cause a violation of federal securities laws or other applicable law.

4. Restrictions on Transfer.

The Participant shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively “transfer”) any RSUs, or any interest therein, except by will or the laws of descent and distribution.

5. Dividend and Other Shareholder Rights.

Except as set forth in the Plan, neither the Participant nor any person claiming under or through the Participant shall be, or have any rights or privileges of, a stockholder of the Company in respect of the Shares issuable pursuant to the RSUs granted hereunder until the Shares have been delivered to the Participant.

6. Provisions of the Plan; Change in Control.

This Agreement is subject to the provisions of the Plan, the terms of which are incorporated herein by reference. A prospectus describing the Plan has been delivered to the Participant. In that regard, the RSUs are subject to adjustment in connection with a change in capital of the Company or a Corporate Transaction, as provided in Sections 15.1 and 15.2 of the Plan. In addition, vesting of the RSUs in connection with a Change in Control following the Grant Date shall be determined in accordance with Section 15.3.1 of the Plan. For purposes of Section 15.3.1(ii) of the Plan, if the RSUs are assumed, converted or replaced by the resulting entity in the Change in Control and if, within one year after the date of the Change in Control, the Participant has either (A) a Separation from Service by the Company other than for Cause or (B) a separation from Service by the Participant for Good Reason, in either case any unvested RSUs shall become vested and payable as of the date of such Separation from Service. For this purpose, "Cause" and "Good Reason" shall have the meaning set forth in the Participant's employment, severance, retention or similar agreement with the Company in effect at the time (if any) or if no such agreement is in effect shall mean as follows:

"Cause" means any (i) willful failure by the Participant, which failure is not cured within 30 days of written notice to the Participant from the Company, to perform his or her material responsibilities to the Company, or (ii) willful misconduct by the Participant that affects the business reputation of the Company.

"Good Reason" means any significant diminution in the Participant's title, authority, or responsibilities from and after the Change in Control, or any reduction in the annual cash compensation payable to the Participant from and after the Change in Control.

7. Withholding Taxes; No Section 83(b) Election.

(a) No Shares will be delivered pursuant to the vesting of an RSU unless and until the Participant pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, state or local withholding taxes required by law to be withheld in respect of the vesting of the RSU. To satisfy any such tax obligation, the Company may deduct and retain from the Shares to be distributed upon the Settlement Date such number of Shares as is equal in value up to the Company's maximum statutory withholding obligations with respect to the income recognized by the Participant upon the lapse of the forfeiture provisions (based on statutory withholding rates for federal and state tax purposes, including payroll taxes, that are applicable to such income), and pay the required amounts to the relevant taxing authorities.

(b) The Participant acknowledges that no election under Section 83(b) of the Internal Revenue Code of 1986 may be filed with respect to this Award.

8. Miscellaneous.

(a) No Rights to Employment. The Participant acknowledges and agrees that the vesting of the RSUs shall be in accordance with the vesting schedule set forth in the Notice, and is contingent upon status as an employee at the time of vesting at the will of the Company. The Participant further acknowledges and agrees that the transactions contemplated hereunder and the vesting schedule set forth in the Notice do not constitute an express or implied promise of continued engagement as an employee or consultant for the vesting period, for any period, or at all.

(b) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each other provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(c) Waiver. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board of Directors of the Company.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Participant and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 4 of this Agreement.

(e) Notice. Any notice which either party hereto may be required or permitted to give to the other shall be in writing and may be delivered personally, by intraoffice mail, by fax, by electronic mail or other electronic means, or via a postal service, postage prepaid, to such electronic mail or postal address and directed to such person as the Company may notify the Participant from time to time; and to the Participant at the Participant's electronic mail or postal address as shown on the records of the Company from time to time, or at such other electronic mail or postal address as the Participant, by notice to the Company, may designate in writing from time to time.

(f) Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

(g) Entire Agreement. This Agreement, the Notice and the Plan constitute the entire agreement between the parties, and this Agreement supersedes all prior agreements and understandings, relating to the subject matter of this Agreement.

(h) Amendment. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Participant.

(i) Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the State of Delaware, USA without regard to any applicable conflicts of laws principles.

(j) *Participant's Acknowledgments*. The Participant acknowledges that he or she: (i) has read this Agreement, the Plan and the Notice; (ii) understands the terms and consequences of this Agreement; and (iii) is fully aware of the legal and binding effect of this Agreement.

(k) Unfunded Rights. The right of the Participant to receive Common Stock pursuant to this Agreement is an unfunded and unsecured obligation of the Company. The Participant shall have no rights under this Agreement other than those of an unsecured general creditor of the Company.

(l) Section 409A. Payments under this Agreement are intended to be exempt from, or comply with, the provisions of Section 409A and this Agreement shall be administered and construed accordingly. If any payment, compensation or other benefit provided to the Participant in connection with a termination of his employment is determined, in whole or in part, to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Participant is a specified employee as defined in Section 409A(2)(B)(i), no part of such payments shall be paid before the day that is six (6) months plus one (1) day after the date of termination (the "New Payment Date"). The aggregate of any payments that otherwise would have been paid to the Participant during the period between the date of termination and the New Payment Date shall be paid to the Participant in a lump sum on such New Payment Date.

(m) Additional Acknowledgments; Appendix A. By accepting this Award, the Participant acknowledges and agrees that this Award is subject to the terms applicable to Awards granted to service providers outside the U.S. set forth in the Appendix A hereto. Appendix A constitutes part of this Agreement. Please review the provisions of Appendix A carefully, as this Award will be null and void absent the Participant's acceptance of such provisions. The Company reserves the right to impose other requirements on the Award to the extent that the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Award and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

By accepting this grant online, I hereby acknowledge that I have read these Terms and Conditions, the 2022 Omnibus Incentive Plan and related prospectus, and agree to all terms and conditions set forth therein.

APPENDIX A
TO THE TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT AWARD

1. ADDITIONAL ACKNOWLEDGEMENTS

By entering into this Agreement and accepting the grant of RSUs evidenced hereby, the Participant acknowledges, understands and agrees that:

- (a) the Plan is established voluntarily by the Company, and all Awards under the Plan are discretionary in nature;
- (b) the grant of RSUs is voluntary and occasional and does not create any contractual or other right to receive future awards of RSUs or benefits in lieu of RSUs, even if such awards have been awarded in the past;
- (c) all decisions with respect to future awards, if any, will be at the sole discretion of the Company;
- (d) the grant of RSUs shall not create a right to employment with the Company or any other Subsidiary and shall not interfere with the ability of the Company or any Subsidiary to terminate the Participant's employment or service relationship (if any);
- (e) the Participant is voluntarily participating in the Plan;
- (f) the RSUs and any payment made pursuant to the RSUs, and the value and income of same, are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement benefits or welfare benefits or similar payments;
- (g) unless otherwise agreed with the Company, the Award and any Shares subject to the Award, and the value and income of same, are not granted as consideration for, or in connection with, any service the Participant may provide as a director of any Subsidiary;
- (h) in accepting the grant of RSUs, the Participant expressly recognizes that the RSUs are an award made solely by the Company, with principal offices in Massachusetts, U.S.A.; the Company is solely responsible for the administration of the Plan and the Participant's participation in the Plan; in the event that the Participant is an employee or consultant of an Subsidiary, the RSUs and the Participant's participation in the Plan will not create a right to employment be interpreted to form an employment or service contract or relationship with the Company; furthermore, the RSUs will not be interpreted to form an employment or service contract with any Subsidiary;
- (i) the future value of the Shares which may be delivered in settlement of the RSUs (to the extent earned) is unknown, indeterminable and cannot be predicted with certainty;
- (j) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSUs resulting from termination of the Participant's employment or service (for any reason whatsoever, whether or not such termination is later found to be invalid or in breach of the employment laws in the jurisdiction where the Participant is employed or providing services or the terms of the Participant's employment or service agreement, if any) or recoupment of all or any portion of any payment made pursuant to the RSUs

as provided by the Terms and Conditions and, in consideration of the grant of the RSUs to which the Participant is not otherwise entitled, the Participant irrevocably agrees never to institute any claim against the Company or any other Subsidiary, waives the Participant's ability, if any, to bring any such claim, and releases the Company, the Participant's employer and any other Subsidiary from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, the Participant shall be deemed irrevocably to have agreed not to pursue such claim, and the Participant agrees to execute any and all documents necessary to request dismissal or withdrawal of such claim;

(k) the Participant is solely responsible for investigating and complying with any exchange control laws applicable to the Participant in connection with his or her participation in the Plan;

(l) unless otherwise provided in the Plan or by the Company in its discretion, the RSUs and the benefits evidenced by this Agreement do not create any entitlement to have the RSUs or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the Common Stock; and

(m) neither the Company nor any other Subsidiary shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the United States Dollar that may affect the value of the RSUs, any payment made pursuant to the RSUs or the subsequent sale of any Shares acquired under the Plan.

2. NO ADVICE REGARDING GRANT

The Company is not providing any tax, legal, or financial advice, nor is the Company making any recommendations regarding the Participant's participation in the Plan or the Participant's acquisition of any Shares under the Plan or subsequent sale of such Shares. The Participant is hereby advised to consult with the Participant's personal tax, legal and financial advisors regarding the Participant's participation in the Plan before taking any action in relation thereto.

3. LANGUAGE

If the Participant has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version differs from the English version, the English version shall control.

4. Electronic Delivery and Acceptance

The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

5. Insider-Trading/Market-Abuse Laws

The Participant acknowledges that, depending on his or her country, the Participant may be subject to insider-trading restrictions and/or market-abuse laws, which may affect his or her ability to acquire or sell Shares acquired or rights to acquire Shares under the Plan during such times as the Participant is considered to have "inside information" regarding the Company (as defined by the laws in his or her country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Participant is responsible for complying with any applicable restrictions, and the Participant is advised to speak to his or her personal legal advisor regarding this matter.

Aspen Technology, Inc.
Terms and Conditions of Performance Restricted Stock Unit Agreement
Granted Under 2022 Omnibus Incentive Plan

1. Grant of Award.

These terms and conditions, together with the notice of grant attached hereto (“Notice”), evidence the grant by Aspen Technology, a Delaware corporation (the “Company”), on the grant date set forth in the Notice (the “Grant Date”) to the individual named in the Notice (the “Participant”) of Performance Restricted Stock Units of the Company (individually, a “PSU” and collectively, the “PSUs” or the “Award”) on the terms provided herein and in the Notice and the Company’s 2022 Omnibus Incentive Plan (the “Plan”). Each PSU represents the right to receive one share of the common stock, \$0.0001 par value per share, of the Company (“Common Stock”) as provided in this Agreement. The shares of Common Stock that are issuable upon vesting of the PSUs are referred to in this Agreement as “Shares.”

2. Vesting; Forfeiture.

- (a) The PSUs shall vest according to the schedule set forth on the Notice.
- (b) Except as otherwise provided in the Plan, by the Board of Directors or pursuant to a written employment or severance or similar agreement between the Company and the Participant, if the Participant’s employment with the Company terminates for any reason, any portion of this Award that is not vested as of the date of such termination shall be forfeited. For purposes of this Agreement, employment with the Company shall include employment with a parent or subsidiary of the Company.

3. Distribution of Shares. The Company will distribute to the Participant (or to the Participant’s estate in the event that his or her death occurs after a vesting date but before distribution of the corresponding Shares), as soon as administratively practicable (not more than 74 days) after each vesting date (each such date of distribution hereinafter referred to as a “Settlement Date”), all of the vested Shares represented by PSUs that vested before the applicable Settlement Date. If a Settlement Date occurs during a period during which the Participant may not trade in securities of the Company because the Company’s insider trading policy imposes a trading blackout on the Participant, then the Settlement Date shall be delayed until such trading blackout has ended, to the extent permitted by 409A, but in no event past March 15 of the year following the year in which the vesting date related to such Settlement Date occurs, unless the Company deducts and retains in its sole discretion from the Shares to be distributed upon the Settlement Date, such number of Shares as is equal in value to the Company’s statutory withholding obligations with respect to the income recognized by Participant upon the lapse of the forfeiture provisions set forth in the Agreement (based on statutory withholding rates for Federal and state tax purposes, including payroll taxes, that are applicable to such income), and to pay the required amounts to the relevant taxing authorities. The Company shall not be obligated to issue to the Participant the Shares upon the vesting of any PSU (or otherwise) unless the issuance and delivery of such Shares shall comply with all relevant provisions of law and other legal requirements including, without limitation, any applicable federal or state securities laws and the requirements of any stock exchange upon which shares of Common Stock may then be listed. The Settlement Date may be delayed in the event the Company reasonably anticipates that the issuance of the Shares related to such Settlement Date would constitute a violation of federal securities laws or other applicable law. If the Settlement Date is delayed by the provisions of the foregoing sentence, the Settlement Date shall occur at the earliest date at which the Company reasonably anticipates issuing the Shares related to such Settlement Date will not cause a violation of federal securities laws or other applicable law.

4. Restrictions on Transfer.

The Participant shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively “transfer”) any PSUs, or any interest therein, except by will or the laws of descent and distribution.

5. Dividend and Other Shareholder Rights.

Except as set forth in the Plan, neither the Participant nor any person claiming under or through the Participant shall be, or have any rights or privileges of, a stockholder of the Company in respect of the Shares issuable pursuant to the PSUs granted hereunder until the Shares have been delivered to the Participant.

6. Provisions of the Plan; Change in Control.

This Agreement is subject to the provisions of the Plan, the terms of which are incorporated herein by reference. A prospectus describing the Plan has been delivered to the Participant. In that regard, the PSUs are subject to adjustment in connection with a change in capital of the Company or a Corporate Transaction, as provided in Sections 15.1 and 15.2 of the Plan. In addition, vesting of the PSUs in connection with a Change in Control following the Grant Date shall be determined in accordance with Section 15.3.1 of the Plan. For purposes of Section 15.3.1(ii) of the Plan, if the PSUs are assumed, converted or replaced by the resulting entity in the Change in Control and if, within one year after the date of the Change in Control, the Participant has either (A) a Separation from Service by the Company other than for Cause or (B) a Separation from Service by the Participant for Good Reason, in either case any unvested PSUs shall become vested and payable as of the date of such Separation from Service based upon the greater of: (A) an assumed achievement of all relevant performance goals at the "target" level, or (B) the actual level of achievement of all relevant performance goals against target as of the Company's fiscal quarter end preceding the Change in Control, with such result being applied to the entire performance period. For this purpose, "Cause" and "Good Reason" shall have the meaning set forth in the Participant's employment, severance, retention or similar agreement with the Company in effect at the time (if any) or if no such agreement is in effect shall mean as follows:

"Cause" means any (i) willful failure by the Participant, which failure is not cured within 30 days of written notice to the Participant from the Company, to perform his or her material responsibilities to the Company, or (ii) willful misconduct by the Participant that affects the business reputation of the Company.

"Good Reason" means any significant diminution in the Participant's title, authority, or responsibilities from and after the Change in Control, or any reduction in the annual cash compensation payable to the Participant from and after the Change in Control.

7. Withholding Taxes; No Section 83(b) Election.

- (a) No Shares will be delivered pursuant to the vesting of a PSU unless and until the Participant pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, state or local withholding taxes required by law to be withheld in respect of the vesting of the PSU. To satisfy any such tax obligation, the Company may deduct and retain from the Shares to be distributed upon the Settlement Date such number of Shares as is equal in value up to the Company's maximum statutory withholding obligations with respect to the income recognized by the Participant upon the lapse of the forfeiture provisions (based on statutory withholding rates for federal and state tax purposes, including payroll taxes, that are applicable to such income), and pay the required amounts to the relevant taxing authorities.
- (b) The Participant acknowledges that no election under Section 83(b) of the Internal Revenue Code of 1986 may be filed with respect to this Award.

8. Miscellaneous.

- (a) **No Rights to Employment.** The Participant acknowledges and agrees that the vesting of the PSUs shall be in accordance with the vesting schedule set forth in the Notice, and is contingent upon status as an employee at the time of vesting at the will of the Company. The Participant further acknowledges and agrees that the transactions contemplated hereunder and the vesting schedule set forth in the Notice do not constitute an express or implied promise of continued engagement as an employee or consultant for the vesting period, for any period, or at all.
- (b) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each other provision of this Agreement shall be severable and enforceable to the extent permitted by law.
- (c) **Waiver.** Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board of Directors of the Company.
- (d) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Company and the Participant and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 4 of this Agreement.
- (e) **Notice.** Any notice which either party hereto may be required or permitted to give to the other shall be in writing and may be delivered personally, by intraoffice mail, by fax, by electronic mail or other electronic means, or via a postal service, postage prepaid, to such electronic mail or postal address and directed to such person as the Company may notify the Participant from time to time; and to the Participant at the Participant's electronic mail or postal address as shown on the records of the Company from time to time, or at such other electronic mail or postal address as the Participant, by notice to the Company, may designate in writing from time to time.
- (f) **Pronouns.** Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.
- (g) **Entire Agreement.** This Agreement, the Notice and the Plan constitute the entire agreement between the parties, and this Agreement supersedes all prior agreements and understandings, relating to the subject matter of this Agreement.
- (h) **Amendment.** This Agreement may be amended or modified only by a written instrument executed by both the Company and the Participant.
- (i) **Governing Law.** This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the State of Delaware, USA without regard to any applicable conflicts of laws principles.
- (j) **Participant's Acknowledgments.** The Participant acknowledges that he or she: (i) has read this Agreement, the Plan and the Notice; (ii) understands the terms and consequences of this Agreement; and (iii) is fully aware of the legal and binding effect of this Agreement.
- (k) **Unfunded Rights.** The right of the Participant to receive Common Stock pursuant to this Agreement is an unfunded and unsecured obligation of the Company. The Participant shall have no rights under this Agreement other than those of an unsecured general creditor of the Company.
- (l) **Section 409A.** Payments under this Agreement are intended to be exempt from, or comply with, the provisions of Section 409A and this Agreement shall be administered and construed

accordingly. If any payment, compensation or other benefit provided to the Participant in connection with a termination of his employment is determined, in whole or in part, to constitute “nonqualified deferred compensation” within the meaning of Section 409A and the Participant is a specified employee as defined in Section 409A(2)(B)(i), no part of such payments shall be paid before the day that is six (6) months plus one (1) day after the date of termination (the “New Payment Date”). The aggregate of any payments that otherwise would have been paid to the Participant during the period between the date of termination and the New Payment Date shall be paid to the Participant in a lump sum on such New Payment Date.

(m) **Additional Acknowledgments; Appendix A.** By accepting this Award, the Participant acknowledges and agrees that this Award is subject to the terms applicable to Awards granted to service providers outside the U.S. set forth in the Appendix A hereto. Appendix A constitutes part of this Agreement. Please review the provisions of Appendix A carefully, as this Award will be null and void absent the Participant’s acceptance of such provisions. The Company reserves the right to impose other requirements on the Award to the extent that the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Award and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

By accepting this grant online, I hereby acknowledge that I have read these Terms and Conditions, the 2022 Omnibus Incentive Plan and related prospectus, and agree to all terms and conditions set forth therein.

APPENDIX A
TO THE TERMS AND CONDITIONS OF PERFORMANCE RESTRICTED STOCK UNIT
AWARD

1. ADDITIONAL ACKNOWLEDGEMENTS

By entering into this Agreement and accepting the grant of PSUs evidenced hereby, the Participant acknowledges, understands and agrees that:

- (a) the Plan is established voluntarily by the Company, and all Awards under the Plan are discretionary in nature;
- (b) the grant of PSUs is voluntary and occasional and does not create any contractual or other right to receive future awards of PSUs or benefits in lieu of PSUs, even if such awards have been awarded in the past;
- (c) all decisions with respect to future awards, if any, will be at the sole discretion of the Company;
- (d) the grant of PSUs shall not create a right to employment with the Company or any other Subsidiary and shall not interfere with the ability of the Company or any Subsidiary to terminate the Participant's employment or service relationship (if any);
- (e) the Participant is voluntarily participating in the Plan;
- (f) the PSUs and any payment made pursuant to the PSUs, and the value and income of same, are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement benefits or welfare benefits or similar payments;
- (g) unless otherwise agreed with the Company, the Award and any Shares subject to the Award, and the value and income of same, are not granted as consideration for, or in connection with, any service the Participant may provide as a director of any Subsidiary;
- (h) in accepting the grant of PSUs, the Participant expressly recognizes that the PSUs are an award made solely by the Company, with principal offices in Massachusetts, U.S.A.; the Company is solely

responsible for the administration of the Plan and the Participant's participation in the Plan; in the event that the Participant is an employee or consultant of an Subsidiary, the PSUs and the Participant's participation in the Plan will not create a right to employment be interpreted to form an employment or service contract or relationship with the Company; furthermore, the PSUs will not be interpreted to form an employment or service contract with any Subsidiary;

(i) the future value of the Shares which may be delivered in settlement of the PSUs (to the extent earned) is unknown, indeterminable and cannot be predicted with certainty;

(j) no claim or entitlement to compensation or damages shall arise from forfeiture of the PSUs resulting from termination of the Participant's employment or service (for any reason whatsoever, whether or not such termination is later found to be invalid or in breach of the employment laws in the jurisdiction where the Participant is employed or providing services or the terms of the Participant's employment or service agreement, if any) or recoupment of all or any portion of any payment made pursuant to the PSUs as provided by the Terms and Conditions and, in consideration of the grant of the PSUs to which the Participant is not otherwise entitled, the Participant irrevocably agrees never to institute any claim against the Company or any other Subsidiary, waives the Participant's ability, if any, to bring any such claim, and releases the Company, the Participant's employer and any other Subsidiary from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, the Participant shall be deemed irrevocably to have agreed not to pursue such claim, and the Participant agrees to execute any and all documents necessary to request dismissal or withdrawal of such claim;

(k) the Participant is solely responsible for investigating and complying with any exchange control laws applicable to the Participant in connection with his or her participation in the Plan;

(l) unless otherwise provided in the Plan or by the Company in its discretion, the PSUs and the benefits evidenced by this Agreement do not create any entitlement to have the PSUs or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the Common Stock; and

(m) neither the Company nor any other Subsidiary shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the United States Dollar that may affect the value of the PSUs, any payment made pursuant to the PSUs or the subsequent sale of any Shares acquired under the Plan.

2. NO ADVICE REGARDING GRANT

The Company is not providing any tax, legal, or financial advice, nor is the Company making any recommendations regarding the Participant's participation in the Plan or the Participant's acquisition of any Shares under the Plan or subsequent sale of such Shares. The Participant is hereby advised to consult with the Participant's personal tax, legal and financial advisors regarding the Participant's participation in the Plan before taking any action in relation thereto.

3. LANGUAGE

If the Participant has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version differs from the English version, the English version shall control.

4. Electronic Delivery and Acceptance

The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Participant hereby consents to receive such

documents by electronic delivery and agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

5. Insider-Trading/Market-Abuse Laws

The Participant acknowledges that, depending on his or her country, the Participant may be subject to insider-trading restrictions and/or market-abuse laws, which may affect his or her ability to acquire or sell Shares acquired or rights to acquire Shares under the Plan during such times as the Participant is considered to have “inside information” regarding the Company (as defined by the laws in his or her country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Participant is responsible for complying with any applicable restrictions, and the Participant is advised to speak to his or her personal legal advisor regarding this matter.

Execution Version

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

December 23, 2019

Among

ASPEN TECHNOLOGY, INC.,
as Borrower,

The LENDERS Party Hereto,

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,

and

SILICON VALLEY BANK
as Joint Lead Arrangers and Joint Bookrunners,

SILICON VALLEY BANK
as Syndication Agent,

and

CITIBANK, N.A.,
CITIZENS BANK, N.A.,
TD BANK, N.A.
and
WELLS FARGO BANK, N.A.,
as Co-Documentation Agents

Table of Contents

	Page
ARTICLE I Definitions	1
SECTION 1.01. Defined Terms	1
SECTION 1.02. Classification of Loans and Borrowings.....	44
SECTION 1.03. Terms Generally	44
SECTION 1.04. Accounting Terms; GAAP; Pro Forma Calculations	45
SECTION 1.05. Excluded Swap Obligations.....	46
SECTION 1.06. Foreign Currency Calculations.....	46
SECTION 1.07. Interest Rates; LIBOR Notification	47
SECTION 1.08. Division.....	47
ARTICLE II The Credits	48
SECTION 2.01. Commitments.....	48
SECTION 2.02. Loans and Borrowings.....	49
SECTION 2.03. Requests for Borrowings	50
SECTION 2.04. Funding of Borrowings.....	51
SECTION 2.05. Interest Elections	51
SECTION 2.06. Termination and Reduction of Commitments	53
SECTION 2.07. Repayment of Loans; Evidence of Debt; Letter of Credit Reimbursements.....	53
SECTION 2.08. Prepayment of Loans; Mandatory Prepayment of Term Loans.....	55
SECTION 2.09. Fees.....	57
SECTION 2.10. Interest	58
SECTION 2.11. Alternate Rate of Interest.....	59
SECTION 2.12. Increased Costs; Illegality.....	60
SECTION 2.13. Break Funding Payments.....	62
SECTION 2.14. Taxes.....	63
SECTION 2.15. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.....	67
SECTION 2.16. Mitigation Obligations; Replacement of Lenders or Issuing Banks.....	69
SECTION 2.17. Defaulting Lenders	70
SECTION 2.18. [Reserved]	72
SECTION 2.19. Issuance of and Drawings and Reimbursement Under Letters of Credit	72
SECTION 2.20. Incremental Facility	75
ARTICLE III Representations and Warranties.....	79
SECTION 3.01. Organization; Powers.....	79
SECTION 3.02. Authorization; Enforceability	79
SECTION 3.03. Governmental Approvals; No Conflicts.....	80
SECTION 3.04. Financial Condition; No Material Adverse Change	80
SECTION 3.05. Properties	80
SECTION 3.06. Litigation and Environmental Matters.....	81
SECTION 3.07. Compliance with Laws and Agreements; No Default	81

SECTION 3.08.	Investment Company Status	81
SECTION 3.09.	Taxes.....	81
SECTION 3.10.	ERISA and Labor Matters.....	82
SECTION 3.11.	Subsidiaries.....	82
SECTION 3.12.	Insurance.....	82
SECTION 3.13.	Solvency	83
SECTION 3.14.	Disclosure.....	83
SECTION 3.15.	Collateral Matters	83
SECTION 3.16.	Federal Reserve Regulations.....	85
SECTION 3.17.	Anti-Corruption Laws and Sanctions	85
SECTION 3.18.	Use of Proceeds	85
SECTION 3.19.	USA PATRIOT Act.....	85
SECTION 3.20.	EEA Financial Institution	85
ARTICLE IV	Conditions.....	85
SECTION 4.01.	Restatement Effective Date.....	85
SECTION 4.02.	Each Credit Event	87
ARTICLE V	Affirmative Covenants.....	88
SECTION 5.01.	Financial Statements; and Other Information.....	88
SECTION 5.02.	Notices of Material Events	90
SECTION 5.03.	Information Regarding Collateral	91
SECTION 5.04.	Existence; Conduct of Business.....	92
SECTION 5.05.	Reserved	92
SECTION 5.06.	Maintenance of Properties.....	92
SECTION 5.07.	Insurance.....	92
SECTION 5.08.	Books and Records; Inspection and Audit Rights.....	92
SECTION 5.09.	Compliance with Laws	93
SECTION 5.10.	Use of Proceeds	93
SECTION 5.11.	Additional Subsidiaries.....	93
SECTION 5.12.	Further Assurances	93
SECTION 5.13.	After-Acquired Real Property.....	94
SECTION 5.14.	Environmental Compliance	94
ARTICLE VI	Negative Covenants.....	94
SECTION 6.01.	Indebtedness; Certain Equity Securities.....	95
SECTION 6.02.	Liens	97
SECTION 6.03.	Fundamental Changes.....	98
SECTION 6.04.	Investments, Loans, Advances, Guarantees and Acquisitions	99
SECTION 6.05.	Asset Sales.....	102
SECTION 6.06.	Sale/Leaseback Transactions.....	104
SECTION 6.07.	Hedging Agreements.....	104
SECTION 6.08.	Restricted Payments; Certain Payments of Indebtedness.....	104
SECTION 6.09.	Transactions with Affiliates.....	106

SECTION 6.10. Restrictive Agreements.....	107
SECTION 6.11. Amendment of Material Documents	108
SECTION 6.12. Fiscal Year	108
SECTION 6.13. Leverage Ratio.....	108
SECTION 6.14. Interest Coverage Ratio	108
ARTICLE VII Events of Default.....	108
SECTION 7.01. Events of Default	108
SECTION 7.02. Actions in Respect of the Letters of Credit upon Default	111
ARTICLE VIII The Administrative Agent.....	112
ARTICLE IX Miscellaneous	117
SECTION 9.01. Notices.....	117
SECTION 9.02. Waivers; Amendments.....	118
SECTION 9.03. Expenses; Indemnity; Damage Waiver	121
SECTION 9.04. Assignments and Participations.....	123
SECTION 9.05. Survival	127
SECTION 9.06. Counterparts; Integration; Effectiveness	128
SECTION 9.07. Severability	128
SECTION 9.08. Right of Setoff	128
SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process	129
SECTION 9.10. WAIVER OF JURY TRIAL	129
SECTION 9.11. Headings	130
SECTION 9.12. Confidentiality	130
SECTION 9.13. Interest Rate Limitation	131
SECTION 9.14. Release of Liens and Guarantees.....	131
SECTION 9.15. USA PATRIOT Act Notice.....	132
SECTION 9.16. No Fiduciary Relationship.....	132
SECTION 9.17. Non-Public Information.....	132
SECTION 9.18. Judgment Currency	133
SECTION 9.19. Acknowledgement and Consent to Bail-In of EEA Financial Institutions	133
SECTION 9.20. Acknowledgement Regarding Any Supported QFCs.....	134
SECTION 9.21. Certain ERISA Matters.....	134
ARTICLE X AMENDMENT AND RESTATEMENT	136

SCHEDULES:

Schedule 1.01 –	Scheduled Excluded Equity Interests
Schedule 1.02 –	Existing Letters of Credit
Schedule 2.01 –	Commitments
Schedule 3.06(a) –	Litigation
Schedule 3.06(b) –	Environmental Matters
Schedule 3.11 –	Subsidiaries
Schedule 3.12 –	Insurance
Schedule 6.01 –	Existing Indebtedness
Schedule 6.02 –	Existing Liens
Schedule 6.04 –	Existing Investments
Schedule 6.10 –	Existing Restrictions

EXHIBITS:

Exhibit A –	Form of Assignment and Assumption
Exhibit B –	Form of Borrowing Request
Exhibit C –	Form of Amended and Restated Collateral Agreement
Exhibit D –	Form of Compliance Certificate
Exhibit E –	Form of Interest Election Request
Exhibit F-1 –	Form of U.S. Tax Compliance Certificate for Non-U.S. Lenders that are not Partnerships for U.S. Federal Income Tax Purposes
Exhibit F-2 –	Form of U.S. Tax Compliance Certificate for Non-U.S. Participants that are not Partnerships for U.S. Federal Income Tax Purposes
Exhibit F-3 –	Form of U.S. Tax Compliance Certificate for Non-U.S. Participants that are Partnerships for U.S. Federal Income Tax Purposes
Exhibit F-4 –	Form of U.S. Tax Compliance Certificate for Non-U.S. Lenders that are Partnerships for U.S. Federal Income Tax Purposes
Exhibit G –	[Reserved]
Exhibit H –	Form of Amended and Restated Guarantee Agreement
Exhibit I –	Form of Promissory Note
Exhibit J –	Form of Solvency Certificate

AMENDED AND RESTATED CREDIT AGREEMENT dated as of December 23, 2019, among ASPEN TECHNOLOGY, INC., as Borrower, the LENDERS party hereto, the INITIAL ISSUING BANKS party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

RECITALS

WHEREAS the Borrower, the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the other agents named therein are parties to that certain Credit Agreement, dated as of February 26, 2016 (the "Existing Credit Agreement") pursuant to which certain loans and other extensions of credit were made to the Borrower;

WHEREAS, the Borrower, the Lenders party hereto and the Administrative Agent have entered into this Agreement in order to (i) amend and restate the Existing Credit Agreement in its entirety; (ii) replace revolving commitments and outstanding revolving loans under such Existing Credit Agreement with new revolving commitments and term loans as provided herein; and (iii) re-evidence the "Obligations" under, and as defined in, the Existing Credit Agreement as part of the Obligations, which shall be repayable in accordance with the terms of this Agreement;

WHEREAS, it is also the intent of the Borrower and the Borrower to confirm that all obligations under the applicable "Loan Documents" (as referred to and defined in the Existing Credit Agreement) shall continue in full force and effect as modified or restated by the Loan Documents (as referred to and defined herein) and that, from and after the Restatement Effective Date, all references to the "Credit Agreement" contained in any such existing "Loan Documents" shall be deemed to refer to this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree that the Existing Credit Agreement is hereby amended and restated as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, means that such Loan, or the Loans comprising such Borrowing, shall bear interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted Free Cash Flow" means, for any period, an amount equal to:

- (a) Free Cash Flow for such period; plus
- (b) without duplication, an amount equal to the sum of:

(i) Consolidated Interest Expense for such period (including imputed interest expense in respect of finance lease obligations), and

(ii) provision for taxes based on income, profits or losses, including foreign withholding taxes, and for corporate franchise, capital stock, net worth taxes, in each case during such period as reflected in the consolidated statements of income of the Borrower and its Subsidiaries for such period delivered pursuant to Section 5.01; minus

(c) without duplication, the net amount (which may be an amount below zero) equal to the sum of (i) adjustments for deferred income taxes, plus (ii) changes in accounts receivable, plus (iii) changes in prepaid expenses, plus (iv) changes in prepaid income taxes, plus (vi) changes in other assets, plus (vii) changes in accounts payable, plus (viii) changes in accrued expenses and other current liabilities, plus (ix) changes in income taxes payable, plus (x) changes in other liabilities, in each case as reflected in the consolidated statements of cash flow of the Borrower and its Subsidiaries for such period delivered pursuant to Section 5.01.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” means JPMorgan Chase Bank, N.A. (including its branches and affiliates), in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

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

“Affected Foreign Currency” has the meaning set forth in Section 2.11(c).

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

“Agreement” means this Credit Agreement, as amended, restated, modified or supplemented from time to time.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate on such day (or if such day is not a Business Day, the immediately preceding Business Day) for a deposit in Dollars with a maturity of one month plus 1% provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 (for the avoidance of doubt, only until any amendment has become effective pursuant to Section 2.11(b)), then the Alternate Base Rate shall

be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Creditor” has the meaning set forth in Section 9.18(b).

“Applicable Lending Office” means, with respect to each Lender, such Lender’s Domestic Lending Office in the case of a ABR Loan and such Lender’s Eurodollar Lending Office in the case of a Eurodollar Loan.

“Applicable Rate” means, (a) from the Restatement Effective Date to the date on which the Administrative Agent receives a Compliance Certificate pursuant to Section 5.01(d) for the first full Fiscal Quarter ending after the Restatement Effective Date, (i) with respect to any ABR Loan or Eurodollar Loan, the Applicable Rate set forth below under Level I shall apply and (ii) with respect to any commitment fee, the commitment fee rate set forth below under Level I shall apply and (b) thereafter, (i) with respect to any Eurodollar Loan, the applicable rate per annum set forth below under the caption “Applicable Rate – Eurodollar Loans” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d), (ii) with respect to any ABR Loan, the applicable rate per annum set forth below under the caption “Applicable Rate – ABR Loans” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d) and (iii) with respect to any commitment fee, a rate per annum set forth below under the caption “Commitment Fee Rate” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d):

<u>Status:</u>	<u>Leverage Ratio</u>	<u>Applicable Rate – Eurodollar Loans</u>	<u>Applicable Rate – ABR Loans</u>	<u>Commitment Fee Rate</u>
Level I	Less than 1.50 to 1.00	1.50%	0.50%	0.20%
Level II	Greater than or equal to 1.50 to 1.00, but less than 2.50 to 1.00	1.75%	0.75%	0.25%
Level III	Greater than or equal to 2.50 to 1.00	2.00%	1.00%	0.30%

“Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its activities and that is administered or managed by (a) a Lender, (b) an

Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means, collectively, JPMorgan Chase Bank, N.A. and Silicon Valley Bank in their capacity as joint lead arrangers and joint bookrunners for the credit facilities provided for herein.

“Asset Sale” means any Disposition of property or series of related Dispositions of property (excluding any such Disposition permitted by Section 6.05 (other than clause (k) thereof)) that yields gross proceeds to the Borrower or any Subsidiary (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of \$5,000,000.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee, with the consent of any party whose consent is required by Section 9.04, and accepted by the Administrative Agent, substantially in the form of Exhibit A or any other form approved by the Administrative Agent and the Borrower.

“Availability Period” means the period from and including the Restatement Effective Date to but excluding the earlier of the Revolving Termination Date and the date of termination of the Revolving Commitments.

“Available Amount” of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing); provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any L/C Related Documents, provides for one or more automatic increases in the stated amount thereof, the Available Amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

“BAFT-IFSA” has the meaning set forth in Section 2.19(f).

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

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

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof; provided that a Bankruptcy Event

shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person 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 permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Benchmark Replacement” means the sum of: (a) the alternate benchmark rate (which, with respect to U.S. dollars, may be a SOFR-Based Rate) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the LIBO Rate for U.S. dollar-denominated or Designated Foreign Currency-denominated, as applicable syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement; provided further that any such Benchmark Replacement shall be administratively feasible as determined by the Administrative Agent in its sole discretion.

“Benchmark Replacement Adjustment” means the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBO Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBO Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated or Designated Foreign Currency, as applicable syndicated credit facilities at such time (for the avoidance of doubt, such Benchmark Replacement Adjustment shall not be in the form of a reduction to the Applicable Rate).

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent in consultation with the Borrower decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to the LIBO Rate:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the LIBO Screen Rate permanently or indefinitely ceases to provide the LIBO Screen Rate; or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the LIBO Rate:

(1) a public statement or publication of information by or on behalf of the administrator of the LIBO Screen Rate announcing that such administrator has ceased or will cease to provide the LIBO Screen Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Screen Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBO Screen Rate, a resolution authority with jurisdiction over the administrator for the LIBO Screen Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Screen Rate, in each case which states that the administrator of the LIBO Screen Rate has ceased or will cease to provide the LIBO Screen Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate; and/or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Screen Rate announcing that the LIBO Screen Rate is no longer representative.

“Benchmark Transition Start Date” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

“Benchmark Unavailability Period” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBO Rate and solely to the extent that the LIBO Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder in accordance with Section 2.11 and (y) ending at the time that a Benchmark Replacement has replaced the LIBO

Rate for all purposes hereunder pursuant to Section 2.11.

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

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

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

“Borrower” means Aspen Technology, Inc., a Delaware corporation.

“Borrowing” means Loans of the same Type and Class, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03, which shall be, in the case of any such written request, substantially in the form of Exhibit B or any other form approved by the Administrative Agent.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, (a) when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in deposits in the relevant currency in the London interbank market and (b) when used in connection with a Eurodollar Loan denominated in Euros, the term “Business Day” shall also exclude any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer System (which utilizes a single shared platform and which was launched on November 19, 2007 (TARGET2)) (or, if such clearing system ceases to be operative, such other clearing system (if any) determined by the Administrative Agent to be a suitable replacement) is not open for settlement of payment in Euros.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, subject to Section 1.04. The amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP. For purposes of Section 6.02, a Capital Lease Obligation shall be deemed to be secured by a Lien on the property being leased and such property shall be deemed to be owned by the lessee.

“Cash Management Agreement” means an agreement pursuant to which a bank or other financial institution provides Cash Management Services.

“Cash Management Services” means (a) treasury management services (including controlled disbursements, zero balance arrangements, cash sweeps, automated clearinghouse transactions, return items, overdrafts, temporary advances, interest and fees and interstate depository network services) provided to the Borrower or any Subsidiary and (b) commercial credit card and purchasing card services provided to the Borrower or any Subsidiary.

“CFC” means (a) each Person that is a “controlled foreign corporation” for purposes of the Code and (b) each subsidiary of any such controlled foreign corporation.

“CFC Holding Company” means a Subsidiary, substantially all of the assets of which consist of Equity Interests or Indebtedness of (a) one or more CFCs or (b) one or more CFC Holding Companies.

“Change in Control” means (a) occupation of a majority of the seats (other than vacant seats) on the Board of Directors of the Borrower by Persons who were neither (i) nominated by the Board of Directors of the Borrower nor (ii) appointed or approved by directors so nominated or (b) any person or group or persons (within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended) shall obtain ownership or control in one or more series of transactions of more than 35% of the common Equity Interests or 35% of the voting power of the Equity Interests of the Borrower entitled to vote on the election of members of the Board of Directors of the Borrower.

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

“Charges” has the meaning set forth in Section 9.13.

“Class” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Term Loans.

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

“Collateral” means any and all assets, whether real or personal, tangible or intangible, on which Liens are granted pursuant to the Security Documents as security for the Obligations, subject, in each case, to the Collateral and Guarantee Requirements.

“Collateral Agreement” means the Amended and Restated Collateral Agreement

among the Borrower, the other Loan Parties organized in the United States and the Administrative Agent, substantially in the form of Exhibit C.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Administrative Agent shall have received from the Borrower and each Designated Subsidiary either (i) counterparts of the Guarantee Agreement and a Collateral Agreement duly executed and delivered on behalf of such Person or (ii) in the case of any Person that becomes a Designated Subsidiary after the Restatement Effective Date, a supplement to the Guarantee Agreement and a Collateral Agreement, substantially in the form specified therein (or as otherwise agreed by the Administrative Agent), duly executed and delivered on behalf of such Person, together with documents of the type referred to in Section 4.01(c)(i), (ii) and (iii) and, to the extent reasonably requested by the Administrative Agent, opinions of the type referred to in Section 4.01(c)(iv), with respect to such Designated Subsidiary;

(b) (i) all outstanding Equity Interests in any Significant Subsidiary (other than Excluded Equity Interests), in each case directly owned by any Loan Party, shall have been pledged pursuant to the Collateral Agreement and (ii) the Administrative Agent shall, to the extent such Equity Interests are certificated securities, have received certificates or other instruments representing all such Equity Interests, together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank;

(c) all Indebtedness of the Borrower and each Subsidiary that is owing to any Loan Party in an aggregate principal amount in excess of \$10,000,000 shall be evidenced by a promissory note and shall have been pledged pursuant to the Collateral Agreement or a supplement to the Collateral Agreement, and the Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;

(d) all documents and instruments, including Uniform Commercial Code financing statements, required by Requirements of Law or reasonably requested by the Administrative Agent to be filed, registered or recorded to evidence the Liens intended to be created by the Security Documents and perfect such Liens to the extent required by, and with the priority required by, the Security Documents and the other provisions of the term “Collateral and Guarantee Requirement”, shall have been filed, registered or recorded or delivered to (or provided by, as applicable) the Administrative Agent for filing, registration or recording; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Mortgaged Property duly executed and delivered by the record owner of such Mortgaged Property, (ii) with respect to each Mortgaged Property located in the United States, a policy or policies of title insurance issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a valid and enforceable Lien on the Mortgaged Property described therein, free of any other Liens except as permitted under Section 6.02, together with such endorsements as the Administrative Agent may reasonably request, (iii) with respect to each Mortgaged Property located

outside the United States, such title reports and other documentation as is customary in such jurisdiction in connection with the mortgage of property in comparable transactions, (iv) if the Borrower is in receipt of a Standard Flood Hazard Determination that shows that a Mortgaged Property is located in an area determined by the Federal Emergency Management Agency to have special flood hazards, the Borrower shall (prior to the delivery of a counterpart to the Mortgage for such Mortgaged Property) deliver to the Administrative Agent evidence of such flood insurance as may be required under applicable law or regulations, including Regulation H of the Board of Governors, and in any event in form and substance reasonably satisfactory to the Administrative Agent and (v) any surveys as may exist at such time with respect to any such Mortgaged Property and any legal opinions as the Administrative Agent may reasonably request with respect to any such Mortgage.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (a) the Loan Parties shall have the time periods specified in Section 5.11 to satisfy the Collateral and Guarantee Requirement with respect to Designated Subsidiaries newly acquired or formed (or which first become Designated Subsidiaries) after the Restatement Effective Date and with respect to assets acquired after the Restatement Effective Date that do not automatically constitute Collateral under a Collateral Agreement, (b) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, as to which the Administrative Agent and the Borrower reasonably agree that the cost of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any adverse tax consequences to the Borrower and the Subsidiaries (including the imposition of withholding or other material taxes)), shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (c) Liens required to be granted from time to time pursuant to the term "Collateral and Guarantee Requirement" shall be subject to exceptions and limitations set forth in the Security Documents and, to the extent appropriate in the applicable jurisdiction, as reasonably agreed between the Administrative Agent and the Borrower, (d) in no event shall the Collateral include any Excluded Assets, (e) no Person shall be required to Guarantee the Obligations or grant security therefor if to do so would conflict with the fiduciary duties of its directors or contravene any legal prohibition or result in a risk of personal or criminal liability on the part of any officer or director thereof, (f) the requirement to enter into the Guarantee Agreement and any Security Document and the terms of each such agreement shall be subject to general statutory limitations, financial assistance, capital maintenance, corporate benefit, fraudulent preference, "thin capitalization" rules, retention of title claims, exchange control restrictions, ineffectiveness of agency provisions, and similar principles that may limit the ability of any Person to provide a Guarantee or security to the Administrative Agent or the Lenders or may require that the Guarantee or security be limited by an amount or otherwise; provided, that each such affected Person that is otherwise required to be a Loan Party shall use commercially reasonable efforts to provide the maximum permissible credit support and to assist in demonstrating that adequate corporate benefit accrues to any relevant entity, and (g) the maximum Guaranteed or secured amount may be limited due to legal or regulatory limitations, or, in the Administrative Agent's reasonable discretion, to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties. Notwithstanding any other provision of any

Loan Document, the Guarantee given by any Subsidiary that becomes a Subsidiary Guarantor (as defined in the Guarantee Agreement) after the Restatement Effective Date (an “Additional Guarantor”) shall be subject to the limitations consistent with this definition and such limitations shall be set forth in the Supplement (as defined in the Guarantee Agreement) applicable to such Additional Guarantor. The Administrative Agent may, without the consent of any Lender, grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Designated Subsidiary (including extensions beyond the Restatement Effective Date or in connection with assets acquired, or Designated Subsidiaries formed or acquired, after the Restatement Effective Date) where it and the Borrower reasonably agree that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement or the Security Documents. In addition, in no event shall (a) control agreements or control or similar arrangements be required with respect to cash deposit or securities accounts, (b) notice be required to be sent to account debtors or other contractual third parties prior to the occurrence and absent the continuance of an Event of Default, (c) perfection be required with respect to letter of credit rights and commercial tort claims (except to the extent perfected through the filing of Uniform Commercial Code financing statements), (d) security documents governed by the laws of a jurisdiction other than the United States or any State thereof or the District of Columbia be required, (e) filings be required to be made against intellectual property in any jurisdiction other than the United States or (f) landlord, warehouse or bailee waivers be required for leased or used real property.

“Commitment” means a Revolving Credit Commitment, a Term Loan Credit Commitment or a Letter of Credit Commitment.

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

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit D or any other form approved by the Administrative Agent.

“Compounded SOFR” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which may include compounding in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period) being established by the Administrative Agent in accordance with:

- (1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that:
- (2) if, and to the extent that, the Administrative Agent determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that the Administrative Agent, in consultation with the Borrower, determines in its reasonable discretion are substantially consistent with any evolving or then-prevailing market convention for determining compounded SOFR for U.S. dollar-denominated syndicated credit

facilities at such time;

provided, further, that if the Administrative Agent decides that any such rate, methodology or convention determined in accordance with clause (1) or clause (2) is not administratively feasible for the Administrative Agent, then Compounded SOFR will be deemed unable to be determined for purposes of the definition of "Benchmark Replacement."

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Interest Expense" means, with reference to any period, the Interest Expense of the Borrower and its Subsidiaries calculated on a consolidated basis in accordance with GAAP for such period.

"Consolidated Total Assets" means, with reference to any period, the total assets of the Borrower and its Subsidiaries calculated on a consolidated basis in accordance with GAAP for such period.

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

"Corresponding Tenor" with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the applicable Interest Period with respect to the LIBO Rate.

"Covered Entity" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning assigned to it in Section 9.20.

"Default" means any event or condition that constitutes, or upon notice, lapse of time or both would constitute, an Event of Default.

"Defaulting Lender" means any Lender that has (a) failed to fund any portion of its Loans within two Business Days of the date required to be funded by it hereunder, (b) notified the Borrower, the Administrative Agent or any Lender in writing that it does not intend to comply

with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans (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), (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless such payment is the subject of a good faith dispute, or (e) has become the subject of (A) a Bankruptcy Event or (B) a Bail-In Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17) upon delivery of written notice of such determination to the Borrower and each Lender.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Designated Foreign Currency” means Euros or Pounds Sterling.

“Designated Subsidiary” means each Significant Domestic Subsidiary that is not an Excluded Subsidiary.

“Disposition” has the meaning set forth in Section 6.05.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

(a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests); or

(c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by the Borrower or any Subsidiary, in whole or in part, at the option of the holder thereof;

in each case, on or prior to the date that is 91 days after the Maturity Date (determined as of the date of issuance thereof or, in the case of any such Equity Interests outstanding on the Restatement Effective Date, the Restatement Effective Date); provided, however, that (i) an Equity Interest in

any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale” or a “change of control” (or similar event, however denominated) shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after repayment in full of all the Loans and all other Loan Document Obligations that are accrued and payable and the termination or expiration of the Commitments and (ii) an Equity Interest in any Person that is issued to any employee or to any plan for the benefit of employees or by any such plan to such employees shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by such Person or any of its subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

“Disqualified Institutions” means (i) banks, financial institutions and other institutional lenders separately identified in writing by the Borrower to the Administrative Agent prior to the Restatement Effective Date, (ii) the competitors of the Borrower and the Subsidiaries identified by name in writing by the Borrower to the Administrative Agent from time to time and (iii) in the case of each of the entities covered by clauses (i) and (ii), any of their Affiliates that are either (a) identified in writing by the Borrower or (ii) clearly identifiable on the basis of such Affiliate’s name; for the avoidance of doubt the Administrative Agent shall, and shall be permitted to, provide such list of Disqualified Institutions to the Lenders. In no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any prospective assignee is a Disqualified Institution or have any liability with respect to any assignment made to a Disqualified Institution.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Dollar Equivalent” means, for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in a Designated Foreign Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Designated Foreign Currency last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Thomson Reuters Corp., Refinitiv, or any successor thereto (“Reuters”) source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with the Designated Foreign Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its reasonable discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its reasonable discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its reasonable discretion.

“Domestic Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Domestic Lending Office” in its Administrative Questionnaire delivered to the Administrative Agent or specified in the Incremental Assumption Agreement or the Assignment and Assumption pursuant to which it became a Lender, or such other office of such

Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

“Domestic Subsidiary” means any Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

“Early Opt-in Election” means the occurrence of:

(1) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders (or with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility) to the Administrative Agent (with a copy to the Borrower) that the Required Lenders (or with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility) have determined that U.S. dollar-denominated or Designated Foreign Currency-denominated, as applicable, syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.11 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate, and

(2) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders (or with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility) to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders (or with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility) of written notice of such election to the Administrative Agent.

“EEA Financial Institution” means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, (d) any bank and (e) any other financial institution or investment fund engaged as a primary activity in the ordinary course of its business in making or investing in commercial loans or debt securities, other than, in each case, (i) a natural person (including a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof), (ii) a Defaulting Lender or (iii) the Borrower, any Subsidiary or any other Affiliate of the Borrower, in each case other than any Disqualified Institution.

“Environmental Laws” means all Requirements of Law relating to pollution or the protection of the environment or natural resources (or, as it relates to exposure to hazardous or toxic substances, human health and safety matters).

“Environmental Liability” means any liability, obligation, loss, claim, lawsuit or order, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties and indemnities) directly or indirectly resulting or arising from (a) the violation of any Environmental Law or Environmental Permit, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) the Release or threatened Release of any Hazardous Materials, (d) exposure to any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits” means any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization issued or required under Environmental Laws.

“Equity Interests” means shares of capital stock, partnership interests, membership interests, beneficial interests in a trust or other equity ownership interests (whether voting or non-voting) in, or interests in the income or profits of, a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing (other than, prior to the date of such conversion, Indebtedness that is convertible into Equity Interests).

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

“ERISA Affiliate” means (A) any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or (B) any entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001(a)(14) of ERISA.

“ERISA Event” means (a) the existence, with respect to any Plan of the Borrower, of a non-exempt Prohibited Transaction; (b) any Reportable Event; (c) the failure of the Borrower or any ERISA Affiliate to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or any failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, in each case whether or not waived; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (e) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 430(i)(4) of the Code or Section 303(i)(4) of ERISA); (f) the incurrence by the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (g) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (h) the incurrence by the Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (i) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the

imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, in “endangered” or “critical” status (within the meaning of Sections 431 or 432 of the Code or Sections 304 or 305 of ERISA), or in “critical and declining” status (within the meaning of Section 305 of ERISA) or terminated (within the meaning of Section 4041A of ERISA) or that the PBGC has issued a partition order under Section 4233 of ERISA with respect to the Multiemployer Plan; (j) the failure by the Borrower or any ERISA Affiliate to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability under Section 4201 of ERISA; (k) a Foreign Plan Event; (l) the imposition of a Lien pursuant to Section 430(k) of the Code or pursuant to Section 303(k) or 4068 of ERISA with respect to any Pension Plan; or (m) the occurrence of an act or omission which could give rise to the imposition on any Borrower or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Plan.

“Euro” means the lawful currency of the European Union as constituted by the Treaty of Rome which established the European Community, as such treaty may be amended from time to time and as referred to in the European Monetary Union legislation.

“Eurodollar,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Eurodollar Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Eurodollar Lending Office” in its Administrative Questionnaire delivered to the Administrative Agent or specified in the Incremental Assumption Agreement or the Assignment and Assumption pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

“Event of Default” has the meaning set forth in Article VII.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended from time to time.

“Excluded Assets” means (a) any fee-owned real property with a fair market value of less than \$10,000,000 and all leasehold interests; (b) motor vehicles and other assets subject to certificates of title (other than to the extent a security interest in such assets can be perfected by filing a Uniform Commercial Code financing statement or similar financing statement in a non-U.S. jurisdiction); (c) commercial tort claims with a value of less than \$5,000,000; (d) any lease, license or other agreement or any property subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money security interest or similar arrangement or create a right of termination in favor of any other party thereto (other than the Borrower or any wholly owned Subsidiary) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or analogous law of any non-U.S. jurisdiction, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or analogous law of any non-U.S. jurisdiction notwithstanding such prohibition;

(e) “intent-to-use” trademark applications; (f) any Excluded Equity Interests; and (g) any business interruption insurance policies of the Borrower or any of its Subsidiaries (or the proceeds thereof other than to the extent such proceeds would otherwise constitute proceeds of Collateral).

“Excluded Equity Interests” means (a) any Equity Interests described on Schedule 1.01, (b) any Equity Interests that consist of voting stock of a Subsidiary that is a CFC or a CFC Holding Company in excess of 65% of the outstanding voting stock (or 65% of the outstanding Equity Interests in the case of an entity that is not a corporation for U.S. tax purposes) of such Subsidiary, (c) any Equity Interests if, to the extent, and for so long as, the grant of a Lien thereon to secure the Obligations is effectively prohibited by any Requirements of Law; provided that such Equity Interest shall cease to be an Excluded Equity Interest at such time as such prohibition ceases to be in effect, and (d) Equity Interests in any Person that is not a Subsidiary or in non-wholly owned Subsidiaries permitted under this Agreement to the extent and for so long as the granting of security interests in such Equity Interests would (i) be prohibited by the Organizational Documents or shareholder agreements or similar contracts between the owners of the Equity Interests of such non-wholly owned Subsidiaries or (ii) in the good faith judgment of the board of directors of the Borrower or such Subsidiary, require shareholder approval for such pledge; provided that such Equity Interest shall cease to be an Excluded Equity Interest at such time as such prohibition ceases to be in effect.

“Excluded Subsidiary” means (a) any Subsidiary that is not a wholly-owned Significant Subsidiary organized in the United States, (b) any Subsidiary (other than the Borrower) that is a CFC or a CFC Holding Company (and accordingly, in no event shall a CFC or a CFC Holding Company be required to enter into any Security Document or pledge any assets hereunder) and (c) any Subsidiary formed or acquired after the Restatement Effective Date, in each case that is prohibited by Requirements of Law from guaranteeing the Loan Document Obligations; provided however that any Subsidiary shall cease to be an Excluded Subsidiary at such time as none of clauses (a), (b) or (c) above apply to such Subsidiary and provided, further, that if a Subsidiary that is party to the Guarantee Agreement ceases to be wholly-owned by the Borrower then it shall not constitute an “Excluded Subsidiary” under clause (a) to the extent it remains a Significant Subsidiary of the Borrower organized in the United States.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, and only for so long as, the Guarantee by such Loan Party of, or the grant by such Loan Party of a security interest to secure, as applicable, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Loan Party or the grant by any Loan Party of a security interest, as applicable, becomes effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes

imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.16(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.14, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in such Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.14(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Letters of Credit" means those letters of credit described on Schedule 1.02 issued under the Existing Credit Agreement that are outstanding thereunder on the Restatement Effective Date.

"Facility" means each of (a) the Term Commitments and the Term Loans made thereunder (the "Term Facility") and (b) the Revolving Credit Commitments and the extensions of credit made thereunder (the "Revolving Facility").

"FATCA" means Sections 1471 through 1474 of the Code, as of the Restatement Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreements entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate, provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to zero for the purposes of calculating such rate.

"Financial Officer" means, with respect to any Person, the chief executive officer, chief financial officer, principal accounting officer or treasurer of such Person.

"Federal Reserve Bank of New York's Website" means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Fiscal Quarter" means a fiscal quarter of the Borrower.

“Fiscal Year” means a fiscal year of the Borrower.

“Foreign Currency Loan” means Revolving Loans denominated in Euros and Revolving Loans denominated in Pounds Sterling.

“Foreign Lender” means any Lender that is not a U.S. Person.

“Foreign Plan” means each employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), program or agreement that is not subject to US law and is maintained or contributed to by, or entered into with, the Borrower or any ERISA Affiliate, other than any employee benefit plan, program or agreement that is sponsored or maintained exclusively by a Governmental Authority.

“Foreign Plan Event” means, with respect to any Foreign Plan, (a) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any contributions or payments required by applicable law or by the terms of such Foreign Plan; (b) the failure to register or loss of good standing with applicable Governmental Authorities of any such Foreign Plan required to be registered with such Governmental Authorities; or (c) the failure of any Foreign Plan to comply with any material provisions of applicable law and regulations or with the material terms of such Foreign Plan.

“Free Cash Flow” means, for any period, an amount equal to:

- (a) Net Cash Provided by Operating Activities for such period, plus
- (b) without duplication, an amount equal to the sum of:
 - (i) any extraordinary losses or charges for such period, determined on a consolidated basis in accordance with GAAP, including litigation-related payments (receipts),
 - (ii) Transaction Costs related to the Transactions and any non-recurring fees, costs and expenses incurred or payable by the Borrower or any of its Subsidiaries in connection with any Permitted Acquisition or Specified Transaction or any other asset acquisitions permitted hereunder, including non-capitalized acquired technology,
 - (iii) any impact from restructuring charges or impairment charges, provided that cash impact is included in Free Cash Flow when any such amount is actually paid, minus
- (c) without duplication, the net amount equal to the sum of (i) capital expenditures for such period for the purchases of property, equipment and leasehold improvements plus (ii) payments for capitalized computer software costs for such period, in each case as reflected in the consolidated statements of cash flows of the Borrower and its Subsidiaries for such period delivered pursuant to Section 5.01, minus
- (d) any extraordinary gains for such period, determined on a consolidated basis in accordance with GAAP.

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

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

“Governmental Authority” means the government of the United States of America, any other nation or 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 body exercising such powers or functions, such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other obligation; provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount, as of any date of determination, of any Guarantee shall be the principal amount outstanding on such date of the Indebtedness or other obligation guaranteed thereby (or, in the case of (i) any Guarantee the terms of which limit the monetary exposure of the guarantor or (ii) any Guarantee of an obligation that does not have a principal amount, the maximum monetary exposure as of such date of the guarantor under such Guarantee (as determined, in the case of clause (i), pursuant to such terms or, in the case of clause (ii), reasonably and in good faith by a Financial Officer of the Borrower)). The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantee Agreement” means the Amended and Restated Guarantee Agreement among the Designated Subsidiaries and the Administrative Agent, substantially in the form of Exhibit H.

“Hazardous Materials” means petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, mercury, lime solids, radon gas and all other substances, wastes or other pollutants (including explosive, radioactive, hazardous or toxic substances or wastes) that are regulated pursuant to, or the Release of or exposure to which could give rise to liability under, any Environmental Law.

“Hedging Agreement” means any agreement with respect to any swap, forward, future or derivative transaction, or any option or similar agreement, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt securities or instruments, or economic, financial or pricing indices or measures of economic, financial or pricing risk or

value, or any similar transaction or any combination of the foregoing transactions, in each case, not entered into for speculative purposes; 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 or any Subsidiary shall be a Hedging Agreement.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Hedging Agreements.

“Honor Date” has the meaning set forth in Section 2.19(c).

“ICC” has the meaning set forth in Section 2.19(f).

“Impacted Interest Period” has the meaning set forth in the definition of LIBO Rate.

“Increased Amount Date” has the meaning set forth in Section 2.20(b).

“Incremental Amount” means an aggregate amount not to exceed an amount equal to the greater of (i) \$250,000,000 and (ii) the Ratio-Based Incremental Amount as of the Increased Amount Date.

“Incremental Assumption Agreement” means an Incremental Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and one or more Incremental Term Lenders and/or Incremental Revolving Lenders.

“Incremental Facility” means any facility established by the Lenders pursuant to Section 2.20.

“Incremental Revolving Commitment” means the Revolving Commitment of any Lender, established pursuant to Section 2.20, to make Incremental Revolving Loans to the Borrower.

“Incremental Revolving Lender” means each Lender which holds an Incremental Revolving Commitment or an outstanding Incremental Revolving Loan.

“Incremental Revolving Loans” means the Revolving Loans made by one or more Lenders to the Borrower pursuant to Section 2.20 and/or any Incremental Assumption Agreement.

“Incremental Term Lender” means each Lender which holds an Incremental Term Loan.

“Incremental Term Loans” means the Term Loans made by one or more Lenders to the Borrower pursuant to Section 2.20 and/or any Incremental Assumption Agreement, including for the avoidance of doubt any Term B Loans.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale

or other title retention agreements relating to property acquired by such Person (excluding, for the avoidance of doubt, trade accounts payable), (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade accounts payable, deferred compensation arrangements for employees, directors and officers and other accrued obligations), (e) all Capital Lease Obligations of such Person, (f) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (g) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (h) all Disqualified Equity Interests in such Person, valued, as of the date of determination, at the greater of (i) the maximum aggregate amount that would be payable upon maturity, redemption, repayment or repurchase thereof (or of Disqualified Equity Interests or Indebtedness into which such Disqualified Equity Interests are convertible or exchangeable) and (ii) the maximum liquidation preference of such Disqualified Equity Interests, (i) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed by such Person, and (j) all Guarantees by such Person of Indebtedness of others; provided that Indebtedness shall not include any performance guarantee or other Guarantee that is not a Guarantee of other Indebtedness; and provided, further, that Indebtedness shall not include obligations under any operating lease, financing lease or property that is not required to be capitalized on the balance sheet of such Person. The Indebtedness of any Person shall include the Indebtedness of any other Person (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 other Person, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor. Notwithstanding the foregoing, the term "Indebtedness" shall not include (i) purchase price adjustments, earnouts, holdbacks or deferred payments of a similar nature (including deferred compensation representing consideration or other contingent obligations incurred in connection with an acquisition), except in each case to the extent that such amount payable is, or becomes, reasonably determinable and contingencies have been resolved or such amount would otherwise be required to be reflected on a balance sheet prepared in accordance with GAAP; (ii) current accounts payable (including intercompany accounts payable); (iii) obligations in respect of non-competes and similar agreements; (iv) Hedging Obligations; and (v) deferred revenue, customer pre-payments or other similar obligations. The amount of Indebtedness of any Person for purposes of clause (i) above shall (unless such Indebtedness has been assumed by such Person or such Person has otherwise become liable for the payment thereof) be deemed to be equal to the lesser of (x) the aggregate unpaid amount of such Indebtedness and (y) the fair market value of the property encumbered thereby as determined by such Person in good faith.

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

"Indemnitee" has the meaning set forth in Section 9.03(b).

"Initial Issuing Banks" means the Initial Issuing Banks listed on the signature pages hereof.

"Insolvent" means with respect to any Multiemployer Plan, the condition that such

plan is insolvent within the meaning of Section 4245 of ERISA.

“Intellectual Property” has the meaning set forth in the Collateral Agreement.

“Interest Coverage Ratio” means, as of the end of any Fiscal Quarter of the Borrower, the ratio of Adjusted Free Cash Flow to Consolidated Interest Expense (excluding non-cash interest), in each case, as calculated for the Test Period then ending (and, for the avoidance of doubt, Adjusted Free Cash Flow shall be measured on a trailing twelve (12) month basis).

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.05, which shall be, in the case of any such written request, substantially in the form of Exhibit E or any other form approved by the Administrative Agent.

“Interest Expense” means, with respect to any person for any period, the gross interest expense of such person for such period on a consolidated basis, including without limitation (a) the amortization of debt discounts, (b) the amortization of all fees (including fees with respect to Hedging Agreements (other than as set forth below)) payable in connection with the incurrence of Indebtedness to the extent included in interest expense, (c) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense and (d) commissions, discounts, yield and other fees and charges incurred in connection with the asset securitization or similar transaction which are payable to any person other than the Borrower or a wholly-owned Subsidiary; provided that in any event “Interest Expense” will exclude any make whole or prepayment premiums, write offs or Hedging Agreement termination costs and similar premiums and costs related to the Transactions. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received by the Borrower and the Subsidiaries with respect to Hedging Agreements.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter (or, to the extent made available by all Lenders, twelve months thereafter), as the Borrower may elect; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the

effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available for the applicable currency) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available for the applicable currency) that exceeds the Impacted Interest Period, in each case, at such time.

“Investment” means, with respect to a specified Person, (a) any Equity Interests, evidences of Indebtedness (other than accounts receivables and/or accrued expenses arising in the ordinary course of business payable in accordance with customary practices and loans to employees in the ordinary course of business) or other securities (including any option, warrant or other right to acquire any of the foregoing) of, or any capital contribution or loans or advances (other than commission, travel and similar advances to officers and employees made in the ordinary course of business) to, Guarantees of any Indebtedness or other obligations of, or any other investment in, any other Person that are held or made by the specified Person and (b) the purchase or acquisition (in one transaction or a series of related transactions) of all or substantially all the property and assets or business of another Person or assets constituting a business unit, line of business, division or product line of such other Person. The amount, as of any date of determination, of (i) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date (excluding any portion thereof representing paid-in-kind interest or principal accretion), without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (ii) any Investment in the form of a Guarantee shall be determined in accordance with the definition of the term “Guarantee”, (iii) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair value (as determined reasonably and in good faith by the Borrower in accordance with GAAP) of such Equity Interests or other property as of the time of the transfer, minus any payments actually received in cash, or other property that has been converted into cash or is readily marketable for cash, by such specified Person representing a return of capital of such Investment, but without any adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such transfer, (iv) any Investment (other than any Investment referred to in clause (i), (ii) or (iii) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness, other securities or assets of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus the cost of all additions, as of such date, thereto, and minus the amount, as of such date, of any portion of such Investment repaid to the investor in cash as a repayment of principal or a return of capital, as the case may be, but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (v) any Investment (other than any Investment referred to in clause (i), (ii), (iii) or (iv) above) by the specified Person in any other Person resulting from the issuance by such other Person of its Equity Interests to the specified Person shall be the fair value (as determined reasonably and in good faith by a Financial Officer of the Borrower) of such Equity Interests at

the time of the issuance thereof. For purposes of Section 6.04, if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; provided that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer of the Borrower. Any basket in this Agreement used to make an Investment by any Loan Party on or after the Restatement Effective Date in any Person that is not a Loan Party on the date such Investment is made but subsequently becomes a Loan Party in accordance with the terms of this Agreement shall be refreshed by the amount of the Investment so made on the date such Person so becomes a Loan Party. For the avoidance of doubt, for purposes of covenant compliance, the amount of an Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment and, in the case of an Investment made in a currency other than Dollars, without adjustment for any changes in any applicable exchange rate.

“Investment Company Act” means the U.S. Investment Company Act of 1940, as amended.

“IP Security Agreement” has the meaning set forth in the Collateral Agreement.

“IRS” means the United States Internal Revenue Service.

“ISP” has the meaning set forth in Section 2.19(f).

“Issuing Bank” means an Initial Issuing Bank, any Eligible Assignee to which a portion of the Letter of Credit Commitment hereunder has been assigned pursuant to Section 9.04 and any other Lender that agrees to issue a Letter of Credit hereunder so long as such Eligible Assignee or other Lender expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank and notifies the Administrative Agent of its Applicable Lending Office (which information shall be recorded by the Administrative Agent in the Register), for so long as such Initial Issuing Bank, Eligible Assignee or Lender, as the case may be, shall have a Letter of Credit Commitment or shall have issued an outstanding Letter of Credit hereunder.

“Judgment Currency” has the meaning set forth in Section 9.18(b).

“L/C Cash Collateral Account” means an interest bearing cash collateral account for the benefit of the Borrower to be established and maintained by the Administrative Agent, over which the Administrative Agent shall have sole dominion and control, upon terms as may be reasonably satisfactory to the Administrative Agent.

“L/C Exposure” means, at any time, the sum of (a) the aggregate Available Amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all Revolving Loans made in accordance with Section 2.19 that have not been funded by the Lenders. The L/C Exposure of any Lender at any time shall be its Pro Rata Share of the total L/C Exposure at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“L/C Related Documents” has the meaning set forth in Section 2.07(h)(i).

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or pursuant to Section 2.20, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Letter of Credit Agreement” has the meaning set forth in Section 2.19(a).

“Letter of Credit Commitment” means, with respect to each Initial Issuing Bank, the amount set forth opposite the Initial Issuing Bank’s name on Schedule 2.01 hereto under the caption “Letter of Credit Commitment” or, if such Initial Issuing Bank has entered into one or more Assignment and Assumptions, the amount set forth for such Issuing Bank in the Register maintained by the Administrative Agent pursuant to Section 9.04(c) as such Issuing Bank’s “Letter of Credit Commitment”, as such amount may be reduced at or prior to such time pursuant to Section 2.06.

“Letter of Credit Facility” means, at any time, an amount equal to \$10,000,000, as such amount may be reduced at or prior to such time pursuant to Section 2.06.

“Letters of Credit” has the meaning set forth in Section 2.01(c).

“Leverage Ratio” means, on any date of determination, the ratio of (a) an amount equal to Total Indebtedness as of such date to (b) Adjusted Free Cash Flow for the Test Period recently ended on or prior to such date.

“Leverage Specified Acquisition” means a Permitted Acquisition financed in whole or in part with Indebtedness and for which (i) the consideration in respect of such acquisition is \$100,000,000 or more and (ii) the Borrower delivers to the Administrative Agent an officers’ certificate no later than the date by which the Borrower must deliver financial statements in respect of such fiscal quarter in accordance with Section 5.01(a) or (b) in respect of the fiscal quarter in which such Permitted Acquisition was consummated, designating such Permitted Acquisition as a “Leverage Specified Acquisition”; provided that in no event shall there be more than two Leverage Specified Acquisitions commencing after the Restatement Effective Date.

“Leverage Specified Period” means the period of two consecutive fiscal quarters commencing on the first day of the fiscal quarter in which the consummation of a Leverage Specified Acquisition occurs (such first day, the “Relevant Day”); provided that no event shall a Leverage Specified Period commence if a Leverage Specified Period was in effect during any portion of the four consecutive fiscal quarter period ended immediately prior to the Relevant Day.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any applicable currency and for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) with respect to the applicable currency then the LIBO Rate shall be the Interpolated Rate. For the avoidance of doubt, if the LIBO Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“LIBO Screen Rate” means, for any day and time, with respect to any Eurodollar Borrowing for any applicable currency and for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for the relevant currency for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, charge, security interest or other encumbrance on, in or of such asset, including any agreement to provide any of the foregoing and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan” means any loan made by an Lender pursuant to this Agreement.

“Loan Document Obligations” means (a) the due and punctual payment by the Borrower of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under this Agreement and each of the other Loan Documents, including subject to the terms of the Loan Documents, obligations to pay fees, expense reimbursement obligations (including with respect to outside counsel attorneys’ fees) and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual performance of all other obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to each of the Loan Documents (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

“Loan Documents” means this Agreement, the Guarantee Agreement, the Collateral Agreement, the other Security Documents, the other L/C Related Documents and, except for purposes of Section 9.02, any Notes (and, in each case, any amendment, restatement, waiver, supplement or other modification to any of the foregoing).

“Loan Parties” means the Borrower and each Designated Subsidiary that is a party to the Guarantee Agreement.

“Majority Facility Lenders” with respect to any Facility, the holders of more than

50% of the aggregate unpaid principal amount of the Term Loans or the Revolving Loans, as the case may be, outstanding under such Facility (or, in the case of the Revolving Facility, prior to any termination of the Revolving Credit Commitments, the holders of more than 50% of the aggregate Revolving Credit Commitments).

“Material Adverse Effect” means an event or condition that has resulted, or could reasonably be expected to result, in a material adverse effect on (a) the business, assets, operations, or financial condition of the Borrower and the Subsidiaries, taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Administrative Agent and the Lenders under the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Guarantees under the Loan Documents) or Hedging Obligations of any one or more of the Borrower and the Subsidiaries in an aggregate principal amount of \$20,000,000 or more. For purposes of determining Material Indebtedness, the “principal amount” of any Hedging Obligation at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if the applicable Hedging Agreement were terminated at such time.

“Maturity Date” means, with respect to each Facility, December 23, 2024.

“Maximum Rate” has the meaning set forth in Section 9.13.

“MNPI” means material information concerning the Borrower, any Subsidiary or any Affiliate of any of the foregoing or their securities that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD under the Securities Act and the Exchange Act. For purposes of this definition, “material information” means information concerning the Borrower, the Subsidiaries or any Affiliate of any of the foregoing, or any of their securities, that could reasonably be expected to be material for purposes of the United States Federal and State securities laws.

“Moody’s” means Moody’s Investors Service, Inc., and any successor to its rating agency business.

“Mortgage” means a mortgage, deed of trust or other security document granting a Lien on any Mortgaged Property to secure the Obligations. Each Mortgage shall be in form and substance reasonably satisfactory to the Administrative Agent.

“Mortgaged Property” means each parcel of real property owned in fee by a Loan Party, and the improvements thereto, that (together with such improvements) has a fair market value of \$10,000,000 or more, subject to the limitations in the definition of the term “Collateral and Guarantee Requirement”

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Cash Proceeds” means, (a) in connection with any Asset Sale or any Recovery

Event, the proceeds thereof in the form of cash and cash equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document), other customary fees and expenses actually incurred in connection therewith and net of any transfer or similar taxes and other Taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements, in each case, to the extent the credit or deduction or payment under such an arrangement, as applicable, is reasonably expected to reduce such tax amounts as determined by treating the income from such Asset Sale or Recovery Event as if it were the last item of income available to offset such credit or deduction or payment) and amounts provided as a reserve, in accordance with GAAP against any liabilities under any indemnification obligations and any purchase price adjustments associated with any Asset Sale and (b) in connection with any incurrence of Indebtedness, the cash proceeds received from such incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith.

"Net Cash Provided by Operating Activities" means, for any period, the net cash provided by operating activities of the Borrower and its consolidated Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, as reflected in the consolidated statements of cash flows of the Borrower and its Subsidiaries for such period delivered pursuant to Section 5.01.

"Non-Consenting Lender" has the meaning set forth in Section 9.02(d).

"Non-U.S. Lender" means a Lender that is not a U.S. Person.

"Note" means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.07(e) in substantially the form of Exhibit I hereto, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender.

"Notice of Renewal" has the meaning set forth in Section 2.01(b).

"Notice of Termination" has the meaning set forth in Section 2.01(c).

"NYFRB Rate" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day; provided, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to zero for the purposes of calculating such rate.

"Obligations" means, collectively, (a) the Loan Document Obligations, (b) the Secured Cash Management Obligations and (c) the Secured Hedging Obligations (other than any Excluded Swap Obligation).

"Organizational Documents" means (a) with respect to any corporation, the

certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement, and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and, if applicable, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.16(b)).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar Loans by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“Participant” has the meaning set forth in Section 9.04(d).

“Participant Register” has the meaning set forth in Section 9.04(d).

“PBGC” means the Pension Benefit Guaranty Corporation established under Section 4002 of ERISA or any successor entity performing similar functions.

“Permitted Acquisition” means the purchase or other acquisition, by merger or otherwise, by the Borrower or any Subsidiary of substantially all the Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person if (a) in the case of any purchase or other acquisition of Equity Interests in a Person, such Person and each subsidiary of such Person upon the consummation of such acquisition, will be a wholly-owned Subsidiary (or, in the case of any such purchase or other acquisition structured as a two-step tender offer, such Person (including each subsidiary of such Person) will become a wholly-owned Subsidiary upon the consummation of the second step of such transaction), in each case including as a result of a merger or

consolidation between any Subsidiary and such Person and, to the extent required under this Agreement, will be or become a Loan Party as required under the Collateral and Guarantee Requirement or otherwise become a Loan Party, or (b) in the case of any purchase or other acquisition of assets other than Equity Interests, such assets will be owned by a Loan Party or a Subsidiary thereof; provided that, in each case, (i) the business of such Person, or such assets, as the case may be, constitute a business permitted under Section 6.03(b) and (ii) with respect to each such purchase or other acquisition, all actions required to be taken with respect to each newly created or acquired Subsidiary or assets in order to satisfy the requirements set forth in the definition of the term "Collateral and Guarantee Requirement" shall be taken within the required time periods for satisfaction of such requirements set forth therein.

"Permitted Amount" means, as of any date, (a) \$35,000,000 less (b) the sum of, without duplication, (i) the aggregate outstanding principal amount of Indebtedness incurred under Section 6.01(g) by Subsidiaries that are not Loan Parties as of such date, (ii) the aggregate outstanding principal amount of Indebtedness incurred under Section 6.01(l) as of such date, (iii) the aggregate amount of Investments by Loan Parties in Subsidiaries that are not Loan Parties outstanding under Section 6.04(d) as of such date, (iv) the aggregate outstanding amount of loans or advances made by Loan Parties to Subsidiaries that are not Loan Parties under Section 6.04(e) as of such date, (v) the aggregate outstanding amount of Indebtedness of Subsidiaries that are not Loan Parties Guaranteed by Loan Parties under Section 6.04(f) as of such date and (vi) the aggregate amount of Investments by Loan Parties in Subsidiaries that are not Loan Parties outstanding under Section 6.04(r) as of such date.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes, assessments and other governmental charges that are not yet due or are being contested in compliance with Section 5.05;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords' and other like Liens imposed by law (other than any Lien imposed pursuant to Section 430(k) of the Code or Section 303(k) or 4068 of ERISA or a violation of Section 436 of the Code), arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days;

(c) (i) Liens (including pledges and deposits) arising in the ordinary course of business in connection with worker's compensation, unemployment insurance, old age pensions and social security benefits and similar statutory obligations and (ii) pledges and deposits in respect of letters of credit, bank guarantees or similar instruments issued for the account of the Borrower or any Subsidiary in the ordinary course of business supporting obligations of the type set forth in clause (c)(i) above;

(d) pledges and deposits made (i) to secure the performance of bids, trade and commercial contracts (other than for payment of Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business and (ii) in respect of letters of credit, bank guarantees or similar instruments issued for the account of the Borrower or any Subsidiary in the ordinary course of business supporting obligations

of the type set forth in clause (d)(i) above;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under Section 7.01(k);

(f) survey exceptions, easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business, and other minor title imperfections with respect to real property, that in any case do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Loan Party;

(g) Liens arising from Permitted Investments described in clause (d) of the definition of the term Permitted Investments;

(h) banker's liens, rights of setoff or similar rights and remedies as to deposit accounts or other funds maintained with depository institutions and securities accounts and other financial assets maintained with a securities intermediary; provided that such deposit accounts or funds and securities accounts or other financial assets are not established or deposited for the purpose of providing collateral for any Indebtedness and are not subject to restrictions on access by the Borrower or any Subsidiary in excess of those required by applicable banking regulations;

(i) Liens arising by virtue of Uniform Commercial Code financing statement filings (or similar filings under applicable law) regarding operating leases entered into by the Borrower and the Subsidiaries in the ordinary course of business and any other similar precautionary Uniform Commercial Code financing statement filings;

(j) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 (or the applicable corresponding section) of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon (or similar provisions under applicable law);

(k) Liens representing any interest or title of a licensor, lessor or sublicensor or sublessor, or a licensee, lessee or sublicensee or sublessee, in the property subject to any lease, license or sublicense or concession agreement entered into in the ordinary course of business;

(l) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(m) Liens that are contractual rights of set-off;

(n) Leases, subleases, licenses and sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary course of business of the Borrower and its Subsidiaries and do not secure Indebtedness; and

(o) Deposits in the ordinary course of business to secure liability to insurance

carriers.

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, other than Liens referred to in clauses (c) and (d) above securing obligations under letters of credit, bank guarantees or similar instruments.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, (i) a short term credit rating of "P-1" or higher from Moody's or "A-1" or higher from S&P or (ii) a long term rating of "A2" or higher from Moody's or "A" or higher from S&P;

(c) investments (i) in cash and (ii) in certificates of deposit, banker's acceptances and demand or time deposits, in each case maturing within 365 days from the date of acquisition thereof, issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) "money market funds" that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act, (ii) with (A) a short term credit rating of "P-1" or higher from Moody's or "A-1" or higher from S&P or (B) a long term rating of "A2" or higher from Moody's or "A" or higher from S&P and (iii) have portfolio assets of at least \$5,000,000,000;

(f) investments in Indebtedness that is (x) issued by Persons with (i) a short term credit rating of "P-1" or higher from Moody's or "A-1" or higher from S&P or (ii) a long term rating of "A2" or higher from Moody's or "A" or higher from S&P, in each case for clauses (i) and (ii) with maturities not more than 12 months after the date of acquisition and (y) of a type customarily used by companies for cash management purposes;

(g) investments in assets set forth on the Borrower's cash management and investment policy as provided to the Administrative Agent and as in effect on the Restatement Effective Date (as may be modified by the Borrower after the Restatement Effective Date in a manner reasonably satisfactory to the Administrative Agent); and

(h) in the case of the Borrower or any Foreign Subsidiary, other short-term investments that are analogous to the foregoing, are of comparable credit quality and are

customarily used by companies in the jurisdiction of such Foreign Subsidiary for cash management purposes.

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

“Plan” means any “employee pension benefit plan”, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), that is subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

“Platform” has the meaning set forth in Section 9.01(d).

“Pounds Sterling” and “£” shall mean freely transferable lawful currency of the United Kingdom (expressed in Pounds Sterling).

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Private Side Lender Representatives” means, with respect to any Lender, representatives of such Lender that are not Public Side Lender Representatives.

“Pro Forma Basis” means, with respect to compliance with any test or covenant hereunder required by the terms of this Agreement to be made on a Pro Forma Basis, that all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of (or commencing with) the first day of the applicable period of measurement in such test or covenant: (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction (A) in the case of a Disposition of all or substantially all Equity Interests in any Subsidiary or any division, product line, or facility used for operations of the Borrower or any of the Subsidiaries, shall be excluded, and (B) in the case of an acquisition or Investment described in the definition of “Specified Transaction”, shall be included, (ii) any prepayment, repayment, retirement, redemption or satisfaction of Indebtedness, and (iii) any Indebtedness incurred or assumed by the Borrower or any of the Subsidiaries in connection therewith.

“Pro Rata Share” means, (i) with respect to any Revolving Lender, the percentage of the total Revolving Credit Commitments represented by such Revolving Lender’s Revolving Credit Commitment; provided that in the case of Section 2.17 when a Defaulting Lender shall

exist, "Pro Rata Share" shall mean the percentage of the total Revolving Credit Commitments (disregarding any Defaulting Lender's Revolving Credit Commitment) represented by such Revolving Lender's Revolving Credit Commitment and (ii) with respect to any Term Lender, the percentage of the aggregate outstanding amount of Term Loans represented by such Term Lender's aggregate outstanding amount of Term Loans. If the Revolving Credit Commitments have terminated or expired, the Pro Rata Shares shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"Prohibited Transaction" has the meaning assigned to such term in Section 406 of ERISA and Section 4975(c) of the Code.

"Proposed Change" has the meaning set forth in Section 9.02(d).

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Side Lender Representatives" means, with respect to any Lender, representatives of such Lender that do not wish to receive MNPI.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to it in Section 9.20.

"Qualified Equity Interests" means Equity Interests of the Borrower other than Disqualified Equity Interests.

"Ratio-Based Incremental Amount" shall mean an amount represented by Incremental Revolving Commitments to be established pursuant to Section 2.20 or Incremental Term Loans to be incurred pursuant to Section 2.20, as the case may be, that would not immediately after giving effect to the establishment or incurrence thereof (assuming that the full amount of any Incremental Revolving Commitments have been borrowed as Revolving Loans) cause the Secured Leverage Ratio, calculated on a Pro Forma Basis as of the date of incurrence of such Indebtedness (but including for purposes of such calculation all such Incremental Revolving Commitments or Incremental Term Loans), to exceed 2.50 to 1.00.

"Recipient" means, as applicable, (a) the Administrative Agent and (b) any Lender.

"Recovery Event" means any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any Subsidiary that yields gross proceeds to the Borrower or any Subsidiary in excess of \$5,000,000.

"Refinancing Indebtedness" means, in respect of any Indebtedness (the "Original Indebtedness"), any Indebtedness that extends, renews or refinances such Original Indebtedness (or any Refinancing Indebtedness in respect thereof); provided that (a) the principal amount (or accreted value, if applicable) of such Refinancing Indebtedness shall not exceed the principal

amount (or accreted value, if applicable) of such Original Indebtedness except by an amount no greater than accrued and unpaid interest with respect to such Original Indebtedness and any reasonable fees, premium and expenses relating to such extension, renewal or refinancing; (b) the stated final maturity of such Refinancing Indebtedness shall not be earlier than that of such Original Indebtedness, and such stated final maturity shall not be subject to any conditions that could result in such stated final maturity occurring on a date that precedes the stated final maturity of such Original Indebtedness; (c) such Refinancing Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon the occurrence of an event of default or a change in control, fundamental change, or upon conversion or exchange in the case of convertible or exchangeable Indebtedness or as and to the extent such repayment, prepayment, redemption, repurchase or defeasance would have been required pursuant to the terms of such Original Indebtedness) prior to the earlier of (i) the maturity of such Original Indebtedness and (ii) the date that is 91 days after the latest Maturity Date in effect on the date of such extension, renewal or refinancing; provided that, notwithstanding the foregoing, scheduled amortization payments (however denominated) of such Refinancing Indebtedness shall be permitted so long as the weighted average life to maturity of such Refinancing Indebtedness shall be longer than the shorter of (x) the weighted average life to maturity of such Original Indebtedness remaining as of the date of such extension, renewal or refinancing and (y) the weighted average life to maturity of Loans remaining as of the date of such extension, renewal or refinancing with the latest Maturity Date; (d) such Refinancing Indebtedness shall not constitute an obligation (including pursuant to a Guarantee) of any Subsidiary, in each case that shall not have been (or, in the case of after-acquired Subsidiaries, shall not have been required to become pursuant to the terms of the Original Indebtedness) an obligor in respect of such Original Indebtedness, and shall not constitute an obligation of the Borrower if the Borrower shall not have been an obligor in respect of such Original Indebtedness, and, in each case, shall constitute an obligation of such Subsidiary or of the Borrower only to the extent of their obligations in respect of such Original Indebtedness; (e) if such Original Indebtedness shall have been subordinated to the Loan Document Obligations, such Refinancing Indebtedness shall also be subordinated to the Loan Document Obligations on terms not less favorable in any material respect to the Lenders; and (f) such Refinancing Indebtedness shall not be secured by any Lien on any asset other than the assets that secured such Original Indebtedness (or would have been required to secure such Original Indebtedness pursuant to the terms thereof) or, in the event Liens securing such Original Indebtedness shall have been contractually subordinated to any Lien securing the Loan Document Obligations, by any Lien that shall not have been contractually subordinated to at least the same extent.

“Register” has the meaning set forth in Section 9.04(c).

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Reinvestment Deferred Amount” means, with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Borrower or any of its Subsidiaries in connection therewith that are not applied to prepay the Term Loans pursuant to Section 2.08(f) as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event” means any Asset Sale or Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice” means a written notice executed by an officer of the Borrower stating that no Event of Default pursuant to Section 7.01(a), (b), (d) (solely with respect to a violation of Section 6.13 or 6.14), (h) or (i) has occurred and is continuing and that the Borrower (directly or indirectly through a Subsidiary) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Recovery Event to acquire or repair productive assets to be used or usable by the Borrower or any of its Subsidiaries.

“Reinvestment Prepayment Amount” means, with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire or repair productive assets of the kind then used or usable by the Borrower or any of its Subsidiaries.

“Reinvestment Prepayment Date” means with respect to any Reinvestment Event, the earlier of (a) the date occurring eighteen months after such Reinvestment Event and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, acquire or repair productive assets to be used or usable by the Borrower or any of its Subsidiaries with all or any portion of the relevant Reinvestment Deferred Amount.

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

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the indoor or outdoor environment.

“Relevant Governmental Body” means the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“Reportable Event” means any “reportable event,” as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan, other than those events as to which notice is waived pursuant to DOL Reg. § 4043.

“Required Lenders” means, at any time, Lenders having more than 50% of the sum of (i) the aggregate unpaid principal amount of Term Loans then outstanding and (ii) Revolving Loans and unused Revolving Credit Commitments.

“Requirements of Law” means, with respect to any Person, (a) the Organizational Documents of such Person and (b) any law (including common law), statute, ordinance, treaty, rule, regulation, code, judgment, order, decree, writ, injunction, settlement agreement or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its material property or to which such Person or any of its material property is subject.

“Resigning Issuing Bank” has the meaning set forth in Section 2.19(g).

“Restatement Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment or distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, exchange, conversion, cancellation or termination of, or any other return of capital with respect to, any Equity Interests in the Borrower or any Subsidiary.

“Revolving Credit Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Loans, as such commitment may be (a) reduced or increased from time to time pursuant to Sections 2.06 and 2.20 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Commitment is set forth on Schedule 2.01 under the caption “Revolving Credit Commitment”, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders’ Commitments is \$200,000,000.

“Revolving Facility” shall have the meaning assigned to such term in the definition of “Facility”.

“Revolving Lender” means each Lender that has a Revolving Credit Commitment or that holds Revolving Loans.

“Revolving Loan” means a Loan made by the Lenders to the Borrower pursuant to Section 2.01(b) hereof.

“Revolving Termination Date” means, as to the Revolving Facility, the Maturity Date.

“S&P” means Standard & Poor’s Financial Services LLC.

“Sale/Leaseback Transaction” means an arrangement relating to property owned by the Borrower or any Subsidiary whereby the Borrower or such Subsidiary sells or transfers such property to any Person and the Borrower or any Subsidiary leases such property, or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, from such Person or its Affiliates.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S.

Department of the Treasury, the U.S. Department of State, the Ministry of Finance of the State of Israel, the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“SEC” means the United States Securities and Exchange Commission.

“Secured Cash Management Obligations” means the due and punctual payment and performance of any and all obligations of the Borrower and each Subsidiary (whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) arising in respect of Cash Management Services that (a) are owed pursuant to a Cash Management Agreement in effect on the Restatement Effective Date, entered into with a party that was a Lender as of the Restatement Effective Date or an Affiliate thereof, or (b) are owed pursuant to a Cash Management Agreement entered into after the Restatement Effective Date with a party that was a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, in each case at the time such Cash Management Agreement was entered into, and, in the case of any such Cash Management Agreement referred to in clause (a) or (b) above (other than any such Cash Management Agreement entered into with the Administrative Agent or an Affiliate thereof), has been designated by the Borrower in a written notice given to the Administrative Agent as a Cash Management Agreement the obligations under which are to constitute Secured Cash Management Obligations for purposes of the Loan Documents.

“Secured Hedging Obligations” means the due and punctual payment and performance of any and all obligations of the Borrower and each Subsidiary arising under each Hedging Agreement that (a) was in effect on the Restatement Effective Date with a counterparty that was a Lender as of the Restatement Effective Date or an Affiliate thereof, or (b) is entered into after the Restatement Effective Date with a counterparty that was a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, in each case at the time such Hedging Agreement was entered into, and, in the case of any such Hedging Agreement referred to in clause (a) or (b) above (other than any such Hedging Agreement entered into with the Administrative Agent or an Affiliate thereof) has been designated by the Borrower in a written notice given to the Administrative Agent as a Hedging Agreement the obligations under which are to constitute Secured Hedging Obligations for purposes of the Loan Documents.

“Secured Indebtedness” means Indebtedness (other than Subordinated Indebtedness) that is secured by a Lien on any asset of the Borrower or any of its Subsidiaries.

“Secured Leverage Ratio” means, on any date of determination, the ratio of (a) an amount equal to Secured Indebtedness as of such date to (b) Adjusted Free Cash Flow for the Test Period recently ended on or prior to such date.

“Secured Parties” means, collectively, (a) the Lenders, (b) the Administrative Agent, (c) the Arranger, (d) the Issuing Banks, (e) each provider of Cash Management Services under a Cash Management Agreement the obligations under which constitute Secured Cash Management Obligations, (f) each counterparty to any Hedging Agreement the obligations under which constitute Secured Hedging Obligations, (g) the beneficiaries of each indemnification obligation undertaken by any Loan Party under this Agreement or any other Loan Document and (h) the permitted successors and assigns of each of the foregoing.

“Securities Act” means the United States Securities Act of 1933.

“Security Documents” means the Collateral Agreement, the Mortgages (if any) and each other security agreement or other instrument or document executed and delivered pursuant to Section 5.03, 5.11 or the requirements of the Collateral and Guarantee Requirement to secure the Obligations.

“Significant Domestic Subsidiary” means any Domestic Subsidiary that is a Significant Subsidiary.

“Significant Subsidiary” means (a) each Subsidiary (i) with total assets (including the value of Equity Interests of its subsidiaries), on any date of determination, equal to or greater than 10% of the total assets of the Borrower and its Subsidiaries and/or (ii) the gross revenues of which, for the Test Period most recently ended, are equal to or greater than 10% of the gross revenues of the Borrower and its Subsidiaries, in each case calculated in accordance with GAAP and (b) each Subsidiary that owns any Equity Interests of any Subsidiary that would be deemed a Significant Subsidiary under clause (a)(i) or (a)(ii) above; provided that if at the end of or for any Test Period during the term of this Agreement, the combined aggregate amount of total assets as of the last day of any Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01(a) or 5.01(b) or combined aggregate amount of gross revenues for the Test Period most recently ended of all Subsidiaries that are not Significant Subsidiaries shall have exceeded 20% of the Consolidated Total Assets of the Borrower and its Subsidiaries or 20% of the consolidated gross revenues of the Borrower and its Subsidiaries for the Test Period most recently ended, then one or more of the Subsidiaries that are not Significant Subsidiaries shall be designated by the Borrower in writing to the Administrative Agent as a Significant Subsidiary until such excess has been eliminated.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the NYFRB, as the administrator of the benchmark (or a successor administrator), on the Federal Reserve Bank of New York’s Website.

“SOFR-Based Rate” means SOFR, Compounded SOFR or Term SOFR.

“Software” has the meaning set forth in the Collateral Agreement.

“Specified Transaction” means, with respect to any period, any Investment, acquisition, Disposition, incurrence, assumption or repayment of Indebtedness, Restricted Payment, that by the terms of this Agreement requires such test or covenant to be calculated on a Pro Forma Basis.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves), expressed as a decimal, established by the Board of Governors to which the Administrative Agent is subject for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board of Governors). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Indebtedness” of any Person means any Indebtedness of such Person that is contractually subordinated in right of payment to any other Indebtedness of such Person.

“Subsequently Incurred Term B Loans” shall have the meaning assigned to such term in Section 2.20(c) hereof.

“subsidiary” means, with respect to any Person (the “parent”) at any date, (a) any Person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP and (b) any other Person (i) of which Equity Interests representing more than 50% of the equity value or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Supported QFC” has the meaning assigned to it in Section 9.20.

“Swap” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Obligation” means, with respect to any Loan Party, any obligation to pay or perform under any Swap.

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

“Term B Lender” shall mean, at any time, any Lender that holds any Term B Loans.

“Term B Loan” shall mean any Incremental Term Loan which has terms that are customary market terms for “B” term loans at the time of incurrence thereof (as determined in good faith by the Borrower and so designated in the applicable request of the Borrower).

“Term Facility” shall have the meaning assigned to such term in the definition of

“Facility”.

“Term Lender” means each Lender that has a Term Loan Credit Commitment or that holds Term Loans.

“Term Loan” means a loan made pursuant to Section 2.01(a) of this Agreement.

“Term Loan Credit Commitment” means, with respect to each Lender, the commitment of such Lender to make Term Loans hereunder on the Restatement Effective Date in a principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Term Loan Credit Commitment”. The initial aggregate amount of the Lenders’ Term Loan Credit Commitments is \$320,000,000.

“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Test Period” means each period of four consecutive Fiscal Quarters of the Borrower.

“Total Assets” means, as of any date, the total assets of the Borrower and its Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Borrower and its Subsidiaries, determined on a Pro Forma Basis.

“Total Indebtedness” means, on any date, the aggregate principal amount of Indebtedness of the Borrower and the Subsidiaries outstanding as of such date, in the amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but without giving effect to any election to value any Indebtedness at “fair value”, as described in Section 1.04, or any other accounting principle that results in the amount of any such Indebtedness (other than zero coupon Indebtedness) as reflected on such balance sheet to be below the stated principal amount of such Indebtedness).

“Transaction Costs” means all fees, costs and expenses incurred or payable by the Borrower or any Subsidiary in connection with the Transactions to be consummated on the Restatement Effective Date.

“Transactions” means, collectively, (a) the execution, delivery and performance by each Loan Party of the Loan Documents (including this Agreement) to which it is to be a party, (b) the creation, continuation (as applicable) and perfection of the security interests provided for in the Security Documents, and (c) the payment of the Transaction Costs.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“UCP” has the meaning set forth in Section 2.19(f).

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment; provided that, if the Unadjusted Benchmark

Replacement as so determined would be less than zero, the Unadjusted Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Unissued Letter of Credit Commitment” means, with respect to any Issuing Bank, such Issuing Bank’s Letter of Credit Commitment minus the aggregate Available Amount of all Letters of Credit issued by such Issuing Bank.

“Unused Commitment” means, with respect to each Lender at any time, (a) such Lender’s Revolving Credit Commitment at such time minus (b) the sum of (i) the Dollar Equivalent of the aggregate principal amount of all outstanding Revolving Loans made by such Lender (in its capacity as a Lender), plus (ii) such Lender’s Pro Rata Share of the L/C Exposure at such time.

“U.S. Person” means a “United States” person within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regime” has the meaning assigned to it in Section 9.20.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 2.14(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“wholly-owned”, when used in reference to a subsidiary of any Person, means that all the Equity Interests in such subsidiary (other than directors’ qualifying shares and other nominal amounts of Equity Interests that are required to be held by other Persons under applicable law) are owned, beneficially and of record, by such Person, another wholly-owned subsidiary of such Person or any combination thereof.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

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

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require,

any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all real and personal, tangible and intangible assets and properties, including cash, securities, accounts and contract rights. The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders, writs and decrees, of all Governmental Authorities. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document (including this Agreement and the other Loan Documents) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, extended, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, amendment and restatements, extensions, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, consolidated, replaced, interpreted, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (e) 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.

SECTION 1.04. Accounting Terms; GAAP; Pro Forma Calculations. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature used herein shall be construed in accordance with GAAP as in effect from time to time; provided that (i) if the Borrower, by notice to the Administrative Agent, shall request an amendment to any provision hereof to eliminate the effect of (A) any change occurring after the Restatement Effective Date in GAAP or in the application thereof or (B) the issuance of any new accounting rule or guidance (including, without limitation, any accounting rule or guidance relating to or issued in connection with Topic 606) or in the application thereof on the operation of such provision after the Restatement Effective Date (or if the Administrative Agent or the Required Lenders, in each case, by notice to the Borrower, shall request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof or the issuance of such rule or guidance or the application thereof, then such provision shall be interpreted on the basis of GAAP and such rule or guidance as in effect and applied immediately prior thereto shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith, provided, further, that the Borrower shall provide reconciliation information in form and substance reasonably satisfactory to the Administrative Agent in the applicable Compliance Certificate to the extent required to reconcile such calculations with the information in the financial statements delivered pursuant to Section 5.01, and (ii) notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (A) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards

159, The Fair Value Option for Financial Assets and Financial Liabilities), or any successor thereto (including pursuant to the Accounting Standards Codification), to value any Indebtedness of the Borrower or any Subsidiary at "fair value", as defined therein and (B) any treatment of Indebtedness relating to convertible or equity-linked securities under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) requiring the valuation of any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. For purposes of the foregoing, any change by the Borrower in its accounting principles and standards to adopt International Financial Reporting Standards, regardless of whether required by applicable laws and regulations, will be deemed a change in GAAP.

(b) For purposes of determining compliance with any test or covenant contained in this Agreement with respect to any period during which any Specified Transaction occurs, or for purposes of determining whether any Specified Transaction, Adjusted Free Cash Flow, the Leverage Ratio and the Interest Coverage Ratio shall be calculated with respect to such period on a Pro Forma Basis, giving effect to such Specified Transaction. For the avoidance of doubt, any calculations on a Pro Forma Basis (i) shall exclude purchase acquisition accounting impact for any Permitted Acquisition or Specified Transaction, as applicable, and (ii) for periods prior to the applicable Permitted Acquisition or Specified Transaction, shall be made based on the financial information for the target of such Permitted Acquisition or Specified Transaction, as applicable, that is publicly or privately available and regardless of the accounting standard applied to such target prior to the date of such Permitted Acquisition or Specified Transaction (and, for the avoidance of doubt, no breach of this Agreement shall result therefrom).

(c) All leases of a Person that would have been treated as operating leases or financing leases and not as Capital Lease Obligations, as applicable, for purposes of GAAP but for the adoption of accounting rules or guidance with respect to Accounting Standards Codification Topic 842 ("ACS 842"), shall continue to be accounted for as operating leases and financing leases, respectively (and not Capital Lease Obligations), hereunder notwithstanding the fact that such leases are required in accordance with ACS 842 to be treated as Capital Lease Obligations.

SECTION 1.05. Excluded Swap Obligations. Notwithstanding any provision of this Agreement or any other Loan Document, no Guarantee by any Loan Party under any Loan Document shall include a Guarantee of any Obligation that, as to such Loan Party, is an Excluded Swap Obligation and no Collateral provided by any Loan Party shall secure any Obligation that, as to such Loan Party, is an Excluded Swap Obligation. In the event that any payment is made by, or any collection is realized from, any Loan Party as to which any Obligations are Excluded Swap Obligations, or from any Collateral provided by such Loan Party, the proceeds thereof shall be applied to pay the Obligations of such Loan Party as otherwise provided herein without giving effect to such Excluded Swap Obligations and each reference in this Agreement or any other Loan Document to the ratable application of such amounts as among the Obligations or any specified portion of the Obligations that would otherwise include such Excluded Swap Obligations shall be deemed so to provide.

SECTION 1.06. Foreign Currency Calculations. For purposes of any determination under Section 6.01, 6.02, 6.04, 6.05 or 6.08 or under Article VII, all amounts

incurred, outstanding or proposed to be incurred or outstanding in Euros or Pounds Sterling shall be translated into Dollars at the Dollar Equivalent thereof on the date of such determination; provided that no Default or Event of Default shall arise as a result of any limitation set forth in Dollars in Section 6.01 or 6.02 being exceeded solely as a result of changes in currency exchange rates from those rates applicable at the time or times Indebtedness or Liens were initially consummated in reliance on the exceptions under such Sections. For purposes of any determination under Section 6.04, 6.05 or 6.08, the amount of each Investment, Disposition, Restricted Payment or other applicable transaction denominated in Euros or Pounds Sterling shall be translated into Dollars at the Dollar Equivalent thereof on the date such Investment, Disposition, Restricted Payment or other transaction is consummated.

SECTION 1.07. Interest Rates; LIBOR Notification. The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. Upon the occurrence of a Benchmark Transition Event or an Early Opt-In Election, Section 2.11(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 2.11(d), of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of "LIBO Rate" or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.11(b), whether upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.11(c)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

SECTION 1.08. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Credits

SECTION 2.01. Commitments.

(a) Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a term loan in Dollars (a "Term Loan") to the Borrower on the Restatement Date in an amount not to exceed the amount of the Term Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.03 and 2.05.

(b) Subject to the terms and conditions set forth herein, each Revolving Lender agrees to make revolving credit loans ("Revolving Loans") in Dollars, Euros and Pounds Sterling to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (i) the Dollar Equivalent of the sum of such Lender's Revolving Loans and its Pro Rata Share of the L/C Exposure exceeding such Lender's Revolving Credit Commitment or (ii) the sum of the total Dollar Equivalent of Revolving Loans and its Pro Rata Share of the L/C Exposure exceeding the total Revolving Credit Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans without penalty.

(c) Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, to issue letters of credit (each, a "Letter of Credit" and, collectively, "Letters of Credit") in Dollars for the account of the Borrower and its Subsidiaries from time to time on any Business Day during the period from the Restatement Effective Date until 30 days before the final Maturity Date in an aggregate Available Amount (i) not exceeding at any time (x) for all Letters of Credit, the Letter of Credit Facility at such time and (y) for all Letters of Credit issued by each Issuing Bank, such Issuing Bank's Letter of Credit Commitment at such time (unless otherwise agreed by such Issuing Bank) and (ii) for each such Letter of Credit not to exceed an amount equal to the Unused Commitments of the Lenders at such time. Each Letter of Credit shall be in an amount of \$25,000 or more (or such lesser amount as agreed to by the Issuing Bank issuing such Letter of Credit). The Borrower shall be liable for all Obligations with respect to any Letter of Credit issued for the account of any of its Subsidiaries. No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary to require renewal) later than the earlier of (x) the date that is one year after the date of issuance thereof, but may by its terms be renewable annually upon notice (a "Notice of Renewal") given to the Issuing Bank that issued such Letter of Credit and the Administrative Agent on or prior to any date for notice of renewal set forth in such Letter of Credit but in any event at least three Business Days prior to the date of the proposed renewal of such Letter of Credit and upon fulfillment of the applicable conditions set forth in Article IV unless such Issuing Bank has notified the Borrower (with a copy to the Administrative Agent) on or prior to the date for notice of termination set forth in such Letter of Credit but in any event at least 30 days prior to the date of automatic renewal of its election not to renew such Letter of Credit (a "Notice of Termination") and (y) five Business Days prior to the final Maturity Date; provided, further, that the terms of each Letter of Credit that is automatically renewable annually shall (1) require the Issuing Bank that issued such Letter of Credit to give the beneficiary named in such Letter of Credit notice of any Notice of Termination and (2) permit such beneficiary, upon receipt

of such notice, to draw under such Letter of Credit prior to the date such Letter of Credit otherwise would have been automatically renewed. If either a Notice of Renewal is not given by the Borrower or a Notice of Termination is given by the relevant Issuing Bank pursuant to the immediately preceding sentence, such Letter of Credit shall expire on the date on which it otherwise would have been automatically renewed; provided, however, that even in the absence of receipt of a Notice of Renewal the relevant Issuing Bank may in its discretion, unless instructed to the contrary by the Administrative Agent or the Borrower, deem that a Notice of Renewal had been timely delivered and in such case, a Notice of Renewal shall be deemed to have been so delivered for all purposes under this Agreement. Within the limits referred to above, the Borrower may request the issuance of Letters of Credit under this Section 2.01(c), repay any Revolving Loans resulting from drawings thereunder pursuant to Section 2.19(c) and request the issuance of additional Letters of Credit under this Section 2.01(c).

(d) The parties hereto agree that the Existing Letters of Credit will automatically, without any further action on the part of any Person, be deemed to be Letters of Credit hereunder issued hereunder on the Restatement Effective Date for the account of the Borrower. Without limiting the foregoing (i) each such Existing Letter of Credit shall be included in the calculation of the L/C Exposure, (ii) all liabilities of the Borrower and the other Loan Parties with respect to such Existing Letters of Credit shall constitute Obligations and (iii) each Lender shall have reimbursement obligations with respect to such Existing Letters of Credit as provided in Section 2.08(g).

SECTION 2.02. Loans and Borrowings.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments under the relevant Facility. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.11, (i) each Borrowing in Dollars shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith and (ii) each Borrowing in a Designated Foreign Currency shall be comprised entirely of Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of (i) in the case of Borrowings denominated in Dollars, \$1,000,000 and not less than \$1,000,000, (ii) in the case of Borrowings denominated in Pounds Sterling, £1,000,000 and not less than £1,000,000 and (iii) in the case of Borrowings denominated in Euros, €1,000,000 and not less than €1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total

Commitments. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of ten (10) Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (other than a request for any Borrowing of Revolving Loans denominated in a Designated Foreign Currency, which request shall be made in writing (including by electronic mail)), electronic mail or hand delivery of an executed written Borrowing Request (a) in the case of a Eurodollar Borrowing denominated in Dollars, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing, (b) in the case of a Eurodollar Borrowing denominated in a Designated Foreign Currency, not later than 1:00 p.m., London time, four Business Days before the date of the proposed Borrowing or (c) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the day of the proposed Borrowing. Each telephonic or electronic mail Borrowing Request shall be irrevocable and shall in the case of a telephonic request be confirmed promptly by hand delivery, electronic mail or teletype to the Administrative Agent of a written Borrowing Request signed by the Borrower. Each written Borrowing Request shall be in the form of Exhibit B and each telephonic, electronic mail and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing and the Facility under which such Borrowing is requested to be made;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) in the case of a Borrowing to be denominated in Dollars, whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(v) in the case of Revolving Loans, the currency of such Borrowing (which shall be Dollars, Euros or Pounds Sterling); and

(vi) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.04.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time (or in the case of any Revolving Loan denominated in a Designated Foreign Currency, 12:00 noon, London time), to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an operating account of the Borrower designated by the Borrower in the applicable Borrowing Request.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on written demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, 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 or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If the Borrower and 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 such amount to the Administrative Agent, then such amount 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.

SECTION 2.05. Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type (provided that Eurodollar Borrowings denominated in a Designated Foreign Currency may not be converted to ABR Borrowings) or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. Subject to the requirements of Section 2.02(c), the Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone or electronic mail by the time that a Borrowing

Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each Interest Election Request shall be irrevocable and, in the case of a telephonic Interest Election Request, shall be confirmed promptly by hand delivery, electronic mail or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing under each Facility to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) in the case of a Borrowing to be denominated in Dollars, whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to (i) a Eurodollar Borrowing denominated in Dollars prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing or (ii) any other Eurodollar Borrowing, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Eurodollar Borrowing with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Majority Facility Lenders under the relevant Facility, so notifies the Borrower in writing, then, so long as an Event of Default is continuing (i) no outstanding Borrowing under the relevant Facility may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, (A) each Eurodollar Borrowing under the relevant Facility denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (B) each other Eurodollar

Borrowing shall be converted to a Eurodollar Borrowing with an Interest Period of one month's duration.

SECTION 2.06. Termination and Reduction of Commitments.

(a) All Term Commitments shall terminate on the Restatement Effective Date after giving effect to the Borrowing of Term Loans requested to be made on such date. Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000, and (ii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.08, the sum of the Revolving Loans then outstanding would exceed the total Revolving Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Subject to Section 2.20, any termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments under the Revolving Facility.

SECTION 2.07. Repayment of Loans; Evidence of Debt; Letter of Credit Reimbursements.

(a) The Term Loans of each Term Lender shall mature in quarterly installments commencing on the first full fiscal quarter ended after the Restatement Effective Date, such that the amount of each installment equals such Lender's Pro Rata Share of the Term Facility multiplied by the amount set forth below opposite such installment, provided that, notwithstanding the above, the remaining outstanding principal balance of Term Loans as of the Maturity Date shall be due and payable on the Maturity Date:

<u>Installment</u>	<u>Principal Amount</u>
1-8	\$4,000,000
9-12	\$6,000,000
13-16	\$8,000,000

17-20

\$10,000,000

Maturity Date

Remaining principal balance

(b) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered and permitted assigns. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein and its registered assigns.

(g) Subject to Section 2.08(c), if at any time the aggregate Revolving Loans of the Lenders exceeds the aggregate Commitments of the Lenders, the Borrower shall immediately prepay the Revolving Loans in the amount of such excess.

(h) Letter of Credit Reimbursements. The obligations of the Borrower under this Agreement, any Letter of Credit Agreement and any other agreement or instrument, in each case, relating to any Letter of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, such Letter of Credit Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances (it being understood that any such payment by the Borrower is without prejudice to, and does not constitute a waiver of, any rights the Borrower might have or might acquire as a result of the payment by any Lender of any draft or the reimbursement by the Borrower thereof):

(i) any lack of validity or enforceability of this Agreement, any Letter of Credit, any Letter of Credit Agreement or any other agreement or instrument, in each case,

relating thereto (all of the foregoing being, collectively, the "L/C Related Documents");

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of the Borrower in respect of any L/C Related Document or any other amendment or waiver of or any consent to departure from all or any of the L/C Related Documents;

(iii) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), any Issuing Bank, the Administrative Agent, any Lender or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(iv) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or certificate that does not strictly comply (but materially complies) with the terms of such Letter of Credit;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the obligations of the Borrower in respect of the L/C Related Documents; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or a guarantor.

SECTION 2.08. Prepayment of Loans; Mandatory Prepayment of Term Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy, electronic mail or other writing approved by the Administrative Agent) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing under each Facility or portion thereof to be prepaid; provided that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof.

Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Class and Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Each prepayment of Term Loans made pursuant to this Section 2.08(b) shall be applied against the remaining scheduled installments of principal due in respect of the Term Loans in the manner specified by the Borrower or, in the absence of any such specification, as set forth in Section 2.15(a). Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10 and, if applicable, amounts owed pursuant to Section 2.13, if any. Notwithstanding the foregoing, any prepayment of Revolving Loans pursuant to this Section 2.08 shall not reduce the Revolving Commitments unless notice is given by the Borrower in accordance with Section 2.06.

(c) (i) If the Administrative Agent notifies the Borrower in writing on the second Business Day prior to any interest payment date that the sum of (A) the aggregate principal amount of all Revolving Loans denominated in Dollars then outstanding, plus (B) the Dollar Equivalent (determined on the third Business Day prior to such interest payment date) of the aggregate principal amount of all Revolving Loans denominated in Euros and Pounds Sterling then outstanding, plus (C) the aggregate Available Amount of all Letters of Credit then outstanding exceeds 100% of the aggregate Revolving Credit Commitments of the Lenders on such date, the Borrower shall, within two Business Days after receipt of such notice, prepay the outstanding principal amount of any Revolving Loans owing by the Borrower in an aggregate amount sufficient to reduce such sum after such payment to an amount not to exceed 100% of the aggregate Revolving Credit Commitments of the Lenders. The Administrative Agent shall provide such notice to the Borrower at the request of any Lender.

(ii) Each prepayment made pursuant to this Section 2.08(c) shall be made together with any interest accrued to the date of such prepayment on the principal amounts prepaid and, in the case of any prepayment of a Eurodollar Loan on a date other than the last day of an Interest Period or at its maturity, any additional amounts which the Borrower shall be obligated to reimburse to the Lenders in respect thereof pursuant to Section 2.13. The Administrative Agent shall give prompt notice of any prepayment required under this Section 2.08(c) to the Borrower and the Lenders.

(d) The Borrower shall, on the day that is five (5) Business Days prior to the Maturity Date, pay to the Administrative Agent for deposit in the L/C Cash Collateral Account an amount in Dollars sufficient to cause the amount of Dollars on deposit in the L/C Cash Collateral Account to equal 100% of the aggregate Available Amount of all Letters of Credit then outstanding; provided that nothing herein shall be deemed to amend or modify any provision of Section 2.01(b). Upon the drawing of any such Letter of Credit, to the extent funds are on deposit in the L/C Cash Collateral Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable law, and if so applied, then such reimbursement shall be deemed a repayment of the corresponding Revolving Loans in respect of such Letter of Credit. After any such Letter of Credit shall have expired or been fully drawn upon and all other obligations of the Borrower thereunder shall have been paid in full, the equivalent amount deposited in such L/C Cash Collateral Account in respect of such Letter of Credit shall be promptly returned to the Borrower.

(e) If any Indebtedness shall be incurred by the Borrower or any of its Subsidiaries (excluding any Indebtedness incurred in accordance with Section 6.01 or pursuant to this Agreement or any other Loan Document), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied within ten (10) Business Days after the date of such issuance or incurrence toward the prepayment of the Term Loans as set forth in Section 2.08(g).

(f) If on any date the Borrower or any of its Subsidiaries shall receive Net Cash Proceeds from any Asset Sale or Recovery Event in excess of \$10,000,000 in the aggregate in any fiscal year then, unless a Reinvestment Notice shall be delivered in respect thereof, such Net Cash Proceeds shall be applied within twenty (20) Business Days after such date toward the prepayment of the Term Loans as set forth in Section 2.08(g).

(g) Amounts to be applied in connection with prepayments made pursuant to Section 2.08(e) or (f) shall be applied first to the prepayment of the next four principal installments of Term Loans required pursuant to Section 2.07(a) and then shall be applied to reduce the then remaining installments of the Term Loans *pro rata* based upon the then remaining principal amounts thereof. The application of any prepayment pursuant to Section 2.08(e) or (f) shall be made, first, to ABR Loans and, second, to Eurodollar Loans. Each prepayment of the Loans under Section 2.08(e) or (f) shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

SECTION 2.09. Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate (as designated in the definition of "Applicable Rate" as the "Commitment Fee Rate") on the daily amount of the difference between the Revolving Credit Commitment of such Lender and the outstanding principal balance of the Revolving Loans of such Lender during the period from and including the Restatement Effective Date to but excluding the date on which such Revolving Credit Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Revolving Credit Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay to the Administrative Agent, for its own account, an agency fee payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(c) All commitment fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution to the Lenders. Fees paid shall not be refundable under any circumstances.

(d) (i) The Borrower shall pay to the Administrative Agent for the account of each Lender a commission on such Lender's Pro Rata Share under the Revolving Facility of the average daily aggregate Available Amount of all Letters of Credit outstanding (and not cash-collateralized) from time to time at a rate per annum equal to the Applicable Rate for Eurodollar

Loans in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December and on the final Maturity Date, and after such Maturity Date payable upon written demand; provided that the Applicable Rate shall increase by 2% upon the occurrence and during the continuation of an Event of Default if the Borrower is required to pay default interest on the principal of all Revolving Loans pursuant to Section 2.10(c).

(ii) The Borrower shall pay to each Issuing Bank for its own account, in Dollars, a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the L/C Exposure attributable to Letters of Credit issued by such Issuing Bank (excluding any portion thereof attributable to unreimbursed Letters of Credit) during any period that there is any L/C Exposure, payable in arrears quarterly on the last day of each March, June, September and December and on the final Maturity Date, and after such Maturity Date payable upon written demand.

SECTION 2.10. Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing for the relevant currency plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.10 or (ii) in the case of any other amount, 2.00% per annum plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section 2.10.

(d) Accrued interest on each Loan shall be payable in arrears in the currency of the applicable Loan on each Interest Payment Date for such Loan and upon termination of all of the Revolving Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on written demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. All interest shall be payable in the currency in which the applicable Loan is denominated.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that (i) interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day) and (ii) interest computed on Revolving

Loans in Pounds Sterling shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.11. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines in good faith (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means (including, without limitation, by means of an Interpolated Rate) do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the LIBO Screen Rate is not available or published on a current basis), for the applicable currency and such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time for such currency;

(b) the Administrative Agent is advised by the Majority Facility Lenders under the relevant Facility that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for the applicable currency and such Interest Period;

(c) the Administrative Agent determines in good faith (which determination shall be conclusive and binding upon the Borrower absent manifest error) that deposits in the applicable currency are not generally available, or cannot be obtained by the Lenders, in the applicable market (any Designated Foreign Currency affected by the circumstances described in Section 2.11(a) or (b) is referred to as an "Affected Foreign Currency");

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing. Until such relevant notice has been withdrawn by the Administrative Agent, no further Eurodollar Revolving Loans in an Affected Foreign Currency shall be made or continued as such, nor shall the Borrower have the right to convert ABR Revolving Loans to Eurodollar Revolving Loans (to the extent such Eurodollar Loan is denominated in an Affected Foreign Currency).

(d) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the LIBO Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such

proposed amendment to all Lenders and the Borrower, so long as the Administrative Agent has not received, by such time, written notice of objection to such proposed amendment from Lenders comprising the Required Lenders (or, with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility); provided that, with respect to any proposed amendment containing any SOFR-Based Rate, the Lenders shall be entitled to object only to the Benchmark Replacement Adjustment contained therein. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders (or, with respect to a Designated Foreign Currency, the Majority Facility Lenders of under the Revolving Facility) have delivered to the Administrative Agent written notice that such Required Lenders (or, with respect to a Designated Foreign Currency, the Majority Facility Lenders of under the Revolving Facility) accept such amendment. No replacement of LIBO Rate with a Benchmark Replacement will occur prior to the applicable Benchmark Transition Start Date.

(e) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(f) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.11.

(g) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing and (iii) no further Eurodollar Revolving Loans in an Affected Foreign Currency shall be made or continued as such, nor shall the Borrower have the right to convert ABR Revolving Loans to Eurodollar Revolving Loans (to the extent such Eurodollar Loan is denominated in an Affected Foreign Currency).

SECTION 2.12. Increased Costs; Illegality.

(a) If any Change in Law shall:

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

(ii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Loans made by such Lender; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of the term "Excluded Taxes" and (C) Connection Income Taxes) on its loans, loan principal, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, from time to time upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs or expenses incurred or reduction suffered.

(b) If any Lender reasonably determines that any Change in 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 had 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 Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then, from time to time upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) If by reason of any change in a Requirement of Law subsequent to the Restatement Effective Date, material disruption of currency or foreign exchange markets, war or civil disturbance or similar event, the funding of any Foreign Currency Loan in any currency or the funding of any Foreign Currency Loan in any currency to an office located other than in New York shall be impossible or such currency is no longer available or readily convertible to Dollars, or the Dollar Equivalent of such currency is no longer readily calculable, then, at the election of the Administrative Agent, no Foreign Currency Loans in the relevant currency shall be made or any Foreign Currency Loan in the relevant currency shall be made to an office of the Administrative Agent located in New York, as the case may be.

(d) (i) If payment in respect of any Foreign Currency Loan shall be due in a currency other than Dollars and/or at a place of payment other than New York and if, by reason of any change in a Requirement of Law subsequent to the Restatement Effective Date, material disruption of currency or foreign exchange markets, war or civil disturbance or similar event, payment of such Obligations in such currency or such place of payment shall be impossible or, in the reasonable judgment of the Administrative Agent, such currency is no longer available or readily convertible to Dollars, or the Dollar Equivalent of such currency is no longer readily calculable, then, at the election of any affected Lender, the Borrower shall make payment of such Loan in Dollars (based upon the Dollar Equivalent thereof on the date on which such payment occurs) and/or in New York or (ii) if any Foreign Currency in which Loans are outstanding is redenominated then, at the election of any affected Lender, such affected Loan and all obligations of the applicable Borrower in respect thereof shall be converted into obligations in Dollars (based upon the Dollar Equivalent thereof on such date), and, in each case, the Borrower shall indemnify the Lenders, against any currency exchange losses or reasonable out-of-pocket expenses that it shall sustain as a result of such alternative payment.

(e) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.12 delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(f) Failure or delay on the part of any Lender to make written demand for compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.12 for any increased costs or expenses incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or expenses or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or expenses or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(g) If any Change in Law shall make it unlawful for any Lender to make or maintain Eurodollar Loans, (i) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such and convert ABR Loans to Eurodollar Loans shall forthwith be suspended until such time as it shall no longer be unlawful for such Lender to make or maintain Eurodollar Loans and (ii) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to ABR Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.13.

SECTION 2.13. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue

or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.08(b) and is revoked in accordance therewith) or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.16, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of the Applicable Rate for Eurodollar Loans). In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

SECTION 2.14. Taxes.

(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. 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 2.14) 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 by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.14, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of

any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a 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.

(e) Indemnification by the 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 9.04(c) 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 Section 2.14(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender

becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed 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 or Form W-8BEN-E 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 or Form W-8BEN-E 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 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 Form W-8BEN-E; 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, IRS Form W-8BEN-E, 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.

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.

(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 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), 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 2.14 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 (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, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph 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 2.14 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Defined Terms. For purposes of this Section 2.14, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

SECTION 2.15. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee, any participation fee and any reduction of the Revolving Commitments of the Lenders shall be made pro rata according to the respective Pro Rata Share, as the case may be, under the relevant Facility. Each payment (including each prepayment) on account of principal of and interest on the Term Loans shall be made pro rata according to the respective outstanding principal amounts of the Term Loans then held by the Term Lenders. Unless otherwise set forth herein, the amount of each principal prepayment of the Term Loans shall be applied to reduce the then remaining installments of the Term Loans, pro rata based upon the then remaining principal amounts thereof. Amounts prepaid on account of the Term Loans may not be reborrowed. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its designated office, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder or under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments or prepayments of any Loan shall be made in the currency in which such Loan is denominated, all reimbursements of Letters of Credit shall be made in Dollars and all other payments under each Loan Document shall be made in Dollars.

(b) 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, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans hereunder or participations in Letters of Credit resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans hereunder or participations in Letters of Credit and accrued interest thereon than the proportion received by any other Lender under the relevant Facility, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans hereunder or participations in Letters of Credit of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders under the relevant Facility ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans hereunder or participations in Letters of Credit; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans hereunder or participations in Letters of Credit to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. Notwithstanding the foregoing, to the extent prohibited by applicable law as described in the definition of "Excluded Swap Obligation," no amounts received from, or set off with respect to, any Loan Party shall be applied to any Excluded Swap Obligations of such Loan Party.

(d) 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 that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such 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.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(b), 2.15(d) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

(f) The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 9.03(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 9.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall (except as provided herein with respect to a Defaulting Lender) 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 9.03(c).

SECTION 2.16. Mitigation Obligations; Replacement of Lenders or Issuing Banks.

(a) If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.14, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

(b) If (i) any Lender requests compensation under Section 2.12, (ii) the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14 or (iii) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04 hereof, with the Borrower obligated to pay any applicable processing and recordation fee unless waived by the Administrative Agent in its sole discretion), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation); provided that (A) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts); (C) in the case of any such assignment and delegation resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14,

such assignment will result in a reduction in such compensation or payments, and (D) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver or consent by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation have ceased to apply.

(c) Replacement of Issuing Banks. If any Issuing Bank declines to provide the consent required under Sections 2.20(b) or 9.04(b)(iii)(C), or declines to provide a Letter of Credit pursuant to Section 2.19(a)(ii), then the Borrower may, at its sole expense and effort, upon notice to such Issuing Bank and the Administrative Agent, require such Issuing Bank to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.04), all of its Letter of Credit Commitment to one or more Eligible Assignees that shall assume such obligations (which assignee may be one or more Issuing Banks, if such Issuing Bank accepts such assignment); provided that:

(i) each outstanding Letter of Credit issued by such Issuing Bank shall have been replaced or such other arrangement reasonably satisfactory to such Issuing Bank shall have been made; and

(ii) such assignment does not conflict with applicable law.

SECTION 2.17. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Credit Commitment of such Defaulting Lender pursuant to Section 2.09(a); and

(b) the Revolving Credit Commitment and outstanding principal amount of Revolving Loans of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender, and provided further, that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender made pursuant to clause (i), (ii) or (iii) of the first proviso to Section 9.02(b) (but, in respect of such clauses (ii) and (iii), only to the extent relating to principal or interest) shall also require the consent of any such Lender which has become a Defaulting Lender.

(c) if any L/C Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of L/C Exposure of such Defaulting Lender shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent that (x) the sum of the aggregate principal amount of Revolving Loans owing to all Non-Defaulting Lenders plus the aggregate amount of L/C Exposure of all Lenders does not exceed the total of all Non-Defaulting Lenders'

Revolving Credit Commitments, (y) after giving effect to such reallocation, the sum of the aggregate principal amount of Revolving Loans owing to, and the L/C Exposure allocated to, each Non-Defaulting Lender shall not exceed such Non-Defaulting Lender's Revolving Credit Commitment and (z) no Event of Default has occurred and is continuing;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within two Business Days following notice by the Administrative Agent, cash collateralize for the benefit of each Issuing Bank only the Borrower's obligations corresponding to such Defaulting Lender's L/C Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 7.02 for so long as such L/C Exposure is outstanding or such Lender remains a Defaulting Lender (and such L/C Exposure cannot be allocated pursuant to Section 2.17(c)(i));

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's L/C Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.09(d) with respect to such Defaulting Lender's L/C Exposure during the period such Defaulting Lender's L/C Exposure is cash collateralized;

(iv) if the L/C Exposure of the Non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.09(a) and Section 2.09(d) shall be adjusted in accordance with such Non-Defaulting Lenders' Pro Rata Shares; and

(v) if all or any portion of such Defaulting Lender's L/C Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of any Issuing Bank or any other Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Revolving Credit Commitment that was utilized by such L/C Exposure) and letter of credit commissions payable under Section 2.09(d) with respect to such Defaulting Lender's L/C Exposure shall be payable to the applicable Issuing Banks until and to the extent that such L/C Exposure is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding L/C Exposure will be 100% covered by the Revolving Credit Commitments of the Non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 7.02, and participating interests in any newly issued or increased Letter of Credit shall be allocated among Non-Defaulting Lenders in a manner consistent with Section 2.17(c)(i) (and such Defaulting Lender shall not participate therein).

In the event that the Administrative Agent, the Borrower and the Issuing Banks each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the L/C Exposure of the Lenders shall be readjusted to reflect the inclusion

of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Revolving Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Revolving Loans in accordance with its Pro Rata Share.

SECTION 2.18. [Reserved].

SECTION 2.19. Issuance of and Drawings and Reimbursement Under Letters of Credit.

(a) Request for Issuance. (i) Subject to clause (ii) below, each Letter of Credit shall be issued upon notice, given not later than 1:00 P.M. (New York City time) on the fifth Business Day prior to the date of the proposed issuance of such Letter of Credit, by the Borrower to any Issuing Bank, and such Issuing Bank shall give the Administrative Agent, prompt written notice thereof. Each such notice of issuance of a Letter of Credit (a "Notice of Issuance") shall be by telephone, confirmed promptly in writing, or telecopier, specifying therein the requested (A) date of such issuance (which shall be a Business Day), (B) the amount of such Letter of Credit, (C) expiration date of such Letter of Credit, (D) name and address of the beneficiary of such Letter of Credit and (E) form of such Letter of Credit, and shall be accompanied by such customary application and agreement for letter of credit as such Issuing Bank may specify to the Borrower requesting such issuance for use in connection with such requested Letter of Credit (a "Letter of Credit Agreement"). If the requested form of such Letter of Credit is reasonably acceptable to such Issuing Bank, such Issuing Bank will, upon fulfillment of the applicable conditions set forth in Article IV, make such Letter of Credit available to the Borrower (or its applicable Subsidiary) requesting such issuance at its office referred to in Section 9.01 or as otherwise agreed with the Borrower in connection with such issuance. In the event and to the extent that the provisions of any Letter of Credit Agreement shall conflict with this Agreement, the provisions of this Agreement shall govern.

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any governmental authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any governmental authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Restatement Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Restatement Effective Date and which such Issuing Bank in good faith deems material to it; or

(B) the issuance of the Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally and to customers of the Issuing Bank

generally; provided that, in the event the Issuing Bank can no longer issue any Letter of Credit, the Issuing Bank shall endeavor to provide sufficient written notice thereof to the Borrower.

(b) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Share under the Revolving Facility of the aggregate amount available to be drawn under such Letter of Credit. The Borrower hereby agrees to each such participation. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Lender's Pro Rata Share under the Revolving Facility of each drawing made under a Letter of Credit funded by such Issuing Bank and not reimbursed by the Borrower within one Business Day after the Borrower's receipt of notice thereof, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Pro Rata Share under the Revolving Facility of the Available Amount of such Letter of Credit at each time such Lender's Revolving Credit Commitment is amended pursuant to an Incremental Revolving Commitment in accordance with Section 2.20, an assignment in accordance with Section 9.04 or otherwise pursuant to this Agreement.

(c) Drawing and Reimbursement. Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant Issuing Bank shall notify promptly the Borrower and the Administrative Agent thereof in writing. No later than the second Business Day immediately following the Business Day on which the Borrower shall have received written notice of any payment by an Issuing Bank under a Letter of Credit (such date of payment, an "Honor Date"), the Borrower shall reimburse such Issuing Bank through the Administrative Agent in an amount equal to such drawing in Dollars. If the Borrower fails to so reimburse such Issuing Bank on the Honor Date (or if any such reimbursement payment is required to be refunded to the Borrower for any reason), then the payment by such Issuing Bank of such drawing shall constitute for all purposes of this Agreement the making by such Issuing Bank of a Revolving Loan, which, shall be an ABR Loan, in the amount of such draft. Each Issuing Bank shall give prompt notice (and such Issuing Bank will use its commercially reasonable efforts to deliver such notice within one Business Day) of each drawing under any Letter of Credit issued by it to the Borrower and the Administrative Agent. Upon written demand by such Issuing Bank, with a copy of such demand to the Administrative Agent, each Lender shall pay to the Administrative Agent such Lender's Pro Rata Share under the Revolving Facility of such

outstanding Revolving Loans, by making available for the account of its Applicable Lending Office to the Administrative Agent for the account of such Issuing Bank, by deposit to the Administrative Agent's Account, in same day funds, an amount equal to the portion of the outstanding principal amount of such Revolving Loan to be funded by such Revolving Lender. Promptly after receipt thereof, the Administrative Agent shall transfer such funds to such Issuing Bank. Each Revolving Lender agrees to fund its Pro Rata Share under the Revolving Facility of an outstanding Revolving Loan on (i) the Business Day on which demand therefor is made by such Issuing Bank, provided that notice of such demand is given not later than 11:00 A.M. (New York City time) on such Business Day, or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. If and to the extent that any Revolving Lender shall not have so made the amount of such Revolving Loan available to the Administrative Agent, such Revolving Lender agrees to pay to the Administrative Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by any such Issuing Bank until the date such amount is paid to the Administrative Agent, at the Federal Funds Effective Rate for its account or the account of such Issuing Bank, as applicable. If such Revolving Lender shall pay to the Administrative Agent such amount for the account of any such Issuing Bank on any Business Day, such amount so paid in respect of principal shall constitute a Revolving Loan made by such Revolving Lender on such Business Day for purposes of this Agreement, and the outstanding principal amount of the Revolving Loan made by such Issuing Bank shall be reduced by such amount on such Business Day. For the avoidance of doubt, if any drawing occurs under a Letter of Credit and such drawing is not reimbursed on the same day, such drawing shall, without duplication, accrue interest at the rate applicable to the ABR Loans based on the amount of such drawing.

(d) Letter of Credit Reports. Each Issuing Bank shall furnish (i) to the Administrative Agent and each Lender on the first Business Day of each month a written report summarizing issuance and expiration dates of Letters of Credit during the preceding month and drawings during such month under all Letters of Credit and (ii) to the Administrative Agent and each Lender on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit.

(e) Failure to Make Revolving Loans. The failure of any Revolving Lender to make the Revolving Loan to be made by it on the date specified in Section 2.19(c) shall not relieve any other Revolving Lender of its obligation hereunder to make its Revolving Loans on such date, but no Revolving Lender shall be responsible for the failure of any other Revolving Lender to make the Revolving Loans to be made by such other Revolving Lender on such date.

(f) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the Issuing Bank and the Borrower when a Letter of Credit is issued, (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance) (the "ISP") shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce ("ICC") Publication No. 600 (or such later version thereof as may

be in effect at the time of issuance) (the “UCP”) shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and no Issuing Bank’s rights and remedies against the Borrower shall be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (“BAFT-IFSA”), or the Institute of International Banking Law & Practice, to the extent that the relevant Letter of Credit chooses such law or practice.

(g) Resignation. Notwithstanding anything to the contrary contained herein, any Initial Issuing Bank may, with the written consent of the Borrower and the Administrative Agent (in each case, such consent not to be unreasonably withheld or delayed), resign (such Issuing Bank, the “Resigning Issuing Bank”) as an Issuing Bank, with respect to its Unissued Letter of Credit Commitment and be replaced with one or more substitute Issuing Banks from among the Lenders who agree to assume such role, with the written consent of the Borrower and the Administrative Agent (in each case, such consent not to be unreasonably withheld or delayed); provided that after giving effect to any such assignment at no time shall (x) the Letter of Credit Commitment of any Issuing Bank, including any substitute Issuing Bank, exceed its Revolving Credit Commitment and (y) the sum of the L/C Exposure of all Issuing Banks exceed the sum of (A) the aggregate amount of the Letter of Credit Commitment of all Issuing Banks less (B) the aggregate amount of the Unissued Letter of Credit Commitment of all Issuing Banks. The Borrower or the Resigning Issuing Bank with the written consent of the Borrower and the Administrative Agent (in each case, consent not to be unreasonably withheld or delayed) shall be entitled to appoint from among the Lenders who agree to assume such role a successor Issuing Bank hereunder and it shall notify the Administrative Agent, who will notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the Resigning Issuing Bank pursuant to Section 2.09. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Resigning Issuing Bank under this Agreement with respect to Unissued Letter of Credit Commitment being assigned and the Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Initial Issuing Bank hereunder, the Resigning Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

SECTION 2.20. Incremental Facility.

(a) The Borrower may, by written notice to the Administrative Agent from time to time request Incremental Term Loans and/or Incremental Revolving Commitments (an

“Incremental Facility”) in an aggregate amount not to exceed the Incremental Amount at such time from one or more Incremental Term Lenders and/or Incremental Revolving Lenders (which may include any existing Lender) willing to provide such Incremental Term Loans and/or Incremental Revolving Commitments, as the case may be, in their own discretion; provided, that no Lender will be required to participate in any Incremental Facility without its consent and each Incremental Term Lender and/or Incremental Revolving Lender, if not already a Lender hereunder, shall be subject to the approval (which approval shall not be unreasonably withheld or delayed) of the Administrative Agent (solely to the extent the Administrative Agent’s consent would otherwise be required for an assignment to such Incremental Term Lender or Incremental Revolving Lender, as applicable, in accordance with Section 9.04 hereof) and, in the case of Incremental Revolving Lenders only, the Issuing Bank.

(b) Such notice shall set forth (i) the amount of the Incremental Term Loans and/or Incremental Revolving Commitments being requested (which shall be (1) with respect to Incremental Term Loans, in minimum increments of \$10,000,000, (2) with respect to Incremental Revolving Commitments, in minimum increments of \$5,000,000 or (3) equal to the remaining Incremental Amount at such time), (ii) the date, which shall be a Business Day, on which such Incremental Term Loans are requested to be made and/or Incremental Revolving Commitments are requested to become effective (the “Increased Amount Date”), (iii) in the case of Incremental Term Loans, whether such Incremental Term Loans are to be on the same terms as the outstanding Term Loans or with terms different from the outstanding Term Loans (with shall comply with clause (e) below), (iv) the use of proceeds for such Incremental Term Loan and/or Incremental Revolving Commitment and (v) pro forma financial calculations demonstrating compliance with the requirements under clause (iii) of Section 2.20(f).

(c) The Borrower and each Incremental Term Lender and/or Incremental Revolving Lender shall execute and deliver to the Administrative Agent an Incremental Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Term Loans of such Incremental Term Lender and/or Incremental Revolving Commitment of such Incremental Revolving Lender.

(d) If at the time of any Incremental Revolving Commitments the Revolving Credit Commitments are still in effect, the Incremental Revolving Commitment shall be on terms and pursuant to documentation applicable to the Revolving Credit Commitments.

(e) Each Incremental Assumption Agreement relating to Incremental Term Loans shall specify the terms of the Incremental Term Loans to be made thereunder (including any “most favored nation” pricing provisions applicable to such Incremental Term Loans); provided that (i) the maturity date of any Incremental Term Loan shall be no earlier than the maturity date for the existing Term Loans (other than with respect to any Subsequently Incurred Term B Loans (as defined below), which shall mature no earlier than the latest maturity date then applicable to any outstanding Term Loans that are Term B Loans); (ii) the weighted average life to maturity of any Incremental Term Loan shall be no shorter than the remaining weighted average life to maturity of the existing Term Loans (other than as necessary, if applicable, to make such Incremental Term Loan fungible with the existing Term Loans and other than with respect to any Subsequently Incurred Term B Loans, which shall have a weighted average life to maturity no shorter than the remaining weighted average life to maturity of any existing Term B Loans); (iii)

if the total yield in respect of any Incremental Term Loans that would be considered tranche A term loans under then-existing customary market convention exceeds the total yield for the existing Term Loans (other than any Term B Loans) by more than $\frac{1}{2}$ of 1% (it being understood that any such excess may take the form of original issue discount ("OID")), the Applicable Rate for the existing Term Loans (other than any Term B Loans) shall be increased so that the total yield in respect of such Incremental Term Loans is no more than $\frac{1}{2}$ of 1% higher than the total yield for the existing Term Loans (other than Term B Loans); (iv) if the total yield in respect of any Term B Loans incurred after any Term B Loans have been incurred under this Section 2.20 ("Subsequently Incurred Term B Loans") under then-existing customary market convention exceeds the total yield for any such existing Term B Loans by more than $\frac{1}{2}$ of 1% (it being understood that any such excess may take the form of OID), the Applicable Rate for the existing Term B Loans shall be increased so that the total yield in respect of such Incremental Term Loans is no more than $\frac{1}{2}$ of 1% higher than the total yield for the existing Term B Loans; provided that, in determining the interest rate margins applicable to any Incremental Term Loans and the existing Term Loans under clauses (iii) and (iv) above, (x) any OID and upfront fees (which shall be deemed to constitute like amounts of OID) but excluding any arrangement, underwriting or similar fee paid to the Administrative Agent or the arrangers under any Incremental Term Loans and the existing Term Loans in the initial primary syndication thereof shall be included and equated to interest rate, (y) the excess of any Adjusted LIBO Rate "floor" over three-month Adjusted LIBO Rate and the excess of any ABR "floor" over the ABR, in each case without duplication as of the date of drawing of such Incremental Term Loans (disregarding such "floors" in determining the three-month Adjusted LIBO Rate and ABR on such date), shall be equated to interest margin on the Incremental Term Loans and (z) OID shall be equated to the interest rates in a manner reasonably determined by the Administrative Agent based on an assumed four-year life to maturity; (v) the Incremental Term Loans will rank *pari passu* in right of payment and security with the existing Term Loans; (vi) the Incremental Term Loans shall share ratably in any optional or mandatory prepayments of the Term Facility unless the lenders with respect to the applicable Incremental Term Loans and the Borrower agree to a less than ratable share of such prepayments, provided that any Incremental Term Loans that are Term B Loans may be subject to a customary "Excess Cash Flow" mandatory prepayment; (viii) to the extent the terms or documentation for Incremental Term Loans (other than Term B Loans) are not consistent with the terms of the existing Term Loans they shall be reasonably satisfactory to the Administrative Agent; and (ix) in the case of any Incremental Term Loans which are Term B Loans only, (A) may have customary call-protection, including "soft-call" protection in connection with any repricing transaction, and (B) may also, to the extent so provided in the applicable Incremental Assumption Agreement, specify whether (x) the applicable Term B Lenders shall have any voting rights in respect of the financial covenants under the Loan Documents (it being agreed that if any Subsequently Incurred Term B Loans shall have such voting rights, all then outstanding Term B Loans shall also have similar voting rights), (y) any breach of such covenants would result in a Default or Event of Default for such Term B Lenders prior to an acceleration of Commitments and/or Loans by the applicable Lenders in accordance with the terms hereof as a result of such breach (it being agreed that if any Subsequently Incurred Term B Loans shall have such a default, all then outstanding Term B Loans shall also have a similar default), and (z) the applicable Term B Lenders shall be subject to any other representations and warranties, covenants or events of default that are different from the terms set forth in the Loan Documents as of the date of the incurrence of such Indebtedness; provided that, such Incremental Term Loans shall not have representations and

warranties, covenants or events of default that are more restrictive, taken as a whole, than the representations and warranties, covenants or events of default set forth in the Loan Documents as of the date of incurrence of such Indebtedness unless such representations and warranties, covenants or events of default apply also to all other then outstanding Term Loans or only apply after the Maturity Date or, in the case of Incremental Term Loans which are Term B Loans, the latest maturity date then applicable to any Term Loans which are Term B Loans. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Assumption Agreement, this Agreement shall be amended to the extent necessary to reflect the existence and terms of the Incremental Term Loans and/or Incremental Revolving Commitments evidenced thereby. Any such deemed amendment may be memorialized in writing by the Administrative Agent with the Borrower's consent and furnished to the other parties hereto without their consent.

(f) Notwithstanding the foregoing, no Incremental Term Loan may be made and no Incremental Revolving Commitment shall become effective under this Section 2.20 unless (i) on the date on which such Loan is made or the date of such effectiveness and after giving effect to the Incremental Term Loans and/or Incremental Revolving Loans requested to be made on such date, the conditions set forth in Section 4.02 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by an officer of the Borrower, (ii) the Administrative Agent shall have received board resolutions and other closing certificates and related documentation as may be required by the relevant Incremental Assumption Agreement which, to the extent required, shall be consistent with the related documentation delivered on the Restatement Effective Date and such additional documents and filings (including amendments to the Mortgages and other Security Documents and title endorsement bring downs) as the Administrative Agent may reasonably require to assure that the Incremental Term Loans and/or Incremental Revolving Loans are secured by the Collateral ratably with the existing Term Loans and Revolving Loans, and (iii) the Borrower and its Subsidiaries would be in compliance on a Pro Forma Basis with the financial covenants set forth in Section 6.13 and 6.14 recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, after giving effect to such Incremental Term Loans and/or Loans to be made as of such date under the Incremental Revolving Commitment (and assuming such Incremental Revolving Commitments are fully drawn) and the application of the proceeds therefrom as if made and applied on such date; provided that in the case of any Incremental Term Loans the proceeds of which shall be used to consummate an acquisition permitted by this Agreement for which the Borrower has determined, in good faith, that limited conditionality with respect to financing is required (any such acquisition, a "Limited Conditionality Acquisition"), in lieu of satisfying clauses (i) and (iii) above, such Incremental Term Loans may be made if (x) as of the date of entry into the definitive documentation in respect of such Limited Conditionality Acquisition (the "Limited Conditionality Acquisition Agreement"), (1) no Default or Event of Default shall have occurred and be continuing or would arise after giving effect thereto, (2) the representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (or in all respects if qualified by materiality) on and as of such date and (3) the Borrower and its Subsidiaries would be in compliance on a pro forma basis with the financial covenants set forth in Section 6.13 and 6.14 recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, after giving effect to such Incremental Term Loans and any Incremental Revolving Commitment to be made on the

applicable Increased Amount Date (and assuming any such Incremental Revolving Commitments are fully drawn) and the application of the proceeds therefrom as if made and applied on such date and (y) as of the applicable Increased Amount Date, (1) no Event of Default under Section 7.01(a), (h) or (i) shall have occurred and be continuing and (2) the representations and warranties of each Loan Party set forth in the Loan Documents that are those customarily made in connection with acquisition financings (as determined by the Borrower and the Lenders in respect of such Incremental Term Loans) shall be true and correct in all material respects (or in all respects if qualified by materiality) on and as of such date.

(g) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans and/or Incremental Revolving Loans, when originally made, are included in each borrowing of outstanding Term Loans or Revolving Loans on a pro rata basis, that each Incremental Term Lender and each Incremental Revolving Lender shall be included in the definitions of Required Lenders and Majority Facility Lenders, and the Borrower agrees that Section 2.12 shall apply to any conversion of Eurodollar Loans to ABR Loans reasonably required by the Administrative Agent to effect the foregoing. For the avoidance of doubt, it is understood that the Revolving Facility shall be increased in an amount equal to the aggregate Incremental Revolving Commitments.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

SECTION 3.01. Organization; Powers. The Borrower and each Significant Subsidiary (a) is duly organized, validly existing and, to the extent that such concept is applicable in the relevant jurisdiction, in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority, and the legal right, to carry on its business as now conducted and as proposed to be conducted, to execute, deliver and perform its obligations under this Agreement and each other Loan Document and each other agreement or instrument contemplated thereby to which it is a party and to effect the Transactions and (c) except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and, to the extent that such concept is applicable in the relevant jurisdiction, is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions to be entered into by each Loan Party have been duly authorized by all necessary corporate or other organizational action and, if required, action by the holders of such Loan Party's Equity Interests. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of the Borrower or such other Loan Party, as applicable, enforceable against such Person in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors'

rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) as contemplated by the definition of “Collateral and Guarantee Requirement” and (ii) such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate any Requirement of Law applicable to the Borrower or any Subsidiary, except to the extent any such violations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (c) will not violate or result (alone or with notice or lapse of time or both) in a default under any indenture or agreement governing Indebtedness, any other material agreement or any other material instrument binding upon the Borrower or any Subsidiary or their respective assets, or give rise to a right thereunder to require any payment, repurchase or redemption to be made by the Borrower or any Subsidiary or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder, except, in each case, to the extent any such violations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset now owned or hereafter acquired by the Borrower or any Subsidiary, except Liens created under the Loan Documents.

SECTION 3.04. Financial Condition; No Material Adverse Change.

(a) The Borrower has, to the extent the following are not otherwise publicly available to the Lenders, heretofore furnished to the Lenders (i) the consolidated balance sheets and related statements of income, stockholders’ equity and cash flows of the Borrower and its Subsidiaries for the Fiscal Years ended June 30, 2019, audited by and accompanied by the opinion of KPMG LLP, independent registered public accounting firm and (ii) unaudited consolidated balance sheets and related statements of income, stockholders’ equity and cash flows of the Borrower and its Subsidiaries for the Fiscal Quarter ended September 30, 2019. Such financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Borrower and its Subsidiaries as of such date and for such period in conformity with GAAP, provided any interim financials shall be subject to normal year-end adjustment and the absence of certain footnotes.

(b) Except as disclosed by the Borrower in reports filed with or furnished to the SEC prior to the Restatement Effective Date (it being understood the preceding shall not apply to disclosure set forth in risk factors, forward looking statements and other similar prospective statements contained therein), since June 30, 2019, there has been no event or condition that has resulted, or would reasonably be expected to result, in a Material Adverse Effect.

SECTION 3.05. Properties.

(a) The Borrower and each Subsidiary has good title to, or valid leasehold interests in, all its real and personal property material to its business (including Mortgaged Properties, if any), except for defects in title that could not reasonably be expected to materially

interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) The Borrower and each Subsidiary owns, or is licensed to use, all Intellectual Property used in the conduct of its business as currently conducted, and the use thereof and the conduct of their respective businesses by the Borrower or any Subsidiary does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each such registration and application is subsisting and, to the actual knowledge of the Borrower or any Subsidiary, valid and enforceable. No claim, proceeding or litigation regarding any Intellectual Property is pending or, to the actual knowledge of the Borrower or any Subsidiary, threatened in writing against the Borrower or any Subsidiary that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. Litigation and Environmental Matters.

(a) Except as disclosed on Schedule 3.06(a), as of the Restatement Effective Date, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority (including with respect to any Environmental Liability) pending against or, to the actual knowledge of the Borrower or any Subsidiary, threatened in writing against or affecting the Borrower or any Subsidiary that (i) could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) involve any of the Loan Documents or the Transactions.

(b) Except as disclosed on Schedule 3.06(b), as of the Restatement Effective Date, and except with respect to any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, none of the Borrower or any Subsidiary (i) has violated any Environmental Law or is subject to any Environmental Liability, (ii) has failed to obtain, maintain or comply with any Environmental Permit, (iii) has received notice of any claim alleging the Borrower or any Subsidiary is responsible for any Environmental Liability, (iv) knows of any basis for, or is subject to any judgment or consent order pertaining to, any Environmental Liability of the Borrower or any Subsidiary or (v) has contractually assumed any liability or obligation under or relating to Environmental Laws.

SECTION 3.07. Compliance with Laws and Agreements; No Default. The Borrower and each Subsidiary is in compliance with (i) all Requirements of Law and (ii) all indentures, agreements and other instruments binding upon it or its property, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

SECTION 3.08. Investment Company Status. None of the Borrower or any other Loan Party is required to be registered as an "investment company" under the Investment Company Act.

SECTION 3.09. Taxes. The Borrower and each Subsidiary (a) has timely filed or caused to be filed all Tax returns and reports required to have been filed by it, except to the extent the failure to do so could not reasonably be expected to result in a Material Adverse Effect

and (b) has paid or caused to be paid all Taxes required to have been paid by it, except where (i)(x) the validity or amount thereof is being contested in good faith by appropriate proceedings and (y) the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto to the extent required by GAAP, or (ii) the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA and Labor Matters.

(a) No ERISA Events have occurred or are reasonably expected to occur that could, in the aggregate, reasonably be expected to result in a Material Adverse Effect; all amounts required by applicable law with respect to, or by the terms of, any retiree welfare benefit arrangement maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has an obligation to contribute have been accrued in accordance with ASC Topic 715-60; the present value of all accumulated benefit obligations under each Plan, did not, as of the close of its most recent plan year, exceed by more than an immaterial amount the fair market value of the assets of such Plan allocable to such accrued benefits, and the present value of all accumulated benefit obligations of all underfunded Plans did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than an immaterial amount the fair market value of the assets of all such underfunded Plans.

(b) Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (i) there are no strikes, lockouts, work stoppages or similar labor disputes against the Borrower or any Subsidiary pending or, to the actual knowledge of the Borrower or any Subsidiary, threatened, (ii) hours worked by and payment made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters; and (iii) all payments due from the Borrower or any Subsidiary on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the Borrower or relevant Subsidiary.

SECTION 3.11. Subsidiaries. Schedule 3.11 sets forth the name and jurisdiction of organization of, and the ownership interest of the Borrower and each Subsidiary in, each Subsidiary and each class of Equity Interest of each Loan Party and each direct Subsidiary thereof and identifies each Subsidiary that is a Loan Party or an Excluded Subsidiary, in each case as of the Restatement Effective Date. The Equity Interests in each Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable, and such Equity Interests are owned by the Borrower, directly or indirectly, free and clear of all Liens (other than Liens created under the Loan Documents and Liens permitted by Section 6.02). Except as set forth in Schedule 3.11, as of the Restatement Effective Date, there is no existing option, warrant, call, right, commitment or other agreement to which any Subsidiary is a party requiring, and there are no Equity Interests in any Subsidiary outstanding that upon exercise, conversion or exchange would require, the issuance by any Subsidiary of any additional Equity Interests or other securities exercisable for, convertible into, exchangeable for or evidencing the right to subscribe for or purchase any Equity Interests in any Subsidiary.

SECTION 3.12. Insurance. Schedule 3.12 sets forth a description of all material insurance maintained by or on behalf of the Borrower and the Subsidiaries as of the Restatement Effective Date.

SECTION 3.13. Solvency. Immediately after giving effect to the Transactions that will occur on the Restatement Effective Date:

(a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis;

(b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured;

(c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured; and

(d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

SECTION 3.14. Disclosure.

(a) None of the reports, financial statements, certificates, diligence materials or other written information furnished by or on behalf of the Borrower or any Subsidiary to any Arranger, the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document, included herein or therein or furnished hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; provided that, with respect to forecasts, projected financial information and information of a general economic or industry specific nature, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time so furnished and, if such projected financial information was furnished prior to the Restatement Effective Date, as of the Restatement Effective Date (it being understood and agreed that any such projected financial information may vary from actual results and that such variations may be material).

(b) As of the Restatement Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Restatement Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.15. Collateral Matters. Subject to the Collateral and Guarantee Requirement:

(a) The Collateral Agreement, upon execution and delivery thereof by the parties thereto, will create in favor of the Administrative Agent, for the benefit of the Secured Parties, a valid and enforceable security interest in the Collateral (as defined therein, or if

applicable, the analogous term in any non-U.S. Security Document) and (i) when the Collateral (as defined in the Collateral Agreement) constituting certificated securities (as defined in the Uniform Commercial Code) is delivered to the Administrative Agent, together with instruments of transfer duly endorsed in blank, the security interest created under the Collateral Agreement will constitute a fully perfected security interest in all right, title and interest of the pledgors thereunder in such Collateral, prior and superior in right to any other Person (other than Permitted Encumbrances that by operation of law or contract would have priority over the Obligations), and (ii) when financing statements in appropriate form are filed in the applicable filing offices, the security interest created under the Collateral Agreement will constitute a fully perfected security interest in all right, title and interest of the Loan Parties in the remaining Collateral (as defined therein) to the extent perfection can be obtained by filing Uniform Commercial Code financing statements, prior and superior to the rights of any other Person (other than Liens permitted under Section 6.02).

(b) Each Mortgage, upon execution and delivery thereof by the parties thereto, will create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in all the applicable mortgagor's right, title and interest in and to the Mortgaged Properties subject thereto and the proceeds thereof, and when the Mortgages have been filed in the jurisdictions specified therein, the Mortgages will constitute a fully perfected security interest in all right, title and interest of the mortgagors in the Mortgaged Properties and the proceeds thereof, prior and superior in right to any other Person, other than Liens permitted under Section 6.02.

(c) Upon the recordation of the Collateral Agreement (or an IP Security Agreement in form and substance reasonably satisfactory to the Borrower and the Administrative Agent) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and the filing of the financing statements referred to in paragraph (a) of this Section 3.15, the security interest created under the Collateral Agreement will constitute a fully perfected security interest in all right, title and interest of the Loan Parties in the Intellectual Property (as defined in the Collateral Agreement and, for the avoidance of doubt, other than any Excluded Assets) registered in the United States in which a security interest may be perfected by filing or recording in the United States of America, in each case prior and superior in right to any other Person, other than Liens permitted under Section 6.02 (it being understood and agreed that subsequent recordings in the United States Patent and Trademark Office or the United States Copyright Office may be necessary to perfect a security interest in such Intellectual Property acquired or developed by the applicable Loan Parties after the Restatement Effective Date).

(d) Each Security Document, upon execution and delivery thereof by the parties thereto and the making of the filings and taking of the other actions provided for therein, will be effective under applicable law to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a valid and enforceable security interest in the Collateral subject thereto, and will constitute a fully perfected security interest in all right, title and interest of the Loan Parties in the Collateral subject thereto (save for those security interests which, pursuant to the terms of this Agreement, can only be perfected upon an Event of Default which is continuing and notice of acceleration in connection therewith has been given), prior and superior to the rights of any other Person, except for rights secured by Liens permitted under Section 6.02.

SECTION 3.16. Federal Reserve Regulations. None of the Borrower or any other Subsidiary is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the Loans will be used, directly or indirectly, for any purpose that entails a violation (including on the part of any Lender) of any of the regulations of the Board of Governors, including Regulations U and X. Not more than 25% of the value of the assets subject to any restrictions on the sale, pledge or other disposition of assets under this Agreement, any other Loan Document or any other agreement to which any Lender or Affiliate of a Lender is party will at any time be represented by margin stock (within the meaning of Regulation U of the Board of Governors).

SECTION 3.17. Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its subsidiaries and their respective officers and employees and to the actual knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in the Borrower being designated as a Sanctioned Person. None of (a) the Borrower, any Subsidiary or any of their respective officers or employees, or (b) to the actual knowledge of the Borrower, any director or agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. The Transactions (including any Borrowing or Letter of Credit hereunder) will not violate Anti-Corruption Laws or applicable Sanctions.

SECTION 3.18. Use of Proceeds. The Borrower will use the proceeds of the Revolving Loans and Letters of Credit in compliance with Section 5.10.

SECTION 3.19. USA PATRIOT Act. The Borrower and its Subsidiaries are in compliance in all material respects with the USA PATRIOT Act.

SECTION 3.20. EEA Financial Institution. No Loan Party is an EEA Financial Institution.

ARTICLE IV

Conditions

SECTION 4.01. Restatement Effective Date. The obligations of the Lenders to make Loans hereunder shall not become effective until the date on which each of the following conditions precedent have been satisfied (or waived in accordance with Section 9.02):

- (a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement and the other Loan Documents signed on behalf of such party or (ii) written evidence reasonably satisfactory to the Administrative Agent (which may include teletype transmission or a .pdf email

attachment) that such party has signed a counterpart of this Agreement and the other Loan Documents.

(b) All fees and other amounts then due and payable by the Borrower to the Administrative Agent, the Arranger and the Lenders hereunder or pursuant to any fee or similar letters relating to this Agreement shall be paid, to the extent invoiced by the relevant person at least one Business Day prior to the Restatement Effective Date and to the extent such amounts are payable on or prior to the Restatement Effective Date.

(c) The Administrative Agent shall have received on or before the Restatement Effective Date, each dated on or about such date:

(i) Certified copies of the resolutions or similar authorizing documentation of the governing bodies of each Loan Party authorizing the Transactions to occur on the Restatement Effective Date and such Person to enter into and perform its obligations under the Loan Documents to which it is a party;

(ii) Copies of the Organizational Documents of each Loan Party;

(iii) A good standing certificate or similar certificate dated a date reasonably close to the Restatement Effective Date from the jurisdiction of formation of each Loan Party, but only where such concept is applicable;

(iv) A customary certificate of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign this Agreement and the other documents to be delivered by it hereunder;

(v) A favorable opinion letter of K&L Gates LLP, special counsel to the Borrower, in form and substance reasonably satisfactory to the Administrative Agent.

(d) The Administrative Agent shall have received a certificate, dated the Restatement Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraph (a) of Section 4.02.

(e) All consents and approvals (including, without limitation, consents and approvals required for regulatory compliance) required to be obtained from any Governmental Authority or other Person in connection with the Transactions shall have been obtained and be in full force and effect, except where failure to obtain such approval or consent would not have a Material Adverse Effect.

(f) The Administrative Agent and the Lenders shall have received from the Loan Parties such other certificates and other documents as the Administrative Agent or any Lender may reasonably have requested, including the promissory note complying with Section 2.07(f) of any Lender requesting such promissory note.

(g) The Collateral and Guarantee Requirements shall have been satisfied. The Administrative Agent shall have received the results of a search of the Uniform

Commercial Code (or equivalent) filings made with respect to the Loan Parties in the appropriate jurisdictions and copies of the financing statements (or similar documents) disclosed by such search.

(h) The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.03.

(i) The Administrative Agent shall have received a certificate in the form attached hereto as Exhibit J, dated the Restatement Effective Date and signed by a Financial Officer of the Borrower, as to the solvency of the Borrower and the Subsidiaries on a consolidated basis after giving effect to the Transactions to occur on the Restatement Effective Date.

(j) The revolving commitments under the Existing Credit Agreement shall have been replaced with the Commitments hereunder, and the "Loans" under the Existing Credit Agreement shall have been prepaid (together with interest and fees thereon), it being understood that the Lenders constituting "Required Lenders" under the Existing Credit Agreement waive any prepayment prior notice required to be delivered pursuant to the terms thereof and any notice requirement in respect of any reduction of the aggregate commitments thereunder required to be delivered pursuant to the terms thereof.

(k) Either (i) the Lenders executing and delivering this Agreement shall constitute "Required Lenders" under and as defined in the Existing Credit Agreement or (ii) the "Required Lenders" under and as defined in the Existing Credit Agreement shall have separately consented to amend and restate the Existing Credit Agreement in its entirety to read as set forth in this Agreement.

The Administrative Agent shall notify the Borrower and the Lenders of the Restatement Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Revolving Loan (other than a Revolving Loan made by an Issuing Bank or a Lender pursuant to Section 2.19(c)) on the occasion of each Borrowing, the obligation of each Issuing Bank to issue a Letter of Credit or renew a Letter of Credit, each Incremental Facility (other than as set forth in Section 2.20) shall be subject to the conditions precedent that the Restatement Effective Date shall have occurred and on the date of such Borrowing, issuance, renewal, Incremental Facility or extension of Commitments:

(a) the following statements shall be true (and each of the giving of the applicable Notice of Borrowing, Notice of Issuance, Notice of Renewal, request for Incremental Facility or request for extension of Commitments and the acceptance by the Borrower of the proceeds thereof shall constitute a representation and warranty by the Borrower that both on the date of such notice and on the date of such Borrowing, issuance, renewal, Incremental Facility and extension, as the case may be, such statements are true):

(i) the representations and warranties contained in the Loan Documents are true and correct in all material respects (except for representations and warranties qualified as to materiality and Material Adverse Effect, which shall be true and

correct in all respects) on and as of such date, before and after giving effect to such Borrowing, issuance, renewal, Incremental Facility or extension of Commitments, as the case may be, and to the application of the proceeds therefrom, as though made on and as of such date (except to the extent any such representation or warranty specifically relates to an earlier date in which case such representation and warranty shall be accurate in all material respects as of such earlier date), and

(ii) no event has occurred and is continuing, or would result from such Borrowing, issuance, renewal, Incremental Facility or extension of Commitments, as the case may be, or from the application of the proceeds therefrom, that constitutes a Default or an Event of Default; and

(b) in connection with any increase of Revolving Credit Commitments or any extension of the Maturity Date, the Administrative Agent shall have received such other approvals, opinions or documents as any Lender consenting to or providing commitments for such increase or extension may reasonably request through the Administrative Agent.

Each Borrowing by and issuance of a Letter of Credit on behalf of the Borrower shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraph (a) of this Section 4.02.

ARTICLE V

Affirmative Covenants

Until all the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees and other amounts payable hereunder have been paid in full and no Letter of Credit remains outstanding (unless such Letters of Credit have been cash collateralized pursuant to the terms hereof) (other than unmatured, surviving contingent obligations not yet due and payable), the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements; and Other Information. The Borrower will furnish to the Administrative Agent, on behalf of each Lender (or in the case of clause (g) below, conduct):

(a) within 90 days (or such earlier date as the Borrower may be required to file its applicable annual report on Form 10-K by the rules and regulations of the SEC) after the end of each Fiscal Year of the Borrower, its audited consolidated balance sheet and statements of income, comprehensive income, shareholders' equity and cash flows as of the end of and for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by KPMG LLP or another independent registered public accounting firm of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such financial statements present fairly in all material respects the financial condition, results of operations and cash flow of the Borrower and the Subsidiaries on a consolidated basis as of the end of and for such Fiscal Year in accordance with GAAP and accompanied by a narrative report containing

management's discussion and analysis of the financial position and financial performance for such Fiscal Year in reasonable form and detail;

(b) within 45 days (or such earlier date as the Borrower may be required to file its applicable quarterly report on Form 10-Q by the rules and regulations of the SEC) after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower, its unaudited consolidated balance sheet and unaudited statements of income and cash flows as of the end of and for such Fiscal Quarter and the then elapsed portion of the Fiscal Year setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Financial Officer of the Borrower as presenting fairly in all material respects the financial condition, results of operations and cash flows of the Borrower and the Subsidiaries on a consolidated basis as of the end of and for such Fiscal Quarter and such portion of the Fiscal Year in accordance with GAAP, subject to normal year-end audit adjustments and the absence of certain footnotes, and accompanied by a narrative report containing management's discussion and analysis of the financial position and financial performance for such Fiscal Quarter in reasonable form and detail;

(c) [reserved];

(d) not later than the fifth Business Day following the date of delivery of financial statements under clause (a) or (b) above, a completed Compliance Certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) if any change in GAAP or in the application thereof has occurred since the date of the consolidated balance sheet of the Borrower most recently theretofore delivered under clause (a) or (b) above (or, prior to the first such delivery, referred to in Section 3.04) that has had, or would reasonably be expected to have, a material effect on the calculations of the Leverage Ratio, specifying the nature of such change and the effect thereof on such calculations, (iii) identifying as of the date of such Compliance Certificate each Subsidiary that (A) is an Excluded Subsidiary as of such date but has not been identified as an Excluded Subsidiary in Schedule 3.11 or in any prior Compliance Certificate or (B) has previously been identified as an Excluded Subsidiary but has ceased to be an Excluded Subsidiary and (iv) setting forth reasonably detailed calculations, beginning with the financial statements delivered for the first full Fiscal Quarter after the Restatement Effective Date, of (A) the Leverage Ratio for such Fiscal Quarter and (B) the Interest Coverage Ratio for such Fiscal Quarter;

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and financial statements filed by the Borrower or any Subsidiary with the SEC or with any national securities exchange;

(f) promptly following any request therefor, such other information regarding the operations, business affairs, assets, liabilities (including contingent liabilities) and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender (acting through the Administrative Agent) may reasonably request;

(g) a quarterly conference call (each such call to be at a time and date to be agreed by the Borrower and the Administrative Agent), among senior management of the Borrower and the Lenders, it being understood that this clause (g) shall be deemed satisfied by the occurrence of the Borrower's quarterly public conference call with its equity holders to the extent the dial-in details of such call are made publicly available by the Borrower or its subsidiaries prior to the occurrence of such call;

(h) not later than 10 days after the date the Borrower is required to file its applicable annual report on Form 10-K by the rules and regulations of the SEC, the Borrower will furnish to the Administrative Agent, on behalf of each Lender a budget report and annual projections for the Borrower; and

(i) promptly following receipt thereof, copies of (i) any documents described in Sections 101(k) or 101(l) of ERISA that the Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan or any documents described in Section 101(f) of ERISA that the Borrower or any ERISA Affiliate may request with respect to any Plan; provided, that if the Borrower or any ERISA Affiliates have not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plans, then, upon reasonable request of the Administrative Agent, the Borrower or the ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Administrative Agent promptly after receipt thereof.

Notwithstanding anything to the contrary in this Section 5.01, (a) none of the Borrower or any of its Subsidiaries will be required to disclose any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representative or contractors) is prohibited or restricted by Requirements of Law or any binding agreement with a third party not entered into in contemplation hereof, (iii) is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) constitutes classified information and (b) all such material that is so disclosed will be subject to Sections 9.12 and 9.17.

Information required to be furnished pursuant to clause (a), (b) or (e) of this Section 5.01 shall be deemed to have been furnished if such information, or one or more annual or quarterly reports containing such information, shall have been posted by the Administrative Agent on a Platform to which the Lenders have been granted access or shall be available on the website of the SEC at <http://www.sec.gov>. Information required to be furnished pursuant to this Section 5.01 may also be furnished by electronic communications pursuant to procedures approved by the Administrative Agent.

SECTION 5.02. Notices of Material Events.

Within five Business Days after obtaining actual knowledge thereof, the Borrower will furnish to the Administrative Agent notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority (including with respect to any Environmental Liability) against the Borrower or any Subsidiary or any adverse development in any such pending action, suit or proceeding not previously disclosed in writing by the Borrower to the Administrative Agent, that in each case could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event or any fact or circumstance that gives rise to a reasonable expectation that any ERISA Event will occur that, in either case, alone or together with any other ERISA Events that have occurred or are reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect, and provide (i) a written notice specifying the nature thereof, what action the Borrower or any of its ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, upon the Administrative Agent's request, copies of (1) each Schedule SB (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any of its ERISA Affiliates with the IRS with respect to each Plan; (2) all notices received by the Borrower or any of its ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and three (3) copies of such other documents or governmental reports or filings relating to any Plan as Administrative Agent shall reasonably request;

(d) any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary (it being understood and agreed that such notice shall be deemed provided to the extent described in any financial statement delivered to the Administrative Agent pursuant to the terms of this Agreement);

(e) any Governmental Authority denial, revocation, modification or non-renewal of any Environmental Permit held or sought by the Borrower or any Subsidiary that could reasonably be expected to result in a Material Adverse Effect; and

(f) any other development that has resulted, or could reasonably be expected to result, in a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Information Regarding Collateral. The Borrower will furnish to the Administrative Agent prompt written notice of any change (i) in any Loan Party's legal name, as set forth in such Loan Party's organizational documents, (ii) in the jurisdiction of incorporation or organization of any Loan Party, (iii) in the form of organization of any Loan Party or (iv) in any Loan Party's organizational identification number, if any, or, with respect to a Loan Party organized under the laws of a jurisdiction that requires such information to be set forth on the face of a Uniform Commercial Code financing statement, the Federal Taxpayer Identification Number of such Loan Party. The Borrower agrees to deliver all executed or authenticated financing

statements and other filings under the Uniform Commercial Code (or analogous law in a non-U.S. jurisdiction) or otherwise that are required in order for the Administrative Agent to continue to have a valid, legal and perfected security interest in all the Collateral following any such change.

SECTION 5.04. Existence; Conduct of Business. The Borrower and each Subsidiary will do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, and Intellectual Property material to the conduct of its business; provided that the foregoing shall not prohibit any transaction permitted under Section 6.03 or 6.05, including any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.05. Reserved.

SECTION 5.06. Maintenance of Properties. The Borrower and each Subsidiary will keep and maintain (subject to any dispositions permitted pursuant to the Loan Documents) all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.07. Insurance. The Borrower and each Subsidiary will maintain, with financially sound and reputable insurance companies, as determined by the Borrower in good faith, insurance in such amounts (with no greater risk retention) and against such risks as are customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations. Each such policy of liability or property insurance maintained by or on behalf of Loan Parties shall (a) in the case of each liability insurance policy (other than workers' compensation, director and officer liability or other policies in which such endorsements are not customary), name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder, and (b) in the case of each property insurance policy, contain a customary lender's loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties, as the lender's loss payee thereunder. With respect to each Mortgaged Property that is located in an area determined by the Federal Emergency Management Agency to have special flood hazards, the applicable Loan Party has obtained, and will maintain, with financially sound and reputable insurance companies, such flood insurance as is required under applicable law, including Regulation H of the Board of Governors. Notwithstanding the foregoing, if the Administrative Agent receives any payment under any insurance policy of the Borrower or of any Subsidiary, or otherwise receives any amount in respect of any casualty or condemnation event with respect to any property of the Borrower or any Subsidiary, in each case at a time when no Event of Default has occurred and is continuing, the Administrative Agent shall promptly remit such amount to an account specified by the Borrower.

SECTION 5.08. Books and Records; Inspection and Audit Rights. The Borrower will, and will cause each Subsidiary to, keep proper books of record and account in which full, true and correct entries in all material respects in conformity with GAAP and all Requirements of Law are made of all dealings and transactions in relation to its business and activities. During the occurrence and continuation of an Event of Default, the Borrower will, and will cause each Subsidiary to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and, subject to Sections 9.12 and 9.17, to discuss its affairs, finances and

condition with its officers and independent accountants, all at such reasonable times during regular business hours and as often as reasonably requested.

SECTION 5.09. Compliance with Laws.

(a) The Borrower and each Subsidiary will comply with all Requirements of Law with respect to it or its assets, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.10. Use of Proceeds. All or a portion of the proceeds of the Loans made on the Restatement Effective Date shall be used to refinance and replace the commitments and amounts outstanding under the Existing Credit Agreement and for other working capital and general corporate purposes. The proceeds of the Loans made after the Restatement Effective Date shall be used for working capital and general corporate purposes (including, without limitation, Permitted Acquisitions, Investments and other transactions not prohibited by the terms of the Loan Documents. The Borrower will not request any Borrowing, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.11. Additional Subsidiaries. If any additional Subsidiary is formed or acquired (or any existing Subsidiary ceases to be an Excluded Subsidiary or becomes a Designated Subsidiary) after the Restatement Effective Date, then the Borrower will, as promptly as practicable and, in any event, within 30 days (or such longer period as the Administrative Agent may, in its sole discretion, agree to in writing) after such Subsidiary is formed or acquired (or ceases to be an Excluded Subsidiary or becomes a Designated Subsidiary), notify the Administrative Agent thereof and cause the Collateral and Guarantee Requirement, to the extent applicable, to be satisfied with respect to such Subsidiary (if it is a Designated Subsidiary) and with respect to any Equity Interest in or Indebtedness of such Subsidiary owned by any Loan Party.

SECTION 5.12. Further Assurances. The Borrower and each other Loan Party will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law, or that the Administrative Agent may reasonably request, to cause the Collateral and Guarantee Requirement to be satisfied, all at the reasonable expense of the Loan Parties. The Borrower also agrees to provide to the Administrative Agent (i) from time to time upon written request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents and (ii) promptly

after reasonable written request therefor, all documentation and other information reasonably requested by the Administrative Agent or any Lender that is reasonably required to satisfy applicable “know your borrower” and anti-money laundering rules and regulations, including the USA PATRIOT Act, and any necessary updates to the Beneficial Ownership Certification.

SECTION 5.13. After-Acquired Real Property. Each Loan Party shall grant to the Administrative Agent, within 90 days of the acquisition thereof (or such later date as the Administrative Agent may agree), a Mortgage on each parcel of real property owned in fee by such Loan Party as is acquired by such Loan Party after the Restatement Effective Date and that, together with any improvements thereon, individually has an assessed value for real estate taxation purposes of at least \$10,000,000, and shall cause clause (e) of the Collateral and Guarantee Requirement to be satisfied with respect to such real property and such Mortgage.

SECTION 5.14. Environmental Compliance.

(a) The Borrower and each Subsidiary will (i) comply with all Environmental Laws, and obtain, comply with and maintain any and all Environmental Permits necessary for its operations as conducted and as planned; and (ii) take all reasonable efforts to ensure that all of its tenants, subtenants, contractors, subcontractors, and invitees comply with all Environmental Laws, and obtain, comply with and maintain any and all Environmental Permits, applicable to them insofar as any failure to so comply, obtain or maintain reasonably would be expected to result in a Material Adverse Effect on the Borrower; provided that, for purposes of this Section 5.14(a), noncompliance with any of the foregoing shall be deemed not to constitute a breach of this covenant so long as, with respect to any such noncompliance, the Borrower or its relevant Subsidiary is undertaking all reasonable efforts to achieve compliance (or to ensure that the relevant tenant, subtenant, contractor, subcontractor or invitee is achieving compliance) or the Borrower or any Subsidiary (or the relevant party listed above) is disputing such non-compliance in good faith in the applicable manner or forum, and provided further that, in any case, the reasonably anticipated resolution of any such efforts or dispute, individually or in the aggregate, would not reasonably be expected to give rise to a Material Adverse Effect.

(b) The Borrower and each Subsidiary will promptly comply with all orders and directives of all Governmental Authorities regarding Environmental Laws, other than any non-compliance that would not reasonably be expected to result in a Material Adverse Effect and other than such orders and directives as to which an appeal has been timely and properly taken in good faith and provided that, the reasonably anticipated resolution of such appeal would not reasonably be expected to give rise to a Material Adverse Effect.

ARTICLE VI

Negative Covenants

Until the Commitments shall have expired or been terminated, the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and no Letter of Credit remains outstanding (unless such Letter of Credit have been cash collateralized pursuant to the terms hereof), the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Indebtedness; Certain Equity Securities. None of the Borrower or any Subsidiary will create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness created under the Loan Documents;
- (b) Indebtedness existing on the Restatement Effective Date and set forth on Schedule 6.01 and Refinancing Indebtedness in respect of any of the foregoing;
- (c) Indebtedness of any Subsidiary to the Borrower or any Subsidiary; provided that (A) any such Indebtedness owing by any Loan Party shall be unsecured and, any such Indebtedness in excess of \$10,000,000 in the aggregate, shall be subordinated in right of payment to the Loan Document Obligations on terms customary for intercompany subordinated Indebtedness or otherwise reasonably satisfactory to the Administrative Agent, (B) any such Indebtedness owing to any Loan Party shall be evidenced by a promissory note which shall have been pledged pursuant to the Collateral Agreement to the extent required by the Collateral and Guarantee Requirement and (C) any such Indebtedness owing by any Subsidiary that is not a Loan Party to any Loan Party shall be incurred in compliance with Section 6.04(d);
- (d) Guarantees incurred in compliance with Section 6.04;
- (e) (i) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations, purchase money Indebtedness and any Indebtedness assumed by the Borrower or any Subsidiary in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof; provided that the aggregate principal amount of Indebtedness permitted by this clause (i) shall not exceed \$10,000,000 at any time outstanding, and (ii) Refinancing Indebtedness in respect of Indebtedness incurred or assumed pursuant to clause (i) above;
- (f) (i) Indebtedness of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) after the Restatement Effective Date, or Indebtedness of any Person that is assumed by any Subsidiary in connection with an acquisition of assets by such Subsidiary in a Permitted Acquisition; provided that such Indebtedness exists at the time such Person becomes a Subsidiary (or is so merged or consolidated) or such assets are acquired and is not created in contemplation of or in connection with such Person becoming a Subsidiary (or such merger or consolidation) or such assets being acquired, and (ii) Refinancing Indebtedness in respect of Indebtedness assumed pursuant to clause (i) above; provided further that the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed \$10,000,000 at any time outstanding;
- (g) Indebtedness of any Borrower or Subsidiary not otherwise permitted under this Agreement so long as, at the time of incurrence of such Indebtedness, the Leverage Ratio, calculated on a Pro Forma Basis as of the date of incurrence thereof, is not in excess of 3.00 to 1.00; provided that (i) immediately prior to and immediately after giving effect to the incurrence of any such Indebtedness under this clause (g), no Event of Default shall

have occurred and be continuing and (ii) no Indebtedness of any Subsidiary that is not a Loan Party shall be permitted pursuant to this Section 6.01(g) if, at the time of the incurrence of, and after giving effect to such Indebtedness (and any substantially simultaneous use of the Permitted Amount), the Permitted Amount would be less than zero;

(h) Indebtedness incurred and owed in respect of any overdrafts or similar protections and related liabilities arising from treasury, depository and cash management services and related obligations or in connection with any automated clearing-house transfers of funds;

(i) Indebtedness in respect of letters of credit, bank guarantees and similar instruments issued for the account of the Borrower or any Subsidiary in the ordinary course of business supporting obligations under (i) workers' compensation, health, disability or other employee benefits, casualty or liability insurance, unemployment insurance and other social security laws and local state and federal payroll taxes, (ii) obligations in connection with self-insurance arrangements in the ordinary course of business and (iii) bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance and reclamation bonds and obligations of a like nature, including, without limitation, performance guarantees;

(j) Indebtedness consisting of client advances or deposits received in the ordinary course of business;

(k) Indebtedness of the Borrower or any Subsidiary in the form of purchase price adjustments (including in respect of working capital), earnouts, seller notes, deferred compensation, deferred purchase price, indemnification or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with any Permitted Acquisition (or any other acquisition permitted hereunder) or other Investments permitted under Section 6.04 or Dispositions permitted under Section 6.05;

(l) Indebtedness of Subsidiaries that are not Loan Parties; provided that no Subsidiary that is not a Loan Party shall incur any Indebtedness under this Section 6.01(l) if, at the time of, and after giving effect to, the incurrence of such Indebtedness (and any substantially simultaneous use of the Permitted Amount) and the use of proceeds thereof, the Permitted Amount would be less than zero;

(m) Indebtedness relating to premium financing arrangements for property and casualty insurance plans and health and welfare benefit plans (including health and workers compensation insurance, employment practices liability insurance and directors and officers insurance), if incurred in the ordinary course of business;

(n) Indebtedness owing under any Hedging Agreements and owing under any Cash Management Agreements;

(o) Indebtedness under performance bonds, surety bonds, release, appeal and similar bonds, statutory obligations or with respect to workers' compensation claims, in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing; and

(p) other Indebtedness of Loan Parties not otherwise described above in an aggregate amount at any time outstanding not in excess of \$10,000,000.

Notwithstanding anything contrary set forth above, if any Indebtedness is denominated in a foreign currency, no fluctuation in currency values shall result in a breach of this Section 6.01.

SECTION 6.02. Liens. None of the Borrower or any Subsidiary will create, incur, assume or permit to exist any Lien on any asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

- (a) Liens created under the Loan Documents;
- (b) Permitted Encumbrances;

(c) any Lien on any asset of the Borrower or any Subsidiary existing on the Restatement Effective Date and set forth on Schedule 6.02; provided that (i) such Lien shall not apply to any other asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations that it secures on the Restatement Effective Date and extensions, renewals, replacements and refinancings thereof so long as the principal amount of such extensions, renewals, replacements and refinancings does not exceed the principal amount of the obligations being extended, renewed, replaced or refinanced or, in the case of any such obligations constituting Indebtedness, that are permitted under Section 6.01(b) as Refinancing Indebtedness in respect thereof;

(d) any Lien existing on any asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any asset of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) after the Restatement Effective Date prior to the time such Person becomes a Subsidiary (or is so merged or consolidated, including pursuant to a Permitted Acquisition); provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary (or such merger or consolidation), (ii) such Lien shall not apply to any other asset of the Borrower or any Subsidiary (other than, in the case of any such merger or consolidation, the assets of any Subsidiary without significant assets that was formed solely for the purpose of effecting such acquisition) and (iii) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary (or is so merged or consolidated) and extensions, renewals, replacements and refinancings thereof so long as the principal amount of such extensions, renewals and replacements does not exceed the principal amount of the obligations being extended, renewed or replaced or, in the case of any such obligations constituting Indebtedness, that are permitted under Section 6.01(f) as Refinancing Indebtedness in respect thereof;

(e) Liens on fixed or capital assets acquired, constructed or improved (including any such assets made the subject of a Capital Lease Obligation incurred) by the

Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness incurred to finance such acquisition, construction or improvement and permitted by clause (e)(i) of Section 6.01 or any Refinancing Indebtedness in respect thereof permitted by clause (e)(ii) of Section 6.01, and (ii) such Liens shall not apply to any other property or assets of the Borrower or any Subsidiary, other than the proceeds of such fixed or capital assets;

(f) in connection with the sale or transfer of any Equity Interests or other assets in a transaction permitted under Section 6.05, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;

(g) in the case of (i) any Subsidiary that is not a wholly-owned Subsidiary or (ii) the Equity Interests in any Person that is not a Subsidiary, any encumbrance or restriction, including any put and call arrangements, related to Equity Interests in such Subsidiary or such other Person set forth in the Organizational Documents of such Subsidiary or such other Person or any related joint venture, shareholders' or similar agreement;

(h) Liens solely on any cash earnest money deposits, escrow arrangements or similar arrangements made by the Borrower or any Subsidiary in connection with any letter of intent or purchase agreement for a Permitted Acquisition or other transaction permitted hereunder;

(i) Liens consisting of cash collateral to secure Hedging Agreements permitted by Section 6.07;

(j) Liens granted by a Subsidiary that is not a Loan Party in respect of Indebtedness permitted to be incurred by such Subsidiary under Section 6.01(c);

(k) Liens securing judgments for the payment of money not constituting an Event of Default under Article VII; and

(l) other Liens securing Indebtedness or other obligations in an aggregate principal amount not to exceed \$20,000,000 at any time outstanding.

SECTION 6.03. Fundamental Changes.

(a) None of the Borrower or any Subsidiary will merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, (i) any Person (other than the Borrower) may merge into or consolidate with the Borrower in a transaction in which the Borrower is the surviving entity, (ii) any Person (other than the Borrower) may merge or consolidate with any Subsidiary in a transaction in which the surviving entity is a Subsidiary (and, if any party to such merger or consolidation is a Loan Party, is a Loan Party), (iii) any Subsidiary (other than the Borrower) may merge into or consolidate with any Person (other than the Borrower) in a transaction permitted under Section 6.05 in which, after giving effect to such transaction, the surviving entity is not a Subsidiary, (iv) any Subsidiary (other than the Borrower) may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; provided that if such Subsidiary is a Loan Party the continuing or surviving Person shall be a Loan Party and (v) any Subsidiary (other than the

Borrower) may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided that any such merger or consolidation involving a Person that is not a wholly-owned Subsidiary immediately prior thereto shall not be permitted unless it is also permitted under Section 6.04 or 6.05.

(b) None of the Borrower or any Subsidiary will engage to any material extent in any business other than businesses of the type conducted by the Borrower and the Subsidiaries on the Restatement Effective Date and businesses reasonably related thereto.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. None of the Borrower or any Subsidiary will purchase, hold, acquire (including pursuant to any merger or consolidation with any Person that was not a wholly-owned Subsidiary prior thereto), make or otherwise permit to exist any Investment in any other Person, except:

(a) [reserved];

(b) Permitted Investments;

(c) (i) Investments existing or contemplated by investment agreements existing on the Restatement Effective Date in Subsidiaries and (ii) other Investments existing or contemplated by investment agreements existing on the Restatement Effective Date and set forth on Schedule 6.04;

(d) (i) additional Investments by the Borrower in any Loan Party and by any Loan Party in the Borrower or in another Loan Party, and (ii) Investments (including by way of capital contributions or extensions of credit) by the Borrower and the Subsidiaries in Equity Interests in their Subsidiaries; provided, in the case of clause (ii), that (x) any such Equity Interests held by a Loan Party shall be pledged in accordance with the requirements of the Collateral and Guarantee Requirement and (y) no Investment by any Loan Party in any Subsidiary that is not a Loan Party shall be permitted pursuant to this Section 6.04(d) if, at the time of the making of, and after giving effect to, such Investment (and any substantially simultaneous use of the Permitted Amount), the Permitted Amount would be less than zero;

(e) loans or advances made by the Borrower or any Subsidiary to any Subsidiary; provided that no loan or advance made by any Loan Party to a Subsidiary that is not a Loan Party shall be permitted pursuant to this Section 6.04(e) if, at the time of, and after giving effect to, the making of such loan or advance (and any substantially simultaneous use of the Permitted Amount) and the use of proceeds thereof, the Permitted Amount would be less than zero;

(f) Guarantees by the Borrower or any Subsidiary of Indebtedness or other obligations of the Borrower or any Subsidiary (including any such Guarantees arising as a result of any such Person being a joint and several co-applicant with respect to any letter of credit or letter of guaranty); provided that (i) (A) a Subsidiary that has not Guaranteed the Obligations pursuant to the Guarantee Agreement shall not Guarantee any Indebtedness of any Loan Party and (B) any such Guarantee of Indebtedness that is required to be

subordinated to the Loan Document Obligations shall be subordinated to the Loan Document Obligations on terms no less favorable to the Lenders than those of such Subordinated Indebtedness, (ii) any such Guarantee constituting Indebtedness is permitted by Section 6.01 (other than clause (d) thereof) and (iii) no Guarantee by any Loan Party of Indebtedness (excluding, for the avoidance of doubt, Guarantees of obligations not constituting Indebtedness) of any Subsidiary that is not a Loan Party shall be permitted pursuant to this Section 6.04(f) if, at the time of the making of, and after giving effect to, such Guarantee (and any substantially simultaneous use of the Permitted Amount), the Permitted Amount would be zero;

(g) (i) loans or advances to employees of the Borrower or any Subsidiary made in the ordinary course of business, including those to finance the purchase of Equity Interests of the Borrower pursuant to employee plans and (ii) payroll, travel, entertainment, relocation and similar advances to directors and employees of the Borrower or any Subsidiary to cover matters that are expected at the time of such advances to be treated as expenses of the Borrower or such Subsidiary for accounting purposes and that are made in the ordinary course of business; provided that the aggregate principal amount of such loans and advances under this clause (g) outstanding at any time shall not exceed \$10,000,000;

(h) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, or consisting of securities acquired in connection with the satisfaction or enforcement of claims due or owing to the Borrower or any Subsidiary;

(i) Permitted Acquisitions;

(j) Investments held by a Subsidiary acquired after the Restatement Effective Date or of a Person merged or consolidated with or into the Borrower or a Subsidiary after the Restatement Effective Date, in each case as permitted hereunder, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(k) Investments made as a result of the receipt of noncash consideration from a sale, transfer, lease or other disposition of any asset in compliance with Section 6.05;

(l) Investments by the Borrower or any Subsidiary that result solely from the receipt by the Borrower or such Subsidiary from any of its subsidiaries of a dividend or other Restricted Payment in the form of Equity Interests, evidences of Indebtedness or other securities (but not any additions thereto made after the date of the receipt thereof) and any other Restricted Payments permitted by Section 6.08;

(m) Investments in the form of Hedging Agreements permitted under Section 6.07;

(n) Investments by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party;

(o) Investments consisting of (i) extensions of trade credit, (ii) deposits made in connection with the purchase of goods or services or the performance of leases, licenses or contracts, in each case, in the ordinary course of business or in connection with Permitted Acquisitions, (iii) notes receivable of, or prepaid royalties and other extensions of credit to, customers and suppliers that are not Affiliates of the Borrower and that are made in the ordinary course of business and (iv) Guarantees made in the ordinary course of business in support of obligations of the Borrower or any of its Subsidiaries not constituting Indebtedness for borrowed money, including operating leases and obligations owing to suppliers, customers and licensees;

(p) mergers and consolidations permitted under Section 6.03 that do not involve any Person other than the Borrower and Subsidiaries that are wholly-owned Subsidiaries;

(q) intercompany loans or other intercompany Investments made by Loan Parties in the ordinary course of business to or in any Subsidiary that is not a Loan Party;

(r) intercompany Investments, reorganizations and other activities relating to tax planning and reorganization, so long as, after giving effect thereto the Liens of the Secured Parties in the Collateral, taken as a whole, are not materially impaired; provided that no Investment may be made by any Loan Party in a Subsidiary that is not a Loan Party if, at the time of the making of, and after giving effect to, such Investment (and any substantially simultaneous use of the Permitted Amount), the Permitted Amount would be zero;

(s) Investments consisting of Guarantees in the ordinary course of business to support the obligations of any Subsidiary under its worker's compensation and general insurance agreements;

(t) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may on any date make Restricted Payments as set forth in Section 6.08(a)(vii);

(u) Investments constituting endorsements for collection or deposit in the ordinary course of business;

(v) Investments by any Subsidiary consisting of loans to the Borrower to the extent (and for the avoidance of doubt without duplication and not in addition to) the amount of such loan could also be made as a distribution under Section 6.08;

(w) other Investments, including Investments in connection with the acquisition of Subsidiaries that are not Loan Parties or other Persons that will not be Loan Parties, in an aggregate amount not in excess of \$20,000,000; provided, however, that at the time any such Investment is made pursuant to this clause (w), no Default shall have occurred and be continuing or would result therefrom; and

(x) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may on any date make Investments not otherwise permitted under this Agreement so long as, at the time of the making of such Investment,

the Leverage Ratio, calculated on a Pro Forma Basis as of the date of making thereof, is not in excess of 3.00 to 1.00.

Notwithstanding anything contrary set forth above, (i) if any Investment is denominated in a foreign currency, no fluctuation in currency values shall result in a breach of this Section 6.04 and the amount of such Investment shall be determined as of the date such Investment is made and (ii) if any Investment is made in reliance on any "basket" determined by reference to Total Assets, no fluctuation in the aggregate amount of Total Assets shall result in a breach of this Section 6.04. In addition, in the event that a Loan Party makes an Investment in an Excluded Subsidiary for purposes of permitting such Excluded Subsidiary or any other Excluded Subsidiary to apply the amounts received by it to make a substantially concurrent Investment (which may be made through any other Excluded Subsidiary) permitted hereunder, such substantially concurrent Investment by such Excluded Subsidiary shall not be included as an Investment for purposes of this Section 6.04 to the extent that the initial Investment by the Loan Party reduced amounts available to make Investments hereunder.

SECTION 6.05. Asset Sales. None of the Borrower or any Subsidiary will sell, transfer, lease, license or sublicense or otherwise dispose of any asset, including any Equity Interest owned by it (but other than, for the avoidance of doubt, treasury shares of the Borrower held by the Borrower), nor will any Subsidiary issue any additional Equity Interest in such Subsidiary (other than issuing directors' qualifying shares and other than issuing Equity Interests to the Borrower or another Subsidiary in compliance with Section 6.04(d)) (each, a "Disposition"), except:

(a) Dispositions of (i) inventory, (ii) used, obsolete, damaged, worn out or surplus equipment or other property (including, for the avoidance of doubt, such Dispositions consisting of the abandonment of such equipment or other property), (iii) cash and Permitted Investments, and (iv) leasehold improvements for property that is no longer leased by the Borrower or any Subsidiary thereof, in each case in the ordinary course of business;

(b) Dispositions to the Borrower or a Subsidiary; provided that any such Disposition involving a Subsidiary that is not a Loan Party (i) shall be made in compliance with Sections 6.04 and 6.09 and (ii) shall not, in the case of any Disposition by any Loan Party to Subsidiaries that are not Loan Parties that are not made as Investments permitted by Section 6.04, involve assets having an aggregate fair market value for all such assets so Disposed in excess of \$10,000,000 in the aggregate;

(c) Dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business consistent with past practice and not as part of any accounts receivables financing transaction;

(d) Sale/Leaseback Transactions permitted by Section 6.06;

(e) Licenses, leases or subleases entered into in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Subsidiary;

(f) Licenses or sublicenses of Intellectual Property in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Subsidiary;

(g) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any asset of any of the Borrower or any Subsidiary;

(h) Dispositions of assets (including as a result of like-kind exchanges) to the extent that (i) such assets are exchanged for credit (on a fair market value basis) against the purchase price of similar or replacement assets or (ii) such asset is Disposed of for fair market value and the proceeds of such Disposition are applied to the purchase price of similar or replacement assets within 12 months of such Disposition;

(i) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements;

(j) the abandonment, cancellation, non-renewal or discontinuance of use or maintenance of non-material Intellectual Property or failure to maintain in any material respect the integrity and security of the Software used in the business of the Borrower or any Subsidiary, except to the extent any such abandonment, cancellation, non-renewal, discontinuance or failure, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

(k) any other Disposition of assets (including Equity Interests) of any Subsidiaries of the Borrower; provided that (i) any such Disposition shall be for fair market value, (ii) at least 75% of the total consideration for any such Disposition received by the Borrower and its Subsidiaries is in the form of cash or Permitted Investments, (iii) the Net Cash Proceeds of any Disposition pursuant to this Section 6.05(k) shall be applied to prepay the Term Loans in accordance with, and to the extent required by, Section 2.08(f); and (iv) no Default or Event of Default then exists or would result from such Disposition (except if such Disposition is made pursuant to an agreement entered into at a time when no Default or Event of Default exists); provided, however, that for purposes of clause (ii) above, the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's or such Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Subsidiary (other than liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and its Subsidiaries shall have been validly released by all applicable creditors in writing and (B) any securities received by the Borrower or such Subsidiary from such transferee that are converted by the Borrower or such Subsidiary into cash or Permitted Investments (to the extent of the cash or Permitted Investments received in the conversion) within 180 days following the closing of the applicable Disposition; provided that all assets Disposed pursuant to this clause (k) shall not have an aggregate fair market value in excess of 5% of Consolidated Total Assets per annum;

(l) Dispositions of receivables in the ordinary course of business and consistent with past practice of the Borrower and the Subsidiaries;

(m) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(n) Dispositions of Equity Interests of the Borrower or any Subsidiary not otherwise prohibited by the terms of this Agreement; and

(o) Dispositions permitted pursuant to Section 6.03.

Notwithstanding the foregoing, other than Dispositions to the Borrower or any Subsidiary in compliance with Section 6.04, and other than directors' qualifying shares and other nominal amounts of Equity Interests that are required to be held by other Persons under applicable Requirements of Law, no such Disposition of any Equity Interests in any Subsidiary shall be permitted unless immediately after giving effect to such transaction, the Borrower and the Subsidiaries shall otherwise be in compliance with Section 6.04.

SECTION 6.06. Sale/Leaseback Transactions. None of the Borrower or any Subsidiary will enter into any Sale/Leaseback Transaction unless (a) the sale or transfer of the property thereunder is permitted under Section 6.05 (other than Section 6.05(d)), (b) any Capital Lease Obligations arising in connection therewith are permitted under Section 6.01 and (c) any Liens arising in connection therewith (including Liens deemed to arise in connection with any such Capital Lease Obligations) are permitted under Section 6.02.

SECTION 6.07. Hedging Agreements. None of the Borrower or any Subsidiary will enter into any Hedging Agreement, except (a) Hedging Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has perceived or actual exposure (other than those in respect of the Equity Interests or Indebtedness of the Borrower or any Subsidiary), including with respect to currencies, and (b) Hedging Agreements entered into in order to 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 the Borrower or any Subsidiary.

SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness.

(a) None of the Borrower or any Subsidiary will declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(i) any Subsidiary may declare and pay dividends or make other distributions with respect to its Equity Interests, in each case ratably to the holders of such Equity Interests (or if not ratably, on a basis more favorable to the Borrower and the Loan Parties);

(ii) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in shares of Qualified Equity Interests of the Borrower;

(iii) the Borrower may repurchase, purchase, acquire, cancel or retire for value Equity Interests of the Borrower from present or former employees, officers, directors or consultants (or their estates or beneficiaries under their estates) of the Borrower or any Subsidiary upon the death, disability, retirement or termination of employment or service of such employees, officers, directors or consultants, or to the extent required, pursuant to employee benefit plans, employment agreements, stock purchase agreements or stock purchase plans, or other benefit plans; provided that the aggregate amount of Restricted Payments made pursuant to this Section 6.08(a)(iii) shall not exceed \$10,000,000 in the aggregate;

(iv) the Borrower may make cash payments (A) to satisfy an employee's withholding tax obligations incurred in connection with the exercise, vesting or acquisition of warrants, options or other securities convertible into or exchangeable for Equity Interests in the Borrower and (B) in lieu of the issuance of fractional shares representing insignificant interests in the Borrower in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests in the Borrower;

(v) the Borrower may acquire Equity Interests of the Borrower upon the exercise of stock options for such Equity Interests of the Borrower if such Equity Interests represent a portion of the exercise price of such stock options or in connection with tax withholding obligations arising in connection with the exercise of options by, or the vesting of restricted Equity Interests held by, any current or former director, officer or employee of the Borrower or its Subsidiaries;

(vi) the Borrower may convert or exchange any Equity Interests of the Borrower for or into Qualified Equity Interests of the Borrower;

(vii) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may on any date make Restricted Payments not otherwise permitted under this Agreement so long as, at the time of the making of such Restricted Payment, the Leverage Ratio, calculated on a Pro Forma Basis as of the date of making thereof, is not in excess of 2.75 to 1.00;

(viii) any Subsidiary may repurchase its Equity Interests held by minority shareholders or interest holders in a Permitted Acquisition or another transaction permitted by Section 6.04(t) (it being understood that for purposes of Section 6.04, the Borrower shall be deemed the purchaser of such Equity Interests and such repurchase shall constitute an Investment by the Borrower in a Person that is not a Subsidiary in the amount of such purchase unless such Subsidiary becomes a Loan Party in connection with such repurchase);

(ix) so long as, at the date of declaration thereof, no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may repurchase or redeem its Equity Interests from its equity holders in an amount not to exceed \$10,000,000; and

(x) the Borrower may make Restricted Payments within 60 days after the date of declaration thereof, if at the date of declaration of such Restricted Payments, such Restricted Payments would have been permitted pursuant to another clause of this Section 6.08(a).

(b) None of the Borrower or any Subsidiary will make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Subordinated Indebtedness that is required pursuant to Section 6.01 to be subordinated to the payment of the Obligations, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, defeasance, cancellation or termination of such Subordinated Indebtedness, except:

(i) regularly scheduled interest and principal payments as and when due in respect of such Subordinated Indebtedness, other than payments prohibited by the subordination provisions thereof;

(ii) refinancings of such Subordinated Indebtedness with the proceeds of Refinancing Indebtedness permitted in respect thereof under Section 6.01;

(iii) payments of or in respect of such Subordinated Indebtedness made solely with Qualified Equity Interests in the Borrower or the conversion of such Subordinated Indebtedness into Qualified Equity Interests of the Borrower;

(iv) prepayments of intercompany Indebtedness permitted hereby owed by the Borrower or any Subsidiary to the Borrower or any Subsidiary; provided that, for the avoidance of doubt, no prepayment of any Indebtedness owed by any Loan Party to any Subsidiary that is not a Loan Party shall be permitted so long as an Event of Default shall have occurred and be continuing or would result therefrom; and

(v) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may on any date make payments of (including prepayments thereof) or in respect of any such Subordinated Indebtedness (other than any intercompany Indebtedness) not otherwise permitted hereunder so long as, at the time of the making of such payment, the Leverage Ratio, calculated on a Pro Forma Basis as of the date of making thereof, is not in excess of 2.75 to 1.00.

SECTION 6.09. Transactions with Affiliates. None of the Borrower or any Subsidiary will sell, lease or otherwise transfer any assets to, or purchase, lease or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that are at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than those that could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Loan Parties not involving any other Affiliate, (c) transactions between or among Subsidiaries that are not Loan Parties not involving any other Affiliate, (d) any Investment permitted under Section 6.04, (e) the payment of reasonable fees to directors of the Borrower or any Subsidiary who are not employees of the Borrower or any Subsidiary, (f) compensation, expense reimbursement and indemnification of, and other

employment arrangements (including severance arrangements) and health, disability and similar insurance or benefit arrangements with, directors, officers and employees of the Borrower or any Subsidiary entered into in the ordinary course of business, (g) any Restricted Payment permitted by Section 6.08, (h) sales of Equity Interests to Affiliates to the extent not prohibited under this Agreement, (i) any payments or other transactions pursuant to any tax sharing agreement among the Loan Parties and their Subsidiaries; provided that any such tax sharing agreement is on terms usual and customary for agreements of that type, and (j) any other transactions between or among the Borrower and its Subsidiaries entered into in the ordinary course of business including any transactions expressly permitted under this Agreement or any other Loan Document.

SECTION 6.10. Restrictive Agreements. None of the Borrower or any Subsidiary will, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its assets to secure the Obligations or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any Subsidiary; provided that (i) the foregoing shall not apply to (A) restrictions and conditions imposed by law or by this Agreement or any other Loan Document, (B) restrictions and conditions contained in any agreement or document governing or evidencing Subordinated Indebtedness or Refinancing Indebtedness, as applicable, in respect of Indebtedness referred to in clause (A); provided that the restrictions and conditions contained in any such agreement or document referred to in this clause (B) are not less favorable in any material respect to the Lenders than the restrictions and conditions imposed by this Agreement, (C) restrictions and conditions existing on the date hereof identified on Schedule 6.10, (D) in the case of any Subsidiary that is not a wholly-owned Subsidiary, restrictions and conditions imposed by its Organizational Documents or any related joint venture or similar agreements; provided that such restrictions and conditions apply only to such Subsidiary and to the Equity Interests of such Subsidiary, (E) restrictions imposed by any agreement governing Indebtedness entered into after the Restatement Effective Date and permitted under Section 6.01 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Subsidiary than those contained in this Agreement and (F) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets of the Borrower or any Subsidiary, in each case pending such sale; provided that such restrictions and conditions apply only to such Subsidiary or the assets that are to be sold and, in each case, such sale is permitted hereunder; and (ii) clause (a) of the foregoing shall not apply to (A) restrictions and conditions imposed by any agreement relating to secured Indebtedness permitted by clause (e), (f), (h), (i), (j), (l), (m), (n) and (o) of Section 6.01 if such restrictions and conditions apply only to the assets securing such Indebtedness, (B) customary provisions in leases, licenses and other agreements restricting the assignment thereof and (C) restrictions imposed by agreements relating to Indebtedness of any Subsidiary in existence at the time such Subsidiary became a Subsidiary and otherwise permitted by Section 6.01(f); provided that such restrictions apply only to such Subsidiary and its assets (or any special purpose acquisition Subsidiary without material assets acquiring such Subsidiary pursuant to a merger). Nothing in this paragraph shall be deemed to modify the requirements set forth in the definition of the term "Collateral and Guarantee Requirement" or the obligations of the Loan Parties under Sections 5.03, 5.11 or under the Security Documents.

SECTION 6.11. Amendment of Material Documents. None of the Borrower or any Subsidiary will amend, modify or waive any of its rights under (a) any agreement or instrument document evidencing Subordinated Indebtedness that constitutes Material Indebtedness except pursuant to the subordination/intercreditor terms applicable to such Subordinated Indebtedness or (b) its certificate of incorporation, bylaws or other organizational documents, in each case to the extent such amendment, modification or waiver would be materially adverse to the Lenders.

SECTION 6.12. Fiscal Year. The Borrower will not, and the Borrower will not permit any other Loan Party to, change its Fiscal Year to end on a date other than June 30.

SECTION 6.13. Leverage Ratio. Beginning with the first full Fiscal Quarter after the Restatement Effective Date, the Borrower will not permit the Leverage Ratio to exceed 3.5 to 1.0 as of the last day of any Fiscal Quarter of the Borrower (or, during a Leverage Specified Period, 4.00 to 1.0 as of the last day of any such Fiscal Quarter of the Borrower).

SECTION 6.14. Interest Coverage Ratio. Beginning with the first full Fiscal Quarter ending after the Restatement Effective Date, the Borrower will not permit the Interest Coverage Ratio to be less than 2.5 to 1.0 as of the end of any Fiscal Quarter of the Borrower.

ARTICLE VII

Events of Default

SECTION 7.01. Events of Default. If any of the following events (each such event, an "Event of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation contained in Section 2.19(c), when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay (i) any interest on any Loan or (ii) any fee or any other amount (other than an amount referred to in clause (a) or clause (b)(i) of this Section 7.01) payable under this Agreement or any other Loan Document, in each case, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation, warranty or statement made or deemed made by or on behalf of the Borrower or any Loan Party in any Loan Document or in any certificate furnished by or on behalf of the Borrower or any Loan Party pursuant to or in connection with this Agreement or any other Loan Document shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.04 (with respect to the existence of the Borrower), 5.10 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document (other than those specified in clause (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of 60 days after notice thereof from the Administrative Agent or any Lender to the Borrower (with a copy to the Administrative Agent in the case of any such notice from a Lender);

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal, interest, premium or otherwise and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any grace period applicable on the date on which such payment was initially due);

(g) any event or condition occurs that results in any Material Indebtedness becoming due or being required to be prepaid, repurchased, redeemed or defeased prior to its scheduled maturity or that enables or permits the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf, or, in the case of any Hedging Agreement, the applicable counterparty, to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity (in each case after expiration of any applicable grace or cure period set forth in the agreement or instrument evidencing or governing such Material Indebtedness); provided that this clause (g) shall not apply to (i) any secured Indebtedness that becomes due as a result of the voluntary sale, transfer or other disposition of the assets securing such Indebtedness, (ii) any Indebtedness that becomes due as a result of a voluntary refinancing thereof permitted under Section 6.01 or (iii) the occurrence of any conversion or exchange trigger in Indebtedness that is contingently convertible or exchangeable into Equity Interests of the Borrower;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any other Loan Party or its debts, or of a substantial part of its assets, under any Federal, State or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any other Loan Party or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any other Loan Party shall (i) voluntarily commence any proceeding or file any petition seeking liquidation (other than any liquidation permitted under Section 6.03(a)(v)), reorganization or other relief under any Federal, State or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article VII, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any other Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding or (v) make a general assignment for the benefit of creditors, or the board of

directors (or similar governing body) of the Borrower or any other Loan Party (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to above in this clause (i) or clause (h) of this Article VII;

(j) the Borrower or any other Loan Party shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$25,000,000 (other than any such judgment covered by insurance (other than under a self-insurance program) to the extent a claim therefor has been made in writing and liability therefor has not been denied by the insurer) outstanding at any given time, shall be rendered against the Borrower, any other Loan Party or any combination thereof and the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any other Loan Party to enforce any such judgment;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral with the priority required by the applicable Security Document, except as a result of (i) the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents, (ii) the release thereof as provided in the applicable Security Document or Section 9.14 or (iii) as a result of the Administrative Agent's failure to take action within its control, including without limitation, (A) failure to maintain possession of any stock certificate, promissory note or other instrument delivered to it under the Collateral Agreement or (B) file continuation statements under the applicable Uniform Commercial Code (or similar provisions under applicable law);

(n) This Agreement and any Guarantee purported to be created under any Loan Document shall cease to be, or shall be asserted by any Loan Party not to be, in full force and effect, except as a result of the release thereof or any limitation in respect thereof, in each case as provided in the applicable Loan Document or Section 9.14; or

(o) a Change in Control shall occur.

then, (i) in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Section 7.01), and at any time after the Restatement Effective Date and thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by written notice to the Borrower, take any or all of the following actions, at the same or different times: (A) terminate the Revolving Credit Commitments and the Letter of Credit Commitments, and thereupon the Revolving Credit Commitments and the Letter of Credit Commitments shall terminate immediately and (B) declare the Loans then outstanding to be due and payable in whole (or in part (but ratably as among the Loans at such time

outstanding), in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued or owing hereunder, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and (ii) in the case of any event with respect to the Borrower described in clause (h) or (i) of this Article VII, the Revolving Credit Commitments and the Letter of Credit Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower hereunder, shall immediately and automatically become due, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

SECTION 7.02. Actions in Respect of the Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Administrative Agent may with the consent, or shall at the request, of the Majority Facility Lenders under the Revolving Facility, irrespective of whether it is taking any of the actions described in Section 7.01 or otherwise, make written demand upon the Borrower to, and forthwith upon such written demand the Borrower will, (a) pay to the Administrative Agent on behalf of the Revolving Lenders one Business Day after such written demand in immediately available funds at the Administrative Agent's designated office, for deposit in the L/C Cash Collateral Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be reasonably acceptable to the Majority Facility Lenders under the Revolving Facility; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Federal Bankruptcy Code, the Borrower will pay to the Administrative Agent on behalf of the Revolving Lenders one Business Day after such written demand in immediately available funds at the Administrative Agent's designated office, for deposit in the L/C Cash Collateral Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower. If at any time the Administrative Agent determines that any funds held in the L/C Cash Collateral Account are subject to any right or claim of any Person other than the Administrative Agent and the Revolving Lenders or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, the Borrower will, forthwith upon written demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the L/C Cash Collateral Account, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, then held in the L/C Cash Collateral Account that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Collateral Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable law. After all such Letters of Credit shall have expired or been fully drawn upon and all other Obligations of the Borrower hereunder and under the Notes shall have been paid in full, the balance, if any, in such L/C Cash Collateral Account shall be promptly returned to the Borrower.

ARTICLE VIII

The Administrative Agent

Each of the Lenders hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its permitted successors to serve as administrative agent and collateral agent under the Loan Documents and authorizes the Administrative Agent, in its capacity as Administrative Agent, to execute and deliver the Loan Documents and to take such actions and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto (including, as trustee under any Security Document governed by English or other relevant law). It is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty 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.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and 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.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or to exercise any discretionary power (including with respect to enforcement and collection), except discretionary rights and powers expressly contemplated by the 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 necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion, could expose the Administrative Agent to liability or be contrary to this Agreement or any other Loan Document or applicable law, and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any Subsidiary or any other Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Notwithstanding clause (b) of the immediately preceding sentence, the Administrative Agent shall not be required to take, or to omit to take, any action hereunder or under the Loan Documents unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities, costs and expenses that, by reason of such action or omission, may be imposed on,

incurred by or asserted against the Administrative Agent or any Related Party thereof. The Administrative Agent shall not be liable for any action taken or not taken by it 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 to be necessary, under the circumstances as provided in the Loan Documents) or in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and nonappealable judgment). The Administrative Agent shall be deemed not to have actual knowledge of any Default unless and until written notice thereof (stating that it is a "notice of default") is given to the Administrative Agent by the Borrower or a Lender, and 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 in any Loan Document or the occurrence of any Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent.

The Administrative Agent shall be entitled to rely, 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 or sent or otherwise authenticated by the proper Person (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the signatory, sender or authenticator thereof). The Administrative Agent also shall be entitled to rely, and shall not incur any liability for relying, upon any statement made to it orally or by telephone and believed by it to be made by the proper Person (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the signatory, sender or authenticator thereof), and may act upon any such statement prior to receipt of written confirmation thereof. In determining compliance with any condition hereunder to the making of a Loan 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. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any of and all 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 of and all their duties and exercise their rights and powers through their respective Related Parties. The exculpatory provisions of this Article VIII shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities

provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Subject to the terms of this paragraph, the Administrative Agent may resign at any time from its capacity as such. In connection with such resignation, the Administrative Agent shall give written notice of its intent to resign to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower (and so long as no Event of Default shall have occurred and be continuing, with the consent of the Borrower, not to be unreasonably withheld or delayed), to appoint a successor which will be a bank with an office in New York, New York or an Affiliate of any such bank. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank subject, so long as no Event of Default shall have occurred and be continuing, to the approval by the Borrower (which approval shall not be unreasonably withheld or delayed). Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed by the Borrower and such successor. Notwithstanding the foregoing, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Security Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest and be subject to such compliance as collateral agent for the benefit of the Secured Parties and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this paragraph (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Security Document, including any action required to maintain the perfection of any such security interest), and (b) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (i) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (ii) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall also directly be given or made to each Lender. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article VIII and Section 9.03,

as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring 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 it was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

Each Lender and Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Restatement Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, this Agreement and each other Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Restatement Effective Date.

Except with respect to the exercise of setoff rights of any Lender in accordance with Section 9.08 or with respect to a Lender's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Loan Document Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent on behalf of the Secured Parties at such sale or other disposition.

In furtherance of the foregoing and not in limitation thereof, no Hedging Agreement the obligations under which constitute Secured Hedging Obligations will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under this Agreement or any other Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such Hedging Agreement shall be deemed to have appointed the

Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(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.

In case of the pendency of any proceeding with respect to any Loan Party under any Federal, State or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the 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 and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim under Sections 2.09, 2.10, 2.12, 2.13, 2.14 and 9.03) 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 proceeding is hereby authorized by each Lender and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03).

Notwithstanding anything herein to the contrary, the Arranger shall have no duties or obligations under this Agreement or any other Loan Document (except in its capacity, as applicable, as a Lender), but all such Persons shall have the benefit of the indemnities provided for hereunder.

The provisions of this Article VIII are solely for the benefit of the Administrative Agent and the Lenders, and, except solely to the extent of the Borrower's rights to consent and notice pursuant to and subject to the conditions set forth in this Article VIII, none of the Borrower or any Subsidiary shall have any rights as a third party beneficiary of any such provisions. Each

Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and the Guarantees of the Obligations provided under the Loan Documents, to have agreed to the provisions of this Article VIII.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or electronic mail (and subject to paragraph (b) of this Section 9.01), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(i) if to the Borrower, to it at Aspen Technology, Inc., 20 Crosby Drive, Bedford, MA 01730, Attention: Chief Financial Officer and General Counsel (Telecopy No. (781) 221-5215) (email: karl.johnsen@aspentech.com and frederic.hammond@aspentech.com);

(ii) if to the Administrative Agent, as follows (A) if such notice relates to a Loan or Borrowing denominated in Dollars, or does not relate to any particular Loan, Borrower or Letter of Credit, to it at JPMorgan Chase Bank, N.A., 10 South Dearborn Street, Floor L2, Suite IL1-0480, Chicago, Illinois 60603, Attention of Julius C. Williams (Telecopy No. (844) 490-5663) (email: Julius.C.Williams@JPMorgan.com), with a copy to JPMorgan Chase Bank, N.A., Middle Market Servicing, 10 South Dearborn, Floor L2, Suite IL1-0480, Chicago, IL, 60603-2300, Attention of Commercial Banking Group (Telecopy No. (844) 490-5663 (email: jpm.agency.cri@jpmorgan.com; jpm.agency.servicing.1@jpmorgan.com) and (B) if such notice relates to a Loan or Borrowing denominated in a Designated Foreign Currency, to J.P. Morgan Europe Limited, Loans Agency 6th Floor, 25 Bank Street, Canary Wharf, London E14 5JP, United Kingdom, Attention of Loans Agency (Fax No. +44 20-7777-2360) (email: loan_and_agency_London@jpmorgan.com) with copy to JPMorgan Chase Bank, N.A., 10 South Dearborn Street, Floor L2, Suite IL1-0480, Chicago, Illinois 60603, Attention of Julius C. Williams (Telecopy No. (844) 490-5663) (email: Julius.C.Williams@JPMorgan.com);

(iii) if to any other Lender, to it at its address (or fax number) set forth in its Administrative Questionnaire.

Notices and communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) of this Section 9.01 shall be effective as provided in such paragraph.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet and intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices under Article II to any Lender if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. Any notices or other communications to the Administrative Agent, the Borrower may be delivered or furnished by electronic communications pursuant to procedures approved by the recipient thereof prior thereto; provided that approval of such procedures may be limited or rescinded by any such Person by notice to each other such Person.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment) and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefore; provided that, for both clauses (i) and (ii) above, 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 fax number for notices and other communications hereunder by notice to the other parties hereto.

(d) the Borrower agree that the Administrative Agent may, but shall not be obligated to, make any communication by posting such communications on Debt Domain, Intralinks, Syndtrak or a similar electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available". Neither the Administrative Agent nor any of its Related Parties warrants, or shall be deemed to 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 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, or shall be deemed to be made, by the Administrative Agent or any of its Related Parties in connection with the communications or the Platform.

SECTION 9.02. Waivers; Amendments.

(a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of

this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Without limiting the generality of the foregoing, the execution and delivery of this Agreement or the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Except as otherwise expressly provided in this Agreement, none of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower, the Administrative Agent and the Required Lenders and, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders (unless the Administrative Agent has express authority herein or therein to consent unilaterally), provided that (i) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any ambiguity, omission, defect or inconsistency so long as, in each case, (A) such amendment does not adversely affect in any material respect the rights of any Lender or (B) the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; provided, further that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender; (ii) reduce the principal amount of any Loan of any Lender or reduce the rate of interest thereon (including reduction of the Applicable Rate or amending the ratio used in the definition of "Applicable Rate" (but not the definition of such ratio)) (other than waivers, amendments or modifications to the interest rates set forth in Section 2.10(c) and the financial covenants set forth in Sections 6.13 and 6.14), or reduce any fees payable hereunder (including reduction of the Applicable Rate or amending the ratio used in the definition of "Applicable Rate" (but not the definition of such ratio)) (other than waivers, amendments or modifications to the interest rate payable with respect to fees under Section 2.10(c)), without the written consent of such Lender, (iii) postpone the scheduled date of payment of the principal amount of any Loan of any Lender, or any interest thereon, or any fees payable hereunder to any Lender, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of such Lender, (iv) change Section 2.15(a), (b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender adversely affected thereby, (v) change any of the provisions of this Section or the percentage 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, without the written consent of each Lender, (vi) release all or substantially all of the value of the Guarantees provided by the Loan Parties under the Guarantee Agreement without the written consent of each Lender (except as expressly provided in Section 9.14 or the Guarantee Agreement (including any such release by the Administrative Agent in connection with any sale or other disposition of any Subsidiary upon the exercise of remedies under the Security Documents), it being understood and agreed that an amendment or other modification of the type of obligations guaranteed under the Guarantee Agreement shall not be deemed to be a release or limitation of any Guarantee), (vii) release all or substantially all the Collateral from the Liens of the Security Documents without the written

consent of each Lender (except as expressly provided in Section 9.14 or the applicable Security Document (including any such release by the Administrative Agent in connection with any sale or other disposition of the Collateral upon the exercise of remedies under the Security Documents), it being understood and agreed that an amendment or other modification of the type of obligations secured by the Security Documents shall not be deemed to be a release of the Collateral from the Liens of the Security Documents), (viii) consent to the subordination of the Obligations of the Loan Parties under the Loan Documents to any other Indebtedness, or to the subordination of all or substantially all the Liens of the Security Documents to the Liens securing any other Indebtedness, without the written consent of each Lender, (ix) reduce the amount of Net Cash Proceeds required to be applied to prepay Term Loans under this Agreement without the written consent of the Majority Facility Lenders with respect to the Term Facility; (x) reduce the percentage specified in the definition of Majority Facility Lenders with respect to any Facility without the written consent of all Lenders under such Facility and (xi) amend, modify or waive any provision of Section 4.02 with respect to any Borrowing to be made after the Restatement Effective Date without the written consent of the Majority Facility Lenders with respect to the Revolving Facility; provided further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent without the prior written consent of the Administrative Agent. Notwithstanding any of the foregoing, no consent with respect to any amendment, waiver or other modification of this Agreement or any other Loan Document shall be required of any Defaulting Lender, except with respect to any amendment, waiver or other modification referred to in clause (i), (ii) or (iii) of the second proviso of this paragraph and then only in the event such Defaulting Lender shall be affected by such amendment, waiver or other modification.

(c) Notwithstanding the foregoing, upon the execution and delivery of all documentation required by Section 2.20 to be delivered in connection with an Incremental Facility, the Administrative Agent, the Borrower and the new or existing Lenders providing such Incremental Facility may enter into an amendment hereof (which shall be binding on all parties hereto and the new Lenders) solely for the purpose of reflecting any new Lenders and their Incremental Revolving Commitments and/or Incremental Term Loans.

(d) In connection with any proposed amendment, modification, waiver, consent or termination (a "Proposed Change") requiring the consent of all Lenders or all affected Lenders, if the consent of the Required Lenders to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section 9.02 being referred to as a "Non-Consenting Lender"), then, so long as the Lender that is acting as Administrative Agent is not a Non-Consenting Lender, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, (iii) the Borrower or such assignee shall have paid to the Administrative Agent the

processing and recordation fee specified in Section 9.04(b), (iv) such assignment does not conflict with applicable law and (v) the assignee shall have given its consent to such Proposed Change.

(e) Notwithstanding anything herein to the contrary, the Administrative Agent may, without the consent of any Secured Party, consent to a departure by any Loan Party from any covenant of such Loan Party set forth in this Agreement, the Guarantee Agreement, the Collateral Agreement or any other Security Document to the extent such departure is consistent with the authority of the Administrative Agent set forth in the definition of the term "Collateral and Guarantee Requirement".

SECTION 9.03. Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arranger and their respective Affiliates, including the reasonable and documented fees, charges and disbursements of one primary counsel and, one firm of local counsel in each jurisdiction as the Administrative Agent shall deem reasonably advisable in connection with the creation and perfection of the security interests in the Collateral provided under the Loan Documents, in connection with the structuring, arrangement and syndication of the credit facilities provided for herein and any credit or similar facility refinancing or replacing, in whole or in part, any of the credit facilities provided for herein, as well as the preparation, execution, delivery and administration of this Agreement, 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), provided that the Administrative Agent shall provide (A) an estimate to the Borrower of the expected aggregate costs and expenses (i) prior to the Restatement Effective Date, with respect to the transaction contemplated to occur on or prior to the Restatement Effective Date and (ii) prior to any other material transaction occurring after the Restatement Effective Date, with respect to any such transaction and (B) in each case, will provide the Borrower with periodic updates on the accrual of costs and expenses to the extent such accruals exceed the estimate provided in subsection (A) above, and (ii) all out-of-pocket expenses incurred by the Administrative Agent, the Arranger or any Lender, including the reasonable and documented fees, charges and disbursements of any outside counsel for any of the foregoing, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section 9.03, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided that expenses set forth in this clause (ii) shall be limited to (A) one counsel to the Administrative Agent and for the Lenders (taken together as a single group or client), (B) if necessary, one local counsel required in any relevant local jurisdiction and applicable special regulatory counsel, (C) additional counsel retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed) and (D) if representation of the Administrative Agent and/or all Lenders in such matter by a single counsel would be inappropriate based on the advice of legal counsel due to the existence of an actual or potential conflict of interest, one additional counsel for each party subject to such conflict.

(b) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Arranger and each 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, penalties, liabilities and related expenses, including reasonable and documented fees, charges and disbursements of outside counsel (limited to reasonable fees, disbursements and other charges of one primary counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees, taken as a whole (and, in the case of an actual or perceived conflict of interest, where an Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected Indemnitee and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for such affected Indemnitee) and other reasonable and documented out-of-pocket expenses, incurred by or asserted against any Indemnitee arising out of, in connection with or as a result of (i) the structuring, arrangement and syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of this Agreement, the other Loan Documents or any other agreement or instrument contemplated hereby or thereby, the performance by the parties to this Agreement or the other Loan Documents of their respective obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any premises leased or operated by the Borrower or any Subsidiary, or any Environmental Liability related in any way to the Borrower or any Subsidiary 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 and whether initiated against or by any party to this Agreement or any other Loan Document, any Affiliate of any of the foregoing or any third party (and regardless of whether any Indemnitee is a party thereto); provided that the foregoing indemnity shall not, as to any Indemnitee, apply to any losses, claims, damages, penalties, liabilities or related expenses to the extent they (A) are found in a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of such Indemnitee, (B) result from a claim brought by the Borrower or any of its Subsidiaries for a material breach of such Indemnitee's obligations under this Agreement or any other Loan Document if the Borrower or such Subsidiary has obtained a final and non-appealable judgment of a court of competent jurisdiction in the Borrower's or its Subsidiary's favor on such claim as determined by a court of competent jurisdiction or (C) result from a proceeding that does not involve an act or omission by the Borrower or any of its Affiliates and that is brought by an Indemnitee against any other Indemnitee (other than a proceeding that is brought against the Administrative Agent or any Arranger in its capacity as such or in fulfilling its roles as an agent or arranger hereunder or any similar role with respect to the Indebtedness incurred or to be incurred hereunder). This paragraph shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(c) To the extent that the Borrower fails to indefeasibly pay any amount required to be paid by it under paragraph (a) or (b) of this Section 9.03 to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing (and without limiting their obligation to do so), each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as applicable, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as applicable, was incurred by or asserted against the Administrative Agent (or such sub-agent) or against any Related Party of any of the foregoing acting for the Administrative

Agent (or any such sub-agent) in connection with such capacity. For purposes of this Section 9.03, a Lender's "pro rata share" shall be determined based upon its Pro Rata Share under the relevant Facility at that time.

(d) To the fullest extent permitted by applicable law, the Borrower shall not assert, or permit any of its Affiliates or Related Parties to assert, and each hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet) or (ii) 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 or thereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section 9.03 shall be payable within ten Business Days after written demand therefor.

SECTION 9.04. Assignments and Participations.

(a) Successors and Assigns Generally. No Lender may assign, delegate or otherwise transfer any of its rights or obligations hereunder except to an Eligible Assignee (i) in accordance with the provisions of Section 9.04(b), (ii) by way of participation in accordance with the provisions of Section 9.04(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.04(f) (and any other attempted assignment or transfer by any Lender 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, and shall as provided in Sections 2.16(b) and (c), 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 Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans under any Facility at the time owing to it or in the case of an assignment to a Lender, no minimum amount need be assigned; and

(B) in any case not described in Section 9.04(b)(i)(A), the aggregate amount of the applicable Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect

to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 in the case of the Revolving Facility or \$1,000,000 in the case of the Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents.

(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 or the Commitment assigned under any Facility, except that this clause (ii) shall not prohibit any Lender or Issuing Bank from assigning all or a portion of its rights and obligations among the Revolving Credit Commitments and the Letter of Credit Commitments on a non-pro rata basis; provided that, at no time shall the Letter of Credit Commitment of any Issuing Bank exceed the Revolving Credit Commitment of such Issuing Bank.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 9.04(b)(i)(B) and this Section 9.04(b)(iii):

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund of such Lender; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund of such Lender with respect to such Lender; and

(C) the consent of each Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Commitments.

(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 an Administrative Questionnaire.

(v) [Reserved].

(vi) [Reserved].

(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, each Issuing Bank 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 in accordance with its Pro Rata Share. 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 2.12 and 9.03 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 Section 9.04 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 the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal 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 or the Administrative Agent, sell participations to one or more Eligible Assignees (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Banks and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 9.03 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 or any other Loan Document; 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 of any provision of this Agreement or any Note, or any consent to any departure by any Loan Party therefrom, to the extent that such amendment, waiver or consent otherwise requires such Lender's affirmative consent pursuant to the provisions of Section 9.02 and then only to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Notes or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, the Notes or any fees or other amounts payable hereunder, in each case to the extent subject to such participation. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 9.03 and 2.14 (subject to the requirements and limitations therein, including the requirements under Section 2.14(f) (it being understood that the documentation required under Section 2.14(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.12, 2.14 and 2.16 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 2.12 or 2.14, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and reasonable expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.16 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.15 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Revolving 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, or is necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA or other applicable law. 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) Subject to Sections 9.12 and 9.17, any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.04, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Loan Parties furnished to such Lender by or on behalf of the Loan Parties; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree for the benefit of the Loan Parties to preserve the confidentiality of any Borrower Information relating to the Loan Parties received by it from such Lender subject to the terms of this Agreement.

(f) 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 of a security interest shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything else to the contrary contained in this Agreement, any attempted assignment or sale of a participation to a Person who is not an Eligible Assignee shall be null and void.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in this Agreement and the other Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Arranger, any Lender or any Affiliate of any of the foregoing may have had notice or knowledge of any Default or incorrect representation or warranty at the time this Agreement or any other Loan Document is executed and delivered or any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or

terminated. The provisions of Sections 2.12, 2.14, 2.15(e), 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Notwithstanding any other provision of this Agreement to the contrary, upon the Administrative Agent's request, the Loan Parties agree to promptly execute and deliver such amendments to this Agreement as shall be necessary to implement any modifications to this Agreement pursuant to any separate letter agreements between the Borrower and the Administrative Agent during the period permitted therein. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing and the making of the request or the granting of the consent specified in Article VII to authorize the Administrative Agent to declare the Loans due and payable pursuant to Article VII shall have occurred, each Lender and each of its Affiliates, is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) or other amounts at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Loan Parties against any of and all the obligations then due of the Borrower now or hereafter existing under this Agreement held by such Lender or any such Affiliates, irrespective of whether or not such Lender or any such Affiliate shall have made any demand under this Agreement and although such obligations of the Loan Parties are owed to a branch or office of such Lender or any such Affiliate different from the branch or office holding such deposit or obligated on such Indebtedness. Each Lender agrees to notify the applicable Loan Parties and the Administrative Agent promptly after any such setoff and application; provided that the failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender or any Related Party of any of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of such courts and agrees that all claims in respect of any action, litigation or proceeding may be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each party hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action, litigation or proceeding relating to this Agreement or any other Loan Document against any Loan Party or any of its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action, litigation or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER

AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Related Parties, including accountants, legal counsel and other agents and advisors, it being understood and agreed 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), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that the Administrative Agent or such Lender, as applicable, agrees that it will, to the extent practicable and other than with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, notify the Borrower promptly thereof, unless such notification is prohibited by law), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, in each case, only such information as is reasonably necessary to exercise such remedies or enforce such rights, (f) subject to an agreement containing confidentiality undertakings substantially similar to those of this Section 9.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its Related Parties) to any Hedging Agreement relating to the Borrower or any Subsidiary and its obligations hereunder or under any other Loan Document, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided for herein or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facilities provided for herein, (h) with the consent of the Borrower or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.12 or (ii) becomes available to the Administrative Agent, any Lender or any Affiliate of any of the foregoing on a nonconfidential basis from a source other than the Borrower or its Subsidiary. For purposes of this Section 9.12, "Information" means all information received from the Borrower or its Related Parties relating to the Borrower or any Subsidiary or their businesses, other than any such information that is available to the Administrative Agent or any Lender prior to disclosure by the Borrower or its Subsidiaries on a nonconfidential basis from a Person that is not subject to a confidentiality obligation to the Borrower or any of its Related Parties. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if it has complied with the requirements set forth in this Section 9.12 and 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 (absent gross

negligence or willful misconduct). For the avoidance of doubt, the Borrower has the right to review and approve in advance, with such approval not to be unreasonably withheld or delayed, all press releases, advertisements and similar materials and disclosures (other than any disclosures to industry trade organizations of information that is customary for inclusion in league table measurements) that the Administrative Agent or any Lender prepares or that is prepared on the Administrative Agent's or any Lender's behalf that contain the Borrower's name or the name of any of its respective Affiliates.

SECTION 9.13. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 9.13 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.14. Release of Liens and Guarantees. A Loan Party (other than the Borrower) shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Security Documents in Collateral owned by such Loan Party shall be automatically released, upon the consummation of any transaction permitted by this Agreement as a result of which such Loan Party ceases to be a Subsidiary (or becomes an Excluded Subsidiary (other than solely as a result of such Subsidiary ceasing to be a Significant Subsidiary)); provided that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise; provided further that as of any date upon which a Loan Party (other than the Borrower) becomes an Excluded Subsidiary (other than solely as a result of such Subsidiary ceasing to be a Significant Subsidiary), the Borrower shall be deemed to have made an Investment in a Person that is not a Loan Party in an amount equal to the fair market value of the assets (net of third-party liabilities) of such Subsidiary as of such date (as determined reasonably and in good faith by a Financial Officer of the Borrower).

Upon any sale or other transfer by any Loan Party (other than to the Borrower or any other Loan Party) of any Collateral in a transaction permitted under this Agreement, or upon the effectiveness of any written consent to the release of the security interest created under any Security Document in any Collateral pursuant to Section 9.02, the security interests in such Collateral created by the Security Documents shall be automatically released. In connection with any termination or release pursuant to this Section 9.14, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's reasonable expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 9.14 shall be without recourse to or warranty by the Administrative Agent. Each of the Secured Parties irrevocably authorizes the Administrative Agent, at its option and in its discretion, to effect the releases set forth in this Section 9.14.

SECTION 9.15. USA PATRIOT Act Notice. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that, pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.16. No Fiduciary Relationship. Each of the Borrower, on behalf of itself and its Subsidiaries, agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, the Borrower, the Subsidiaries and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger, the Lenders and their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Administrative Agent, the Lenders or their Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications. The Administrative Agent, the Arranger, the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower, the Subsidiaries and their respective Affiliates, and none of the Administrative Agent, the Arranger, the Lenders or any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower the Subsidiaries or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower hereby waives and releases any claims that it or any of its Affiliates may have against the Administrative Agent, the Arranger, the Lenders or any of their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.17. Non-Public Information.

(a) Each Lender acknowledges that all information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to or in connection with, or in the course of administering, this Agreement will be syndicate-level information, which may contain MNPI. Each Lender represents to the Borrower and the Administrative Agent that (i) it has developed compliance procedures regarding the use of MNPI and that it will handle MNPI in accordance with such procedures and applicable law, including Federal, State and foreign securities laws, and (ii) it has identified in its Administrative Questionnaire a credit contact who may receive information that may contain MNPI in accordance with its compliance procedures and applicable law, including Federal, State and foreign securities laws.

(b) The Borrower and each Lender acknowledge that, if information furnished by the Borrower pursuant to or in connection with this Agreement is being distributed by the Administrative Agent through the Platform, (i) the Administrative Agent may post any information that the Borrower has indicated as containing MNPI solely on that portion of the Platform designated for Private Side Lender Representatives and (ii) if the Borrower has not indicated whether any information furnished by it pursuant to or in connection with this Agreement contains MNPI, the Administrative Agent reserves the right to post such information solely on that portion of the Platform as is designated for Private Side Lender Representatives. The Borrower agrees to

clearly designate all information provided to the Administrative Agent by or on behalf of the Borrower that is suitable to be made available to Public Side Lender Representatives, and the Administrative Agent shall be entitled to rely on any such designation by the Borrower without liability or responsibility for the independent verification thereof.

SECTION 9.18. Judgment Currency.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in Dollars into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction Dollars could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of each party hereto in respect of any sum due to any other party hereto or any holder of the obligations owing hereunder (the "Applicable Creditor") shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than Dollars, be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase Dollars with the Judgment Currency; if the amount of Dollars so purchased is less than the sum originally due to the Applicable Creditor in Dollars, such party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such deficiency. The obligations of the parties contained in this Section 9.18 shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

SECTION 9.19. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 9.20. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 9.21. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger, any Syndication Agent, any Co-Documentation Agent or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent, and each Arranger, Syndication Agent and Co-Documentation Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other

payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE X
AMENDMENT AND RESTATEMENT

Upon the Restatement Effective Date, this Agreement shall amend and restate the Existing Credit Agreement, but shall not constitute a novation thereof or in any way impair or otherwise affect the rights or obligations of the parties thereunder (including with respect to Loans and representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. The Existing Credit Agreement as amended and restated hereby shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Existing Credit Agreement not amended and restated in connection with the entry of the parties into this Agreement shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement to the same extent as if the modifications to the Existing Credit Agreement contained herein were set forth in an amendment to the Existing Credit Agreement in a customary form, unless such document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Agreement, the Existing Credit Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ASPEN TECHNOLOGY, INC., as Borrower

By: /s/ Karl E. Johnsen

Name: Karl E. Johnsen

Title: Senior Vice President and Chief
Financial Officer

[Signature Page – Amended and Restated Credit Agreement]

JPMORGAN CHASE BANK, N.A., as
Administrative Agent and as Issuing Bank

By: /s/ MARIA RIAZ
Name: MARIA RIAZ
Title: VICE PRESIDENT

[Signature Page – Amended and Restated Credit Agreement]

JPMORGAN CHASE BANK, N.A., as a Lender

By: /s/ MARIA RIAZ
Name: MARIA RIAZ
Title: VICE PRESIDENT

[Signature Page – Amended and Restated Credit Agreement]

Silicon Valley Bank, as a Lender

By: /s/ Ryan Aberdale _____
Name: Ryan Aberdale
Title: Vice President

[Signature Page – Amended and Restated Credit Agreement]

Wells Fargo Bank, N.A., as a Lender

By: /s/ D'Andre Dina
Name: D'Andre Dina
Title: Director

[Signature Page – Amended and Restated Credit Agreement]

Wells Fargo Bank, N.A., London Branch, as a
Lender

By: /s/ N. B. Hogg
Name: N. B. Hogg
Title: Authorised Signatory

[Signature Page – Amended and Restated Credit Agreement]

CITIBANK, N.A., as a Lender

By: /s/ Ron Homa
Name: Ron Homa
Title: Senior Vice President

[Signature Page – Amended and Restated Credit Agreement]

Citizens Bank, N.A., as a Lender

By: /s/ William E. Rurode Jr. _____
Name: William E. Rurode Jr.
Title: Managing Director

[Signature Page – Amended and Restated Credit Agreement]

TD BANK, N.A., as a Lender

By: /s/ Craig Welch
Name: Craig Welch
Title: Senior Vice President

[Signature Page – Amended and Restated Credit Agreement]

The Huntington National Bank, as a Lender

By: /s/ Stephanie Sorensen
Name: Stephanie Sorensen
Title: Assistant Vice President

[Signature Page – Amended and Restated Credit Agreement]

U.S. BANK NATIONAL ASSOCIATION, as a
Lender

By: /s/ BRIAN SEIPKE
Name: BRIAN SEIPKE
Title: SENIOR VICE PRESIDENT

[Signature Page – Amended and Restated Credit Agreement]

People's United Bank, National Association, as a
Lender

By: /s/ Kathryn Williams
Name: Kathryn Williams
Title: SVP

[Signature Page – Amended and Restated Credit Agreement]

Santander Bank, N.A., as a Lender

By: /s/ Daniel Wilansky _____
Daniel Wilansky
Vice President

[Signature Page – Amended and Restated Credit Agreement]

WAIVER AND SECOND AMENDMENT

WAIVER AND SECOND AMENDMENT, dated as of December 14, 2021 (this "Waiver and Amendment"), to the Amended and Restated Credit Agreement, dated as of December 23, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Aspen Technology, Inc. (the "Borrower" or "Aspentech"), the other Loan Parties from time to time party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent (the "Administrative Agent"), as amended by the First Amendment to Amended and Restated Credit Agreement, dated as of August 5, 2020.

WITNESSETH:

WHEREAS, the Borrower, the Lenders, the Administrative Agent are parties to the Credit Agreement;

WHEREAS, the Borrower has entered into the Transaction Agreement (as defined below);

WHEREAS, the Borrower has informed the Administrative Agent that, upon the satisfaction of the conditions precedent set forth therein, the consummation of the transactions described in the Transaction Agreement will result in the occurrence of a Change of Control under Section 7.01(o) of the Credit Agreement (the "Specified Event of Default");

WHEREAS, the Borrower has informed the Administrative Agent that, upon the consummation of the transactions described in the Transaction Agreement, the Borrower (and the other Loan Parties) may elect to change its Fiscal Year to end on December 31 (the "Fiscal Year Change"), which Fiscal Year Change would result in the occurrence of an Event of Default under the Credit Agreement (the "Fiscal Year Event of Default");

WHEREAS, the Borrower has requested that the Required Lenders consent to the waiver of the Specified Event of Default and the Fiscal Year Event of Default (the "Waiver");

WHEREAS, as a condition for consent of the Required Lenders to the Specified Event of Default, the Fiscal Year Event of Default and the effectiveness of the Waiver, New AspenTech (as defined below) shall become a Loan Party under the Loan Documents;

WHEREAS, certain loans, commitments and/or other extensions of credit under the Credit Agreement denominated in Pounds Sterling and Euros (the "Affected Currencies") incur or are permitted to incur interest, fees or other amounts based on the London Interbank Offered Rate as administered by the ICE Benchmark Administration ("LIBOR") in accordance with the terms of the Credit Agreement;

WHEREAS, from December 31, 2021, panel submissions for Designated Foreign Currency LIBO Rate tenors and 1-week and 2-month Dollar LIBO Rate tenors shall cease, following which representative LIBO Rates for such currencies and tenors shall cease to be available (the "2021 LIBOR Cessation");

WHEREAS, the Administrative Agent, the Borrower and the Majority Facility Lenders under the Revolving Facility have elected to trigger an Early Opt-In Election with respect to the Affected Currencies and pursuant to Section 2.11(d) of the Credit Agreement, the Administrative Agent, the Borrower and the Majority Facility Lenders under the Revolving Facility have determined in accordance with the Credit Agreement that LIBOR for the Affected Currencies should be replaced with the applicable Benchmark Replacement for all purposes under the Credit Agreement;

WHEREAS, the Lenders party hereto and listed on the signature pages hereof, the Administrative Agent, the Issuing Banks and the Loan Parties have agreed to (i) the Waiver and (ii) certain amendments to the Credit Agreement to address the 2021 LIBOR Cessation and to establish the necessary Benchmark Replacement for each Affected Currency (the "Benchmark Amendments"), in each case on the terms and conditions set forth herein; and

WHEREAS, JPMorgan Chase Bank, N.A. (or any of its affiliates as so designated by it to act in such capacity) has been appointed and will act as the lead arranger and bookrunner for this Waiver and Amendment (in such capacity, the "Lead Arranger");

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, capitalized terms used herein which are defined in the Credit Agreement are used herein as therein defined.

(b) As used in this Waiver and Amendment, the following defined terms shall have the meaning set forth below:

"Amendment Effective Date" shall have the meaning assigned to such term in Section 5 of this Waiver and Amendment.

"Waiver Effective Date" shall have the meaning assigned to such term in Section 6 of this Waiver and Amendment.

"Emerson" means Emerson Electric Co., a Missouri corporation.

"Emerson Sub" means EMR Worldwide Inc., a Delaware corporation and wholly-owned subsidiary of Emerson.

"Merger Subsidiary" means Emersub CXI, Inc., a Delaware corporation and a wholly-owned subsidiary of New AspenTech.

"New AspenTech" means Emersub CX, Inc., a Delaware corporation and a wholly-owned subsidiary of Emerson.

“Specified Representations” means the representations and warranties of the Loan Parties in the Loan Documents relating to (a) the Loan Parties’ corporate existence and power to enter into the Waiver and Amendment and the documentation related to the New AspenTech Accession, (b) corporate authorization and enforceability of the Waiver and Amendment and the documentation related to the New AspenTech Accession with respect to the Loan Parties, (c) no contravention of the Waiver and Amendment and the documentation related to the New AspenTech Accession with the Loan Parties’ organizational documents (limited to the execution, delivery and performance by the Loan Parties of the Waiver and Amendment, the documentation related to the New AspenTech Accession and the granting of the security interests in respect thereof, (d) creation, validity and perfection of liens with respect to the Loan Parties under the security documents (subject to permitted liens as set forth in the Loan Documents), (e) Federal Reserve margin regulations, (f) the Investment Company Act, (g) the PATRIOT Act and (h) the use of the proceeds of the Loans not violating OFAC or FCPA.

“Transactions” means the transactions described in the Transaction Agreement, pursuant to which on the Transaction Effective Date, among others, certain assets, cash and equity interests will be contributed by Emerson to New AspenTech, and Merger Subsidiary will merge with and into the Borrower, with the Borrower as the surviving corporation and a direct wholly-owned subsidiary of New AspenTech.

“Transaction Agreement” means that certain Transaction Agreement and Plan of Merger, dated as of October 10, 2021 entered among the Borrower, Emerson, Emerson Sub, New AspenTech, and Merger Subsidiary, after giving effect to any modifications, amendments, consents or waivers thereto, other than those modifications, amendments, consents or waivers that are materially adverse to the interests of the Lenders, unless consented to in writing by the Administrative Agent.

“Transaction Effective Date” means the date of satisfaction of all conditions precedent set forth in the Transaction Agreement and the consummation of the Transactions, which date shall not be later than the Waiver Expiration Date.

“Waiver Expiration Date” means the “End Date” as such term is defined in the Transaction Agreement as of the date hereof.

2. Waiver.

(a) Effective as of the Waiver Effective Date, the Lenders party hereto hereby permanently waive the Specified Event of Default resulting from the consummation of the Transactions.

(b) Effective as of the Waiver Effective Date, the Lenders party hereto hereby permanently waive the Change of Fiscal Year Event of Default resulting from a change of the Fiscal Year by the Borrower and the Loan Parties to December 31, provided that (i) at the time of the election of such Fiscal Year Change the Borrower (which shall refer to New AspenTech to the extent it has become the Borrower after the New AspenTech Accession) is or remains a reporting company required to file its applicable annual report on Form 10-K by the rules and regulations of

the SEC and (ii) to the extent reasonably requested by the Administrative Agent, the Borrower and the Administrative Agent shall have entered into any amendments or modifications to the Credit Agreement pursuant to Section 7 hereto to ensure the continuing delivery of consolidated financial statements of the Borrower to the Administrative Agent for the benefit of the Lenders (including, if required by the rules and regulations of the SEC, audited financial statements) with respect to any transition period resulting from such Fiscal Year Change.

3. Benchmark Amendments. To address the 2021 LIBOR Cessation and to give effect to the Benchmark Amendments, effective as of the Amendment Effective Date:

(a) the Credit Agreement shall be amended, without additional consent or approval of any other Lender, to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto; and

(b) Exhibit B ([Form of] Borrowing Request) to the Credit Agreement shall be replaced by the [Form of] Borrowing Request attached as Exhibit B hereto.

(c) Exhibit E ([Form of] Interest Election Request) to the Credit Agreement shall be replaced by the Interest Election Request attached as Exhibit C hereto.

(d) Exhibit I ([Form of] Revolving Note) to the Credit Agreement shall be replaced by the Revolving Note attached as Exhibit D hereto.

(e) Exhibit I-1([Form of] Term Note) to the Credit Agreement shall be replaced by the Term Note attached as Exhibit E hereto.

4. Representations and Warranties. The Borrower hereby represents that as of each of the date hereof, the Amendment Effective Date and the Waiver Effective Date (subject to the provisions of Section 7(b) below) each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents (including this Waiver and Amendment) is true and correct in all material respects (except for representations and warranties qualified as to materiality and Material Adverse Effect, which shall be true and correct in all respects) as if made on and as of such date (it being understood and agreed that any such representation or warranty (i) that relates solely to an earlier date is true and correct as of such earlier date and (ii) is true and correct in all respects if it is qualified by a materiality standard), and no Default or Event of Default has occurred and is continuing.

5. Effectiveness of Amendments. The Benchmark Amendments set forth in Section 3 shall become effective on and as of the date (such date the "Amendment Effective Date") of satisfaction of the following conditions:

(a) the execution and delivery of this Waiver and Amendment by the Borrower, the Loan Parties, the Administrative Agent, each Issuing Bank and each of the Required Lenders;

(b) the representations and warranties set forth in Section 4 of this Waiver and Amendment shall be true and correct;

(c) the Administrative Agent shall have received on or before the Amendment Effective Date, each dated on or about such date:

- i. Certified copies of the resolutions or similar authorizing documentation of the governing bodies of each Loan Party authorizing this Waiver and Amendment;
- ii. Copies of the Organizational Documents of each Loan Party;
- iii. A good standing certificate or similar certificate dated a date reasonably close to the Amendment Effective Date from the jurisdiction of formation of each Loan Party, but only where such concept is applicable;
- iv. A customary certificate of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign this Waiver and Amendment and the other documents to be delivered by it hereunder;

(d) all accrued, but theretofore unpaid, interest on all outstanding Loans denominated in an Affected Currency under the Credit Agreement, and all accrued, but theretofore unpaid, fees owed to the Lenders pursuant to the Credit Agreement with respect to each Affected Currency shall have been paid on the Amendment Effective Date; and

(e) receipt by the Administrative Agent of all fees and expenses reimbursable under Section 9 below for which invoices have been presented (including the reasonable fees and expenses of legal counsel).

(f) receipt by the Administrative Agent, for the account of each Lender consenting to this Waiver and Amendment, of consent fees separately agreed between the Borrower and the Administrative Agent.

6. Effectiveness of Waiver. The Waiver set forth in Section 2 shall become effective on and as of the date (such date, the "Waiver Effective Date") of satisfaction of the following conditions on or prior to the Waiver Expiration Date:

(a) the execution and delivery of this Waiver and Amendment by the Borrower, the Loan Parties, the Administrative Agent and the Required Lenders;

(b) the representations and warranties set forth in Section 4 of this Waiver and Amendment shall be true and correct, provided that (a) the only representations and warranties relating to the Borrower and its subsidiaries or New AspenTech and its subsidiaries and their respective businesses or otherwise the accuracy of which shall be a condition to the Waiver Effective Date shall be (i) the representations made by or on behalf of New AspenTech in the Transaction Agreement that are material to the interests of the Lenders (in their capacities as such), but only to the extent that the Borrower or any of its subsidiaries has the right to terminate its obligations to consummate the Transactions under the Transaction Agreement as a result of a

breach of such representations in the Transaction Agreement and (ii) the Specified Representations;

(c) the Transactions shall have been, or shall concurrently with the Waiver Effective Date be, consummated in all material respects in accordance with the terms of the Transaction Agreement;

(d) either (i) New AspenTech shall have become a Loan Party under the Loan Documents and shall have guaranteed all Obligations of the Borrower to the same extent as each Designated Subsidiary currently guarantees such Obligations pursuant to the Guarantee Agreement or (ii) (1) AspenTech shall have assigned all Obligations as Borrower under the Loan Documents to New AspenTech and New AspenTech shall have assumed all Obligations of AspenTech as Borrower under the Loan Documents and (2) AspenTech shall have become a Designated Subsidiary under the Guarantee Agreement and shall have guaranteed all Obligations of New AspenTech pursuant to the Guarantee Agreement, in each case pursuant to a joinder, assignment or such other applicable documentation that is reasonably satisfactory to the Administrative Agent (the "New AspenTech Accession");

(e) New AspenTech and each of its Subsidiaries constituting a Designated Subsidiary after giving effect to the Transactions (the "New AspenTech Entities") and the other Loan Parties shall have satisfied the Collateral and Guarantee Requirement, provided that to the extent any collateral (including the grant or perfection of any security interest) is not or cannot be provided on the Waiver Effective Date (other than the grant and perfection of security interests (i) in assets with respect to which a lien may be perfected solely by the filing of a financing statement under the Uniform Commercial Code ("UCC"), or (ii) in capital stock of AspenTech and New AspenTech's material domestic subsidiaries (to the extent required by the Collateral and Guarantee Requirement) with respect to which a lien may be perfected by the delivery of a stock certificate) after the use of commercially reasonable efforts to do so without undue burden or expense, then the provision of and/or perfection of a security interest in such collateral shall not constitute a condition precedent to the Waiver Effective Date but may instead be provided after the Waiver Effective Date pursuant to arrangements to be mutually agreed between AspenTech and the Administrative Agent.

(f) the Lenders shall have received such customary legal opinions from counsel to the Borrower as may be reasonably required by the Administrative Agent with respect to the New AspenTech Accession, corporate organizational documents and good standing from the New AspenTech Entities and a solvency certificate from the chief financial officer (or other officer with equivalent duties) of New AspenTech demonstrating the solvency (on a consolidated basis) of New AspenTech and its subsidiaries as of the Waiver Effective Date on a pro forma basis for the Transactions, substantially in the form of Exhibit J to the Credit Agreement (as modified to refer to the Transactions), resolutions and other instruments with respect to the New AspenTech Entities, each as is customary for transactions of this type and, to the extent applicable, consistent with such equivalent documentation delivered under the Credit Agreement or otherwise reasonably satisfactory to the Administrative Agent (including, without limitation, to the extent reasonably requested by the Lenders at least ten (10) business days in advance of the Waiver Effective Date, receipt of the documentation and other information that is required by regulatory authorities under applicable "know-your-customer" rules and regulations with respect to the New AspenTech

Entities, including the PATRIOT Act and the beneficial ownership regulation, at least three (3) business days prior to the Waiver Effective Date;

(g) Since the date of the Transaction Agreement, there shall not have occurred any event, circumstance, development, change, occurrence or effect that has had or would reasonably be expected to have, individually or in the aggregate, an Emerson Material Adverse Effect (as defined in the Transaction Agreement);

(h) receipt by the Administrative Agent of all fees and expenses reimbursable under Section 9 below for which invoices have been presented (including the reasonable fees and expenses of legal counsel).

7. Conforming Changes.

(a) In connection with the New AspenTech Accession, and the consummation of the Transactions and the Fiscal Year Change, the Administrative Agent will have the right to make any technical, administrative or operational changes to the Loan Documents (including the exhibits and schedules thereto) that the Administrative Agent and the Borrower in their reasonable discretion decide may be appropriate to reflect the New AspenTech Accession or that in the reasonable discretion of the Administrative Agent may be appropriate to ensure the continuing delivery of consolidated financial statements of the Borrower to the Administrative Agent for the benefit of the Lenders as a result of any Fiscal Year Change, and any amendments implementing such changes will become effective without any further action or consent of any other party hereto or to the Credit Agreement. Notwithstanding the foregoing authority of the Administrative Agent, the Administrative Agent may, in its sole discretion, in connection with the New AspenTech Accession, the consummation of the Transactions and the Fiscal Year Change, provide prior written notice of any required changes to the Loan Documents to give effect to the New AspenTech Accession or to reflect the Fiscal Year Change and such changes shall become effective without any further action or consent of any other party hereto or to the Credit Agreement to the extent the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such changes.

(b) Each of the Lenders hereby authorizes the Administrative Agent, in its capacity as Administrative Agent, to execute, deliver and accept such joinders, assignments, instruments and other required documentation or such other Loan Documents (including the exhibits and schedules thereto) and to take such actions and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto, as required or deemed necessary by the Administrative Agent in connection with the New AspenTech Accession, the Fiscal Year Change and the requirements set forth in Section 7 hereunder.

8. Acknowledgments and Confirmations; Liens Unimpaired.

(a) Each Loan Party party hereto hereby expressly acknowledges the terms of this Waiver and Amendment and reaffirms, as of the date hereof, (i) the covenants and agreements contained in each Loan Document to which it is a party (and each joinder to which it is a party to

any Loan Documents), including, in each case, such covenants and agreements as in effect immediately after giving effect to the Benchmark Amendments, the Waiver, the New AspenTech Accession and the transactions contemplated hereby, (ii) subject to any limitations set forth in the Guarantee Agreement, its guarantee of the Obligations, and (iii) its prior grant of Liens on the Collateral to secure the Obligations owed or otherwise guaranteed by it pursuant to the Security Documents with all such Liens continuing in full force and effect after giving effect to this Amendment;

(b) Notwithstanding the above, each of the Loan Parties party hereto consents to the Benchmark Amendments, the New AspenTech Accession and the Waiver effected by this Waiver and Amendment and confirms that (i) its obligations under the Guarantee Agreement to which it is a party are not discharged or otherwise affected by the Benchmark Amendments, the New AspenTech Accession, the Waiver or the other provisions of this Waiver and Amendment and shall accordingly, subject to any limitations set forth in the Guarantee Agreement, continue in full force and effect, (ii) its obligations under, and the Liens granted by it in and pursuant to, the Security Documents to which it is a party are not discharged or otherwise affected by the Benchmark Amendments, the Waiver, the New AspenTech Accession or the other provisions of this Waiver and Amendment and shall accordingly remain in full force and effect, (iii) the Obligations so guaranteed and secured shall, after each of the Amendment Effective Date and the Waiver Effective Date and subject to any limitations set forth in the Guarantee Agreement, extend to the Obligations under the Credit Documents (including under the Credit Agreement as amended pursuant to this Waiver and Amendment).

(c) After giving effect to the provisions of this Waiver and Amendment, neither the Waiver, the New AspenTech Accession, or the modification of the Credit Agreement effected pursuant to this Waiver and Amendment, nor the execution, delivery, performance or effectiveness of this Waiver and Amendment:

- i. impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority applicable to such Liens immediately prior to giving effect to the transactions contemplated by this Waiver and Amendment to secure repayment of all Obligations, whether heretofore or hereafter incurred; or
- ii. requires that any new filings required to be made under any Loan Document be made or other action required to be taken under any Loan Document be taken to perfect or to maintain the perfection of such Liens, except for such filings and other actions required to be made or taken on or prior to the Waiver Effective Date with respect to the New AspenTech Entities.

9. Expenses. Subject to Section 9.3 of the Credit Agreement, the Borrower agrees to pay and reimburse the Administrative Agent for all its reasonable out-of-pocket costs and expenses incurred in connection with the preparation and delivery of this Waiver and Amendment, including, without limitation, the reasonable fees and disbursements of counsel to the Administrative Agent.

10. Effect of Waiver and Amendment.

(a) Except as expressly set forth herein, this Waiver and Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of, the Lenders or the Administrative Agent under the Credit Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Nothing herein shall be deemed to establish a precedent for purposes of interpreting the provisions of the Credit Agreement or entitle any Loan Party to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document in similar or different circumstances. This Waiver and Amendment shall apply to and be effective only with respect to the provisions of the Credit Agreement specifically referred to herein.

(b) On and after each of the Amendment Effective Date and the Waiver Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import, and each reference to the Credit Agreement, "thereunder", "thereof", "therein" or words of like import in any other Loan Document, shall be deemed a reference to the Credit Agreement, as modified hereby on the Amendment Effective Date and the Waiver Effective Date, as applicable. This Waiver and Amendment shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents.

11. Execution in Counterparts; Electronic Signatures.

(a) This Waiver and Amendment may be executed by one or more of the parties to this Waiver and Amendment 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 Waiver and Amendment by email or facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

(b) The words "delivery", "execute," "execution," "signed," "signature," and words of like import in this Waiver and Amendment and any document executed in connection herewith 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, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary neither the Administrative Agent nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent or such Lender pursuant to procedures approved by it and provided further without limiting the foregoing, upon the request of any party, any electronic signature shall be promptly followed by such manually executed counterparts.

12. Severability. Any provision of this Waiver and Amendment 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.

13. Integration. This Waiver and Amendment and the other Loan Documents represent the entire agreement of the Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof, 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.

14. Governing Law. This Waiver and Amendment and the rights and obligations of the parties under this Waiver shall be governed by, and construed and interpreted in accordance with, the law of the state of New York. The provisions of Sections 9.09 and 9.10 of the Credit Agreement shall apply to this Waiver and Amendment to the same extent as if fully set forth herein.

15. Successors and Assigns. The consent of any Lender to this Waiver and Amendment shall be binding upon such Lender's successors, assigns and participants permitted by the Credit Agreement. Further, the provisions of this Waiver and Amendment shall be binding and inure to the benefit of, such Lender's successors, assigns and participants permitted by the Credit Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Waiver and Amendment to be duly executed and delivered by their officers as of the date first above written.

BORROWER:

ASPEN TECHNOLOGY, INC.

By:

DocuSigned by:
Chantelle Breithaupt

450CB13ED9694D9
Name: Chantelle Breithaupt

Title: SVP, CFO

[Signature Page to Waiver and Amendment]

LOAN PARTY:

ASPENTECH CANADA HOLDINGS, LLC

By: 

AS0CB12FD0A94D9
Name: Chantelle Breithaupt

Title: SVP, CFO

[Signature Page to Waiver and Amendment]

JPMORGAN CHASE BANK, N.A., as Administrative
Agent and Lender

By:

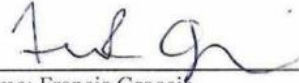


Name: David Tepper
Title: Vice President

[Signature Page to Waiver and Second Amendment]

SILICON VALLEY BANK, as a Lender:

By:

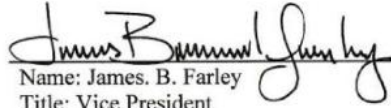


Name: Francis Groccia
Title: Director

[Signature Page to Waiver and Second Amendment]

Wells Fargo Bank, N.A., as a Lender:

By:


Name: James. B. Farley
Title: Vice President

[Signature Page to Waiver and Second Amendment]

Citibank N.A., as a Lender:

By:



Name: Ronald Homa
Title: Director

[Signature Page to Waiver and Second Amendment]

Citizens Bank, N.A., as a Lender:

By:

A handwritten signature in blue ink, appearing to read "Chancellor Peterson", is written over a horizontal line.

Name: Chancellor Peterson
Title: Senior Vice President

[Signature Page to Waiver and Second Amendment]

TD Bank, N.A., as a Lender:

By: 

Name: M. Bernadette Collins
Title: Senior Vice President

For any Lender requiring a second signature line:

By:

Name:
Title:

[Signature Page to Waiver and Second Amendment]

Internal

The Huntington National Bank, as a Lender:

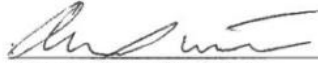
By: 

Name: Scott Pritchett
Title: Assistant Vice President

[Signature Page to Waiver and Second Amendment]

U.S. BANK NATIONAL ASSOCIATION, as a Lender:

By:



Name: Alexander Wilson
Title: Assistant Vice President

[Signature Page to Waiver and Second Amendment]

People's United Bank, National Association, as a
Lender:

By:

Kathryn Williams

Name: Kathryn Williams

Title: SVP

[Signature Page to Waiver and Second Amendment]

Confidential

Santander Bank, N.A., as a Lender:

By: 
Name: Benjamin Hildreth
Title: Senior Vice President

For any Lender requiring a second signature line:

By: _____
Name:
Title:

[Signature Page to Waiver and Second Amendment]

Exhibit A

[Exhibit A to Waiver and Second Amendment]

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

December 23, 2019

Among

ASPEN TECHNOLOGY, INC.,
as Borrower,

The LENDERS Party Hereto,

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,

and

SILICON VALLEY BANK
as Joint Lead Arrangers and Joint Bookrunners,

SILICON VALLEY BANK
as Syndication Agent,

and

CITIBANK, N.A.,
CITIZENS BANK, N.A.,
TD BANK, N.A.

and

WELLS FARGO BANK, N.A.,
as Co-Documentation Agents

Table of Contents

	Page
ARTICLE I Definitions	1
SECTION 1.01. Defined Terms	1
SECTION 1.02. Classification of Loans and Borrowings	45
SECTION 1.03. Terms Generally	45
SECTION 1.04. Accounting Terms; GAAP; Pro Forma Calculations	45
SECTION 1.05. Excluded Swap Obligations	47
SECTION 1.06. Foreign Currency Calculations	47
SECTION 1.07. Interest Rates; LIBOR Notification	47
SECTION 1.08. Division	48
ARTICLE II The Credits	48
SECTION 2.01. Commitments	48
SECTION 2.02. Loans and Borrowings	49
SECTION 2.03. Requests for Borrowings	50
SECTION 2.04. Funding of Borrowings	51
SECTION 2.05. Interest Elections	52
SECTION 2.06. Termination and Reduction of Commitments	53
SECTION 2.07. Repayment of Loans; Evidence of Debt; Letter of Credit Reimbursements	54
SECTION 2.08. Prepayment of Loans; Mandatory Prepayment of Term Loans	56
SECTION 2.09. Fees	57
SECTION 2.10. Interest	58
SECTION 2.11. Alternate Rate of Interest	59
SECTION 2.12. Increased Costs; Illegality	61
SECTION 2.13. Break Funding Payments	63
SECTION 2.14. Taxes	63
SECTION 2.15. Payments Generally; Pro Rata Treatment; Sharing of Set-offs	67
SECTION 2.16. Mitigation Obligations; Replacement of Lenders or Issuing Banks	69
SECTION 2.17. Defaulting Lenders	71
SECTION 2.18. [Reserved]	72
SECTION 2.19. Issuance of and Drawings and Reimbursement Under Letters of Credit	72
SECTION 2.20. Incremental Facility	76
ARTICLE III Representations and Warranties	80
SECTION 3.01. Organization; Powers	80
SECTION 3.02. Authorization; Enforceability	80
SECTION 3.03. Governmental Approvals; No Conflicts	80
SECTION 3.04. Financial Condition; No Material Adverse Change	81
SECTION 3.05. Properties	81
SECTION 3.06. Litigation and Environmental Matters	82
SECTION 3.07. Compliance with Laws and Agreements; No Default	82

SECTION 3.08.	Investment Company Status	82
SECTION 3.09.	Taxes	82
SECTION 3.10.	ERISA and Labor Matters	82
SECTION 3.11.	Subsidiaries	83
SECTION 3.12.	Insurance	83
SECTION 3.13.	Solvency	83
SECTION 3.14.	Disclosure	84
SECTION 3.15.	Collateral Matters	84
SECTION 3.16.	Federal Reserve Regulations	85
SECTION 3.17.	Anti-Corruption Laws and Sanctions	86
SECTION 3.18.	Use of Proceeds	86
SECTION 3.19.	USA PATRIOT Act	86
SECTION 3.20.	EEA Financial Institution	86
ARTICLE IV Conditions		86
SECTION 4.01.	Restatement Effective Date	86
SECTION 4.02.	Each Credit Event	88
ARTICLE V Affirmative Covenants		89
SECTION 5.01.	Financial Statements; and Other Information	89
SECTION 5.02.	Notices of Material Events	91
SECTION 5.03.	Information Regarding Collateral	92
SECTION 5.04.	Existence; Conduct of Business	93
SECTION 5.05.	Reserved	93
SECTION 5.06.	Maintenance of Properties	93
SECTION 5.07.	Insurance	93
SECTION 5.08.	Books and Records; Inspection and Audit Rights	93
SECTION 5.09.	Compliance with Laws	94
SECTION 5.10.	Use of Proceeds	94
SECTION 5.11.	Additional Subsidiaries	94
SECTION 5.12.	Further Assurances	94
SECTION 5.13.	After-Acquired Real Property	95
SECTION 5.14.	Environmental Compliance	95
ARTICLE VI Negative Covenants		96
SECTION 6.01.	Indebtedness; Certain Equity Securities	96
SECTION 6.02.	Liens	98
SECTION 6.03.	Fundamental Changes	99
SECTION 6.04.	Investments, Loans, Advances, Guarantees and Acquisitions	100
SECTION 6.05.	Asset Sales	103
SECTION 6.06.	Sale/Leaseback Transactions	105
SECTION 6.07.	Hedging Agreements	105
SECTION 6.08.	Restricted Payments; Certain Payments of Indebtedness	106
SECTION 6.09.	Transactions with Affiliates	108

SECTION 6.10.	Restrictive Agreements	108
SECTION 6.11.	Amendment of Material Documents	109
SECTION 6.12.	Fiscal Year	109
SECTION 6.13.	Leverage Ratio	109
SECTION 6.14.	Interest Coverage Ratio	109
ARTICLE VII	Events of Default	109
SECTION 7.01.	Events of Default	109
SECTION 7.02.	Actions in Respect of the Letters of Credit upon Default	112
ARTICLE VIII	The Administrative Agent	113
ARTICLE IX	Miscellaneous	118
SECTION 9.01.	Notices	118
SECTION 9.02.	Waivers; Amendments	120
SECTION 9.03.	Expenses; Indemnity; Damage Waiver	122
SECTION 9.04.	Assignments and Participations	124
SECTION 9.05.	Survival	129
SECTION 9.06.	Counterparts; Integration; Effectiveness	129
SECTION 9.07.	Severability	130
SECTION 9.08.	Right of Setoff	130
SECTION 9.09.	Governing Law; Jurisdiction; Consent to Service of Process	130
SECTION 9.10.	WAIVER OF JURY TRIAL	131
SECTION 9.11.	Headings	131
SECTION 9.12.	Confidentiality	132
SECTION 9.13.	Interest Rate Limitation	133
SECTION 9.14.	Release of Liens and Guarantees	133
SECTION 9.15.	USA PATRIOT Act Notice	133
SECTION 9.16.	No Fiduciary Relationship	134
SECTION 9.17.	Non-Public Information	134
SECTION 9.18.	Judgment Currency	135
SECTION 9.19.	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	135
SECTION 9.20.	Acknowledgement Regarding Any Supported QFCs	135
SECTION 9.21.	Certain ERISA Matters	136
ARTICLE X	AMENDMENT AND RESTATEMENT	138

SCHEDULES:

Schedule 1.01 –	Scheduled Excluded Equity Interests	
Schedule 1.02 –	Existing Letters of Credit	
Schedule 2.01 –	Commitments	
Schedule 3.06(a) –	Litigation	
Schedule 3.06(b) –	Environmental	Matters
Schedule 3.11 –	Subsidiaries	
Schedule 3.12 –	Insurance	
Schedule 6.01 –	Existing	Indebtedness
Schedule 6.02 –	Existing	Liens
Schedule 6.04 –	Existing	Investments
Schedule 6.10 –	Existing Restrictions	

EXHIBITS:

Exhibit A –	Form of Assignment and Assumption
Exhibit B –	Form of Borrowing Request
Exhibit C –	Form of Amended and Restated Collateral Agreement
Exhibit D –	Form of Compliance Certificate
Exhibit E –	Form of Interest Election Request
Exhibit F-1 –	Form of U.S. Tax Compliance Certificate for Non-U.S. Lenders that are not Partnerships for U.S. Federal Income Tax Purposes
Exhibit F-2 –	Form of U.S. Tax Compliance Certificate for Non-U.S. Participants that are not Partnerships for U.S. Federal Income Tax Purposes
Exhibit F-3 –	Form of U.S. Tax Compliance Certificate for Non-U.S. Participants that are Partnerships for U.S. Federal Income Tax Purposes
Exhibit F-4 –	Form of U.S. Tax Compliance Certificate for Non-U.S. Lenders that are Partnerships for U.S. Federal Income Tax Purposes
Exhibit G –	[Reserved]
Exhibit H –	Form of Amended and Restated Guarantee Agreement
Exhibit I –	Form of Promissory Note
Exhibit J –	Form of Solvency Certificate

AMENDED AND RESTATED CREDIT AGREEMENT dated as of December 23, 2019, among ASPEN TECHNOLOGY, INC., as Borrower, the LENDERS party hereto, the INITIAL ISSUING BANKS party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

RECITALS

WHEREAS the Borrower, the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the other agents named therein are parties to that certain Credit Agreement, dated as of February 26, 2016 (the "Existing Credit Agreement") pursuant to which certain loans and other extensions of credit were made to the Borrower;

WHEREAS, the Borrower, the Lenders party hereto and the Administrative Agent have entered into this Agreement in order to (i) amend and restate the Existing Credit Agreement in its entirety; (ii) replace revolving commitments and outstanding revolving loans under such Existing Credit Agreement with new revolving commitments and term loans as provided herein; and (iii) re-evidence the "Obligations" under, and as defined in, the Existing Credit Agreement as part of the Obligations, which shall be repayable in accordance with the terms of this Agreement;

WHEREAS, it is also the intent of the Borrower and the Borrower to confirm that all obligations under the applicable "Loan Documents" (as referred to and defined in the Existing Credit Agreement) shall continue in full force and effect as modified or restated by the Loan Documents (as referred to and defined herein) and that, from and after the Restatement Effective Date, all references to the "Credit Agreement" contained in any such existing "Loan Documents" shall be deemed to refer to this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree that the Existing Credit Agreement is hereby amended and restated as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, means that such Loan, or the Loans comprising such Borrowing, shall bear interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted EURIBOR Rate" means, with respect to any EURIBOR Benchmark Borrowing for any Interest Period, an interest rate per annum equal to (a) the EURIBOR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Adjusted Free Cash Flow" means, for any period, an amount equal to:

- (a) Free Cash Flow for such period; plus
- (b) without duplication, an amount equal to the sum of:
 - (i) Consolidated Interest Expense for such period (including imputed interest expense in respect of finance lease obligations), and
 - (ii) provision for taxes based on income, profits or losses, including foreign withholding taxes, and for corporate franchise, capital stock, net worth taxes, in each case during such period as reflected in the consolidated statements of income of the Borrower and its Subsidiaries for such period delivered pursuant to Section 5.01; minus
- (c) without duplication, the net amount (which may be an amount below zero) equal to the sum of (i) adjustments for deferred income taxes, plus (ii) changes in accounts receivable, plus (iii) changes in prepaid expenses, plus (iv) changes in prepaid income taxes, plus (v) changes in other assets, plus (vi) changes in accounts payable, plus (vii) changes in accrued expenses and other current liabilities, plus (ix) changes in income taxes payable, plus (x) changes in other liabilities, in each case as reflected in the consolidated statements of cash flow of the Borrower and its Subsidiaries for such period delivered pursuant to Section 5.01.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” means JPMorgan Chase Bank, N.A. (including its branches and affiliates), in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

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

“Affected Foreign Currency” has the meaning set forth in Section 2.11(c).

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

“Agreement” means this Credit Agreement, as amended, restated, modified or supplemented from time to time.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate on such day (or if such day is not a Business Day, the immediately preceding Business Day) for a deposit in Dollars with a maturity of one month plus 1% provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the LIBOR Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate

or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 (for the avoidance of doubt, only until any amendment has become effective pursuant to Section 2.11(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Creditor” has the meaning set forth in Section 9.18(b).

“Applicable Lending Office” means, with respect to each Lender, such Lender’s Domestic Lending Office in the case of a ABR Loan and such Lender’s EurodollarBenchmark Lending Office in the case of a EurodollarBenchmark Loan.

“Applicable Rate” means, (a) from the Restatement Effective Date to the date on which the Administrative Agent receives a Compliance Certificate pursuant to Section 5.01(d) for the first full Fiscal Quarter ending after the Restatement Effective Date, (i) with respect to any ABR Loan ~~or~~, Eurodollar Loan, EURIBOR Benchmark Loan or SONIA Loan, the Applicable Rate set forth below under Level I shall apply and (ii) with respect to any commitment fee, the commitment fee rate set forth below under Level I shall apply and (b) thereafter, (i) with respect to any Eurodollar Loan, the applicable rate per annum set forth below under the caption “Applicable Rate – Eurodollar Loans” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d); (ii) with respect to any ABR Loan, the applicable rate per annum set forth below under the caption “Applicable Rate – ABR Loans” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d) and (iii) with respect to any EURIBOR Benchmark Loan, the applicable rate per annum set forth below under the caption “Applicable Rate – EURIBOR Benchmark Loans” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d)(iv) with respect to any SONIA Loans, the applicable rate per annum set forth below under the caption “Applicable Rate – SONIA Loans” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d)(v) with respect to any CBR Loan, the applicable rate per annum set forth below under the caption “Applicable Rate – CBR Loans” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d) and (vi) with respect to any commitment fee, a rate per annum set forth below under the caption “Commitment Fee Rate” based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d):

Status:	Leverage Ratio	Applicable Rate –	Applicable Rate – ABR	Applicable Rate	Applicable	Commitment Fee
---------	----------------	-------------------	-----------------------	-----------------	------------	----------------

		<u>Eurodollar Loans</u>	<u>Loans</u>	<u>EURIB OR Benchm ark Loans and SONIA Loans</u>	<u>Rate – CBR Loans</u>	<u>Rate</u>
Level I	Less than 1.50 to 1.00	1.50%	0.50%	1.50%	1.50%	0.20%
Level II	Greater than or equal to 1.50 to 1.00, but less than 2.50 to 1.00	1.75%	0.75%	1.75%	1.75%	0.25%
Level III	Greater than or equal to 2.50 to 1.00	2.00%	1.00%	2.00%	2.00%	0.30%

“Applicable SONIA Adjustment” shall mean, for any day, with respect to any SONIA Loan, the rate per annum equal to 0.0326%

“Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its activities and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means, collectively, JPMorgan Chase Bank, N.A. and Silicon Valley Bank in their capacity as joint lead arrangers and joint bookrunners for the credit facilities provided for herein.

“Asset Sale” means any Disposition of property or series of related Dispositions of property (excluding any such Disposition permitted by Section 6.05 (other than clause (k) thereof)) that yields gross proceeds to the Borrower or any Subsidiary (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of \$5,000,000.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee, with the consent of any party whose consent is required by Section 9.04, and accepted by the Administrative Agent, substantially in the form of Exhibit A or any other form approved by the Administrative Agent and the Borrower.

“Availability Period” means the period from and including the Restatement Effective Date to but excluding the earlier of the Revolving Termination Date and the date of

termination of the Revolving Commitments.

“Available Amount” of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing); provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any L/C Related Documents, provides for one or more automatic increases in the stated amount thereof, the Available Amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

“Available Tenor” means, as of the date of determination and with respect to the then-currency benchmark for Dollars or any Designated Foreign Currency, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments pursuant to this Agreement as of such date.

“BAFT-IFSA” has the meaning set forth in Section 2.19(f).

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

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

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person 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 permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Benchmark” means, initially, with respect to any Eurodollar Borrowing denominated in Dollars, the LIBO Rate, (ii) with respect to any Borrowing denominated in Euros, the EURIBOR Rate or (iii) with respect to any Borrowing denominated in Pounds Sterling, Daily Simple SONIA, as applicable; provided that if a Benchmark Transition Event or

an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (d) of Section 2.11.

“Benchmark Lending Office” means, with respect to any Lender, the office of such Lender specified as its lending office for Benchmark Borrowings in its Administrative Questionnaire delivered to the Administrative Agent or specified in the Incremental Assumption Agreement or the Assignment and Assumption pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

“Benchmark Replacement” means the sum of: (a) the alternate benchmark rate (which, with respect to U.S. dollars, may be a SOFR-Based Rate) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the LIBO Rate or the then-current Benchmark for U.S. dollar-denominated or Designated Foreign Currency-denominated, as applicable syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement; provided further that any such Benchmark Replacement shall be administratively feasible as determined by the Administrative Agent in its sole discretion.

“Benchmark Replacement Adjustment” means the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the ~~LIBO Rate~~then-current Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the ~~LIBO Rate~~then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated or Designated Foreign Currency, as applicable syndicated credit facilities at such time (for the avoidance of doubt, such Benchmark Replacement Adjustment shall not be in the form of a reduction to the Applicable Rate).

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such

market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent in consultation with the Borrower decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earlier to occur of the following events with respect to ~~the LIBO Rates~~ such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of ~~the LIBO Screen Rates~~ such Benchmark permanently or indefinitely ceases to provide ~~the LIBO Screen Rates~~ such Benchmark; or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

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

(1) a public statement or publication of information by or on behalf of the administrator of ~~the LIBO Screen Rates~~ such Benchmark announcing that such administrator has ceased or will cease to provide ~~the LIBO Screen Rates~~ such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide ~~the LIBO Screen Rates~~ such Benchmark;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of ~~the LIBO Screen Rates~~ such Benchmark, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for ~~the LIBO Screen Rates~~ such Benchmark, a resolution authority with jurisdiction over the administrator for ~~the LIBO Screen Rates~~ such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for ~~the LIBO Screen Rates~~ such Benchmark, in each case which states that the administrator of ~~the LIBO Screen Rates~~ such Benchmark has ceased or will cease to provide ~~the LIBO Screen Rates~~ such Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the ~~LIBO Screen Rates~~ such Benchmark; and/or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of ~~the LIBO Screen Rates~~ such Benchmark announcing that ~~the LIBO Screen Rates~~ such Benchmark is no longer representative.

“Benchmark Transition Start Date” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required

Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

“Benchmark Unavailability Period” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to ~~the LIBO Rate~~then-current Benchmark and solely to the extent that ~~the LIBO Rate~~such Benchmark has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder in accordance with Section 2.11 and (y) ending at the time that a Benchmark Replacement has replaced ~~the LIBO Rate~~such Benchmark for all purposes hereunder pursuant to Section 2.11.

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

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

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

“Borrower” means Aspen Technology, Inc., a Delaware corporation.

“Borrowing” means Loans of the same Type and Class, made, converted or continued on the same date and, in the case of each of Eurodollar Loans and EURIBOR Benchmark Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03, which shall be, in the case of any such written request, substantially in the form of Exhibit B or any other form approved by the Administrative Agent.

~~“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, (a) when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in deposits in the relevant currency in the London interbank market and (b) when used in connection with a Eurodollar Loan denominated in Euros, the term “Business Day” shall also exclude any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer System (which utilizes a single shared platform and which was launched on November 19, 2007 (TARGET2)) (or, if such clearing system ceases to be operative, such other clearing system (if any) determined by the Administrative Agent to be a suitable replacement) is not open for settlement of payment in Euros.~~

“Business Day” shall mean any day (other than a Saturday or a Sunday) on which banks are open for business in New York City; provided that (a) in relation to the calculation or computation of LIBOR, shall mean any day (other than a Saturday or a Sunday) on which banks are open for business in London (B) in relation to Loans denominated in Euros and in relation to the calculation of EURIBOR, shall mean any day which is a TARGET Day and (C) in relation to SONIA Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such SONIA Loan, or any other dealings in Pounds Sterling, shall mean any such day that is only a SONIA Business Day.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, subject to Section 1.04. The amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP. For purposes of Section 6.02, a Capital Lease Obligation shall be deemed to be secured by a Lien on the property being leased and such property shall be deemed to be owned by the lessee.

“Cash Management Agreement” means an agreement pursuant to which a bank or other financial institution provides Cash Management Services.

“Cash Management Services” means (a) treasury management services (including controlled disbursements, zero balance arrangements, cash sweeps, automated clearinghouse transactions, return items, overdrafts, temporary advances, interest and fees and interstate depository network services) provided to the Borrower or any Subsidiary and (b) commercial credit card and purchasing card services provided to the Borrower or any Subsidiary.

“CBR Loan” means a Loan that bears interest at a rate determined by reference to the Central Bank Rate.

“Central Bank Rate” means, (A) the greater of (i) for any Loan denominated in Pounds Sterling, the Bank of England (or any successor thereto)’s “Bank Rate” as published by the Bank of England (or any successor thereto) from time to time, (b) Euro, one of the following three rates as may be selected by the Administrative Agent in its reasonable discretion: (1) the fixed rate for the main refinancing operations of the European Central Bank (or any successor thereto), or, if that rate is not published, the minimum bid rate for the main refinancing operations of the European Central Bank (or any successor thereto), each as published by the European Central Bank (or any successor thereto) from time to time, (2) the rate for the marginal lending facility of the European Central Bank (or any successor thereto), as published by the European Central Bank (or any successor thereto) from time to time or (3) the rate for the deposit facility of the central banking system of the Participating Member States, as published by the European Central Bank (or any successor thereto) from time to time; plus (B) the applicable Central Bank Rate Adjustment.

“Central Bank Rate Adjustment” means, for any day, for any Loan denominated in (a) Euro, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of the EURIBOR Rate for the five most recent Business Days preceding such day

for which the EURIBOR Screen Rate was available (excluding, from such averaging, the highest and the lowest EURIBOR Rate applicable during such period of five Business Days) minus (ii) the Central Bank Rate in respect of Euro in effect on the last Business Day in such period, (b) Sterling, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of SONIA for the five most recent SONIA Business Days preceding such day for which SONIA was available (excluding, from such averaging, the highest and the lowest SONIA applicable during such period of five SONIA Business Days) minus (ii) the Central Bank Rate in respect of Sterling in effect on the last SONIA Business Day in such period. For purposes of this definition, (x) the term Central Bank Rate shall be determined disregarding clause (B) of the definition of such term and (y) the EURIBOR Rate on any day shall be based on the EURIBOR Screen Rate, as applicable, on such day at approximately the time referred to in the definition of such term for deposits in Euro for a maturity of one month (or, in the event the EURIBOR Screen Rate is not available for such maturity of one month, shall be based on the EURIBOR Interpolated Rate, as applicable, as of such time); provided that if such rate shall be less than 0.00%, such rate shall be deemed to be 0.00%.

“CFC” means (a) each Person that is a “controlled foreign corporation” for purposes of the Code and (b) each subsidiary of any such controlled foreign corporation.

“CFC Holding Company” means a Subsidiary, substantially all of the assets of which consist of Equity Interests or Indebtedness of (a) one or more CFCs or (b) one or more CFC Holding Companies.

“Change in Control” means (a) occupation of a majority of the seats (other than vacant seats) on the Board of Directors of the Borrower by Persons who were neither (i) nominated by the Board of Directors of the Borrower nor (ii) appointed or approved by directors so nominated or (b) any person or group or persons (within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended) shall obtain ownership or control in one or more series of transactions of more than 35% of the common Equity Interests or 35% of the voting power of the Equity Interests of the Borrower entitled to vote on the election of members of the Board of Directors of the Borrower.

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

“Charges” has the meaning set forth in Section 9.13.

“Class” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Term Loans.

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

“Collateral” means any and all assets, whether real or personal, tangible or intangible, on which Liens are granted pursuant to the Security Documents as security for the Obligations, subject, in each case, to the Collateral and Guarantee Requirements.

“Collateral Agreement” means the Amended and Restated Collateral Agreement among the Borrower, the other Loan Parties organized in the United States and the Administrative Agent, substantially in the form of Exhibit C.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Administrative Agent shall have received from the Borrower and each Designated Subsidiary either (i) counterparts of the Guarantee Agreement and a Collateral Agreement duly executed and delivered on behalf of such Person or (ii) in the case of any Person that becomes a Designated Subsidiary after the Restatement Effective Date, a supplement to the Guarantee Agreement and a Collateral Agreement, substantially in the form specified therein (or as otherwise agreed by the Administrative Agent), duly executed and delivered on behalf of such Person, together with documents of the type referred to in Section 4.01(c)(i), (ii) and (iii) and, to the extent reasonably requested by the Administrative Agent, opinions of the type referred to in Section 4.01(c)(iv), with respect to such Designated Subsidiary;

(b) (i) all outstanding Equity Interests in any Significant Subsidiary (other than Excluded Equity Interests), in each case directly owned by any Loan Party, shall have been pledged pursuant to the Collateral Agreement and (ii) the Administrative Agent shall, to the extent such Equity Interests are certificated securities, have received certificates or other instruments representing all such Equity Interests, together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank;

(c) all Indebtedness of the Borrower and each Subsidiary that is owing to any Loan Party in an aggregate principal amount in excess of \$10,000,000 shall be evidenced by a promissory note and shall have been pledged pursuant to the Collateral Agreement or a supplement to the Collateral Agreement, and the Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;

(d) all documents and instruments, including Uniform Commercial Code financing statements, required by Requirements of Law or reasonably requested by the Administrative Agent to be filed, registered or recorded to evidence the Liens intended to be created by the Security Documents and perfect such Liens to the extent required by, and with the priority required by, the Security Documents and the other provisions of the term “Collateral and Guarantee Requirement”, shall have been filed, registered or

recorded or delivered to (or provided by, as applicable) the Administrative Agent for filing, registration or recording; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Mortgaged Property duly executed and delivered by the record owner of such Mortgaged Property, (ii) with respect to each Mortgaged Property located in the United States, a policy or policies of title insurance issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a valid and enforceable Lien on the Mortgaged Property described therein, free of any other Liens except as permitted under Section 6.02, together with such endorsements as the Administrative Agent may reasonably request, (iii) with respect to each Mortgaged Property located outside the United States, such title reports and other documentation as is customary in such jurisdiction in connection with the mortgage of property in comparable transactions, (iv) if the Borrower is in receipt of a Standard Flood Hazard Determination that shows that a Mortgaged Property is located in an area determined by the Federal Emergency Management Agency to have special flood hazards, the Borrower shall (prior to the delivery of a counterpart to the Mortgage for such Mortgaged Property) deliver to the Administrative Agent evidence of such flood insurance as may be required under applicable law or regulations, including Regulation H of the Board of Governors, and in any event in form and substance reasonably satisfactory to the Administrative Agent and (v) any surveys as may exist at such time with respect to any such Mortgaged Property and any legal opinions as the Administrative Agent may reasonably request with respect to any such Mortgage.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (a) the Loan Parties shall have the time periods specified in Section 5.11 to satisfy the Collateral and Guarantee Requirement with respect to Designated Subsidiaries newly acquired or formed (or which first become Designated Subsidiaries) after the Restatement Effective Date and with respect to assets acquired after the Restatement Effective Date that do not automatically constitute Collateral under a Collateral Agreement, (b) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, as to which the Administrative Agent and the Borrower reasonably agree that the cost of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any adverse tax consequences to the Borrower and the Subsidiaries (including the imposition of withholding or other material taxes)), shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (c) Liens required to be granted from time to time pursuant to the term "Collateral and Guarantee Requirement" shall be subject to exceptions and limitations set forth in the Security Documents and, to the extent appropriate in the applicable jurisdiction, as reasonably agreed between the Administrative Agent and the Borrower, (d) in no event shall the Collateral include any Excluded Assets, (e) no Person shall be required to Guarantee the Obligations or grant security therefor if to do so would conflict with the fiduciary duties of its directors or contravene any legal prohibition or result in a risk of personal or criminal liability on the part of any officer or director thereof, (f) the requirement to enter into the Guarantee Agreement and any Security

Document and the terms of each such agreement shall be subject to general statutory limitations, financial assistance, capital maintenance, corporate benefit, fraudulent preference, “thin capitalization” rules, retention of title claims, exchange control restrictions, ineffectiveness of agency provisions, and similar principles that may limit the ability of any Person to provide a Guarantee or security to the Administrative Agent or the Lenders or may require that the Guarantee or security be limited by an amount or otherwise; provided, that each such affected Person that is otherwise required to be a Loan Party shall use commercially reasonable efforts to provide the maximum permissible credit support and to assist in demonstrating that adequate corporate benefit accrues to any relevant entity, and (g) the maximum Guaranteed or secured amount may be limited due to legal or regulatory limitations, or, in the Administrative Agent’s reasonable discretion, to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties. Notwithstanding any other provision of any Loan Document, the Guarantee given by any Subsidiary that becomes a Subsidiary Guarantor (as defined in the Guarantee Agreement) after the Restatement Effective Date (an “Additional Guarantor”) shall be subject to the limitations consistent with this definition and such limitations shall be set forth in the Supplement (as defined in the Guarantee Agreement) applicable to such Additional Guarantor. The Administrative Agent may, without the consent of any Lender, grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Designated Subsidiary (including extensions beyond the Restatement Effective Date or in connection with assets acquired, or Designated Subsidiaries formed or acquired, after the Restatement Effective Date) where it and the Borrower reasonably agree that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement or the Security Documents. In addition, in no event shall (a) control agreements or control or similar arrangements be required with respect to cash deposit or securities accounts, (b) notice be required to be sent to account debtors or other contractual third parties prior to the occurrence and absent the continuance of an Event of Default, (c) perfection be required with respect to letter of credit rights and commercial tort claims (except to the extent perfected through the filing of Uniform Commercial Code financing statements), (d) security documents governed by the laws of a jurisdiction other than the United States or any State thereof or the District of Columbia be required, (e) filings be required to be made against intellectual property in any jurisdiction other than the United States or (f) landlord, warehouse or bailee waivers be required for leased or used real property.

“Commitment” means a Revolving Credit Commitment, a Term Loan Credit Commitment or a Letter of Credit Commitment.

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

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit D or any other form approved by the Administrative Agent.

“Compounded SOFR” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which may include compounding in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period)

being established by the Administrative Agent in accordance with:

- (1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that:
- (2) if, and to the extent that, the Administrative Agent determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that the Administrative Agent, in consultation with the Borrower, determines in its reasonable discretion are substantially consistent with any evolving or then-prevailing market convention for determining compounded SOFR for U.S. dollar-denominated syndicated credit facilities at such time;

provided, further, that if the Administrative Agent decides that any such rate, methodology or convention determined in accordance with clause (1) or clause (2) is not administratively feasible for the Administrative Agent, then Compounded SOFR will be deemed unable to be determined for purposes of the definition of “Benchmark Replacement.”

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

“Consolidated Interest Expense” means, with reference to any period, the Interest Expense of the Borrower and its Subsidiaries calculated on a consolidated basis in accordance with GAAP for such period.

“Consolidated Total Assets” means, with reference to any period, the total assets of the Borrower and its Subsidiaries calculated on a consolidated basis in accordance with GAAP for such period.

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

“Corresponding Tenor” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the applicable Interest Period with respect to the LIBO Rate.

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12

C.F.R. § 47.3(b); or

- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned to it in Section 9.20.

“Daily Simple SONIA” means for any day (a “SONIA Interest Day”), an interest rate per annum equal to the greater of SONIA for the day that is five Business Days prior to (A) if such SONIA Interest Day is a Business Day, such SONIA Interest Day or (B) if such SONIA Interest Day is not a Business Day, the Business Day immediately preceding such SONIA Interest Day. If, for such day, Daily Simple Sonia shall be less than 0.00%, such interest rate shall be deemed to be 0.00% for the purposes of this Agreement.

“Default” means any event or condition that constitutes, or upon notice, lapse of time or both would constitute, an Event of Default.

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Loans within two Business Days of the date required to be funded by it hereunder, (b) notified the Borrower, the Administrative Agent or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans (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), (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless such payment is the subject of a good faith dispute, or (e) has become the subject of (A) a Bankruptcy Event or (B) a Bail-In Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17) upon delivery of written notice of such determination to the Borrower and each Lender.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Designated Foreign Currency” means Euros or Pounds Sterling.

“Designated Subsidiary” means each Significant Domestic Subsidiary that is not an Excluded Subsidiary.

“Disposition” has the meaning set forth in Section 6.05.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder

thereof), or upon the happening of any event or condition:

(a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests); or

(c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by the Borrower or any Subsidiary, in whole or in part, at the option of the holder thereof;

in each case, on or prior to the date that is 91 days after the Maturity Date (determined as of the date of issuance thereof or, in the case of any such Equity Interests outstanding on the Restatement Effective Date, the Restatement Effective Date); provided, however, that (i) an Equity Interest in any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale” or a “change of control” (or similar event, however denominated) shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after repayment in full of all the Loans and all other Loan Document Obligations that are accrued and payable and the termination or expiration of the Commitments and (ii) an Equity Interest in any Person that is issued to any employee or to any plan for the benefit of employees or by any such plan to such employees shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by such Person or any of its subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

“Disqualified Institutions” means (i) banks, financial institutions and other institutional lenders separately identified in writing by the Borrower to the Administrative Agent prior to the Restatement Effective Date, (ii) the competitors of the Borrower and the Subsidiaries identified by name in writing by the Borrower to the Administrative Agent from time to time and (iii) in the case of each of the entities covered by clauses (i) and (ii), any of their Affiliates that are either (a) identified in writing by the Borrower or (ii) clearly identifiable on the basis of such Affiliate’s name; for the avoidance of doubt the Administrative Agent shall, and shall be permitted to, provide such list of Disqualified Institutions to the Lenders. In no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any prospective assignee is a Disqualified Institution or have any liability with respect to any assignment made to a Disqualified Institution.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Dollar Equivalent” means, for any amount, at the time of determination thereof,

(a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in a Designated Foreign Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Designated Foreign Currency last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Thomson Reuters Corp., Refinitiv, or any successor thereto (“Reuters”) source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with the Designated Foreign Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its reasonable discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its reasonable discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its reasonable discretion.

“Domestic Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Domestic Lending Office” in its Administrative Questionnaire delivered to the Administrative Agent or specified in the Incremental Assumption Agreement or the Assignment and Assumption pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

“Domestic Subsidiary” means any Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

“Early Opt-in Election” means the occurrence of:

(1) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders (or with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility) to the Administrative Agent (with a copy to the Borrower) that the Required Lenders (or with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility) have determined that U.S. dollar-denominated or Designated Foreign Currency-denominated, as applicable, syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.11 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the ~~LIBO Rate~~then-current Benchmark, and

(2) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders (or with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility) to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders (or with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility) of written notice of such election to the Administrative Agent.

“EEA Financial Institution” means (a) any institution established in any EEA

Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, (d) any bank and (e) any other financial institution or investment fund engaged as a primary activity in the ordinary course of its business in making or investing in commercial loans or debt securities, other than, in each case, (i) a natural person (including a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof), (ii) a Defaulting Lender or (iii) the Borrower, any Subsidiary or any other Affiliate of the Borrower, in each case other than any Disqualified Institution.

“Environmental Laws” means all Requirements of Law relating to pollution or the protection of the environment or natural resources (or, as it relates to exposure to hazardous or toxic substances, human health and safety matters).

“Environmental Liability” means any liability, obligation, loss, claim, lawsuit or order, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties and indemnities) directly or indirectly resulting or arising from (a) the violation of any Environmental Law or Environmental Permit, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) the Release or threatened Release of any Hazardous Materials, (d) exposure to any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits” means any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization issued or required under Environmental Laws.

“Equity Interests” means shares of capital stock, partnership interests, membership interests, beneficial interests in a trust or other equity ownership interests (whether voting or non-voting) in, or interests in the income or profits of, a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing (other than, prior to the date of such conversion, Indebtedness that is convertible into Equity Interests).

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

amended from time to time.

“ERISA Affiliate” means (A) any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or (B) any entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001(a)(14) of ERISA.

“ERISA Event” means (a) the existence, with respect to any Plan of the Borrower, of a non-exempt Prohibited Transaction; (b) any Reportable Event; (c) the failure of the Borrower or any ERISA Affiliate to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or any failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, in each case whether or not waived; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (e) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 430(i)(4) of the Code or Section 303(i)(4) of ERISA); (f) the incurrence by the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (g) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (h) the incurrence by the Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (i) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, in “endangered” or “critical” status (within the meaning of Sections 431 or 432 of the Code or Sections 304 or 305 of ERISA), or in “critical and declining” status (within the meaning of Section 305 of ERISA) or terminated (within the meaning of Section 4041A of ERISA) or that the PBGC has issued a partition order under Section 4233 of ERISA with respect to the Multiemployer Plan; (j) the failure by the Borrower or any ERISA Affiliate to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability under Section 4201 of ERISA; (k) a Foreign Plan Event; (l) the imposition of a Lien pursuant to Section 430(k) of the Code or pursuant to Section 303(k) or 4068 of ERISA with respect to any Pension Plan; or (m) the occurrence of an act or omission which could give rise to the imposition on any Borrower or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Plan.

“EURIBOR Benchmark” when used in reference to any Loan or Borrowing, means a Loan bearing interest at a rate determined by reference to the Adjusted EURIBOR Rate.

“EURIBOR Interpolated Rate” means, at any time, with respect to any EURIBOR Benchmark Borrowing for any Interest Period, the rate per annum (rounded to the same number of decimal places as the EURIBOR Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the EURIBOR Screen Rate for the longest period (for which the EURIBOR Screen Rate is available for Euros) that is shorter than

the Impacted EURIBOR Rate Interest Period; and (b) the EURIBOR Screen Rate for the shortest period (for which the EURIBOR Screen Rate is available for Euros) that exceeds the Impacted EURIBOR Rate Interest Period, in each case, at such time; provided that if any EURIBOR Interpolated Rate shall be less than 0.00% such rate shall be deemed to be 0.00% for the purposes of this Agreement.

“EURIBOR Rate” means, with respect to any EURIBOR Benchmark Borrowing for any Interest Period, the EURIBOR Screen Rate at approximately 11:00 A.M., Brussels time two TARGET Days prior to the commencement of such Interest Period, provided that, if the EURIBOR Screen Rate shall not be available at such time for such Interest Period (an “Impacted EURIBOR Rate Interest Period”) with respect to Euros then the EURIBOR Rate shall be the EURIBOR Interpolated Rate.

“EURIBOR Screen Rate” means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correct, recalculation, or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters screen which displays that rate) or on the appropriate page of such other information services which publishes that rate from time to time in place of Thomson Reuters as of 11:00 a.m. Brussels time two TARGET Days prior to the commencement of such Interest Period. If such page or service ceases to be available, the Administrative Agent may specify another page or service displaying the relevant rate after consultation with the Borrower. If the EURIBOR Screen Rate shall be less than 0.00%, the EURIBOR Screen Rate shall be deemed to be 0.00% for the purposes of this Agreement.

“Euro” means the lawful currency of the European Union as constituted by the Treaty of Rome which established the European Community, as such treaty may be amended from time to time and as referred to in the European Monetary Union legislation.

“Eurodollar,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

~~“Eurodollar Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Eurodollar Lending Office” in its Administrative Questionnaire delivered to the Administrative Agent or specified in the Incremental Assumption Agreement or the Assignment and Assumption pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.~~

“Event of Default” has the meaning set forth in Article VII.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended from time to time.

“Excluded Assets” means (a) any fee-owned real property with a fair market value of less than \$10,000,000 and all leasehold interests; (b) motor vehicles and other assets subject to certificates of title (other than to the extent a security interest in such assets can be

perfected by filing a Uniform Commercial Code financing statement or similar financing statement in a non-U.S. jurisdiction); (c) commercial tort claims with a value of less than \$5,000,000; (d) any lease, license or other agreement or any property subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money security interest or similar arrangement or create a right of termination in favor of any other party thereto (other than the Borrower or any wholly owned Subsidiary) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or analogous law of any non-U.S. jurisdiction, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or analogous law of any non-U.S. jurisdiction notwithstanding such prohibition; (e) "intent-to-use" trademark applications; (f) any Excluded Equity Interests; and (g) any business interruption insurance policies of the Borrower or any of its Subsidiaries (or the proceeds thereof other than to the extent such proceeds would otherwise constitute proceeds of Collateral).

"Excluded Equity Interests" means (a) any Equity Interests described on Schedule 1.01, (b) any Equity Interests that consist of voting stock of a Subsidiary that is a CFC or a CFC Holding Company in excess of 65% of the outstanding voting stock (or 65% of the outstanding Equity Interests in the case of an entity that is not a corporation for U.S. tax purposes) of such Subsidiary, (c) any Equity Interests if, to the extent, and for so long as, the grant of a Lien thereon to secure the Obligations is effectively prohibited by any Requirements of Law; provided that such Equity Interest shall cease to be an Excluded Equity Interest at such time as such prohibition ceases to be in effect, and (d) Equity Interests in any Person that is not a Subsidiary or in non-wholly owned Subsidiaries permitted under this Agreement to the extent and for so long as the granting of security interests in such Equity Interests would (i) be prohibited by the Organizational Documents or shareholder agreements or similar contracts between the owners of the Equity Interests of such non-wholly owned Subsidiaries or (ii) in the good faith judgment of the board of directors of the Borrower or such Subsidiary, require shareholder approval for such pledge; provided that such Equity Interest shall cease to be an Excluded Equity Interest at such time as such prohibition ceases to be in effect.

"Excluded Subsidiary" means (a) any Subsidiary that is not a wholly-owned Significant Subsidiary organized in the United States, (b) any Subsidiary (other than the Borrower) that is a CFC or a CFC Holding Company (and accordingly, in no event shall a CFC or a CFC Holding Company be required to enter into any Security Document or pledge any assets hereunder) and (c) any Subsidiary formed or acquired after the Restatement Effective Date, in each case that is prohibited by Requirements of Law from guaranteeing the Loan Document Obligations; provided however that any Subsidiary shall cease to be an Excluded Subsidiary at such time as none of clauses (a), (b) or (c) above apply to such Subsidiary and provided, further, that if a Subsidiary that is party to the Guarantee Agreement ceases to be wholly-owned by the Borrower then it shall not constitute an "Excluded Subsidiary" under clause (a) to the extent it remains a Significant Subsidiary of the Borrower organized in the United States.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, and only for so long as, the Guarantee by such Loan Party of, or the grant by such Loan Party of a security interest to secure, as applicable, such Swap

Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Loan Party or the grant by any Loan Party of a security interest, as applicable, becomes effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.16(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.14, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in such Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.14(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Letters of Credit" means those letters of credit described on Schedule 1.02 issued under the Existing Credit Agreement that are outstanding thereunder on the Restatement Effective Date.

"Facility" means each of (a) the Term Commitments and the Term Loans made thereunder (the "Term Facility") and (b) the Revolving Credit Commitments and the extensions of credit made thereunder (the "Revolving Facility").

"FATCA" means Sections 1471 through 1474 of the Code, as of the Restatement Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreements entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective

rate, provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to zero for the purposes of calculating such rate.

“Financial Officer” means, with respect to any Person, the chief executive officer, chief financial officer, principal accounting officer or treasurer of such Person.

“Federal Reserve Bank of New York’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

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

“Fiscal Quarter” means a fiscal quarter of the Borrower.

“Fiscal Year” means a fiscal year of the Borrower.

“Foreign Currency Loan” means Revolving Loans denominated in Euros and Revolving Loans denominated in Pounds Sterling.

“Foreign Lender” means any Lender that is not a U.S. Person.

“Foreign Plan” means each employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), program or agreement that is not subject to US law and is maintained or contributed to by, or entered into with, the Borrower or any ERISA Affiliate, other than any employee benefit plan, program or agreement that is sponsored or maintained exclusively by a Governmental Authority.

“Foreign Plan Event” means, with respect to any Foreign Plan, (a) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any contributions or payments required by applicable law or by the terms of such Foreign Plan; (b) the failure to register or loss of good standing with applicable Governmental Authorities of any such Foreign Plan required to be registered with such Governmental Authorities; or (c) the failure of any Foreign Plan to comply with any material provisions of applicable law and regulations or with the material terms of such Foreign Plan.

“Free Cash Flow” means, for any period, an amount equal to:

- (a) Net Cash Provided by Operating Activities for such period, plus
- (b) without duplication, an amount equal to the sum of:
 - (i) any extraordinary losses or charges for such period, determined on a consolidated basis in accordance with GAAP, including litigation-related payments (receipts),
 - (ii) Transaction Costs related to the Transactions and any non-recurring fees, costs and expenses incurred or payable by the Borrower or any of its Subsidiaries in

connection with any Permitted Acquisition or Specified Transaction or any other asset acquisitions permitted hereunder, including non-capitalized acquired technology,

(iii) any impact from restructuring charges or impairment charges, provided that cash impact is included in Free Cash Flow when any such amount is actually paid, minus

(c) without duplication, the net amount equal to the sum of (i) capital expenditures for such period for the purchases of property, equipment and leasehold improvements plus (ii) payments for capitalized computer software costs for such period, in each case as reflected in the consolidated statements of cash flows of the Borrower and its Subsidiaries for such period delivered pursuant to Section 5.01, minus

(d) any extraordinary gains for such period, determined on a consolidated basis in accordance with GAAP.

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

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

“Governmental Authority” means the government of the United States of America, any other nation or 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 body exercising such powers or functions, such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other obligation; provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount, as of any date of determination, of any Guarantee shall be the principal amount outstanding on such date of the Indebtedness or other obligation guaranteed thereby (or, in the case of (i) any Guarantee the terms of which limit the monetary exposure of the guarantor or (ii) any Guarantee of an obligation that does not have a principal amount, the maximum monetary exposure as of such date of the guarantor under such Guarantee (as determined, in the case of clause (i), pursuant to such terms or, in the case of clause (ii), reasonably and in good

faith by a Financial Officer of the Borrower)). The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantee Agreement” means the Amended and Restated Guarantee Agreement among the Designated Subsidiaries and the Administrative Agent, substantially in the form of Exhibit H.

“Hazardous Materials” means petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, mercury, lime solids, radon gas and all other substances, wastes or other pollutants (including explosive, radioactive, hazardous or toxic substances or wastes) that are regulated pursuant to, or the Release of or exposure to which could give rise to liability under, any Environmental Law.

“Hedging Agreement” means any agreement with respect to any swap, forward, future or derivative transaction, or any option or similar agreement, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt securities or instruments, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or any similar transaction or any combination of the foregoing transactions, in each case, not entered into for speculative purposes; 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 or any Subsidiary shall be a Hedging Agreement.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Hedging Agreements.

“Honor Date” has the meaning set forth in Section 2.19(c).

“ICC” has the meaning set forth in Section 2.19(f).

“Impacted EURIBOR Rate Interest Period” has the meaning set forth in the definition of EURIBOR Rate.

“Impacted LIBO Rate Interest Period” has the meaning set forth in the definition of LIBO Rate.

“Increased Amount Date” has the meaning set forth in Section 2.20(b).

“Incremental Amount” means an aggregate amount not to exceed an amount equal to the greater of (i) \$250,000,000 and (ii) the Ratio-Based Incremental Amount as of the Increased Amount Date.

“Incremental Assumption Agreement” means an Incremental Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and one or more Incremental Term Lenders and/or Incremental Revolving Lenders.

“Incremental Facility” means any facility established by the Lenders pursuant to

Section 2.20.

“Incremental Revolving Commitment” means the Revolving Commitment of any Lender, established pursuant to Section 2.20, to make Incremental Revolving Loans to the Borrower.

“Incremental Revolving Lender” means each Lender which holds an Incremental Revolving Commitment or an outstanding Incremental Revolving Loan.

“Incremental Revolving Loans” means the Revolving Loans made by one or more Lenders to the Borrower pursuant to Section 2.20 and/or any Incremental Assumption Agreement.

“Incremental Term Lender” means each Lender which holds an Incremental Term Loan.

“Incremental Term Loans” means the Term Loans made by one or more Lenders to the Borrower pursuant to Section 2.20 and/or any Incremental Assumption Agreement, including for the avoidance of doubt any Term B Loans.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person (excluding, for the avoidance of doubt, trade accounts payable), (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade accounts payable, deferred compensation arrangements for employees, directors and officers and other accrued obligations), (e) all Capital Lease Obligations of such Person, (f) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (g) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (h) all Disqualified Equity Interests in such Person, valued, as of the date of determination, at the greater of (i) the maximum aggregate amount that would be payable upon maturity, redemption, repayment or repurchase thereof (or of Disqualified Equity Interests or Indebtedness into which such Disqualified Equity Interests are convertible or exchangeable) and (ii) the maximum liquidation preference of such Disqualified Equity Interests, (i) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed by such Person, and (j) all Guarantees by such Person of Indebtedness of others; provided that Indebtedness shall not include any performance guarantee or other Guarantee that is not a Guarantee of other Indebtedness; and provided, further, that Indebtedness shall not include obligations under any operating lease, financing lease or property that is not required to be capitalized on the balance sheet of such Person. The Indebtedness of any Person shall include the Indebtedness of any other Person (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 other Person, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor. Notwithstanding the foregoing, the term “Indebtedness” shall not include (i)

purchase price adjustments, earnouts, holdbacks or deferred payments of a similar nature (including deferred compensation representing consideration or other contingent obligations incurred in connection with an acquisition), except in each case to the extent that such amount payable is, or becomes, reasonably determinable and contingencies have been resolved or such amount would otherwise be required to be reflected on a balance sheet prepared in accordance with GAAP; (ii) current accounts payable (including intercompany accounts payable); (iii) obligations in respect of non-competes and similar agreements; (iv) Hedging Obligations; and (v) deferred revenue, customer pre-payments or other similar obligations. The amount of Indebtedness of any Person for purposes of clause (i) above shall (unless such Indebtedness has been assumed by such Person or such Person has otherwise become liable for the payment thereof) be deemed to be equal to the lesser of (x) the aggregate unpaid amount of such Indebtedness and (y) the fair market value of the property encumbered thereby as determined by such Person in good faith.

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

“Indemnitee” has the meaning set forth in Section 9.03(b).

“Initial Issuing Banks” means the Initial Issuing Banks listed on the signature pages hereof.

“Insolvent” means with respect to any Multiemployer Plan, the condition that such plan is insolvent within the meaning of Section 4245 of ERISA.

“Intellectual Property” has the meaning set forth in the Collateral Agreement.

“Interest Coverage Ratio” means, as of the end of any Fiscal Quarter of the Borrower, the ratio of Adjusted Free Cash Flow to Consolidated Interest Expense (excluding non-cash interest), in each case, as calculated for the Test Period then ending (and, for the avoidance of doubt, Adjusted Free Cash Flow shall be measured on a trailing twelve (12) month basis).

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.05, which shall be, in the case of any such written request, substantially in the form of Exhibit E or any other form approved by the Administrative Agent.

“Interest Expense” means, with respect to any person for any period, the gross interest expense of such person for such period on a consolidated basis, including without limitation (a) the amortization of debt discounts, (b) the amortization of all fees (including fees with respect to Hedging Agreements (other than as set forth below)) payable in connection with the incurrence of Indebtedness to the extent included in interest expense, (c) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense and (d) commissions, discounts, yield and other fees and charges incurred in connection with the asset securitization or similar transaction which are payable to any person other than the Borrower or a wholly-owned Subsidiary; provided that in any event “Interest Expense” will

exclude any make whole or prepayment premiums, write offs or Hedging Agreement termination costs and similar premiums and costs related to the Transactions. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received by the Borrower and the Subsidiaries with respect to Hedging Agreements.

“Interest Payment Date” means (1) (a) with respect to any ABR Loan, the last day of each March, June, September and December ~~and~~ (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period: ~~(c) with respect to any EURIBOR Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a EURIBOR Benchmark Loan with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and~~ (d) with respect to any SONIA Loan each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) with respect to any Loan, the Maturity Date.

“Interest Period” means with respect to any Eurodollar Borrowing ~~or EURIBOR Benchmark Borrowing~~, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, ~~two~~, three or six months thereafter (or, to the extent made available by all Lenders, twelve months thereafter), as the Borrower may elect; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period pertaining to a Eurodollar Borrowing ~~or a EURIBOR Benchmark Borrowing~~ that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

~~“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available for the applicable currency) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available for the applicable currency) that exceeds the Impacted Interest Period, in each case, at such time.~~

“Investment” means, with respect to a specified Person, (a) any Equity Interests, evidences of Indebtedness (other than accounts receivables and/or accrued expenses arising in the ordinary course of business payable in accordance with customary practices and loans to

employees in the ordinary course of business) or other securities (including any option, warrant or other right to acquire any of the foregoing) of, or any capital contribution or loans or advances (other than commission, travel and similar advances to officers and employees made in the ordinary course of business) to, Guarantees of any Indebtedness or other obligations of, or any other investment in, any other Person that are held or made by the specified Person and (b) the purchase or acquisition (in one transaction or a series of related transactions) of all or substantially all the property and assets or business of another Person or assets constituting a business unit, line of business, division or product line of such other Person. The amount, as of any date of determination, of (i) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date (excluding any portion thereof representing paid-in-kind interest or principal accretion), without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (ii) any Investment in the form of a Guarantee shall be determined in accordance with the definition of the term "Guarantee", (iii) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair value (as determined reasonably and in good faith by the Borrower in accordance with GAAP) of such Equity Interests or other property as of the time of the transfer, minus any payments actually received in cash, or other property that has been converted into cash or is readily marketable for cash, by such specified Person representing a return of capital of such Investment, but without any adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such transfer, (iv) any Investment (other than any Investment referred to in clause (i), (ii) or (iii) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness, other securities or assets of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus the cost of all additions, as of such date, thereto, and minus the amount, as of such date, of any portion of such Investment repaid to the investor in cash as a repayment of principal or a return of capital, as the case may be, but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (v) any Investment (other than any Investment referred to in clause (i), (ii), (iii) or (iv) above) by the specified Person in any other Person resulting from the issuance by such other Person of its Equity Interests to the specified Person shall be the fair value (as determined reasonably and in good faith by a Financial Officer of the Borrower) of such Equity Interests at the time of the issuance thereof. For purposes of [Section 6.04](#), if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; provided that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer of the Borrower. Any basket in this Agreement used to make an Investment by any Loan Party on or after the Restatement Effective Date in any Person that is not a Loan Party on the date such Investment is made but subsequently becomes a Loan Party in accordance with the terms of this Agreement shall be refreshed by the amount of the Investment so made on the date such Person so becomes a Loan Party. For the avoidance of doubt, for purposes of covenant compliance, the amount of an Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment and, in the case of an Investment made in a currency other than Dollars, without adjustment for any changes in

any applicable exchange rate.

“Investment Company Act” means the U.S. Investment Company Act of 1940, as amended.

“IP Security Agreement” has the meaning set forth in the Collateral Agreement.

“IRS” means the United States Internal Revenue Service.

“ISP” has the meaning set forth in Section 2.19(f).

“Issuing Bank” means an Initial Issuing Bank, any Eligible Assignee to which a portion of the Letter of Credit Commitment hereunder has been assigned pursuant to Section 9.04 and any other Lender that agrees to issue a Letter of Credit hereunder so long as such Eligible Assignee or other Lender expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank and notifies the Administrative Agent of its Applicable Lending Office (which information shall be recorded by the Administrative Agent in the Register), for so long as such Initial Issuing Bank, Eligible Assignee or Lender, as the case may be, shall have a Letter of Credit Commitment or shall have issued an outstanding Letter of Credit hereunder.

“Judgment Currency” has the meaning set forth in Section 9.18(b).

“L/C Cash Collateral Account” means an interest bearing cash collateral account for the benefit of the Borrower to be established and maintained by the Administrative Agent, over which the Administrative Agent shall have sole dominion and control, upon terms as may be reasonably satisfactory to the Administrative Agent.

“L/C Exposure” means, at any time, the sum of (a) the aggregate Available Amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all Revolving Loans made in accordance with Section 2.19 that have not been funded by the Lenders. The L/C Exposure of any Lender at any time shall be its Pro Rata Share of the total L/C Exposure at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“L/C Related Documents” has the meaning set forth in Section 2.07(h)(i).

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or pursuant to Section 2.20, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Letter of Credit Agreement” has the meaning set forth in Section 2.19(a).

“Letter of Credit Commitment” means, with respect to each Initial Issuing Bank, the amount set forth opposite the Initial Issuing Bank’s name on Schedule 2.01 hereto under the

caption “Letter of Credit Commitment” or, if such Initial Issuing Bank has entered into one or more Assignment and Assumptions, the amount set forth for such Issuing Bank in the Register maintained by the Administrative Agent pursuant to [Section 9.04\(c\)](#) as such Issuing Bank’s “Letter of Credit Commitment”, as such amount may be reduced at or prior to such time pursuant to [Section 2.06](#).

“[Letter of Credit Facility](#)” means, at any time, an amount equal to \$10,000,000, as such amount may be reduced at or prior to such time pursuant to [Section 2.06](#).

“[Letters of Credit](#)” has the meaning set forth in [Section 2.01\(c\)](#).

“[Leverage Ratio](#)” means, on any date of determination, the ratio of (a) an amount equal to Total Indebtedness as of such date to (b) Adjusted Free Cash Flow for the Test Period recently ended on or prior to such date.

“[Leverage Specified Acquisition](#)” means a Permitted Acquisition financed in whole or in part with Indebtedness and for which (i) the consideration in respect of such acquisition is \$100,000,000 or more and (ii) the Borrower delivers to the Administrative Agent an officers’ certificate no later than the date by which the Borrower must deliver financial statements in respect of such fiscal quarter in accordance with [Section 5.01\(a\)](#) or (b) in respect of the fiscal quarter in which such Permitted Acquisition was consummated, designating such Permitted Acquisition as a “[Leverage Specified Acquisition](#)”; provided that in no event shall there be more than two [Leverage Specified Acquisitions](#) commencing after the Restatement Effective Date.

“[Leverage Specified Period](#)” means the period of two consecutive fiscal quarters commencing on the first day of the fiscal quarter in which the consummation of a [Leverage Specified Acquisition](#) occurs (such first day, the “[Relevant Day](#)”); provided that no event shall a [Leverage Specified Period](#) commence if a [Leverage Specified Period](#) was in effect during any portion of the four consecutive fiscal quarter period ended immediately prior to the [Relevant Day](#).

“[LIBO Rate](#)” means, with respect to any Eurodollar Borrowing for any applicable currency and for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “[Impacted LIBOR Interest Period](#)”) with respect to the applicable currency then the LIBO Rate shall be the [LIBOR](#) Interpolated Rate. For the avoidance of doubt, if the LIBO Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“[LIBO Screen Rate](#)” means, for any day and time, with respect to any Eurodollar Borrowing for any applicable currency and for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for the relevant currency for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate

page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“LIBOR Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available for the applicable currency) that is shorter than the Impacted LIBOR Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available for the applicable currency) that exceeds the Impacted LIBOR Interest Period, in each case, at such time.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, charge, security interest or other encumbrance on, in or of such asset, including any agreement to provide any of the foregoing and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan” means any loan made by an Lender pursuant to this Agreement.

“Loan Document Obligations” means (a) the due and punctual payment by the Borrower of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under this Agreement and each of the other Loan Documents, including subject to the terms of the Loan Documents, obligations to pay fees, expense reimbursement obligations (including with respect to outside counsel attorneys’ fees) and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual performance of all other obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to each of the Loan Documents (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

“Loan Documents” means this Agreement, the Guarantee Agreement, the Collateral Agreement, the other Security Documents, the other L/C Related Documents and, except for purposes of Section 9.02, any Notes (and, in each case, any amendment, restatement, waiver, supplement or other modification to any of the foregoing).

“Loan Parties” means the Borrower and each Designated Subsidiary that is a party to the Guarantee Agreement.

“Majority Facility Lenders” with respect to any Facility, the holders of more than 50% of the aggregate unpaid principal amount of the Term Loans or the Revolving Loans, as the case may be, outstanding under such Facility (or, in the case of the Revolving Facility, prior to any termination of the Revolving Credit Commitments, the holders of more than 50% of the aggregate Revolving Credit Commitments).

“Material Adverse Effect” means an event or condition that has resulted, or could reasonably be expected to result, in a material adverse effect on (a) the business, assets, operations, or financial condition of the Borrower and the Subsidiaries, taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Administrative Agent and the Lenders under the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Guarantees under the Loan Documents) or Hedging Obligations of any one or more of the Borrower and the Subsidiaries in an aggregate principal amount of \$20,000,000 or more. For purposes of determining Material Indebtedness, the “principal amount” of any Hedging Obligation at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if the applicable Hedging Agreement were terminated at such time.

“Maturity Date” means, with respect to each Facility, December 23, 2024.

“Maximum Rate” has the meaning set forth in Section 9.13.

“MNPI” means material information concerning the Borrower, any Subsidiary or any Affiliate of any of the foregoing or their securities that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD under the Securities Act and the Exchange Act. For purposes of this definition, “material information” means information concerning the Borrower, the Subsidiaries or any Affiliate of any of the foregoing, or any of their securities, that could reasonably be expected to be material for purposes of the United States Federal and State securities laws.

“Moody’s” means Moody’s Investors Service, Inc., and any successor to its rating agency business.

“Mortgage” means a mortgage, deed of trust or other security document granting a Lien on any Mortgaged Property to secure the Obligations. Each Mortgage shall be in form and substance reasonably satisfactory to the Administrative Agent.

“Mortgaged Property” means each parcel of real property owned in fee by a Loan Party, and the improvements thereto, that (together with such improvements) has a fair market value of \$10,000,000 or more, subject to the limitations in the definition of the term “Collateral and Guarantee Requirement”

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Cash Proceeds” means, (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and cash equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of attorneys’ fees, accountants’ fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document), other customary fees and expenses actually incurred in connection therewith and net of any transfer or similar taxes and other Taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements, in each case, to the extent the credit or deduction or payment under such an arrangement, as applicable, is reasonably expected to reduce such tax amounts as determined by treating the income from such Asset Sale or Recovery Event as if it were the last item of income available to offset such credit or deduction or payment) and amounts provided as a reserve, in accordance with GAAP against any liabilities under any indemnification obligations and any purchase price adjustments associated with any Asset Sale and (b) in connection with any incurrence of Indebtedness, the cash proceeds received from such incurrence, net of attorneys’ fees, investment banking fees, accountants’ fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith.

“Net Cash Provided by Operating Activities” means, for any period, the net cash provided by operating activities of the Borrower and its consolidated Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, as reflected in the consolidated statements of cash flows of the Borrower and its Subsidiaries for such period delivered pursuant to Section 5.01.

“Non-Consenting Lender” has the meaning set forth in Section 9.02(d).

“Non-U.S. Lender” means a Lender that is not a U.S. Person.

“Note” means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.07(e) in substantially the form of Exhibit I hereto, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender.

“Notice of Renewal” has the meaning set forth in Section 2.01(b).

“Notice of Termination” has the meaning set forth in Section 2.01(c).

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day; provided, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to zero for the purposes of calculating such rate.

“Obligations” means, collectively, (a) the Loan Document Obligations, (b) the

Secured Cash Management Obligations and (c) the Secured Hedging Obligations (other than any Excluded Swap Obligation).

“Organizational Documents” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement, and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and, if applicable, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.16(b)).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar Loans by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“Participant” has the meaning set forth in Section 9.04(d).

“Participant Register” has the meaning set forth in Section 9.04(d).

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

“PBGC” means the Pension Benefit Guaranty Corporation established under Section 4002 of ERISA or any successor entity performing similar functions.

“Permitted Acquisition” means the purchase or other acquisition, by merger or otherwise, by the Borrower or any Subsidiary of substantially all the Equity Interests in, or all or

substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person if (a) in the case of any purchase or other acquisition of Equity Interests in a Person, such Person and each subsidiary of such Person upon the consummation of such acquisition, will be a wholly-owned Subsidiary (or, in the case of any such purchase or other acquisition structured as a two-step tender offer, such Person (including each subsidiary of such Person) will become a wholly-owned Subsidiary upon the consummation of the second step of such transaction), in each case including as a result of a merger or consolidation between any Subsidiary and such Person and, to the extent required under this Agreement, will be or become a Loan Party as required under the Collateral and Guarantee Requirement or otherwise become a Loan Party, or (b) in the case of any purchase or other acquisition of assets other than Equity Interests, such assets will be owned by a Loan Party or a Subsidiary thereof; provided that, in each case, (i) the business of such Person, or such assets, as the case may be, constitute a business permitted under Section 6.03(b) and (ii) with respect to each such purchase or other acquisition, all actions required to be taken with respect to each newly created or acquired Subsidiary or assets in order to satisfy the requirements set forth in the definition of the term “Collateral and Guarantee Requirement” shall be taken within the required time periods for satisfaction of such requirements set forth therein.

“Permitted Amount” means, as of any date, (a) \$35,000,000 less (b) the sum of, without duplication, (i) the aggregate outstanding principal amount of Indebtedness incurred under Section 6.01(g) by Subsidiaries that are not Loan Parties as of such date, (ii) the aggregate outstanding principal amount of Indebtedness incurred under Section 6.01(l) as of such date, (iii) the aggregate amount of Investments by Loan Parties in Subsidiaries that are not Loan Parties outstanding under Section 6.04(d) as of such date, (iv) the aggregate outstanding amount of loans or advances made by Loan Parties to Subsidiaries that are not Loan Parties under Section 6.04(e) as of such date, (v) the aggregate outstanding amount of Indebtedness of Subsidiaries that are not Loan Parties Guaranteed by Loan Parties under Section 6.04(f) as of such date and (vi) the aggregate amount of Investments by Loan Parties in Subsidiaries that are not Loan Parties outstanding under Section 6.04(r) as of such date.

“Permitted Encumbrances” means:

(a) Liens imposed by law for Taxes, assessments and other governmental charges that are not yet due or are being contested in compliance with Section 5.05;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, landlords’ and other like Liens imposed by law (other than any Lien imposed pursuant to Section 430(k) of the Code or Section 303(k) or 4068 of ERISA or a violation of Section 436 of the Code), arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days;

(c) (i) Liens (including pledges and deposits) arising in the ordinary course of business in connection with worker’s compensation, unemployment insurance, old age pensions and social security benefits and similar statutory obligations and (ii) pledges and deposits in respect of letters of credit, bank guarantees or similar instruments issued for the account of the Borrower or any Subsidiary in the ordinary course of business

supporting obligations of the type set forth in clause (c)(i) above;

(d) pledges and deposits made (i) to secure the performance of bids, trade and commercial contracts (other than for payment of Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business and (ii) in respect of letters of credit, bank guarantees or similar instruments issued for the account of the Borrower or any Subsidiary in the ordinary course of business supporting obligations of the type set forth in clause (d)(i) above;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under Section 7.01(k);

(f) survey exceptions, easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business, and other minor title imperfections with respect to real property, that in any case do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Loan Party;

(g) Liens arising from Permitted Investments described in clause (d) of the definition of the term Permitted Investments;

(h) banker's liens, rights of setoff or similar rights and remedies as to deposit accounts or other funds maintained with depository institutions and securities accounts and other financial assets maintained with a securities intermediary; provided that such deposit accounts or funds and securities accounts or other financial assets are not established or deposited for the purpose of providing collateral for any Indebtedness and are not subject to restrictions on access by the Borrower or any Subsidiary in excess of those required by applicable banking regulations;

(i) Liens arising by virtue of Uniform Commercial Code financing statement filings (or similar filings under applicable law) regarding operating leases entered into by the Borrower and the Subsidiaries in the ordinary course of business and any other similar precautionary Uniform Commercial Code financing statement filings;

(j) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 (or the applicable corresponding section) of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon (or similar provisions under applicable law);

(k) Liens representing any interest or title of a licensor, lessor or sublicensor or sublessor, or a licensee, lessee or sublicensee or sublessee, in the property subject to any lease, license or sublicense or concession agreement entered into in the ordinary course of business;

(l) Liens in favor of customs and revenue authorities arising as a matter of

law to secure payment of customs duties in connection with the importation of goods;

- (m) Liens that are contractual rights of set-off;
- (n) Leases, subleases, licenses and sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary course of business of the Borrower and its Subsidiaries and do not secure Indebtedness; and
- (o) Deposits in the ordinary course of business to secure liability to insurance carriers.

provided that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness, other than Liens referred to in clauses (c) and (d) above securing obligations under letters of credit, bank guarantees or similar instruments.

“Permitted Investments” means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, (i) a short term credit rating of “P-1” or higher from Moody’s or “A-1” or higher from S&P or (ii) a long term rating of “A2” or higher from Moody’s or “A” or higher from S&P;
- (c) investments (i) in cash and (ii) in certificates of deposit, banker’s acceptances and demand or time deposits, in each case maturing within 365 days from the date of acquisition thereof, issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000;
- (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;
- (e) “money market funds” that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act, (ii) with (A) a short term credit rating of “P-1” or higher from Moody’s or “A-1” or higher from S&P or (B) a long term rating of “A2” or higher from Moody’s or “A” or higher from S&P and (iii) have portfolio assets of at least \$5,000,000,000;
- (f) investments in Indebtedness that is (x) issued by Persons with (i) a short term credit rating of “P-1” or higher from Moody’s or “A-1” or higher from S&P or (ii) a long term rating of “A2” or higher from Moody’s or “A” or higher from S&P, in each

case for clauses (i) and (ii) with maturities not more than 12 months after the date of acquisition and (y) of a type customarily used by companies for cash management purposes;

(g) investments in assets set forth on the Borrower's cash management and investment policy as provided to the Administrative Agent and as in effect on the Restatement Effective Date (as may be modified by the Borrower after the Restatement Effective Date in a manner reasonably satisfactory to the Administrative Agent); and

(h) in the case of the Borrower or any Foreign Subsidiary, other short-term investments that are analogous to the foregoing, are of comparable credit quality and are customarily used by companies in the jurisdiction of such Foreign Subsidiary for cash management purposes.

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

"Plan" means any "employee pension benefit plan", as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), that is subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations" means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"Platform" has the meaning set forth in Section 9.01(d).

"Pounds Sterling" and "£" shall mean freely transferable lawful currency of the United Kingdom (expressed in Pounds Sterling).

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Private Side Lender Representatives" means, with respect to any Lender, representatives of such Lender that are not Public Side Lender Representatives.

"Pro Forma Basis" means, with respect to compliance with any test or covenant hereunder required by the terms of this Agreement to be made on a Pro Forma Basis, that all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of (or commencing with) the first day of the applicable period of measurement in such test or covenant: (i) income statement items (whether positive or negative) attributable

to the property or Person subject to such Specified Transaction (A) in the case of a Disposition of all or substantially all Equity Interests in any Subsidiary or any division, product line, or facility used for operations of the Borrower or any of the Subsidiaries, shall be excluded, and (B) in the case of an acquisition or Investment described in the definition of "Specified Transaction", shall be included, (ii) any prepayment, repayment, retirement, redemption or satisfaction of Indebtedness, and (iii) any Indebtedness incurred or assumed by the Borrower or any of the Subsidiaries in connection therewith.

"Pro Rata Share" means, (i) with respect to any Revolving Lender, the percentage of the total Revolving Credit Commitments represented by such Revolving Lender's Revolving Credit Commitment; provided that in the case of Section 2.17 when a Defaulting Lender shall exist, "Pro Rata Share" shall mean the percentage of the total Revolving Credit Commitments (disregarding any Defaulting Lender's Revolving Credit Commitment) represented by such Revolving Lender's Revolving Credit Commitment and (ii) with respect to any Term Lender, the percentage of the aggregate outstanding amount of Term Loans represented by such Term Lender's aggregate outstanding amount of Term Loans. If the Revolving Credit Commitments have terminated or expired, the Pro Rata Shares shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"Prohibited Transaction" has the meaning assigned to such term in Section 406 of ERISA and Section 4975(c) of the Code.

"Proposed Change" has the meaning set forth in Section 9.02(d).

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Side Lender Representatives" means, with respect to any Lender, representatives of such Lender that do not wish to receive MNPI.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to it in Section 9.20.

"Qualified Equity Interests" means Equity Interests of the Borrower other than Disqualified Equity Interests.

"Ratio-Based Incremental Amount" shall mean an amount represented by Incremental Revolving Commitments to be established pursuant to Section 2.20 or Incremental Term Loans to be incurred pursuant to Section 2.20, as the case may be, that would not immediately after giving effect to the establishment or incurrence thereof (assuming that the full amount of any Incremental Revolving Commitments have been borrowed as Revolving Loans) cause the Secured Leverage Ratio, calculated on a Pro Forma Basis as of the date of incurrence of such Indebtedness (but including for purposes of such calculation all such Incremental Revolving Commitments or Incremental Term Loans), to exceed 2.50 to 1.00.

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

“Recovery Event” means any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any Subsidiary that yields gross proceeds to the Borrower or any Subsidiary in excess of \$5,000,000.

“Refinancing Indebtedness” means, in respect of any Indebtedness (the “Original Indebtedness”), any Indebtedness that extends, renews or refinances such Original Indebtedness (or any Refinancing Indebtedness in respect thereof); provided that (a) the principal amount (or accreted value, if applicable) of such Refinancing Indebtedness shall not exceed the principal amount (or accreted value, if applicable) of such Original Indebtedness except by an amount no greater than accrued and unpaid interest with respect to such Original Indebtedness and any reasonable fees, premium and expenses relating to such extension, renewal or refinancing; (b) the stated final maturity of such Refinancing Indebtedness shall not be earlier than that of such Original Indebtedness, and such stated final maturity shall not be subject to any conditions that could result in such stated final maturity occurring on a date that precedes the stated final maturity of such Original Indebtedness; (c) such Refinancing Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon the occurrence of an event of default or a change in control, fundamental change, or upon conversion or exchange in the case of convertible or exchangeable Indebtedness or as and to the extent such repayment, prepayment, redemption, repurchase or defeasance would have been required pursuant to the terms of such Original Indebtedness) prior to the earlier of (i) the maturity of such Original Indebtedness and (ii) the date that is 91 days after the latest Maturity Date in effect on the date of such extension, renewal or refinancing; provided that, notwithstanding the foregoing, scheduled amortization payments (however denominated) of such Refinancing Indebtedness shall be permitted so long as the weighted average life to maturity of such Refinancing Indebtedness shall be longer than the shorter of (x) the weighted average life to maturity of such Original Indebtedness remaining as of the date of such extension, renewal or refinancing and (y) the weighted average life to maturity of Loans remaining as of the date of such extension, renewal or refinancing with the latest Maturity Date; (d) such Refinancing Indebtedness shall not constitute an obligation (including pursuant to a Guarantee) of any Subsidiary, in each case that shall not have been (or, in the case of after-acquired Subsidiaries, shall not have been required to become pursuant to the terms of the Original Indebtedness) an obligor in respect of such Original Indebtedness, and shall not constitute an obligation of the Borrower if the Borrower shall not have been an obligor in respect of such Original Indebtedness, and, in each case, shall constitute an obligation of such Subsidiary or of the Borrower only to the extent of their obligations in respect of such Original Indebtedness; (e) if such Original Indebtedness shall have been subordinated to the Loan Document Obligations, such Refinancing Indebtedness shall also be subordinated to the Loan Document Obligations on terms not less favorable in any material respect to the Lenders; and (f) such Refinancing Indebtedness shall not be secured by any Lien on any asset other than the assets that secured such Original Indebtedness (or would have been required to secure such Original Indebtedness pursuant to the terms thereof) or, in the event Liens securing such Original Indebtedness shall have been contractually subordinated to any Lien securing the Loan Document Obligations, by

any Lien that shall not have been contractually subordinated to at least the same extent.

“Register” has the meaning set forth in Section 9.04(c).

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Reinvestment Deferred Amount” means, with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Borrower or any of its Subsidiaries in connection therewith that are not applied to prepay the Term Loans pursuant to Section 2.08(f) as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event” means any Asset Sale or Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice” means a written notice executed by an officer of the Borrower stating that no Event of Default pursuant to Section 7.01(a), (b), (d) (solely with respect to a violation of Section 6.13 or 6.14), (h) or (i) has occurred and is continuing and that the Borrower (directly or indirectly through a Subsidiary) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Recovery Event to acquire or repair productive assets to be used or usable by the Borrower or any of its Subsidiaries.

“Reinvestment Prepayment Amount” means, with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire or repair productive assets of the kind then used or usable by the Borrower or any of its Subsidiaries.

“Reinvestment Prepayment Date” means with respect to any Reinvestment Event, the earlier of (a) the date occurring eighteen months after such Reinvestment Event and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, acquire or repair productive assets to be used or usable by the Borrower or any of its Subsidiaries with all or any portion of the relevant Reinvestment Deferred Amount.

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

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the indoor or outdoor environment.

“Relevant Governmental Body” means the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“Relevant Screen Rate” means (i) with respect to any Eurocurrency Borrowing, the LIBO Screen Rate and (ii) with respect to any EURIBOR Benchmark Borrowing, the

EURIBOR Screen Rate.

“Reportable Event” means any “reportable event,” as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan, other than those events as to which notice is waived pursuant to DOL Reg. § 4043.

“Required Lenders” means, at any time, Lenders having more than 50% of the sum of (i) the aggregate unpaid principal amount of Term Loans then outstanding and (ii) Revolving Loans and unused Revolving Credit Commitments.

“Requirements of Law” means, with respect to any Person, (a) the Organizational Documents of such Person and (b) any law (including common law), statute, ordinance, treaty, rule, regulation, code, judgment, order, decree, writ, injunction, settlement agreement or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its material property or to which such Person or any of its material property is subject.

“Resigning Issuing Bank” has the meaning set forth in Section 2.19(g).

“Restatement Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment or distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, exchange, conversion, cancellation or termination of, or any other return of capital with respect to, any Equity Interests in the Borrower or any Subsidiary.

“Revolving Credit Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Loans, as such commitment may be (a) reduced or increased from time to time pursuant to Sections 2.06 and 2.20 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Commitment is set forth on Schedule 2.01 under the caption “Revolving Credit Commitment”, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders’ Commitments is \$200,000,000.

“Revolving Facility” shall have the meaning assigned to such term in the definition of “Facility”.

“Revolving Lender” means each Lender that has a Revolving Credit Commitment or that holds Revolving Loans.

“Revolving Loan” means a Loan made by the Lenders to the Borrower pursuant to Section 2.01(b) hereof.

“Revolving Termination Date” means, as to the Revolving Facility, the Maturity Date.

“S&P” means Standard & Poor’s Financial Services LLC.

“Sale/Leaseback Transaction” means an arrangement relating to property owned by the Borrower or any Subsidiary whereby the Borrower or such Subsidiary sells or transfers such property to any Person and the Borrower or any Subsidiary leases such property, or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, from such Person or its Affiliates.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the Ministry of Finance of the State of Israel, the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“SEC” means the United States Securities and Exchange Commission.

“Secured Cash Management Obligations” means the due and punctual payment and performance of any and all obligations of the Borrower and each Subsidiary (whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) arising in respect of Cash Management Services that (a) are owed pursuant to a Cash Management Agreement in effect on the Restatement Effective Date, entered into with a party that was a Lender as of the Restatement Effective Date or an Affiliate thereof, or (b) are owed pursuant to a Cash Management Agreement entered into after the Restatement Effective Date with a party that was a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, in each case at the time such Cash Management Agreement was entered into, and, in the case of any such Cash Management Agreement referred to in clause (a) or (b) above (other than any such Cash Management Agreement entered into with the Administrative Agent or an Affiliate thereof), has been designated by the Borrower in a written notice given to the Administrative Agent as a Cash Management Agreement the obligations under which are to constitute Secured Cash Management Obligations for purposes of the Loan Documents.

“Secured Hedging Obligations” means the due and punctual payment and performance of any and all obligations of the Borrower and each Subsidiary arising under each

Hedging Agreement that (a) was in effect on the Restatement Effective Date with a counterparty that was a Lender as of the Restatement Effective Date or an Affiliate thereof, or (b) is entered into after the Restatement Effective Date with a counterparty that was a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, in each case at the time such Hedging Agreement was entered into, and, in the case of any such Hedging Agreement referred to in clause (a) or (b) above (other than any such Hedging Agreement entered into with the Administrative Agent or an Affiliate thereof) has been designated by the Borrower in a written notice given to the Administrative Agent as a Hedging Agreement the obligations under which are to constitute Secured Hedging Obligations for purposes of the Loan Documents.

“Secured Indebtedness” means Indebtedness (other than Subordinated Indebtedness) that is secured by a Lien on any asset of the Borrower or any of its Subsidiaries.

“Secured Leverage Ratio” means, on any date of determination, the ratio of (a) an amount equal to Secured Indebtedness as of such date to (b) Adjusted Free Cash Flow for the Test Period recently ended on or prior to such date.

“Secured Parties” means, collectively, (a) the Lenders, (b) the Administrative Agent, (c) the Arranger, (d) the Issuing Banks, (e) each provider of Cash Management Services under a Cash Management Agreement the obligations under which constitute Secured Cash Management Obligations, (f) each counterparty to any Hedging Agreement the obligations under which constitute Secured Hedging Obligations, (g) the beneficiaries of each indemnification obligation undertaken by any Loan Party under this Agreement or any other Loan Document and (h) the permitted successors and assigns of each of the foregoing.

“Securities Act” means the United States Securities Act of 1933.

“Security Documents” means the Collateral Agreement, the Mortgages (if any) and each other security agreement or other instrument or document executed and delivered pursuant to Section 5.03, 5.11 or the requirements of the Collateral and Guarantee Requirement to secure the Obligations.

“Significant Domestic Subsidiary” means any Domestic Subsidiary that is a Significant Subsidiary.

“Significant Subsidiary” means (a) each Subsidiary (i) with total assets (including the value of Equity Interests of its subsidiaries), on any date of determination, equal to or greater than 10% of the total assets of the Borrower and its Subsidiaries and/or (ii) the gross revenues of which, for the Test Period most recently ended, are equal to or greater than 10% of the gross revenues of the Borrower and its Subsidiaries, in each case calculated in accordance with GAAP and (b) each Subsidiary that owns any Equity Interests of any Subsidiary that would be deemed a Significant Subsidiary under clause (a)(i) or (a)(ii) above; provided that if at the end of or for any Test Period during the term of this Agreement, the combined aggregate amount of total assets as of the last day of any Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01(a) or 5.01(b) or combined aggregate amount of gross revenues for the Test Period most recently ended of all Subsidiaries that are not Significant Subsidiaries shall have exceeded 20% of the Consolidated Total Assets of the Borrower and its Subsidiaries or 20% of the

consolidated gross revenues of the Borrower and its Subsidiaries for the Test Period most recently ended, then one or more of the Subsidiaries that are not Significant Subsidiaries shall be designated by the Borrower in writing to the Administrative Agent as a Significant Subsidiary until such excess has been eliminated.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the NYFRB, as the administrator of the benchmark (or a successor administrator), on the Federal Reserve Bank of New York’s Website.

“SOFR-Based Rate” means SOFR, Compounded SOFR or Term SOFR.

“SONIA” means, with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA Administrator on the SONIA Administrator’s Website on the immediately succeeding Business Day.

“SONIA Administrator” means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

“SONIA Administrator’s Website” means the Bank of England’s website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

“SONIA Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which banks are closed for general business in London.

“SONIA Interest Day” has the meaning specified in the definition of “Daily Simple SONIA”

“SONIA Loan” means a Loan that bears interest a rate based on Daily Simple SONIA.

“Software” has the meaning set forth in the Collateral Agreement.

“Specified Transaction” means, with respect to any period, any Investment, acquisition, Disposition, incurrence, assumption or repayment of Indebtedness, Restricted Payment, that by the terms of this Agreement requires such test or covenant to be calculated on a Pro Forma Basis.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves), expressed as a decimal, established by the Board of Governors to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate or Adjusted EURIBOR Rate, as applicable, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board of Governors) or any other reserve ratio or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans. Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans and EURIBOR

Benchmark Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Indebtedness” of any Person means any Indebtedness of such Person that is contractually subordinated in right of payment to any other Indebtedness of such Person.

“Subsequently Incurred Term B Loans” shall have the meaning assigned to such term in Section 2.20(c) hereof.

“subsidiary” means, with respect to any Person (the “parent”) at any date, (a) any Person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP and (b) any other Person (i) of which Equity Interests representing more than 50% of the equity value or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Supported QFC” has the meaning assigned to it in Section 9.20.

“Swap” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Obligation” means, with respect to any Loan Party, any obligation to pay or perform under any Swap.

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

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

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

“Term B Lender” shall mean, at any time, any Lender that holds any Term B Loans.

“Term B Loan” shall mean any Incremental Term Loan which has terms that are

customary market terms for “B” term loans at the time of incurrence thereof (as determined in good faith by the Borrower and so designated in the applicable request of the Borrower).

“Term Facility” shall have the meaning assigned to such term in the definition of “Facility”.

“Term Lender” means each Lender that has a Term Loan Credit Commitment or that holds Term Loans.

“Term Loan” means a loan made pursuant to Section 2.01(a) of this Agreement.

“Term Loan Credit Commitment” means, with respect to each Lender, the commitment of such Lender to make Term Loans hereunder on the Restatement Effective Date in a principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Term Loan Credit Commitment”. The initial aggregate amount of the Lenders’ Term Loan Credit Commitments is \$320,000,000.

“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Test Period” means each period of four consecutive Fiscal Quarters of the Borrower.

“Total Assets” means, as of any date, the total assets of the Borrower and its Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Borrower and its Subsidiaries, determined on a Pro Forma Basis.

“Total Indebtedness” means, on any date, the aggregate principal amount of Indebtedness of the Borrower and the Subsidiaries outstanding as of such date, in the amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but without giving effect to any election to value any Indebtedness at “fair value”, as described in Section 1.04, or any other accounting principle that results in the amount of any such Indebtedness (other than zero coupon Indebtedness) as reflected on such balance sheet to be below the stated principal amount of such Indebtedness).

“Transaction Costs” means all fees, costs and expenses incurred or payable by the Borrower or any Subsidiary in connection with the Transactions to be consummated on the Restatement Effective Date.

“Transactions” means, collectively, (a) the execution, delivery and performance by each Loan Party of the Loan Documents (including this Agreement) to which it is to be a party, (b) the creation, continuation (as applicable) and perfection of the security interests provided for in the Security Documents, and (c) the payment of the Transaction Costs.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, Adjusted EURIBOR Rate, Daily Simple SONIA or the

Alternate Base Rate.

“UCP” has the meaning set forth in Section 2.19(f).

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment; provided that, if the Unadjusted Benchmark Replacement as so determined would be less than zero, the Unadjusted Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Unissued Letter of Credit Commitment” means, with respect to any Issuing Bank, such Issuing Bank’s Letter of Credit Commitment minus the aggregate Available Amount of all Letters of Credit issued by such Issuing Bank.

“Unused Commitment” means, with respect to each Lender at any time, (a) such Lender’s Revolving Credit Commitment at such time minus (b) the sum of (i) the Dollar Equivalent of the aggregate principal amount of all outstanding Revolving Loans made by such Lender (in its capacity as a Lender), plus (ii) such Lender’s Pro Rata Share of the L/C Exposure at such time.

“U.S. Person” means a “United States” person within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regime” has the meaning assigned to it in Section 9.20.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 2.14(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“wholly-owned”, when used in reference to a subsidiary of any Person, means that all the Equity Interests in such subsidiary (other than directors’ qualifying shares and other nominal amounts of Equity Interests that are required to be held by other Persons under applicable law) are owned, beneficially and of record, by such Person, another wholly-owned subsidiary of such Person or any combination thereof.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

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

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan”, a “EURIBOR Benchmark Loan” or “SONIA Loan”) or by

Class and Type (e.g., a “Eurodollar Revolving Loan”, a “EURIBOR Benchmark Revolving Loan” or “SONIA Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”, a “EURIBOR Benchmark Borrowing” or a “SONIA Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”, a “EURIBOR Benchmark Revolving Borrowing” or a “SONIA Revolving Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all real and personal, tangible and intangible assets and properties, including cash, securities, accounts and contract rights. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders, writs and decrees, of all Governmental Authorities. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document (including this Agreement and the other Loan Documents) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, extended, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, amendment and restatements, extensions, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, consolidated, replaced, interpreted, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (e) 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.

SECTION 1.04. Accounting Terms; GAAP; Pro Forma Calculations. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature used herein shall be construed in accordance with GAAP as in effect from time to time; provided that (i) if the Borrower, by notice to the Administrative Agent, shall request an amendment to any provision hereof to eliminate the effect of (A) any change occurring after the Restatement Effective Date in GAAP or in the application thereof or (B) the issuance of any new accounting rule or guidance (including, without limitation, any accounting rule or guidance relating to or issued in connection with Topic 606) or in the application thereof on the operation of such provision after the Restatement Effective Date (or if the Administrative Agent or the Required Lenders, in each case, by notice to the Borrower, shall request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof or the issuance of such rule or guidance or the

application thereof, then such provision shall be interpreted on the basis of GAAP and such rule or guidance as in effect and applied immediately prior thereto shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith, provided, further, that the Borrower shall provide reconciliation information in form and substance reasonably satisfactory to the Administrative Agent in the applicable Compliance Certificate to the extent required to reconcile such calculations with the information in the financial statements delivered pursuant to Section 5.01, and (ii) notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (A) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159, The Fair Value Option for Financial Assets and Financial Liabilities), or any successor thereto (including pursuant to the Accounting Standards Codification), to value any Indebtedness of the Borrower or any Subsidiary at “fair value”, as defined therein and (B) any treatment of Indebtedness relating to convertible or equity-linked securities under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) requiring the valuation of any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. For purposes of the foregoing, any change by the Borrower in its accounting principles and standards to adopt International Financial Reporting Standards, regardless of whether required by applicable laws and regulations, will be deemed a change in GAAP.

(b) For purposes of determining compliance with any test or covenant contained in this Agreement with respect to any period during which any Specified Transaction occurs, or for purposes of determining whether any Specified Transaction, Adjusted Free Cash Flow, the Leverage Ratio and the Interest Coverage Ratio shall be calculated with respect to such period on a Pro Forma Basis, giving effect to such Specified Transaction. For the avoidance of doubt, any calculations on a Pro Forma Basis (i) shall exclude purchase acquisition accounting impact for any Permitted Acquisition or Specified Transaction, as applicable, and (ii) for periods prior to the applicable Permitted Acquisition or Specified Transaction, shall be made based on the financial information for the target of such Permitted Acquisition or Specified Transaction, as applicable, that is publicly or privately available and regardless of the accounting standard applied to such target prior to the date of such Permitted Acquisition or Specified Transaction (and, for the avoidance of doubt, no breach of this Agreement shall result therefrom).

(c) All leases of a Person that would have been treated as operating leases or financing leases and not as Capital Lease Obligations, as applicable, for purposes of GAAP but for the adoption of accounting rules or guidance with respect to Accounting Standards Codification Topic 842 (“ACS 842”), shall continue to be accounted for as operating leases and financing leases, respectively (and not Capital Lease Obligations), hereunder notwithstanding the fact that such leases are required in accordance with ACS 842 to be treated as Capital Lease Obligations.

SECTION 1.05. Excluded Swap Obligations. Notwithstanding any provision of this Agreement or any other Loan Document, no Guarantee by any Loan Party under any Loan Document shall include a Guarantee of any Obligation that, as to such Loan Party, is an

Excluded Swap Obligation and no Collateral provided by any Loan Party shall secure any Obligation that, as to such Loan Party, is an Excluded Swap Obligation. In the event that any payment is made by, or any collection is realized from, any Loan Party as to which any Obligations are Excluded Swap Obligations, or from any Collateral provided by such Loan Party, the proceeds thereof shall be applied to pay the Obligations of such Loan Party as otherwise provided herein without giving effect to such Excluded Swap Obligations and each reference in this Agreement or any other Loan Document to the ratable application of such amounts as among the Obligations or any specified portion of the Obligations that would otherwise include such Excluded Swap Obligations shall be deemed so to provide.

SECTION 1.06. Foreign Currency Calculations. For purposes of any determination under Section 6.01, 6.02, 6.04, 6.05 or 6.08 or under Article VII, all amounts incurred, outstanding or proposed to be incurred or outstanding in Euros or Pounds Sterling shall be translated into Dollars at the Dollar Equivalent thereof on the date of such determination; provided that no Default or Event of Default shall arise as a result of any limitation set forth in Dollars in Section 6.01 or 6.02 being exceeded solely as a result of changes in currency exchange rates from those rates applicable at the time or times Indebtedness or Liens were initially consummated in reliance on the exceptions under such Sections. For purposes of any determination under Section 6.04, 6.05 or 6.08, the amount of each Investment, Disposition, Restricted Payment or other applicable transaction denominated in Euros or Pounds Sterling shall be translated into Dollars at the Dollar Equivalent thereof on the date such Investment, Disposition, Restricted Payment or other transaction is consummated.

SECTION 1.07. Interest Rates; LIBOR Notification. The interest rate on ~~Eurodollar~~ Loans denominated in dollars or Designated Foreign Currency is determined by reference to ~~the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the~~ an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable laws and regulations, may be permanently discontinued, and/or the basis on which they are calculated may change. On March 5, 2021, the U.K. Financial Conduct Authority (“FCA”) publicly announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality: (a) immediately after December 31, 2021, publication of all seven euro LIBOR settings, the overnight, 1-week, 2-month and 12-month British Pound Sterling LIBOR settings, and the 1-week and 2-month U.S. Dollar LIBOR settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar LIBOR settings will permanently cease; immediately after December 31, 2021, the 1-month, 3-month and 6-month British Pound Sterling LIBOR settings will cease to be provided or, subject to consultation by the FCA, be provided on a changed methodology (or “synthetic”) basis and no longer be representative of the underlying market and economic reality they are intended to

measure and that representativeness will not be restored; and immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA's consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this agreement should consult its own advisors to stay informed of any such developments. pPublic and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of ~~the London interbank offered rate~~ LIBOR. Upon the occurrence of a Benchmark Transition Event or an Early Opt-In Election, Section 2.11(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 2.11(d), of any change to the reference rate upon which the interest rate on ~~Eurodollar Loans~~ the then-current Benchmark is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of "LIBO Rate", "EURIBOR Rate" or "Daily Simple SONIA" or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.11(b), whether upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.11(c)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or EURIBOR Rate or Daily Simple SONIA or have the same volume or liquidity as did the ~~London interbank offered rate~~ then-current Benchmark prior to its discontinuance or unavailability. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any Benchmark, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.08. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Credits

SECTION 2.01. Commitments.

(a) Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a term loan in Dollars (a "Term Loan") to the Borrower on the Restatement Date in an amount not to exceed the amount of the Term Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.03 and 2.05.

(b) Subject to the terms and conditions set forth herein, each Revolving Lender agrees to make revolving credit loans ("Revolving Loans") in Dollars, Euros and Pounds Sterling to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (i) the Dollar Equivalent of the sum of such Lender's Revolving Loans and its Pro Rata Share of the L/C Exposure exceeding such Lender's Revolving Credit Commitment or (ii) the sum of the total Dollar Equivalent of Revolving Loans and its Pro Rata Share of the L/C Exposure exceeding the total Revolving Credit Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans without penalty.

(c) Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, to issue letters of credit (each, a "Letter of Credit" and, collectively, "Letters of Credit") in Dollars for the account of the Borrower and its Subsidiaries from time to time on any Business Day during the period from the Restatement Effective Date until 30 days before the final Maturity Date in an aggregate Available Amount (i) not exceeding at any time (x) for all Letters of Credit, the Letter of Credit Facility at such time and (y) for all Letters of Credit issued by each Issuing Bank, such Issuing Bank's Letter of Credit Commitment at such time (unless otherwise agreed by such Issuing Bank) and (ii) for each such Letter of Credit not to exceed an amount equal to the Unused Commitments of the Lenders at such time. Each Letter of Credit shall be in an amount of \$25,000 or more (or such lesser amount as agreed to by the Issuing Bank issuing such Letter of Credit). The Borrower shall be liable for all Obligations with respect to any Letter of Credit issued for the account of any of its Subsidiaries. No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary to require renewal) later than the earlier of (x) the date that is one year after the date of issuance thereof, but may by its terms be renewable annually upon notice (a "Notice of Renewal") given to the Issuing Bank that issued such Letter of Credit and the Administrative Agent on or prior to any date for notice of renewal set forth in such Letter of Credit but in any event at least three Business Days prior to the date of the proposed renewal of such Letter of Credit and upon fulfillment of the applicable conditions set forth in Article IV unless such Issuing Bank has notified the Borrower (with a copy to the Administrative Agent) on or prior to the date for notice of termination set forth in such Letter of Credit but in any event at least 30 days prior to the date of automatic renewal of its election not to renew such Letter of Credit (a "Notice of Termination") and (y) five Business Days prior to the final Maturity Date; provided, further, that the terms of each Letter of Credit that is automatically renewable annually shall (1) require the Issuing Bank that issued such Letter

of Credit to give the beneficiary named in such Letter of Credit notice of any Notice of Termination and (2) permit such beneficiary, upon receipt of such notice, to draw under such Letter of Credit prior to the date such Letter of Credit otherwise would have been automatically renewed. If either a Notice of Renewal is not given by the Borrower or a Notice of Termination is given by the relevant Issuing Bank pursuant to the immediately preceding sentence, such Letter of Credit shall expire on the date on which it otherwise would have been automatically renewed; provided, however, that even in the absence of receipt of a Notice of Renewal the relevant Issuing Bank may in its discretion, unless instructed to the contrary by the Administrative Agent or the Borrower, deem that a Notice of Renewal had been timely delivered and in such case, a Notice of Renewal shall be deemed to have been so delivered for all purposes under this Agreement. Within the limits referred to above, the Borrower may request the issuance of Letters of Credit under this Section 2.01(c), repay any Revolving Loans resulting from drawings thereunder pursuant to Section 2.19(c) and request the issuance of additional Letters of Credit under this Section 2.01(c).

(d) The parties hereto agree that the Existing Letters of Credit will automatically, without any further action on the part of any Person, be deemed to be Letters of Credit hereunder issued hereunder on the Restatement Effective Date for the account of the Borrower. Without limiting the foregoing (i) each such Existing Letter of Credit shall be included in the calculation of the L/C Exposure, (ii) all liabilities of the Borrower and the other Loan Parties with respect to such Existing Letters of Credit shall constitute Obligations and (iii) each Lender shall have reimbursement obligations with respect to such Existing Letters of Credit as provided in Section 2.08(g).

SECTION 2.02. Loans and Borrowings.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments under the relevant Facility. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.11, (i) each Borrowing in Dollars shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith and (ii) each Borrowing in ~~a Designated Foreign Currency~~ Euros shall be comprised entirely of ~~Eurodollar Loans as the Borrower may request in accordance herewith~~ EURIBOR Benchmark Loans and (iii) ~~each borrowing in Pounds Sterling shall be comprised entirely of SONIA Loans.~~ Each Lender at its option may make any Eurodollar Loan or EURIBOR Benchmark Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period (i) for any Eurodollar Borrowing such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000, (ii) for any EURIBOR Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of ~~(i) in the case of~~

~~Borrowings denominated in Dollars, \$1,000,000 and not less than \$1,000,000, (ii) in the case of Borrowings denominated in Pounds Sterling, £1,000,000 and not less than £1,000,000 and (iii) in the case of Borrowings denominated in Euros, €1,000,000 and not less than €1,000,000.~~ At the time that each ABR Borrowing and/or SONIA Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of (i) in the case of an ABR Borrowing \$1,000,000 and not less than \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments and (ii) in the case of a SONIA Borrowing, £1,000,000 and not less than £1,000,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of ten (10) Eurodollar, EURIBOR Benchmark or SONIA Borrowings outstanding in the aggregate.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (other than a request for any Borrowing of Revolving Loans denominated in a Designated Foreign Currency, which request shall be made in writing (including by electronic mail)), electronic mail or hand delivery of an executed written Borrowing Request (a) in the case of a Eurodollar Borrowing ~~denominated in Dollars~~, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing, (b) in the case of a ~~Eurodollar Borrowing denominated in a Designated Foreign Currency~~ EURIBOR Benchmark Loan, not later than 1:00 p.m., London time, four Business Days before the date of the proposed Borrowing ~~or~~ (c) in the case of a SONIA Loan, not later than 11.00 a.m., New York City time, five Business Days before the date of the proposed Borrowing or (d) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the day of the proposed Borrowing. Each telephonic or electronic mail Borrowing Request shall be irrevocable and shall in the case of a telephonic request be confirmed promptly by hand delivery, electronic mail or telecopy to the Administrative Agent of a written Borrowing Request signed by the Borrower. Each written Borrowing Request shall be in the form of Exhibit B and each telephonic, electronic mail and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing and the Facility under which such Borrowing is requested to be made;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) ~~in the case of a Borrowing to be denominated in Dollars,~~ whether such Borrowing is to be an ABR Borrowing ~~or,~~ a Eurodollar Borrowing, a EURIBOR Benchmark Borrowing or a SONIA Borrowing;
- (iv) in the case of a Eurodollar Borrowing, or a EURIBOR Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(v) in the case of Revolving Loans, the currency of such Borrowing (which shall be Dollars, Euros or Pounds Sterling); and

(vi) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.04.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing or EURIBOR Benchmark Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time (or in the case of any Revolving Loan denominated in a Designated Foreign Currency, 12:00 noon, London time), to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an operating account of the Borrower designated by the Borrower in the applicable Borrowing Request.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on written demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, 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 or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If the Borrower and 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 such amount to the Administrative Agent, then such amount 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.

SECTION 2.05. Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type (provided that ~~Eurodollar~~EURIBOR Benchmark Borrowings ~~denominated in a Designated Foreign Currency~~and SONIA Borrowings may not be converted to ABR Borrowings) or to continue such Borrowing and, in the case of a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. Subject to the requirements of Section 2.02(c), the Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone or electronic mail by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each Interest Election Request shall be irrevocable and, in the case of a telephonic Interest Election Request, shall be confirmed promptly by hand delivery, electronic mail or teletype to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing under each Facility to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) in the case of a Borrowing to be denominated in Dollars, whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to (i) a Eurodollar Borrowing ~~denominated in Dollars~~ prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing or (ii) ~~any other Eurodollar~~ EURIBOR Benchmark Borrowing, then, unless such Borrowing is repaid as provided herein, ~~at the end of such Interest Period such~~ then the Borrower shall be deemed to have selected that such EURIBOR Benchmark Borrowing shall ~~be converted to a Eurodollar Borrowing~~ automatically be continued with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Majority Facility Lenders under the relevant Facility, so notifies the Borrower in writing, then, so long as an Event of Default is continuing (i) no outstanding Borrowing under the relevant Facility may be converted to or continued as a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing and (ii) unless repaid, (A) each Eurodollar Borrowing under the relevant Facility ~~denominated in Dollars~~ shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (B) each ~~other Eurodollar~~ EURIBOR Benchmark Borrowing shall bear interest at the Central Bank Rate for euro plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for euro cannot be determined, each EURIBOR Benchmark Borrowing shall be (i) ~~converted to a Eurodollar Borrowing with an Interest Period of one month's duration~~ an ABR Borrowing (in an amount equal to the Dollar Equivalent of Euros) at the end of the Interest Period; or (ii) prepaid at the end of the applicable Interest Period, as applicable, in full; provided that if no election is made by the Borrower by the earlier of (x) the date that is three Business Days after receipt by the Borrower of such notice and (y) the last day of the current Interest Period for the applicable EURIBOR Benchmark Loan, the Borrower shall be deemed to have elected clause (i) above.

SECTION 2.06. Termination and Reduction of Commitments.

(a) All Term Commitments shall terminate on the Restatement Effective Date after giving effect to the Borrowing of Term Loans requested to be made on such date. Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000, and (ii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.08, the sum of the Revolving Loans then outstanding would exceed the total Revolving Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such

election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Subject to Section 2.20, any termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments under the Revolving Facility.

SECTION 2.07. Repayment of Loans; Evidence of Debt; Letter of Credit Reimbursements.

(a) The Term Loans of each Term Lender shall mature in quarterly installments commencing on the first full fiscal quarter ended after the Restatement Effective Date, such that the amount of each installment equals such Lender's Pro Rata Share of the Term Facility multiplied by the amount set forth below opposite such installment, provided that, notwithstanding the above, the remaining outstanding principal balance of Term Loans as of the Maturity Date shall be due and payable on the Maturity Date:

<u>Installment</u>	<u>Principal Amount</u>
1-8	\$4,000,000
9-12	\$6,000,000
13-16	\$8,000,000
17-20	\$10,000,000
Maturity Date	Remaining principal balance

(b) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum

received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered and permitted assigns. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein and its registered assigns.

(g) Subject to Section 2.08(c), if at any time the aggregate Revolving Loans of the Lenders exceeds the aggregate Commitments of the Lenders, the Borrower shall immediately repay the Revolving Loans in the amount of such excess.

(h) Letter of Credit Reimbursements. The obligations of the Borrower under this Agreement, any Letter of Credit Agreement and any other agreement or instrument, in each case, relating to any Letter of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, such Letter of Credit Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances (it being understood that any such payment by the Borrower is without prejudice to, and does not constitute a waiver of, any rights the Borrower might have or might acquire as a result of the payment by any Lender of any draft or the reimbursement by the Borrower thereof):

(i) any lack of validity or enforceability of this Agreement, any Letter of Credit, any Letter of Credit Agreement or any other agreement or instrument, in each case, relating thereto (all of the foregoing being, collectively, the "L/C Related Documents");

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of the Borrower in respect of any L/C Related Document or any other amendment or waiver of or any consent to departure from all or any of the L/C Related Documents;

(iii) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), any Issuing Bank, the Administrative Agent, any Lender or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(iv) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or certificate that does not strictly comply (but materially complies) with the terms of such Letter of Credit;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the obligations of the Borrower in respect of the L/C Related Documents; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or a guarantor.

SECTION 2.08. Prepayment of Loans; Mandatory Prepayment of Term Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy, electronic mail or other writing approved by the Administrative Agent) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before the date of prepayment or (ii) in the case of prepayment of a EURIBOR Benchmark Borrowing, not later than 12:00 P.M., New York City time, three Business Days before the date of prepayment (ii) in the case of prepayment of a SONIA Loan, not later than 11:00 A.M., New York City time, five Business Days before the date of prepayment or (iv) in the case of prepayment of an ABR Borrowing, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing under each Facility or portion thereof to be prepaid; provided that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Class and Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Each prepayment of Term Loans made pursuant to this Section 2.08(b) shall be applied against the remaining scheduled installments of principal due in respect of the Term Loans in the manner specified by the Borrower or, in the absence of any such specification, as set forth in Section 2.15(a). Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10 and, if applicable, amounts owed pursuant to Section 2.13, if any. Notwithstanding the

foregoing, any prepayment of Revolving Loans pursuant to this [Section 2.08](#) shall not reduce the Revolving Commitments unless notice is given by the Borrower in accordance with [Section 2.06](#).

(c) (i) If the Administrative Agent notifies the Borrower in writing on the second Business Day prior to any interest payment date that the sum of (A) the aggregate principal amount of all Revolving Loans denominated in Dollars then outstanding, plus (B) the Dollar Equivalent (determined on the third Business Day prior to such interest payment date) of the aggregate principal amount of all Revolving Loans denominated in Euros and Pounds Sterling then outstanding, plus (C) the aggregate Available Amount of all Letters of Credit then outstanding exceeds 100% of the aggregate Revolving Credit Commitments of the Lenders on such date, the Borrower shall, within two Business Days after receipt of such notice, prepay the outstanding principal amount of any Revolving Loans owing by the Borrower in an aggregate amount sufficient to reduce such sum after such payment to an amount not to exceed 100% of the aggregate Revolving Credit Commitments of the Lenders. The Administrative Agent shall provide such notice to the Borrower at the request of any Lender.

(ii) Each prepayment made pursuant to this [Section 2.08\(c\)](#) shall be made together with any interest accrued to the date of such prepayment on the principal amounts prepaid and, in the case of any prepayment of a Eurodollar Loan or [EURIBOR Benchmark Loan](#) on a date other than the last day of an Interest Period or at its maturity, any additional amounts which the Borrower shall be obligated to reimburse to the Lenders in respect thereof pursuant to [Section 2.13](#). The Administrative Agent shall give prompt notice of any prepayment required under this [Section 2.08\(c\)](#) to the Borrower and the Lenders.

(d) The Borrower shall, on the day that is five (5) Business Days prior to the Maturity Date, pay to the Administrative Agent for deposit in the L/C Cash Collateral Account an amount in Dollars sufficient to cause the amount of Dollars on deposit in the L/C Cash Collateral Account to equal 100% of the aggregate Available Amount of all Letters of Credit then outstanding; provided that nothing herein shall be deemed to amend or modify any provision of [Section 2.01\(b\)](#). Upon the drawing of any such Letter of Credit, to the extent funds are on deposit in the L/C Cash Collateral Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable law, and if so applied, then such reimbursement shall be deemed a repayment of the corresponding Revolving Loans in respect of such Letter of Credit. After any such Letter of Credit shall have expired or been fully drawn upon and all other obligations of the Borrower thereunder shall have been paid in full, the equivalent amount deposited in such L/C Cash Collateral Account in respect of such Letter of Credit shall be promptly returned to the Borrower.

(e) If any Indebtedness shall be incurred by the Borrower or any of its Subsidiaries (excluding any Indebtedness incurred in accordance with [Section 6.01](#) or pursuant to this Agreement or any other Loan Document), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied within ten (10) Business Days after the date of such issuance or incurrence toward the prepayment of the Term Loans as set forth in [Section 2.08\(g\)](#).

(f) If on any date the Borrower or any of its Subsidiaries shall receive Net Cash Proceeds from any Asset Sale or Recovery Event in excess of \$10,000,000 in the aggregate in any fiscal year then, unless a Reinvestment Notice shall be delivered in respect thereof, such Net Cash Proceeds shall be applied within twenty (20) Business Days after such date toward the prepayment of the Term Loans as set forth in Section 2.08(g).

(g) Amounts to be applied in connection with prepayments made pursuant to Section 2.08(e) or (f) shall be applied first to the prepayment of the next four principal installments of Term Loans required pursuant to Section 2.07(a) and then shall be applied to reduce the then remaining installments of the Term Loans pro rata based upon the then remaining principal amounts thereof. The application of any prepayment pursuant to Section 2.08(e) or (f) shall be made, first, to ABR Loans and, second, to Eurodollar Loans. Each prepayment of the Loans under Section 2.08(e) or (f) shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

SECTION 2.09. Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate (as designated in the definition of “Applicable Rate” as the “Commitment Fee Rate”) on the daily amount of the difference between the Revolving Credit Commitment of such Lender and the outstanding principal balance of the Revolving Loans of such Lender during the period from and including the Restatement Effective Date to but excluding the date on which such Revolving Credit Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Revolving Credit Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay to the Administrative Agent, for its own account, an agency fee payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(c) All commitment fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution to the Lenders. Fees paid shall not be refundable under any circumstances.

(d) (i) The Borrower shall pay to the Administrative Agent for the account of each Lender a commission on such Lender’s Pro Rata Share under the Revolving Facility of the average daily aggregate Available Amount of all Letters of Credit outstanding (and not cash-collateralized) from time to time at a rate per annum equal to the Applicable Rate for Eurodollar Loans in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December and on the final Maturity Date, and after such Maturity Date payable upon written demand; provided that the Applicable Rate shall increase by 2% upon the occurrence and during the continuation of an Event of Default if the Borrower is required to pay default interest on the principal of all Revolving Loans pursuant to Section 2.10(c).

(ii) The Borrower shall pay to each Issuing Bank for its own account, in Dollars, a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the L/C Exposure attributable to Letters of Credit issued by such Issuing Bank (excluding any portion thereof attributable to unreimbursed Letters of Credit) during any period that there is any L/C Exposure, payable in arrears quarterly on the last day of each March, June, September and December and on the final Maturity Date, and after such Maturity Date payable upon written demand.

SECTION 2.10. Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising (i) each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing for the relevant currency plus the Applicable Rate; (ii) each EURIBOR Benchmark Borrowing shall bear interest at the Adjusted EURIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate and (iii) each SONIA Loan shall be interest at a rate per annum equal to the Daily Simple SONIA plus the Applicable Rate plus the Applicable SONIA Adjustment.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.10 or (ii) in the case of any other amount, 2.00% per annum plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section 2.10.

(d) Accrued interest on each Loan shall be payable in arrears in the currency of the applicable Loan on each Interest Payment Date for such Loan and upon termination of all of the Revolving Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on written demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan or EURIBOR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. All interest shall be payable in the currency in which the applicable Loan is denominated.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that (i) interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day) and (ii) interest computed on Revolving Loans in Pounds Sterling shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or

Adjusted LIBO Rate or Adjusted EURIBOR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.11. Alternate Rate of Interest. If ~~prior to the commencement of any Interest Period for a Eurodollar Borrowing:~~

(a) the Administrative Agent determines in good faith (which determination shall be conclusive and binding absent manifest error) (A) prior to the commencement of any Interest Period for a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing, as applicable, that adequate and reasonable means (including, without limitation, by means of ~~an~~ LIBOR Interpolated Rate or EURIBOR Interpolated Rate) do not exist for ascertaining the Adjusted LIBO Rate ~~or,~~ the LIBO Rate, the Adjusted EURIBOR Rate or the EURIBOR Rate, as applicable (including because the ~~LIBO~~Relevant Screen Rate is not available or published on a current basis), for the applicable currency and such Interest Period or (B) at any time, that adequate and reasonable means to not exist for ascertaining the applicable Daily Simple SONIA or SONIA; provided that no Benchmark Transition Event shall have occurred at such time for such currency;

(b) the Administrative Agent is advised by the Majority Facility Lenders under the relevant Facility that (A) prior to the commencement of any Interest Period for a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing, as applicable, the Adjusted LIBO Rate ~~or,~~ the LIBO Rate, the EURIBOR Rate or the EURIBOR Rate as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for the applicable currency and such Interest Period or (B) at any time, the Daily Simple SONIA or SONIA will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such SONIA Borrowing;

(c) the Administrative Agent determines in good faith (which determination shall be conclusive and binding upon the Borrower absent manifest error) that deposits in the applicable currency are not generally available, or cannot be obtained by the Lenders, in the applicable market (any Designated Foreign Currency affected by the circumstances described in Section 2.11(a) or (b) is referred to as an “Affected Foreign Currency”);

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing shall be ineffective ~~and,~~ (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing. ~~Until such relevant notice has been withdrawn by the Administrative Agent, no further Eurodollar Revolving Loans in an Affected Foreign Currency shall be made or continued as such, nor shall the Borrower have the right to convert ABR Revolving Loans to Eurodollar Revolving Loans (to the extent such Eurodollar Loan is denominated in an Affected Foreign Currency); and~~ (iii) if any Borrowing Request requests a EURIBOR Benchmark Borrowing or a SONIA Borrowing then such request

shall be ineffective.

Furthermore, if any Eurodollar Loan, EURIBOR Loan or SONIA Loan is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.11(a) with respect to a Benchmark applicable to such Loan, then until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) if such Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day, (ii) Loan is denominated in Euro, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for Euro plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for Euro cannot be determined, any outstanding affected Loans denominated in Euro shall, at the Borrower's election prior to such day: (A) be prepaid by the Borrower on such day or (B) solely for the purpose of calculating the interest rate applicable to such Loan, such Loan denominated in Euro shall be deemed to be a Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Loans denominated in Dollars at such time or (iii) if such Loan is denominated in Pounds Sterling, then such Loan shall bear interest at the Central Bank Rate for the Pounds Sterling plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for Pounds Sterling cannot be determined, any outstanding affected Loans denominated in Pounds Sterling, at the Borrower's election, shall either (A) be converted into ABR Loans denominated in Dollars (in an amount equal to the Dollar Equivalent) immediately or (B) be prepaid in full immediately.

(d) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the ~~LIBO-Rate~~ then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower, so long as the Administrative Agent has not received, by such time, written notice of objection to such proposed amendment from Lenders comprising the Required Lenders ~~(or, with respect to a Designated Foreign Currency, the Majority Facility Lenders under the Revolving Facility)~~; provided that, with respect to any proposed amendment containing any SOFR-Based Rate, the Lenders shall be entitled to object only to the Benchmark Replacement Adjustment contained therein. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders ~~(or, with respect to a Designated Foreign Currency, the Majority Facility Lenders of under the Revolving Facility)~~ have delivered to the Administrative Agent written notice that such Required Lenders ~~(or, with respect to a Designated Foreign Currency, the Majority Facility Lenders of under the Revolving Facility)~~ accept such amendment. No replacement of ~~LIBO-Rate~~ then-current Benchmark with a

Benchmark Replacement will occur prior to the applicable Benchmark Transition Start Date.

(e) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(f) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.11.

(g) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, ~~(i) any Interest Election Request that the Borrower may revoke any requests the conversion of any Borrowing to, or continuation of any Borrowing as for~~ a Eurodollar Borrowing ~~shall be ineffective, (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing and (iii) no further Eurodollar Revolving Loans in an Affected Foreign Currency shall be made or continued as such, nor shall the Borrower have the right to convert ABR Revolving Loans to Eurodollar Revolving Loans (to the extent such Eurodollar Loan is denominated in an Affected Foreign Currency).~~ EURIBOR Benchmark Borrowing or Sonia Borrowing of, conversion to or continuation of Eurodollar Loans or EURIBOR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, either (x) the Borrower will be deemed to have converted any request for a Eurodollar Borrowing denominated in Dollars into a request for a Borrowing of or conversion to ABR Loans or (y) any EURIBOR Benchmark Borrowing or SONIA Borrowing shall be ineffective. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Eurodollar Loan, EURIBOR Loan or SONIA Loan is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.11(a) with respect to a Benchmark applicable to such Loan, then until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) if such Loan is denominated in Dollars, then on the last day of the Interest Period applicable to

such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day, (ii) Loan is denominated in Euro, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for Euro plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for Euro cannot be determined, any outstanding affected Loans denominated in Euro shall, at the Borrower's election prior to such day: (A) be prepaid by the Borrower on such day or (B) solely for the purpose of calculating the interest rate applicable to such Loan, such Loan denominated in Euro shall be deemed to be a Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Loans denominated in Dollars at such time or (iii) if such Loan is denominated in Pounds Sterling, then such Loan shall bear interest at the Central Bank Rate for the Pounds Sterling plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for Pounds Sterling cannot be determined, any outstanding affected Loans denominated in Pounds Sterling, at the Borrower's election, shall either (A) be converted into ABR Loans denominated in Dollars (in an amount equal to the Dollar Equivalent) immediately or (B) be prepaid in full immediately.

SECTION 2.12. Increased Costs; Illegality.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate or Adjusted EURIBOR Rate, as applicable);

(ii) impose on any Lender or the London or other applicable offshore interbank market for the Designated Foreign Currencies any other condition, cost or expense (other than Taxes) affecting this Agreement or ~~Eurodollar~~-Loans made by such Lender; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of the term "Excluded Taxes" and (C) Connection Income Taxes) on its loans, loan principal, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, from time to time upon request of such Lender, the Borrower will pay to such

Lender such additional amount or amounts as will compensate such Lender for such additional costs or expenses incurred or reduction suffered.

(b) If any Lender reasonably determines that any Change in 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 had 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 Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then, from time to time upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) If by reason of any change in a Requirement of Law subsequent to the Restatement Effective Date, material disruption of currency or foreign exchange markets, war or civil disturbance or similar event, the funding of any Foreign Currency Loan in any currency or the funding of any Foreign Currency Loan in any currency to an office located other than in New York shall be impossible or such currency is no longer available or readily convertible to Dollars, or the Dollar Equivalent of such currency is no longer readily calculable, then, at the election of the Administrative Agent, no Foreign Currency Loans in the relevant currency shall be made or any Foreign Currency Loan in the relevant currency shall be made to an office of the Administrative Agent located in New York, as the case may be.

(d) (i) If payment in respect of any Foreign Currency Loan shall be due in a currency other than Dollars and/or at a place of payment other than New York and if, by reason of any change in a Requirement of Law subsequent to the Restatement Effective Date, material disruption of currency or foreign exchange markets, war or civil disturbance or similar event, payment of such Obligations in such currency or such place of payment shall be impossible or, in the reasonable judgment of the Administrative Agent, such currency is no longer available or readily convertible to Dollars, or the Dollar Equivalent of such currency is no longer readily calculable, then, at the election of any affected Lender, the Borrower shall make payment of such Loan in Dollars (based upon the Dollar Equivalent thereof on the date on which such payment occurs) and/or in New York or (ii) if any Foreign Currency in which Loans are outstanding is redenominated then, at the election of any affected Lender, such affected Loan and all obligations of the applicable Borrower in respect thereof shall be converted into obligations in Dollars (based upon the Dollar Equivalent thereof on such date), and, in each case, the Borrower shall indemnify the Lenders, against any currency exchange losses or reasonable out-of-pocket expenses that it shall sustain as a result of such alternative payment.

(e) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.12 delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(f) Failure or delay on the part of any Lender to make written demand for compensation pursuant to this [Section 2.12](#) shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this [Section 2.12](#) for any increased costs or expenses incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or expenses or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or expenses or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(g) If any Change in Law shall make it unlawful for any Lender to make or maintain Eurodollar Loans, (i) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such and convert ABR Loans to Eurodollar Loans shall forthwith be suspended until such time as it shall no longer be unlawful for such Lender to make or maintain Eurodollar Loans and (ii) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to ABR Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to [Section 2.13](#).

SECTION 2.13. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan or any EURIBOR Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (b) the conversion of any Eurodollar Loan or any EURIBOR Benchmark Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan or EURIBOR Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under [Section 2.08\(b\)](#) and is revoked in accordance therewith) or (d) the assignment of any Eurodollar Loan or any EURIBOR Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to [Section 2.16](#), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of the Applicable Rate for Eurodollar Loans or EURIBOR Benchmark Loans, as applicable). In the case of a Eurodollar Loan or a EURIBOR Benchmark Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate or the Adjusted EURIBOR Rate, as applicable, that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars or Euros, as applicable of a comparable amount and period from other banks in the eurodollar applicable offshore interbank market for such currency. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error.

The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(b) with respect to SONIA Loans, in the event of (i) the payment of any principal of any SONIA Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional mandatory prepayment of Loans), (ii) the failure to borrow or prepay any SONIA Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.08(b) and is revoked in accordance therewith), (iii) the assignment of any SONIA Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrower pursuant to Section 2.16, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.14. Taxes.

(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. 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 2.14) 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 by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.14, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or

legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a 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.

(e) Indemnification by the 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 9.04(c) 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 Section 2.14(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the

Administrative Agent), executed 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 or Form W-8BEN-E 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 or Form W-8BEN-E 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 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 Form W-8BEN-E; 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, IRS Form W-8BEN-E, 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.

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.

(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 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), 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 2.14 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 (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, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph 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 2.14 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Defined Terms. For purposes of this Section 2.14, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

SECTION 2.15. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee, any participation fee and any reduction of the Revolving Commitments of the Lenders shall be made pro rata according to the respective Pro Rata Share, as the case may be, under the relevant Facility. Each payment (including each prepayment) on account of principal of and interest on the Term Loans shall be made pro rata according to the respective outstanding principal amounts of the Term Loans then held by the Term Lenders. Unless otherwise set forth herein, the amount of each principal prepayment of the Term Loans shall be applied to reduce the then remaining installments of the Term Loans, pro rata based upon the then remaining principal amounts thereof. Amounts prepaid on account of the Term Loans may not be reborrowed. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its designated office, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder or under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments or prepayments of any Loan shall be made in the

currency in which such Loan is denominated, all reimbursements of Letters of Credit shall be made in Dollars and all other payments under each Loan Document shall be made in Dollars.

(b) 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, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans hereunder or participations in Letters of Credit resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans hereunder or participations in Letters of Credit and accrued interest thereon than the proportion received by any other Lender under the relevant Facility, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans hereunder or participations in Letters of Credit of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders under the relevant Facility ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans hereunder or participations in Letters of Credit; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans hereunder or participations in Letters of Credit to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. Notwithstanding the foregoing, to the extent prohibited by applicable law as described in the definition of "Excluded Swap Obligation," no amounts received from, or set off with respect to, any Loan Party shall be applied to any Excluded Swap Obligations of such Loan Party.

(d) 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 that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such 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.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(b), 2.15(d) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

(f) The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 9.03(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 9.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall (except as provided herein with respect to a Defaulting Lender) 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 9.03(c).

SECTION 2.16. Mitigation Obligations; Replacement of Lenders or Issuing Banks.

(a) If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.14, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

(b) If (i) any Lender requests compensation under Section 2.12, (ii) the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14 or (iii) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04 hereof, with the Borrower obligated to pay any applicable processing and recordation fee unless waived by the Administrative Agent in its sole discretion), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation); provided that (A) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans,

accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts); (C) in the case of any such assignment and delegation resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments, and (D) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver or consent by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation have ceased to apply.

(c) Replacement of Issuing Banks. If any Issuing Bank declines to provide the consent required under Sections 2.20(b) or 9.04(b)(iii)(C), or declines to provide a Letter of Credit pursuant to Section 2.19(a)(ii), then the Borrower may, at its sole expense and effort, upon notice to such Issuing Bank and the Administrative Agent, require such Issuing Bank to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.04), all of its Letter of Credit Commitment to one or more Eligible Assignees that shall assume such obligations (which assignee may be one or more Issuing Banks, if such Issuing Bank accepts such assignment); provided that:

(i) each outstanding Letter of Credit issued by such Issuing Bank shall have been replaced or such other arrangement reasonably satisfactory to such Issuing Bank shall have been made; and

(ii) such assignment does not conflict with applicable law.

SECTION 2.17. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Credit Commitment of such Defaulting Lender pursuant to Section 2.09(a); and

(b) the Revolving Credit Commitment and outstanding principal amount of Revolving Loans of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender, and provided further, that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender made pursuant to clause (i), (ii) or (iii) of the first proviso to Section 9.02(b) (but, in respect of such clauses (ii) and (iii), only to the extent relating to principal or interest) shall also require the consent of any such Lender which has become a Defaulting Lender.

(c) if any L/C Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of L/C Exposure of such Defaulting Lender shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent that (x) the sum of the aggregate principal amount of Revolving Loans owing to all Non-Defaulting Lenders plus the aggregate amount of L/C Exposure of all Lenders does not exceed the total of all Non-Defaulting Lenders' Revolving Credit Commitments, (y) after giving effect to such reallocation, the sum of the aggregate principal amount of Revolving Loans owing to, and the L/C Exposure allocated to, each Non-Defaulting Lender shall not exceed such Non-Defaulting Lender's Revolving Credit Commitment and (z) no Event of Default has occurred and is continuing;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within two Business Days following notice by the Administrative Agent, cash collateralize for the benefit of each Issuing Bank only the Borrower's obligations corresponding to such Defaulting Lender's L/C Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 7.02 for so long as such L/C Exposure is outstanding or such Lender remains a Defaulting Lender (and such L/C Exposure cannot be allocated pursuant to Section 2.17(c)(i));

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's L/C Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.09(d) with respect to such Defaulting Lender's L/C Exposure during the period such Defaulting Lender's L/C Exposure is cash collateralized;

(iv) if the L/C Exposure of the Non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.09(a) and Section 2.09(d) shall be adjusted in accordance with such Non-Defaulting Lenders' Pro Rata Shares; and

(v) if all or any portion of such Defaulting Lender's L/C Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of any Issuing Bank or any other Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Revolving Credit Commitment that was utilized by such L/C Exposure) and letter of credit commissions payable under Section 2.09(d) with respect to such Defaulting Lender's L/C Exposure shall be payable to the applicable Issuing Banks until and to the extent that such L/C Exposure is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding L/C Exposure will be 100% covered by the Revolving Credit Commitments of the Non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 7.02, and participating interests in any newly issued or increased Letter of Credit shall be

allocated among Non-Defaulting Lenders in a manner consistent with Section 2.17(c)(i) (and such Defaulting Lender shall not participate therein).

In the event that the Administrative Agent, the Borrower and the Issuing Banks each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the L/C Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Revolving Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Revolving Loans in accordance with its Pro Rata Share.

SECTION 2.18. [Reserved].

SECTION 2.19. Issuance of and Drawings and Reimbursement Under Letters of Credit.

(a) Request for Issuance. (i) Subject to clause (ii) below, each Letter of Credit shall be issued upon notice, given not later than 1:00 P.M. (New York City time) on the fifth Business Day prior to the date of the proposed issuance of such Letter of Credit, by the Borrower to any Issuing Bank, and such Issuing Bank shall give the Administrative Agent, prompt written notice thereof. Each such notice of issuance of a Letter of Credit (a "Notice of Issuance") shall be by telephone, confirmed promptly in writing, or telecopier, specifying therein the requested (A) date of such issuance (which shall be a Business Day), (B) the amount of such Letter of Credit, (C) expiration date of such Letter of Credit, (D) name and address of the beneficiary of such Letter of Credit and (E) form of such Letter of Credit, and shall be accompanied by such customary application and agreement for letter of credit as such Issuing Bank may specify to the Borrower requesting such issuance for use in connection with such requested Letter of Credit (a "Letter of Credit Agreement"). If the requested form of such Letter of Credit is reasonably acceptable to such Issuing Bank, such Issuing Bank will, upon fulfillment of the applicable conditions set forth in Article IV, make such Letter of Credit available to the Borrower (or its applicable Subsidiary) requesting such issuance at its office referred to in Section 9.01 or as otherwise agreed with the Borrower in connection with such issuance. In the event and to the extent that the provisions of any Letter of Credit Agreement shall conflict with this Agreement, the provisions of this Agreement shall govern.

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any governmental authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any governmental authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or

capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Restatement Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Restatement Effective Date and which such Issuing Bank in good faith deems material to it; or

(B) the issuance of the Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally and to customers of the Issuing Bank generally; provided that, in the event the Issuing Bank can no longer issue any Letter of Credit, the Issuing Bank shall endeavor to provide sufficient written notice thereof to the Borrower.

(b) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Share under the Revolving Facility of the aggregate amount available to be drawn under such Letter of Credit. The Borrower hereby agrees to each such participation. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Lender's Pro Rata Share under the Revolving Facility of each drawing made under a Letter of Credit funded by such Issuing Bank and not reimbursed by the Borrower within one Business Day after the Borrower's receipt of notice thereof, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Pro Rata Share under the Revolving Facility of the Available Amount of such Letter of Credit at each time such Lender's Revolving Credit Commitment is amended pursuant to an Incremental Revolving Commitment in accordance with Section 2.20, an assignment in accordance with Section 9.04 or otherwise pursuant to this Agreement.

(c) Drawing and Reimbursement. Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant Issuing Bank shall notify promptly the Borrower and the Administrative Agent thereof in writing. No later than the second Business Day immediately following the Business Day on which the Borrower shall have received written notice of any payment by an Issuing Bank under a Letter of Credit (such date of payment, an "Honor Date"), the Borrower shall reimburse such Issuing Bank through the Administrative Agent in an amount equal to such drawing in Dollars. If the Borrower fails to so reimburse such Issuing Bank on the Honor Date (or if any such reimbursement payment is required to be refunded to the

Borrower for any reason), then the payment by such Issuing Bank of such drawing shall constitute for all purposes of this Agreement the making by such Issuing Bank of a Revolving Loan, which, shall be an ABR Loan, in the amount of such draft. Each Issuing Bank shall give prompt notice (and such Issuing Bank will use its commercially reasonable efforts to deliver such notice within one Business Day) of each drawing under any Letter of Credit issued by it to the Borrower and the Administrative Agent. Upon written demand by such Issuing Bank, with a copy of such demand to the Administrative Agent, each Lender shall pay to the Administrative Agent such Lender's Pro Rata Share under the Revolving Facility of such outstanding Revolving Loans, by making available for the account of its Applicable Lending Office to the Administrative Agent for the account of such Issuing Bank, by deposit to the Administrative Agent's Account, in same day funds, an amount equal to the portion of the outstanding principal amount of such Revolving Loan to be funded by such Revolving Lender. Promptly after receipt thereof, the Administrative Agent shall transfer such funds to such Issuing Bank. Each Revolving Lender agrees to fund its Pro Rata Share under the Revolving Facility of an outstanding Revolving Loan on (i) the Business Day on which demand therefor is made by such Issuing Bank, provided that notice of such demand is given not later than 11:00 A.M. (New York City time) on such Business Day, or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. If and to the extent that any Revolving Lender shall not have so made the amount of such Revolving Loan available to the Administrative Agent, such Revolving Lender agrees to pay to the Administrative Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by any such Issuing Bank until the date such amount is paid to the Administrative Agent, at the Federal Funds Effective Rate for its account or the account of such Issuing Bank, as applicable. If such Revolving Lender shall pay to the Administrative Agent such amount for the account of any such Issuing Bank on any Business Day, such amount so paid in respect of principal shall constitute a Revolving Loan made by such Revolving Lender on such Business Day for purposes of this Agreement, and the outstanding principal amount of the Revolving Loan made by such Issuing Bank shall be reduced by such amount on such Business Day. For the avoidance of doubt, if any drawing occurs under a Letter of Credit and such drawing is not reimbursed on the same day, such drawing shall, without duplication, accrue interest at the rate applicable to the ABR Loans based on the amount of such drawing.

(d) Letter of Credit Reports. Each Issuing Bank shall furnish (i) to the Administrative Agent and each Lender on the first Business Day of each month a written report summarizing issuance and expiration dates of Letters of Credit during the preceding month and drawings during such month under all Letters of Credit and (ii) to the Administrative Agent and each Lender on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit.

(e) Failure to Make Revolving Loans. The failure of any Revolving Lender to make the Revolving Loan to be made by it on the date specified in Section 2.19(c) shall not relieve any other Revolving Lender of its obligation hereunder to make its Revolving Loans on such date, but no Revolving Lender shall be responsible for the failure of any

other Revolving Lender to make the Revolving Loans to be made by such other Revolving Lender on such date.

(f) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the Issuing Bank and the Borrower when a Letter of Credit is issued, (i) the rules of the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance) (the “ISP”) shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance) (the “UCP”) shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and no Issuing Bank’s rights and remedies against the Borrower shall be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (“BAFT-IFSA”), or the Institute of International Banking Law & Practice, to the extent that the relevant Letter of Credit chooses such law or practice.

(g) Resignation. Notwithstanding anything to the contrary contained herein, any Initial Issuing Bank may, with the written consent of the Borrower and the Administrative Agent (in each case, such consent not to be unreasonably withheld or delayed), resign (such Issuing Bank, the “Resigning Issuing Bank”) as an Issuing Bank, with respect to its Unissued Letter of Credit Commitment and be replaced with one or more substitute Issuing Banks from among the Lenders who agree to assume such role, with the written consent of the Borrower and the Administrative Agent (in each case, such consent not to be unreasonably withheld or delayed); provided that after giving effect to any such assignment at no time shall (x) the Letter of Credit Commitment of any Issuing Bank, including any substitute Issuing Bank, exceed its Revolving Credit Commitment and (y) the sum of the L/C Exposure of all Issuing Banks exceed the sum of (A) the aggregate amount of the Letter of Credit Commitment of all Issuing Banks less (B) the aggregate amount of the Unissued Letter of Credit Commitment of all Issuing Banks. The Borrower or the Resigning Issuing Bank with the written consent of the Borrower and the Administrative Agent (in each case, consent not to be unreasonably withheld or delayed) shall be entitled to appoint from among the Lenders who agree to assume such role a successor Issuing Bank hereunder and it shall notify the Administrative Agent, who will notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the Resigning Issuing Bank pursuant to Section 2.09. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Resigning Issuing Bank under this Agreement with respect to Unissued Letter of Credit Commitment being assigned and the Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to

such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Initial Issuing Bank hereunder, the Resigning Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

SECTION 2.20. Incremental Facility.

(a) The Borrower may, by written notice to the Administrative Agent from time to time request Incremental Term Loans and/or Incremental Revolving Commitments (an “Incremental Facility”) in an aggregate amount not to exceed the Incremental Amount at such time from one or more Incremental Term Lenders and/or Incremental Revolving Lenders (which may include any existing Lender) willing to provide such Incremental Term Loans and/or Incremental Revolving Commitments, as the case may be, in their own discretion; provided, that no Lender will be required to participate in any Incremental Facility without its consent and each Incremental Term Lender and/or Incremental Revolving Lender, if not already a Lender hereunder, shall be subject to the approval (which approval shall not be unreasonably withheld or delayed) of the Administrative Agent (solely to the extent the Administrative Agent’s consent would otherwise be required for an assignment to such Incremental Term Lender or Incremental Revolving Lender, as applicable, in accordance with Section 9.04 hereof) and, in the case of Incremental Revolving Lenders only, the Issuing Bank.

(b) Such notice shall set forth (i) the amount of the Incremental Term Loans and/or Incremental Revolving Commitments being requested (which shall be (1) with respect to Incremental Term Loans, in minimum increments of \$10,000,000, (2) with respect to Incremental Revolving Commitments, in minimum increments of \$5,000,000 or (3) equal to the remaining Incremental Amount at such time), (ii) the date, which shall be a Business Day, on which such Incremental Term Loans are requested to be made and/or Incremental Revolving Commitments are requested to become effective (the “Increased Amount Date”), (iii) in the case of Incremental Term Loans, whether such Incremental Term Loans are to be on the same terms as the outstanding Term Loans or with terms different from the outstanding Term Loans (with shall comply with clause (e) below), (iv) the use of proceeds for such Incremental Term Loan and/or Incremental Revolving Commitment and (v) pro forma financial calculations demonstrating compliance with the requirements under clause (iii) of Section 2.20(f).

(c) The Borrower and each Incremental Term Lender and/or Incremental Revolving Lender shall execute and deliver to the Administrative Agent an Incremental Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Term Loans of such Incremental Term Lender and/or Incremental Revolving Commitment of such Incremental Revolving Lender.

(d) If at the time of any Incremental Revolving Commitments the Revolving Credit Commitments are still in effect, the Incremental Revolving Commitment shall be on terms and pursuant to documentation applicable to the Revolving Credit Commitments.

(e) Each Incremental Assumption Agreement relating to Incremental Term Loans shall specify the terms of the Incremental Term Loans to be made thereunder (including

any “most favored nation” pricing provisions applicable to such Incremental Term Loans); provided that (i) the maturity date of any Incremental Term Loan shall be no earlier than the maturity date for the existing Term Loans (other than with respect to any Subsequently Incurred Term B Loans (as defined below), which shall mature no earlier than the latest maturity date then applicable to any outstanding Term Loans that are Term B Loans); (ii) the weighted average life to maturity of any Incremental Term Loan shall be no shorter than the remaining weighted average life to maturity of the existing Term Loans (other than as necessary, if applicable, to make such Incremental Term Loan fungible with the existing Term Loans and other than with respect to any Subsequently Incurred Term B Loans, which shall have a weighted average life to maturity no shorter than the remaining weighted average life to maturity of any existing Term B Loans); (iii) if the total yield in respect of any Incremental Term Loans that would be considered tranche A term loans under then-existing customary market convention exceeds the total yield for the existing Term Loans (other than any Term B Loans) by more than $\frac{1}{2}$ of 1% (it being understood that any such excess may take the form of original issue discount (“OID”), the Applicable Rate for the existing Term Loans (other than any Term B Loans) shall be increased so that the total yield in respect of such Incremental Term Loans is no more than $\frac{1}{2}$ of 1% higher than the total yield for the existing Term Loans (other than Term B Loans); (iv) if the total yield in respect of any Term B Loans incurred after any Term B Loans have been incurred under this Section 2.20 (“Subsequently Incurred Term B Loans”) under then-existing customary market convention exceeds the total yield for any such existing Term B Loans by more than $\frac{1}{2}$ of 1% (it being understood that any such excess may take the form of OID), the Applicable Rate for the existing Term B Loans shall be increased so that the total yield in respect of such Incremental Term Loans is no more than $\frac{1}{2}$ of 1% higher than the total yield for the existing Term B Loans; provided that, in determining the interest rate margins applicable to any Incremental Term Loans and the existing Term Loans under clauses (iii) and (iv) above, (x) any OID and upfront fees (which shall be deemed to constitute like amounts of OID) but excluding any arrangement, underwriting or similar fee paid to the Administrative Agent or the arrangers under any Incremental Term Loans and the existing Term Loans in the initial primary syndication thereof shall be included and equated to interest rate, (y) the excess of any Adjusted LIBO Rate “floor” over three-month Adjusted LIBO Rate and the excess of any ABR “floor” over the ABR, in each case without duplication as of the date of drawing of such Incremental Term Loans (disregarding such “floors” in determining the three-month Adjusted LIBO Rate and ABR on such date), shall be equated to interest margin on the Incremental Term Loans and (z) OID shall be equated to the interest rates in a manner reasonably determined by the Administrative Agent based on an assumed four-year life to maturity; (v) the Incremental Term Loans will rank pari passu in right of payment and security with the existing Term Loans; (vi) the Incremental Term Loans shall share ratably in any optional or mandatory prepayments of the Term Facility unless the lenders with respect to the applicable Incremental Term Loans and the Borrower agree to a less than ratable share of such prepayments, provided that any Incremental Term Loans that are Term B Loans may be subject to a customary “Excess Cash Flow” mandatory prepayment; (viii) to the extent the terms or documentation for Incremental Term Loans (other than Term B Loans) are not consistent with the terms of the existing Term Loans they shall be reasonably satisfactory to the Administrative Agent; and (ix) in the case of any Incremental Term Loans which are Term B Loans only, (A) may have customary call-protection, including “soft-call” protection in connection with any repricing transaction, and (B) may also, to the extent so provided in the applicable Incremental Assumption Agreement, specify whether (x) the applicable Term B

Lenders shall have any voting rights in respect of the financial covenants under the Loan Documents (it being agreed that if any Subsequently Incurred Term B Loans shall have such voting rights, all then outstanding Term B Loans shall also have similar voting rights), (y) any breach of such covenants would result in a Default or Event of Default for such Term B Lenders prior to an acceleration of Commitments and/or Loans by the applicable Lenders in accordance with the terms hereof as a result of such breach (it being agreed that if any Subsequently Incurred Term B Loans shall have such a default, all then outstanding Term B Loans shall also have a similar default), and (z) the applicable Term B Lenders shall be subject to any other representations and warranties, covenants or events of default that are different from the terms set forth in the Loan Documents as of the date of the incurrence of such Indebtedness; provided that, such Incremental Term Loans shall not have representations and warranties, covenants or events of default that are more restrictive, taken as a whole, than the representations and warranties, covenants or events of default set forth in the Loan Documents as of the date of incurrence of such Indebtedness unless such representations and warranties, covenants or events of default apply also to all other then outstanding Term Loans or only apply after the Maturity Date or, in the case of Incremental Term Loans which are Term B Loans, the latest maturity date then applicable to any Term Loans which are Term B Loans. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Assumption Agreement, this Agreement shall be amended to the extent necessary to reflect the existence and terms of the Incremental Term Loans and/or Incremental Revolving Commitments evidenced thereby. Any such deemed amendment may be memorialized in writing by the Administrative Agent with the Borrower's consent and furnished to the other parties hereto without their consent.

(f) Notwithstanding the foregoing, no Incremental Term Loan may be made and no Incremental Revolving Commitment shall become effective under this Section 2.20 unless (i) on the date on which such Loan is made or the date of such effectiveness and after giving effect to the Incremental Term Loans and/or Incremental Revolving Loans requested to be made on such date, the conditions set forth in Section 4.02 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by an officer of the Borrower, (ii) the Administrative Agent shall have received board resolutions and other closing certificates and related documentation as may be required by the relevant Incremental Assumption Agreement which, to the extent required, shall be consistent with the related documentation delivered on the Restatement Effective Date and such additional documents and filings (including amendments to the Mortgages and other Security Documents and title endorsement bring downs) as the Administrative Agent may reasonably require to assure that the Incremental Term Loans and/or Incremental Revolving Loans are secured by the Collateral ratably with the existing Term Loans and Revolving Loans, and (iii) the Borrower and its Subsidiaries would be in compliance on a Pro Forma Basis with the financial covenants set forth in Section 6.13 and 6.14 recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, after giving effect to such Incremental Term Loans and/or Loans to be made as of such date under the Incremental Revolving Commitment (and assuming such Incremental Revolving Commitments are fully drawn) and the application of the proceeds therefrom as if made and applied on such date; provided that in the case of any Incremental Term Loans the proceeds of which shall be used to consummate an acquisition permitted by this Agreement for which the Borrower has determined,

in good faith, that limited conditionality with respect to financing is required (any such acquisition, a "Limited Conditionality Acquisition"), in lieu of satisfying clauses (i) and (iii) above, such Incremental Term Loans may be made if (x) as of the date of entry into the definitive documentation in respect of such Limited Conditionality Acquisition (the "Limited Conditionality Acquisition Agreement"), (1) no Default or Event of Default shall have occurred and be continuing or would arise after giving effect thereto, (2) the representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (or in all respects if qualified by materiality) on and as of such date and (3) the Borrower and its Subsidiaries would be in compliance on a pro forma basis with the financial covenants set forth in Section 6.13 and 6.14 recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, after giving effect to such Incremental Term Loans and any Incremental Revolving Commitment to be made on the applicable Increased Amount Date (and assuming any such Incremental Revolving Commitments are fully drawn) and the application of the proceeds therefrom as if made and applied on such date and (y) as of the applicable Increased Amount Date, (1) no Event of Default under Section 7.01(a), (h) or (i) shall have occurred and be continuing and (2) the representations and warranties of each Loan Party set forth in the Loan Documents that are those customarily made in connection with acquisition financings (as determined by the Borrower and the Lenders in respect of such Incremental Term Loans) shall be true and correct in all material respects (or in all respects if qualified by materiality) on and as of such date.

(g) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans and/or Incremental Revolving Loans, when originally made, are included in each borrowing of outstanding Term Loans or Revolving Loans on a pro rata basis, that each Incremental Term Lender and each Incremental Revolving Lender shall be included in the definitions of Required Lenders and Majority Facility Lenders, and the Borrower agrees that Section 2.12 shall apply to any conversion of Eurodollar Loans to ABR Loans reasonably required by the Administrative Agent to effect the foregoing. For the avoidance of doubt, it is understood that the Revolving Facility shall be increased in an amount equal to the aggregate Incremental Revolving Commitments.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

SECTION 3.01. Organization; Powers. The Borrower and each Significant Subsidiary (a) is duly organized, validly existing and, to the extent that such concept is applicable in the relevant jurisdiction, in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority, and the legal right, to carry on its business as now conducted and as proposed to be conducted, to execute, deliver and perform its obligations under this Agreement and each other Loan Document and each other agreement or instrument contemplated thereby to which it is a party and to effect the Transactions and (c) except where the failure to do so, individually or in the aggregate, would not reasonably be

expected to result in a Material Adverse Effect, is qualified to do business in, and, to the extent that such concept is applicable in the relevant jurisdiction, is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions to be entered into by each Loan Party have been duly authorized by all necessary corporate or other organizational action and, if required, action by the holders of such Loan Party's Equity Interests. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of the Borrower or such other Loan Party, as applicable, enforceable against such Person in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) as contemplated by the definition of "Collateral and Guarantee Requirement" and (ii) such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate any Requirement of Law applicable to the Borrower or any Subsidiary, except to the extent any such violations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (c) will not violate or result (alone or with notice or lapse of time or both) in a default under any indenture or agreement governing Indebtedness, any other material agreement or any other material instrument binding upon the Borrower or any Subsidiary or their respective assets, or give rise to a right thereunder to require any payment, repurchase or redemption to be made by the Borrower or any Subsidiary or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder, except, in each case, to the extent any such violations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset now owned or hereafter acquired by the Borrower or any Subsidiary, except Liens created under the Loan Documents.

SECTION 3.04. Financial Condition; No Material Adverse Change.

(a) The Borrower has, to the extent the following are not otherwise publicly available to the Lenders, heretofore furnished to the Lenders (i) the consolidated balance sheets and related statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for the Fiscal Years ended June 30, 2019, audited by and accompanied by the opinion of KPMG LLP, independent registered public accounting firm and (ii) unaudited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for the Fiscal Quarter ended September 30, 2019. Such financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Borrower and its Subsidiaries as of such date and for such period in conformity with GAAP; provided any interim financials shall be subject to normal year-end adjustment and the absence of certain footnotes.

(b) Except as disclosed by the Borrower in reports filed with or furnished to the SEC prior to the Restatement Effective Date (it being understood the preceding shall not apply to disclosure set forth in risk factors, forward looking statements and other similar prospective statements contained therein), since June 30, 2019, there has been no event or condition that has resulted, or would reasonably be expected to result, in a Material Adverse Effect.

SECTION 3.05. Properties.

(a) The Borrower and each Subsidiary has good title to, or valid leasehold interests in, all its real and personal property material to its business (including Mortgaged Properties, if any), except for defects in title that could not reasonably be expected to materially interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) The Borrower and each Subsidiary owns, or is licensed to use, all Intellectual Property used in the conduct of its business as currently conducted, and the use thereof and the conduct of their respective businesses by the Borrower or any Subsidiary does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each such registration and application is subsisting and, to the actual knowledge of the Borrower or any Subsidiary, valid and enforceable. No claim, proceeding or litigation regarding any Intellectual Property is pending or, to the actual knowledge of the Borrower or any Subsidiary, threatened in writing against the Borrower or any Subsidiary that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. Litigation and Environmental Matters.

(a) Except as disclosed on Schedule 3.06(a), as of the Restatement Effective Date, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority (including with respect to any Environmental Liability) pending against or, to the actual knowledge of the Borrower or any Subsidiary, threatened in writing against or affecting the Borrower or any Subsidiary that (i) could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) involve any of the Loan Documents or the Transactions.

(b) Except as disclosed on Schedule 3.06(b), as of the Restatement Effective Date, and except with respect to any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, none of the Borrower or any Subsidiary (i) has violated any Environmental Law or is subject to any Environmental Liability, (ii) has failed to obtain, maintain or comply with any Environmental Permit, (iii) has received notice of any claim alleging the Borrower or any Subsidiary is responsible for any Environmental Liability, (iv) knows of any basis for, or is subject to any judgment or consent order pertaining to, any Environmental Liability of the Borrower or any Subsidiary or (v) has contractually assumed any liability or obligation under or relating to Environmental Laws.

SECTION 3.07. Compliance with Laws and Agreements; No Default. The Borrower and each Subsidiary is in compliance with (i) all Requirements of Law and (ii) all indentures, agreements and other instruments binding upon it or its property, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

SECTION 3.08. Investment Company Status. None of the Borrower or any other Loan Party is required to be registered as an “investment company” under the Investment Company Act.

SECTION 3.09. Taxes. The Borrower and each Subsidiary (a) has timely filed or caused to be filed all Tax returns and reports required to have been filed by it, except to the extent the failure to do so could not reasonably be expected to result in a Material Adverse Effect and (b) has paid or caused to be paid all Taxes required to have been paid by it, except where (i)(x) the validity or amount thereof is being contested in good faith by appropriate proceedings and (y) the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto to the extent required by GAAP, or (ii) the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA and Labor Matters.

(a) No ERISA Events have occurred or are reasonably expected to occur that could, in the aggregate, reasonably be expected to result in a Material Adverse Effect; all amounts required by applicable law with respect to, or by the terms of, any retiree welfare benefit arrangement maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has an obligation to contribute have been accrued in accordance with ASC Topic 715-60; the present value of all accumulated benefit obligations under each Plan, did not, as of the close of its most recent plan year, exceed by more than an immaterial amount the fair market value of the assets of such Plan allocable to such accrued benefits, and the present value of all accumulated benefit obligations of all underfunded Plans did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than an immaterial amount the fair market value of the assets of all such underfunded Plans.

(b) Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (i) there are no strikes, lockouts, work stoppages or similar labor disputes against the Borrower or any Subsidiary pending or, to the actual knowledge of the Borrower or any Subsidiary, threatened, (ii) hours worked by and payment made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters; and (iii) all payments due from the Borrower or any Subsidiary on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the Borrower or relevant Subsidiary.

SECTION 3.11. Subsidiaries. Schedule 3.11 sets forth the name and jurisdiction of organization of, and the ownership interest of the Borrower and each Subsidiary in, each Subsidiary and each class of Equity Interest of each Loan Party and each direct

Subsidiary thereof and identifies each Subsidiary that is a Loan Party or an Excluded Subsidiary, in each case as of the Restatement Effective Date. The Equity Interests in each Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable, and such Equity Interests are owned by the Borrower, directly or indirectly, free and clear of all Liens (other than Liens created under the Loan Documents and Liens permitted by Section 6.02). Except as set forth in Schedule 3.11, as of the Restatement Effective Date, there is no existing option, warrant, call, right, commitment or other agreement to which any Subsidiary is a party requiring, and there are no Equity Interests in any Subsidiary outstanding that upon exercise, conversion or exchange would require, the issuance by any Subsidiary of any additional Equity Interests or other securities exercisable for, convertible into, exchangeable for or evidencing the right to subscribe for or purchase any Equity Interests in any Subsidiary.

SECTION 3.12. Insurance. Schedule 3.12 sets forth a description of all material insurance maintained by or on behalf of the Borrower and the Subsidiaries as of the Restatement Effective Date.

SECTION 3.13. Solvency. Immediately after giving effect to the Transactions that will occur on the Restatement Effective Date:

(a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis;

(b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured;

(c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured; and

(d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

SECTION 3.14. Disclosure.

(a) None of the reports, financial statements, certificates, diligence materials or other written information furnished by or on behalf of the Borrower or any Subsidiary to any Arranger, the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document, included herein or therein or furnished hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; provided that, with respect to forecasts, projected financial information and information of a general economic or industry specific nature, the Borrower represents only that

such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time so furnished and, if such projected financial information was furnished prior to the Restatement Effective Date, as of the Restatement Effective Date (it being understood and agreed that any such projected financial information may vary from actual results and that such variations may be material).

(b) As of the Restatement Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Restatement Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.15. Collateral Matters. Subject to the Collateral and Guarantee Requirement:

(a) The Collateral Agreement, upon execution and delivery thereof by the parties thereto, will create in favor of the Administrative Agent, for the benefit of the Secured Parties, a valid and enforceable security interest in the Collateral (as defined therein, or if applicable, the analogous term in any non-U.S. Security Document) and (i) when the Collateral (as defined in the Collateral Agreement) constituting certificated securities (as defined in the Uniform Commercial Code) is delivered to the Administrative Agent, together with instruments of transfer duly endorsed in blank, the security interest created under the Collateral Agreement will constitute a fully perfected security interest in all right, title and interest of the pledgors thereunder in such Collateral, prior and superior in right to any other Person (other than Permitted Encumbrances that by operation of law or contract would have priority over the Obligations), and (ii) when financing statements in appropriate form are filed in the applicable filing offices, the security interest created under the Collateral Agreement will constitute a fully perfected security interest in all right, title and interest of the Loan Parties in the remaining Collateral (as defined therein) to the extent perfection can be obtained by filing Uniform Commercial Code financing statements, prior and superior to the rights of any other Person (other than Liens permitted under Section 6.02).

(b) Each Mortgage, upon execution and delivery thereof by the parties thereto, will create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in all the applicable mortgagor's right, title and interest in and to the Mortgaged Properties subject thereto and the proceeds thereof, and when the Mortgages have been filed in the jurisdictions specified therein, the Mortgages will constitute a fully perfected security interest in all right, title and interest of the mortgagors in the Mortgaged Properties and the proceeds thereof, prior and superior in right to any other Person, other than Liens permitted under Section 6.02.

(c) Upon the recordation of the Collateral Agreement (or an IP Security Agreement in form and substance reasonably satisfactory to the Borrower and the Administrative Agent) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and the filing of the financing statements referred to in paragraph (a) of this Section 3.15, the security interest created under the Collateral Agreement will constitute a fully perfected security interest in all right, title and interest of the Loan Parties in the Intellectual Property (as defined in the Collateral Agreement and, for the avoidance of doubt, other than any

Excluded Assets) registered in the United States in which a security interest may be perfected by filing or recording in the United States of America, in each case prior and superior in right to any other Person, other than Liens permitted under Section 6.02 (it being understood and agreed that subsequent recordings in the United States Patent and Trademark Office or the United States Copyright Office may be necessary to perfect a security interest in such Intellectual Property acquired or developed by the applicable Loan Parties after the Restatement Effective Date).

(d) Each Security Document, upon execution and delivery thereof by the parties thereto and the making of the filings and taking of the other actions provided for therein, will be effective under applicable law to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a valid and enforceable security interest in the Collateral subject thereto, and will constitute a fully perfected security interest in all right, title and interest of the Loan Parties in the Collateral subject thereto (save for those security interests which, pursuant to the terms of this Agreement, can only be perfected upon an Event of Default which is continuing and notice of acceleration in connection therewith has been given), prior and superior to the rights of any other Person, except for rights secured by Liens permitted under Section 6.02.

SECTION 3.16. Federal Reserve Regulations. None of the Borrower or any other Subsidiary is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the Loans will be used, directly or indirectly, for any purpose that entails a violation (including on the part of any Lender) of any of the regulations of the Board of Governors, including Regulations U and X. Not more than 25% of the value of the assets subject to any restrictions on the sale, pledge or other disposition of assets under this Agreement, any other Loan Document or any other agreement to which any Lender or Affiliate of a Lender is party will at any time be represented by margin stock (within the meaning of Regulation U of the Board of Governors).

SECTION 3.17. Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its subsidiaries and their respective officers and employees and to the actual knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in the Borrower being designated as a Sanctioned Person. None of (a) the Borrower, any Subsidiary or any of their respective officers or employees, or (b) to the actual knowledge of the Borrower, any director or agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. The Transactions (including any Borrowing or Letter of Credit hereunder) will not violate Anti-Corruption Laws or applicable Sanctions.

SECTION 3.18. Use of Proceeds. The Borrower will use the proceeds of the Revolving Loans and Letters of Credit in compliance with Section 5.10.

SECTION 3.19. USA PATRIOT Act. The Borrower and its Subsidiaries are in compliance in all material respects with the USA PATRIOT Act.

SECTION 3.20. EEA Financial Institution. No Loan Party is an EEA Financial Institution.

ARTICLE IV

Conditions

SECTION 4.01. Restatement Effective Date. The obligations of the Lenders to make Loans hereunder shall not become effective until the date on which each of the following conditions precedent have been satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement and the other Loan Documents signed on behalf of such party or (ii) written evidence reasonably satisfactory to the Administrative Agent (which may include telecopy transmission or a .pdf email attachment) that such party has signed a counterpart of this Agreement and the other Loan Documents.

(b) All fees and other amounts then due and payable by the Borrower to the Administrative Agent, the Arranger and the Lenders hereunder or pursuant to any fee or similar letters relating to this Agreement shall be paid, to the extent invoiced by the relevant person at least one Business Day prior to the Restatement Effective Date and to the extent such amounts are payable on or prior to the Restatement Effective Date.

(c) The Administrative Agent shall have received on or before the Restatement Effective Date, each dated on or about such date:

(i) Certified copies of the resolutions or similar authorizing documentation of the governing bodies of each Loan Party authorizing the Transactions to occur on the Restatement Effective Date and such Person to enter into and perform its obligations under the Loan Documents to which it is a party;

(ii) Copies of the Organizational Documents of each Loan Party;

(iii) A good standing certificate or similar certificate dated a date reasonably close to the Restatement Effective Date from the jurisdiction of formation of each Loan Party, but only where such concept is applicable;

(iv) A customary certificate of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign this Agreement and the other documents to be delivered by it hereunder;

(v) A favorable opinion letter of K&L Gates LLP, special counsel to the Borrower, in form and substance reasonably satisfactory to the Administrative Agent.

(d) The Administrative Agent shall have received a certificate, dated the Restatement Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraph (a) of Section 4.02.

(e) All consents and approvals (including, without limitation, consents and approvals required for regulatory compliance) required to be obtained from any Governmental Authority or other Person in connection with the Transactions shall have been obtained and be in full force and effect, except where failure to obtain such approval or consent would not have a Material Adverse Effect.

(f) The Administrative Agent and the Lenders shall have received from the Loan Parties such other certificates and other documents as the Administrative Agent or any Lender may reasonably have requested, including the promissory note complying with Section 2.07(f) of any Lender requesting such promissory note.

(g) The Collateral and Guarantee Requirements shall have been satisfied. The Administrative Agent shall have received the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties in the appropriate jurisdictions and copies of the financing statements (or similar documents) disclosed by such search.

(h) The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.03.

(i) The Administrative Agent shall have received a certificate in the form attached hereto as Exhibit J, dated the Restatement Effective Date and signed by a Financial Officer of the Borrower, as to the solvency of the Borrower and the Subsidiaries on a consolidated basis after giving effect to the Transactions to occur on the Restatement Effective Date.

(j) The revolving commitments under the Existing Credit Agreement shall have been replaced with the Commitments hereunder, and the "Loans" under the Existing Credit Agreement shall have been prepaid (together with interest and fees thereon), it being understood that the Lenders constituting "Required Lenders" under the Existing Credit Agreement waive any prepayment prior notice required to be delivered pursuant to the terms thereof and any notice requirement in respect of any reduction of the aggregate commitments thereunder required to be delivered pursuant to the terms thereof.

(k) Either (i) the Lenders executing and delivering this Agreement shall constitute "Required Lenders" under and as defined in the Existing Credit Agreement or (ii) the "Required Lenders" under and as defined in the Existing Credit Agreement shall have separately consented to amend and restate the Existing Credit Agreement in its entirety to read as set forth in this Agreement.

The Administrative Agent shall notify the Borrower and the Lenders of the Restatement Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Revolving Loan (other than a Revolving Loan made by an Issuing Bank or a Lender pursuant to Section 2.19(c)) on the occasion of each Borrowing, the obligation of each Issuing Bank to issue a Letter of Credit or renew a Letter of Credit, each Incremental Facility (other than as set forth in Section 2.20) shall be subject to the conditions precedent that the Restatement Effective Date shall have occurred and on the date of such Borrowing, issuance, renewal, Incremental Facility or extension of Commitments:

(a) the following statements shall be true (and each of the giving of the applicable Notice of Borrowing, Notice of Issuance, Notice of Renewal, request for Incremental Facility or request for extension of Commitments and the acceptance by the Borrower of the proceeds thereof shall constitute a representation and warranty by the Borrower that both on the date of such notice and on the date of such Borrowing, issuance, renewal, Incremental Facility and extension, as the case may be, such statements are true):

(i) the representations and warranties contained in the Loan Documents are true and correct in all material respects (except for representations and warranties qualified as to materiality and Material Adverse Effect, which shall be true and correct in all respects) on and as of such date, before and after giving effect to such Borrowing, issuance, renewal, Incremental Facility or extension of Commitments, as the case may be, and to the application of the proceeds therefrom, as though made on and as of such date (except to the extent any such representation or warranty specifically relates to an earlier date in which case such representation and warranty shall be accurate in all material respects as of such earlier date), and

(ii) no event has occurred and is continuing, or would result from such Borrowing, issuance, renewal, Incremental Facility or extension of Commitments, as the case may be, or from the application of the proceeds therefrom, that constitutes a Default or an Event of Default; and

(b) in connection with any increase of Revolving Credit Commitments or any extension of the Maturity Date, the Administrative Agent shall have received such other approvals, opinions or documents as any Lender consenting to or providing commitments for such increase or extension may reasonably request through the Administrative Agent.

Each Borrowing by and issuance of a Letter of Credit on behalf of the Borrower shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraph (a) of this Section 4.02.

ARTICLE V

Affirmative Covenants

Until all the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees and other amounts payable hereunder have been paid in

full and no Letter of Credit remains outstanding (unless such Letters of Credit have been cash collateralized pursuant to the terms hereof) (other than unmatured, surviving contingent obligations not yet due and payable), the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements; and Other Information. The Borrower will furnish to the Administrative Agent, on behalf of each Lender (or in the case of clause (g) below, conduct):

(a) within 90 days (or such earlier date as the Borrower may be required to file its applicable annual report on Form 10-K by the rules and regulations of the SEC) after the end of each Fiscal Year of the Borrower, its audited consolidated balance sheet and statements of income, comprehensive income, shareholders' equity and cash flows as of the end of and for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by KPMG LLP or another independent registered public accounting firm of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such financial statements present fairly in all material respects the financial condition, results of operations and cash flow of the Borrower and the Subsidiaries on a consolidated basis as of the end of and for such Fiscal Year in accordance with GAAP and accompanied by a narrative report containing management's discussion and analysis of the financial position and financial performance for such Fiscal Year in reasonable form and detail;

(b) within 45 days (or such earlier date as the Borrower may be required to file its applicable quarterly report on Form 10-Q by the rules and regulations of the SEC) after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower, its unaudited consolidated balance sheet and unaudited statements of income and cash flows as of the end of and for such Fiscal Quarter and the then elapsed portion of the Fiscal Year setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Financial Officer of the Borrower as presenting fairly in all material respects the financial condition, results of operations and cash flows of the Borrower and the Subsidiaries on a consolidated basis as of the end of and for such Fiscal Quarter and such portion of the Fiscal Year in accordance with GAAP, subject to normal year-end audit adjustments and the absence of certain footnotes, and accompanied by a narrative report containing management's discussion and analysis of the financial position and financial performance for such Fiscal Quarter in reasonable form and detail;

(c) [reserved];

(d) not later than the fifth Business Day following the date of delivery of financial statements under clause (a) or (b) above, a completed Compliance Certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) if any change in GAAP or in the application thereof has occurred since the date of the consolidated balance sheet of the Borrower most recently theretofore delivered under clause (a) or (b) above (or, prior to

the first such delivery, referred to in Section 3.04) that has had, or would reasonably be expected to have, a material effect on the calculations of the Leverage Ratio, specifying the nature of such change and the effect thereof on such calculations, (iii) identifying as of the date of such Compliance Certificate each Subsidiary that (A) is an Excluded Subsidiary as of such date but has not been identified as an Excluded Subsidiary in Schedule 3.11 or in any prior Compliance Certificate or (B) has previously been identified as an Excluded Subsidiary but has ceased to be an Excluded Subsidiary and (iv) setting forth reasonably detailed calculations, beginning with the financial statements delivered for the first full Fiscal Quarter after the Restatement Effective Date, of (A) the Leverage Ratio for such Fiscal Quarter and (B) the Interest Coverage Ratio for such Fiscal Quarter;

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and financial statements filed by the Borrower or any Subsidiary with the SEC or with any national securities exchange;

(f) promptly following any request therefor, such other information regarding the operations, business affairs, assets, liabilities (including contingent liabilities) and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender (acting through the Administrative Agent) may reasonably request;

(g) a quarterly conference call (each such call to be at a time and date to be agreed by the Borrower and the Administrative Agent), among senior management of the Borrower and the Lenders, it being understood that this clause (g) shall be deemed satisfied by the occurrence of the Borrower's quarterly public conference call with its equity holders to the extent the dial-in details of such call are made publicly available by the Borrower or its subsidiaries prior to the occurrence of such call;

(h) not later than 10 days after the date the Borrower is required to file its applicable annual report on Form 10-K by the rules and regulations of the SEC, the Borrower will furnish to the Administrative Agent, on behalf of each Lender a budget report and annual projections for the Borrower; and

(i) promptly following receipt thereof, copies of (i) any documents described in Sections 101(k) or 101(l) of ERISA that the Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan or any documents described in Section 101(f) of ERISA that the Borrower or any ERISA Affiliate may request with respect to any Plan; provided, that if the Borrower or any ERISA Affiliates have not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plans, then, upon reasonable request of the Administrative Agent, the Borrower or the ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Administrative Agent promptly after receipt thereof.

Notwithstanding anything to the contrary in this Section 5.01, (a) none of the Borrower or any of its Subsidiaries will be required to disclose any document, information or other matter that (i)

constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representative or contractors) is prohibited or restricted by Requirements of Law or any binding agreement with a third party not entered into in contemplation hereof, (iii) is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) constitutes classified information and (b) all such material that is so disclosed will be subject to Sections 9.12 and 9.17.

Information required to be furnished pursuant to clause (a), (b) or (e) of this Section 5.01 shall be deemed to have been furnished if such information, or one or more annual or quarterly reports containing such information, shall have been posted by the Administrative Agent on a Platform to which the Lenders have been granted access or shall be available on the website of the SEC at <http://www.sec.gov>. Information required to be furnished pursuant to this Section 5.01 may also be furnished by electronic communications pursuant to procedures approved by the Administrative Agent.

SECTION 5.02. Notices of Material Events.

Within five Business Days after obtaining actual knowledge thereof, the Borrower will furnish to the Administrative Agent notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority (including with respect to any Environmental Liability) against the Borrower or any Subsidiary or any adverse development in any such pending action, suit or proceeding not previously disclosed in writing by the Borrower to the Administrative Agent, that in each case could reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event or any fact or circumstance that gives rise to a reasonable expectation that any ERISA Event will occur that, in either case, alone or together with any other ERISA Events that have occurred or are reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect, and provide (i) a written notice specifying the nature thereof, what action the Borrower or any of its ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, upon the Administrative Agent's request, copies of (1) each Schedule SB (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any of its ERISA Affiliates with the IRS with respect to each Plan; (2) all notices received by the Borrower or any of its ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and three (3) copies of such other documents or governmental reports or filings relating to any Plan as Administrative Agent shall reasonably request;
- (d) any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary (it being understood and agreed that such notice shall

be deemed provided to the extent described in any financial statement delivered to the Administrative Agent pursuant to the terms of this Agreement);

(e) any Governmental Authority denial, revocation, modification or non-renewal of any Environmental Permit held or sought by the Borrower or any Subsidiary that could reasonably be expected to result in a Material Adverse Effect; and

(f) any other development that has resulted, or could reasonably be expected to result, in a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Information Regarding Collateral. The Borrower will furnish to the Administrative Agent prompt written notice of any change (i) in any Loan Party's legal name, as set forth in such Loan Party's organizational documents, (ii) in the jurisdiction of incorporation or organization of any Loan Party, (iii) in the form of organization of any Loan Party or (iv) in any Loan Party's organizational identification number, if any, or, with respect to a Loan Party organized under the laws of a jurisdiction that requires such information to be set forth on the face of a Uniform Commercial Code financing statement, the Federal Taxpayer Identification Number of such Loan Party. The Borrower agrees to deliver all executed or authenticated financing statements and other filings under the Uniform Commercial Code (or analogous law in a non-U.S. jurisdiction) or otherwise that are required in order for the Administrative Agent to continue to have a valid, legal and perfected security interest in all the Collateral following any such change.

SECTION 5.04. Existence; Conduct of Business. The Borrower and each Subsidiary will do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, and Intellectual Property material to the conduct of its business; provided that the foregoing shall not prohibit any transaction permitted under Section 6.03 or 6.05, including any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.05. Reserved.

SECTION 5.06. Maintenance of Properties. The Borrower and each Subsidiary will keep and maintain (subject to any dispositions permitted pursuant to the Loan Documents) all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.07. Insurance. The Borrower and each Subsidiary will maintain, with financially sound and reputable insurance companies, as determined by the Borrower in good faith, insurance in such amounts (with no greater risk retention) and against such risks as are customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations. Each such policy of liability or property insurance maintained by or on behalf of Loan Parties shall (a) in the case of each liability

insurance policy (other than workers' compensation, director and officer liability or other policies in which such endorsements are not customary), name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder, and (b) in the case of each property insurance policy, contain a customary lender's loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties, as the lender's loss payee thereunder. With respect to each Mortgaged Property that is located in an area determined by the Federal Emergency Management Agency to have special flood hazards, the applicable Loan Party has obtained, and will maintain, with financially sound and reputable insurance companies, such flood insurance as is required under applicable law, including Regulation H of the Board of Governors. Notwithstanding the foregoing, if the Administrative Agent receives any payment under any insurance policy of the Borrower or of any Subsidiary, or otherwise receives any amount in respect of any casualty or condemnation event with respect to any property of the Borrower or any Subsidiary, in each case at a time when no Event of Default has occurred and is continuing, the Administrative Agent shall promptly remit such amount to an account specified by the Borrower.

SECTION 5.08. Books and Records; Inspection and Audit Rights. The Borrower will, and will cause each Subsidiary to, keep proper books of record and account in which full, true and correct entries in all material respects in conformity with GAAP and all Requirements of Law are made of all dealings and transactions in relation to its business and activities. During the occurrence and continuation of an Event of Default, the Borrower will, and will cause each Subsidiary to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and, subject to Sections 9.12 and 9.17, to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times during regular business hours and as often as reasonably requested.

SECTION 5.09. Compliance with Laws.

(a) The Borrower and each Subsidiary will comply with all Requirements of Law with respect to it or its assets, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.10. Use of Proceeds. All or a portion of the proceeds of the Loans made on the Restatement Effective Date shall be used to refinance and replace the commitments and amounts outstanding under the Existing Credit Agreement and for other working capital and general corporate purposes. The proceeds of the Loans made after the Restatement Effective Date shall be used for working capital and general corporate purposes (including, without limitation, Permitted Acquisitions, Investments and other transactions not prohibited by the terms of the Loan Documents. The Borrower will not request any Borrowing, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything

else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.11. Additional Subsidiaries. If any additional Subsidiary is formed or acquired (or any existing Subsidiary ceases to be an Excluded Subsidiary or becomes a Designated Subsidiary) after the Restatement Effective Date, then the Borrower will, as promptly as practicable and, in any event, within 30 days (or such longer period as the Administrative Agent may, in its sole discretion, agree to in writing) after such Subsidiary is formed or acquired (or ceases to be an Excluded Subsidiary or becomes a Designated Subsidiary), notify the Administrative Agent thereof and cause the Collateral and Guarantee Requirement, to the extent applicable, to be satisfied with respect to such Subsidiary (if it is a Designated Subsidiary) and with respect to any Equity Interest in or Indebtedness of such Subsidiary owned by any Loan Party.

SECTION 5.12. Further Assurances. The Borrower and each other Loan Party will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law, or that the Administrative Agent may reasonably request, to cause the Collateral and Guarantee Requirement to be satisfied, all at the reasonable expense of the Loan Parties. The Borrower also agrees to provide to the Administrative Agent (i) from time to time upon written request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents and (ii) promptly after reasonable written request therefor, all documentation and other information reasonably requested by the Administrative Agent or any Lender that is reasonably required to satisfy applicable “know your borrower” and anti-money laundering rules and regulations, including the USA PATRIOT Act, and any necessary updates to the Beneficial Ownership Certification.

SECTION 5.13. After-Acquired Real Property. Each Loan Party shall grant to the Administrative Agent, within 90 days of the acquisition thereof (or such later date as the Administrative Agent may agree), a Mortgage on each parcel of real property owned in fee by such Loan Party as is acquired by such Loan Party after the Restatement Effective Date and that, together with any improvements thereon, individually has an assessed value for real estate taxation purposes of at least \$10,000,000, and shall cause clause (e) of the Collateral and Guarantee Requirement to be satisfied with respect to such real property and such Mortgage.

SECTION 5.14. Environmental Compliance.

(a) The Borrower and each Subsidiary will (i) comply with all Environmental Laws, and obtain, comply with and maintain any and all Environmental Permits necessary for its operations as conducted and as planned; and (ii) take all reasonable efforts to ensure that all of its tenants, subtenants, contractors, subcontractors, and invitees comply with all Environmental Laws, and obtain, comply with and maintain any and all Environmental Permits, applicable to them insofar as any failure to so comply, obtain or maintain reasonably would be expected to

result in a Material Adverse Effect on the Borrower; provided that, for purposes of this Section 5.14(a), noncompliance with any of the foregoing shall be deemed not to constitute a breach of this covenant so long as, with respect to any such noncompliance, the Borrower or its relevant Subsidiary is undertaking all reasonable efforts to achieve compliance (or to ensure that the relevant tenant, subtenant, contractor, subcontractor or invitee is achieving compliance) or the Borrower or any Subsidiary (or the relevant party listed above) is disputing such non-compliance in good faith in the applicable manner or forum, and provided further that, in any case, the reasonably anticipated resolution of any such efforts or dispute, individually or in the aggregate, would not reasonably be expected to give rise to a Material Adverse Effect.

(b) The Borrower and each Subsidiary will promptly comply with all orders and directives of all Governmental Authorities regarding Environmental Laws, other than any non-compliance that would not reasonably be expected to result in a Material Adverse Effect and other than such orders and directives as to which an appeal has been timely and properly taken in good faith and provided that, the reasonably anticipated resolution of such appeal would not reasonably be expected to give rise to a Material Adverse Effect.

ARTICLE VI

Negative Covenants

Until the Commitments shall have expired or been terminated, the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and no Letter of Credit remains outstanding (unless such Letter of Credit have been cash collateralized pursuant to the terms hereof), the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Indebtedness; Certain Equity Securities. None of the Borrower or any Subsidiary will create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness created under the Loan Documents;
- (b) Indebtedness existing on the Restatement Effective Date and set forth on Schedule 6.01 and Refinancing Indebtedness in respect of any of the foregoing;
- (c) Indebtedness of any Subsidiary to the Borrower or any Subsidiary; provided that (A) any such Indebtedness owing by any Loan Party shall be unsecured and, any such Indebtedness in excess of \$10,000,000 in the aggregate, shall be subordinated in right of payment to the Loan Document Obligations on terms customary for intercompany subordinated Indebtedness or otherwise reasonably satisfactory to the Administrative Agent, (B) any such Indebtedness owing to any Loan Party shall be evidenced by a promissory note which shall have been pledged pursuant to the Collateral Agreement to the extent required by the Collateral and Guarantee Requirement and (C) any such Indebtedness owing by any Subsidiary that is not a Loan Party to any Loan Party shall be incurred in compliance with Section 6.04(d);
- (d) Guarantees incurred in compliance with Section 6.04;

(e) (i) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations, purchase money Indebtedness and any Indebtedness assumed by the Borrower or any Subsidiary in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof; provided that the aggregate principal amount of Indebtedness permitted by this clause (i) shall not exceed \$10,000,000 at any time outstanding, and (ii) Refinancing Indebtedness in respect of Indebtedness incurred or assumed pursuant to clause (i) above;

(f) (i) Indebtedness of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) after the Restatement Effective Date, or Indebtedness of any Person that is assumed by any Subsidiary in connection with an acquisition of assets by such Subsidiary in a Permitted Acquisition; provided that such Indebtedness exists at the time such Person becomes a Subsidiary (or is so merged or consolidated) or such assets are acquired and is not created in contemplation of or in connection with such Person becoming a Subsidiary (or such merger or consolidation) or such assets being acquired, and (ii) Refinancing Indebtedness in respect of Indebtedness assumed pursuant to clause (i) above; provided further that the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed \$10,000,000 at any time outstanding;

(g) Indebtedness of any Borrower or Subsidiary not otherwise permitted under this Agreement so long as, at the time of incurrence of such Indebtedness, the Leverage Ratio, calculated on a Pro Forma Basis as of the date of incurrence thereof, is not in excess of 3.5 to 1.0 (or, during a Leverage Specified Period, 4.00 to 1.0); provided that (i) immediately prior to and immediately after giving effect to the incurrence of any such Indebtedness under this clause (g), no Event of Default shall have occurred and be continuing and (ii) no Indebtedness of any Subsidiary that is not a Loan Party shall be permitted pursuant to this Section 6.01(g) if, at the time of the incurrence of, and after giving effect to such Indebtedness (and any substantially simultaneous use of the Permitted Amount), the Permitted Amount would be less than zero;

(h) Indebtedness incurred and owed in respect of any overdrafts or similar protections and related liabilities arising from treasury, depository and cash management services and related obligations or in connection with any automated clearing-house transfers of funds;

(i) Indebtedness in respect of letters of credit, bank guarantees and similar instruments issued for the account of the Borrower or any Subsidiary in the ordinary course of business supporting obligations under (i) workers' compensation, health, disability or other employee benefits, casualty or liability insurance, unemployment insurance and other social security laws and local state and federal payroll taxes, (ii) obligations in connection with self-insurance arrangements in the ordinary course of business and (iii) bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance and reclamation bonds and obligations of a like nature, including, without limitation, performance guarantees;

(j) Indebtedness consisting of client advances or deposits received in the ordinary course of business;

(k) Indebtedness of the Borrower or any Subsidiary in the form of purchase price adjustments (including in respect of working capital), earnouts, seller notes, deferred compensation, deferred purchase price, indemnification or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with any Permitted Acquisition (or any other acquisition permitted hereunder) or other Investments permitted under Section 6.04 or Dispositions permitted under Section 6.05;

(l) Indebtedness of Subsidiaries that are not Loan Parties; provided that no Subsidiary that is not a Loan Party shall incur any Indebtedness under this Section 6.01(l) if, at the time of, and after giving effect to, the incurrence of such Indebtedness (and any substantially simultaneous use of the Permitted Amount) and the use of proceeds thereof, the Permitted Amount would be less than zero;

(m) Indebtedness relating to premium financing arrangements for property and casualty insurance plans and health and welfare benefit plans (including health and workers compensation insurance, employment practices liability insurance and directors and officers insurance), if incurred in the ordinary course of business;

(n) Indebtedness owing under any Hedging Agreements and owing under any Cash Management Agreements;

(o) Indebtedness under performance bonds, surety bonds, release, appeal and similar bonds, statutory obligations or with respect to workers' compensation claims, in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing; and

(p) other Indebtedness of Loan Parties not otherwise described above in an aggregate amount at any time outstanding not in excess of \$10,000,000.

Notwithstanding anything contrary set forth above, if any Indebtedness is denominated in a foreign currency, no fluctuation in currency values shall result in a breach of this Section 6.01.

SECTION 6.02. Liens. None of the Borrower or any Subsidiary will create, incur, assume or permit to exist any Lien on any asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any asset of the Borrower or any Subsidiary existing on the Restatement Effective Date and set forth on Schedule 6.02; provided that (i) such Lien

shall not apply to any other asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations that it secures on the Restatement Effective Date and extensions, renewals, replacements and refinancings thereof so long as the principal amount of such extensions, renewals, replacements and refinancings does not exceed the principal amount of the obligations being extended, renewed, replaced or refinanced or, in the case of any such obligations constituting Indebtedness, that are permitted under Section 6.01(b) as Refinancing Indebtedness in respect thereof;

(d) any Lien existing on any asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any asset of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) after the Restatement Effective Date prior to the time such Person becomes a Subsidiary (or is so merged or consolidated, including pursuant to a Permitted Acquisition); provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary (or such merger or consolidation), (ii) such Lien shall not apply to any other asset of the Borrower or any Subsidiary (other than, in the case of any such merger or consolidation, the assets of any Subsidiary without significant assets that was formed solely for the purpose of effecting such acquisition) and (iii) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary (or is so merged or consolidated) and extensions, renewals, replacements and refinancings thereof so long as the principal amount of such extensions, renewals and replacements does not exceed the principal amount of the obligations being extended, renewed or replaced or, in the case of any such obligations constituting Indebtedness, that are permitted under Section 6.01(f) as Refinancing Indebtedness in respect thereof;

(e) Liens on fixed or capital assets acquired, constructed or improved (including any such assets made the subject of a Capital Lease Obligation incurred) by the Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness incurred to finance such acquisition, construction or improvement and permitted by clause (e)(i) of Section 6.01 or any Refinancing Indebtedness in respect thereof permitted by clause (e)(ii) of Section 6.01, and (ii) such Liens shall not apply to any other property or assets of the Borrower or any Subsidiary, other than the proceeds of such fixed or capital assets;

(f) in connection with the sale or transfer of any Equity Interests or other assets in a transaction permitted under Section 6.05, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;

(g) in the case of (i) any Subsidiary that is not a wholly-owned Subsidiary or (ii) the Equity Interests in any Person that is not a Subsidiary, any encumbrance or restriction, including any put and call arrangements, related to Equity Interests in such Subsidiary or such other Person set forth in the Organizational Documents of such Subsidiary or such other Person or any related joint venture, shareholders' or similar agreement;

(h) Liens solely on any cash earnest money deposits, escrow arrangements or similar arrangements made by the Borrower or any Subsidiary in connection with any letter of intent or purchase agreement for a Permitted Acquisition or other transaction permitted hereunder;

(i) Liens consisting of cash collateral to secure Hedging Agreements permitted by Section 6.07;

(j) Liens granted by a Subsidiary that is not a Loan Party in respect of Indebtedness permitted to be incurred by such Subsidiary under Section 6.01(c);

(k) Liens securing judgments for the payment of money not constituting an Event of Default under Article VII; and

(l) other Liens securing Indebtedness or other obligations in an aggregate principal amount not to exceed \$20,000,000 at any time outstanding.

SECTION 6.03. Fundamental Changes.

(a) None of the Borrower or any Subsidiary will merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, (i) any Person (other than the Borrower) may merge into or consolidate with the Borrower in a transaction in which the Borrower is the surviving entity, (ii) any Person (other than the Borrower) may merge or consolidate with any Subsidiary in a transaction in which the surviving entity is a Subsidiary (and, if any party to such merger or consolidation is a Loan Party, is a Loan Party), (iii) any Subsidiary (other than the Borrower) may merge into or consolidate with any Person (other than the Borrower) in a transaction permitted under Section 6.05 in which, after giving effect to such transaction, the surviving entity is not a Subsidiary, (iv) any Subsidiary (other than the Borrower) may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; provided that if such Subsidiary is a Loan Party the continuing or surviving Person shall be a Loan Party and (v) any Subsidiary (other than the Borrower) may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided that any such merger or consolidation involving a Person that is not a wholly-owned Subsidiary immediately prior thereto shall not be permitted unless it is also permitted under Section 6.04 or 6.05.

(b) None of the Borrower or any Subsidiary will engage to any material extent in any business other than businesses of the type conducted by the Borrower and the Subsidiaries on the Restatement Effective Date and businesses reasonably related thereto.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. None of the Borrower or any Subsidiary will purchase, hold, acquire (including pursuant to any merger or consolidation with any Person that was not a wholly-owned Subsidiary prior thereto), make or otherwise permit to exist any Investment in any other Person, except:

- (a) [reserved];
- (b) Permitted Investments;
- (c) (i) Investments existing or contemplated by investment agreements existing on the Restatement Effective Date in Subsidiaries and (ii) other Investments existing or contemplated by investment agreements existing on the Restatement Effective Date and set forth on Schedule 6.04;
- (d) (i) additional Investments by the Borrower in any Loan Party and by any Loan Party in the Borrower or in another Loan Party, and (ii) Investments (including by way of capital contributions or extensions of credit) by the Borrower and the Subsidiaries in Equity Interests in their Subsidiaries; provided, in the case of clause (ii), that (x) any such Equity Interests held by a Loan Party shall be pledged in accordance with the requirements of the Collateral and Guarantee Requirement and (y) no Investment by any Loan Party in any Subsidiary that is not a Loan Party shall be permitted pursuant to this Section 6.04(d) if, at the time of the making of, and after giving effect to, such Investment (and any substantially simultaneous use of the Permitted Amount), the Permitted Amount would be less than zero;
- (e) loans or advances made by the Borrower or any Subsidiary to any Subsidiary; provided that no loan or advance made by any Loan Party to a Subsidiary that is not a Loan Party shall be permitted pursuant to this Section 6.04(e) if, at the time of, and after giving effect to, the making of such loan or advance (and any substantially simultaneous use of the Permitted Amount) and the use of proceeds thereof, the Permitted Amount would be less than zero;
- (f) Guarantees by the Borrower or any Subsidiary of Indebtedness or other obligations of the Borrower or any Subsidiary (including any such Guarantees arising as a result of any such Person being a joint and several co-applicant with respect to any letter of credit or letter of guaranty); provided that (i) (A) a Subsidiary that has not Guaranteed the Obligations pursuant to the Guarantee Agreement shall not Guarantee any Indebtedness of any Loan Party and (B) any such Guarantee of Indebtedness that is required to be subordinated to the Loan Document Obligations shall be subordinated to the Loan Document Obligations on terms no less favorable to the Lenders than those of such Subordinated Indebtedness, (ii) any such Guarantee constituting Indebtedness is permitted by Section 6.01 (other than clause (d) thereof) and (iii) no Guarantee by any Loan Party of Indebtedness (excluding, for the avoidance of doubt, Guarantees of obligations not constituting Indebtedness) of any Subsidiary that is not a Loan Party shall be permitted pursuant to this Section 6.04(f) if, at the time of the making of, and after giving effect to, such Guarantee (and any substantially simultaneous use of the Permitted Amount), the Permitted Amount would be zero;
- (g) (i) loans or advances to employees of the Borrower or any Subsidiary made in the ordinary course of business, including those to finance the purchase of Equity Interests of the Borrower pursuant to employee plans and (ii) payroll, travel, entertainment, relocation and similar advances to directors and employees of the

Borrower or any Subsidiary to cover matters that are expected at the time of such advances to be treated as expenses of the Borrower or such Subsidiary for accounting purposes and that are made in the ordinary course of business; provided that the aggregate principal amount of such loans and advances under this clause (g) outstanding at any time shall not exceed \$10,000,000;

(h) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, or consisting of securities acquired in connection with the satisfaction or enforcement of claims due or owing to the Borrower or any Subsidiary;

(i) Permitted Acquisitions;

(j) Investments held by a Subsidiary acquired after the Restatement Effective Date or of a Person merged or consolidated with or into the Borrower or a Subsidiary after the Restatement Effective Date, in each case as permitted hereunder, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(k) Investments made as a result of the receipt of noncash consideration from a sale, transfer, lease or other disposition of any asset in compliance with Section 6.05;

(l) Investments by the Borrower or any Subsidiary that result solely from the receipt by the Borrower or such Subsidiary from any of its subsidiaries of a dividend or other Restricted Payment in the form of Equity Interests, evidences of Indebtedness or other securities (but not any additions thereto made after the date of the receipt thereof) and any other Restricted Payments permitted by Section 6.08;

(m) Investments in the form of Hedging Agreements permitted under Section 6.07;

(n) Investments by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party;

(o) Investments consisting of (i) extensions of trade credit, (ii) deposits made in connection with the purchase of goods or services or the performance of leases, licenses or contracts, in each case, in the ordinary course of business or in connection with Permitted Acquisitions, (iii) notes receivable of, or prepaid royalties and other extensions of credit to, customers and suppliers that are not Affiliates of the Borrower and that are made in the ordinary course of business and (iv) Guarantees made in the ordinary course of business in support of obligations of the Borrower or any of its Subsidiaries not constituting Indebtedness for borrowed money, including operating leases and obligations owing to suppliers, customers and licensees;

(p) mergers and consolidations permitted under Section 6.03 that do not involve any Person other than the Borrower and Subsidiaries that are wholly-owned Subsidiaries;

(q) intercompany loans or other intercompany Investments made by Loan Parties in the ordinary course of business to or in any Subsidiary that is not a Loan Party;

(r) intercompany Investments, reorganizations and other activities relating to tax planning and reorganization, so long as, after giving effect thereto the Liens of the Secured Parties in the Collateral, taken as a whole, are not materially impaired; provided that no Investment may be made by any Loan Party in a Subsidiary that is not a Loan Party if, at the time of the making of, and after giving effect to, such Investment (and any substantially simultaneous use of the Permitted Amount), the Permitted Amount would be zero;

(s) Investments consisting of Guarantees in the ordinary course of business to support the obligations of any Subsidiary under its worker's compensation and general insurance agreements;

(t) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may on any date make Restricted Payments as set forth in Section 6.08(a)(vii);

(u) Investments constituting endorsements for collection or deposit in the ordinary course of business;

(v) Investments by any Subsidiary consisting of loans to the Borrower to the extent (and for the avoidance of doubt without duplication and not in addition to) the amount of such loan could also be made as a distribution under Section 6.08;

(w) other Investments, including Investments in connection with the acquisition of Subsidiaries that are not Loan Parties or other Persons that will not be Loan Parties, in an aggregate amount not in excess of \$20,000,000; provided, however, that at the time any such Investment is made pursuant to this clause (w), no Default shall have occurred and be continuing or would result therefrom; and

(x) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may on any date make Investments not otherwise permitted under this Agreement so long as, at the time of the making of such Investment, the Leverage Ratio, calculated on a Pro Forma Basis as of the date of making thereof, is not in excess of 3.00 to 1.00.

Notwithstanding anything contrary set forth above, (i) if any Investment is denominated in a foreign currency, no fluctuation in currency values shall result in a breach of this Section 6.04 and the amount of such Investment shall be determined as of the date such Investment is made and (ii) if any Investment is made in reliance on any "basket" determined by reference to Total Assets, no fluctuation in the aggregate amount of Total Assets shall result in a breach of this Section 6.04. In addition, in the event that a Loan Party makes an Investment in an Excluded

Subsidiary for purposes of permitting such Excluded Subsidiary or any other Excluded Subsidiary to apply the amounts received by it to make a substantially concurrent Investment (which may be made through any other Excluded Subsidiary) permitted hereunder, such substantially concurrent Investment by such Excluded Subsidiary shall not be included as an Investment for purposes of this Section 6.04 to the extent that the initial Investment by the Loan Party reduced amounts available to make Investments hereunder.

SECTION 6.05. Asset Sales. None of the Borrower or any Subsidiary will sell, transfer, lease, license or sublicense or otherwise dispose of any asset, including any Equity Interest owned by it (but other than, for the avoidance of doubt, treasury shares of the Borrower held by the Borrower), nor will any Subsidiary issue any additional Equity Interest in such Subsidiary (other than issuing directors' qualifying shares and other than issuing Equity Interests to the Borrower or another Subsidiary in compliance with Section 6.04(d)) (each, a "Disposition"), except:

(a) Dispositions of (i) inventory, (ii) used, obsolete, damaged, worn out or surplus equipment or other property (including, for the avoidance of doubt, such Dispositions consisting of the abandonment of such equipment or other property), (iii) cash and Permitted Investments, and (iv) leasehold improvements for property that is no longer leased by the Borrower or any Subsidiary thereof, in each case in the ordinary course of business;

(b) Dispositions to the Borrower or a Subsidiary; provided that any such Disposition involving a Subsidiary that is not a Loan Party (i) shall be made in compliance with Sections 6.04 and 6.09 and (ii) shall not, in the case of any Disposition by any Loan Party to Subsidiaries that are not Loan Parties that are not made as Investments permitted by Section 6.04, involve assets having an aggregate fair market value for all such assets so Disposed in excess of \$10,000,000 in the aggregate;

(c) Dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business consistent with past practice and not as part of any accounts receivables financing transaction;

(d) Sale/Leaseback Transactions permitted by Section 6.06;

(e) Licenses, leases or subleases entered into in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Subsidiary;

(f) Licenses or sublicenses of Intellectual Property in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Subsidiary;

(g) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any asset of any of the Borrower or any Subsidiary;

(h) Dispositions of assets (including as a result of like-kind exchanges) to the extent that (i) such assets are exchanged for credit (on a fair market value basis) against the purchase price of similar or replacement assets or (ii) such asset is Disposed of for fair market value and the proceeds of such Disposition are applied to the purchase price of similar or replacement assets within 12 months of such Disposition;

(i) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements;

(j) the abandonment, cancellation, non-renewal or discontinuance of use or maintenance of non-material Intellectual Property or failure to maintain in any material respect the integrity and security of the Software used in the business of the Borrower or any Subsidiary, except to the extent any such abandonment, cancellation, non-renewal, discontinuance or failure, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

(k) any other Disposition of assets (including Equity Interests) of any Subsidiaries of the Borrower; provided that (i) any such Disposition shall be for fair market value, (ii) at least 75% of the total consideration for any such Disposition received by the Borrower and its Subsidiaries is in the form of cash or Permitted Investments, (iii) the Net Cash Proceeds of any Disposition pursuant to this Section 6.05(k) shall be applied to prepay the Term Loans in accordance with, and to the extent required by, Section 2.08(f); and (iv) no Default or Event of Default then exists or would result from such Disposition (except if such Disposition is made pursuant to an agreement entered into at a time when no Default or Event of Default exists); provided, however, that for purposes of clause (ii) above, the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's or such Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Subsidiary (other than liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and its Subsidiaries shall have been validly released by all applicable creditors in writing and (B) any securities received by the Borrower or such Subsidiary from such transferee that are converted by the Borrower or such Subsidiary into cash or Permitted Investments (to the extent of the cash or Permitted Investments received in the conversion) within 180 days following the closing of the applicable Disposition; provided that all assets Disposed pursuant to this clause (k) shall not have an aggregate fair market value in excess of 5% of Consolidated Total Assets per annum;

(l) Dispositions of receivables in the ordinary course of business and consistent with past practice of the Borrower and the Subsidiaries;

(m) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of

contractual rights or litigation claims (including in tort) in the ordinary course of business;

(n) Dispositions of Equity Interests of the Borrower or any Subsidiary not otherwise prohibited by the terms of this Agreement; and

(o) Dispositions permitted pursuant to Section 6.03.

Notwithstanding the foregoing, other than Dispositions to the Borrower or any Subsidiary in compliance with Section 6.04, and other than directors' qualifying shares and other nominal amounts of Equity Interests that are required to be held by other Persons under applicable Requirements of Law, no such Disposition of any Equity Interests in any Subsidiary shall be permitted unless immediately after giving effect to such transaction, the Borrower and the Subsidiaries shall otherwise be in compliance with Section 6.04.

SECTION 6.06. Sale/Leaseback Transactions. None of the Borrower or any Subsidiary will enter into any Sale/Leaseback Transaction unless (a) the sale or transfer of the property thereunder is permitted under Section 6.05 (other than Section 6.05(d)), (b) any Capital Lease Obligations arising in connection therewith are permitted under Section 6.01 and (c) any Liens arising in connection therewith (including Liens deemed to arise in connection with any such Capital Lease Obligations) are permitted under Section 6.02.

SECTION 6.07. Hedging Agreements. None of the Borrower or any Subsidiary will enter into any Hedging Agreement, except (a) Hedging Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has perceived or actual exposure (other than those in respect of the Equity Interests or Indebtedness of the Borrower or any Subsidiary), including with respect to currencies, and (b) Hedging Agreements entered into in order to 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 the Borrower or any Subsidiary.

SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness.

(a) None of the Borrower or any Subsidiary will declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(i) any Subsidiary may declare and pay dividends or make other distributions with respect to its Equity Interests, in each case ratably to the holders of such Equity Interests (or if not ratably, on a basis more favorable to the Borrower and the Loan Parties);

(ii) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in shares of Qualified Equity Interests of the Borrower;

(iii) the Borrower may repurchase, purchase, acquire, cancel or retire for value Equity Interests of the Borrower from present or former employees, officers, directors or consultants (or their estates or beneficiaries under their estates) of the Borrower or any

Subsidiary upon the death, disability, retirement or termination of employment or service of such employees, officers, directors or consultants, or to the extent required, pursuant to employee benefit plans, employment agreements, stock purchase agreements or stock purchase plans, or other benefit plans; provided that the aggregate amount of Restricted Payments made pursuant to this Section 6.08(a)(iii) shall not exceed \$10,000,000 in the aggregate;

(iv) the Borrower may make cash payments (A) to satisfy an employee's withholding tax obligations incurred in connection with the exercise, vesting or acquisition of warrants, options or other securities convertible into or exchangeable for Equity Interests in the Borrower and (B) in lieu of the issuance of fractional shares representing insignificant interests in the Borrower in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests in the Borrower;

(v) the Borrower may acquire Equity Interests of the Borrower upon the exercise of stock options for such Equity Interests of the Borrower if such Equity Interests represent a portion of the exercise price of such stock options or in connection with tax withholding obligations arising in connection with the exercise of options by, or the vesting of restricted Equity Interests held by, any current or former director, officer or employee of the Borrower or its Subsidiaries;

(vi) the Borrower may convert or exchange any Equity Interests of the Borrower for or into Qualified Equity Interests of the Borrower;

(vii) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may on any date make Restricted Payments not otherwise permitted under this Agreement so long as, at the time of the making of such Restricted Payment, the Leverage Ratio, calculated on a Pro Forma Basis as of the date of making thereof, is not in excess of 2.75 to 1.00;

(viii) any Subsidiary may repurchase its Equity Interests held by minority shareholders or interest holders in a Permitted Acquisition or another transaction permitted by Section 6.04(t) (it being understood that for purposes of Section 6.04, the Borrower shall be deemed the purchaser of such Equity Interests and such repurchase shall constitute an Investment by the Borrower in a Person that is not a Subsidiary in the amount of such purchase unless such Subsidiary becomes a Loan Party in connection with such repurchase);

(ix) so long as, at the date of declaration thereof, no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may repurchase or redeem its Equity Interests from its equity holders in an amount not to exceed \$10,000,000; and

(x) the Borrower may make Restricted Payments within 60 days after the date of declaration thereof, if at the date of declaration of such Restricted Payments, such

Restricted Payments would have been permitted pursuant to another clause of this Section 6.08(a).

(b) None of the Borrower or any Subsidiary will make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Subordinated Indebtedness that is required pursuant to Section 6.01 to be subordinated to the payment of the Obligations, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, defeasance, cancelation or termination of such Subordinated Indebtedness, except:

(i) regularly scheduled interest and principal payments as and when due in respect of such Subordinated Indebtedness, other than payments prohibited by the subordination provisions thereof;

(ii) refinancings of such Subordinated Indebtedness with the proceeds of Refinancing Indebtedness permitted in respect thereof under Section 6.01;

(iii) payments of or in respect of such Subordinated Indebtedness made solely with Qualified Equity Interests in the Borrower or the conversion of such Subordinated Indebtedness into Qualified Equity Interests of the Borrower;

(iv) prepayments of intercompany Indebtedness permitted hereby owed by the Borrower or any Subsidiary to the Borrower or any Subsidiary; provided that, for the avoidance of doubt, no prepayment of any Indebtedness owed by any Loan Party to any Subsidiary that is not a Loan Party shall be permitted so long as an Event of Default shall have occurred and be continuing or would result therefrom; and

(v) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may on any date make payments of (including prepayments thereof) or in respect of any such Subordinated Indebtedness (other than any intercompany Indebtedness) not otherwise permitted hereunder so long as, at the time of the making of such payment, the Leverage Ratio, calculated on a Pro Forma Basis as of the date of making thereof, is not in excess of 2.75 to 1.00.

SECTION 6.09. Transactions with Affiliates. None of the Borrower or any Subsidiary will sell, lease or otherwise transfer any assets to, or purchase, lease or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that are at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than those that could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Loan Parties not involving any other Affiliate, (c) transactions between or among Subsidiaries that are not Loan Parties not involving any other Affiliate, (d) any Investment permitted under Section 6.04, (e) the payment of reasonable fees to directors of the Borrower or any Subsidiary who are not employees of the Borrower or any Subsidiary, (f) compensation, expense reimbursement and indemnification of, and other employment arrangements (including severance arrangements) and health, disability and similar insurance or benefit arrangements with, directors, officers and employees of the

Borrower or any Subsidiary entered into in the ordinary course of business, (g) any Restricted Payment permitted by Section 6.08, (h) sales of Equity Interests to Affiliates to the extent not prohibited under this Agreement, (i) any payments or other transactions pursuant to any tax sharing agreement among the Loan Parties and their Subsidiaries; provided that any such tax sharing agreement is on terms usual and customary for agreements of that type, and (j) any other transactions between or among the Borrower and its Subsidiaries entered into in the ordinary course of business including any transactions expressly permitted under this Agreement or any other Loan Document.

SECTION 6.10. Restrictive Agreements. None of the Borrower or any Subsidiary will, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its assets to secure the Obligations or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any Subsidiary; provided that (i) the foregoing shall not apply to (A) restrictions and conditions imposed by law or by this Agreement or any other Loan Document, (B) restrictions and conditions contained in any agreement or document governing or evidencing Subordinated Indebtedness or Refinancing Indebtedness, as applicable, in respect of Indebtedness referred to in clause (A); provided that the restrictions and conditions contained in any such agreement or document referred to in this clause (B) are not less favorable in any material respect to the Lenders than the restrictions and conditions imposed by this Agreement, (C) restrictions and conditions existing on the date hereof identified on Schedule 6.10, (D) in the case of any Subsidiary that is not a wholly-owned Subsidiary, restrictions and conditions imposed by its Organizational Documents or any related joint venture or similar agreements; provided that such restrictions and conditions apply only to such Subsidiary and to the Equity Interests of such Subsidiary, (E) restrictions imposed by any agreement governing Indebtedness entered into after the Restatement Effective Date and permitted under Section 6.01 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Subsidiary than those contained in this Agreement and (F) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets of the Borrower or any Subsidiary, in each case pending such sale; provided that such restrictions and conditions apply only to such Subsidiary or the assets that are to be sold and, in each case, such sale is permitted hereunder; and (ii) clause (a) of the foregoing shall not apply to (A) restrictions and conditions imposed by any agreement relating to secured Indebtedness permitted by clause (e), (f), (h), (i), (j), (l), (m), (n) and (o) of Section 6.01 if such restrictions and conditions apply only to the assets securing such Indebtedness, (B) customary provisions in leases, licenses and other agreements restricting the assignment thereof and (C) restrictions imposed by agreements relating to Indebtedness of any Subsidiary in existence at the time such Subsidiary became a Subsidiary and otherwise permitted by Section 6.01(f); provided that such restrictions apply only to such Subsidiary and its assets (or any special purpose acquisition Subsidiary without material assets acquiring such Subsidiary pursuant to a merger). Nothing in this paragraph shall be deemed to modify the requirements set forth in the definition of the term “Collateral and Guarantee Requirement” or the obligations of the Loan Parties under Sections 5.03, 5.11 or under the Security Documents.

SECTION 6.11. Amendment of Material Documents. None of the Borrower or any Subsidiary will amend, modify or waive any of its rights under (a) any agreement or instrument document evidencing Subordinated Indebtedness that constitutes Material Indebtedness except pursuant to the subordination/intercreditor terms applicable to such Subordinated Indebtedness or (b) its certificate of incorporation, bylaws or other organizational documents, in each case to the extent such amendment, modification or waiver would be materially adverse to the Lenders.

SECTION 6.12. Fiscal Year. The Borrower will not, and the Borrower will not permit any other Loan Party to, change its Fiscal Year to end on a date other than June 30.

SECTION 6.13. Leverage Ratio. Beginning with the first full Fiscal Quarter after the Restatement Effective Date, the Borrower will not permit the Leverage Ratio to exceed 3.5 to 1.0 as of the last day of any Fiscal Quarter of the Borrower (or, during a Leverage Specified Period, 4.00 to 1.0 as of the last day of any such Fiscal Quarter of the Borrower).

SECTION 6.14. Interest Coverage Ratio. Beginning with the first full Fiscal Quarter ending after the Restatement Effective Date, the Borrower will not permit the Interest Coverage Ratio to be less than 2.5 to 1.0 as of the end of any Fiscal Quarter of the Borrower.

ARTICLE VII

Events of Default

SECTION 7.01. Events of Default. If any of the following events (each such event, an “Event of Default”) shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation contained in Section 2.19(c), when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay (i) any interest on any Loan or (ii) any fee or any other amount (other than an amount referred to in clause (a) or clause (b)(i) of this Section 7.01) payable under this Agreement or any other Loan Document, in each case, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation, warranty or statement made or deemed made by or on behalf of the Borrower or any Loan Party in any Loan Document or in any certificate furnished by or on behalf of the Borrower or any Loan Party pursuant to or in connection with this Agreement or any other Loan Document shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.04 (with respect to the existence of the Borrower), 5.10 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document (other than those specified in clause (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of 60 days after notice thereof from the Administrative Agent or any Lender to the Borrower (with a copy to the Administrative Agent in the case of any such notice from a Lender);

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal, interest, premium or otherwise and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any grace period applicable on the date on which such payment was initially due);

(g) any event or condition occurs that results in any Material Indebtedness becoming due or being required to be prepaid, repurchased, redeemed or defeased prior to its scheduled maturity or that enables or permits the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf, or, in the case of any Hedging Agreement, the applicable counterparty, to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity (in each case after expiration of any applicable grace or cure period set forth in the agreement or instrument evidencing or governing such Material Indebtedness); provided that this clause (g) shall not apply to (i) any secured Indebtedness that becomes due as a result of the voluntary sale, transfer or other disposition of the assets securing such Indebtedness, (ii) any Indebtedness that becomes due as a result of a voluntary refinancing thereof permitted under Section 6.01 or (iii) the occurrence of any conversion or exchange trigger in Indebtedness that is contingently convertible or exchangeable into Equity Interests of the Borrower;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any other Loan Party or its debts, or of a substantial part of its assets, under any Federal, State or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any other Loan Party or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any other Loan Party shall (i) voluntarily commence any proceeding or file any petition seeking liquidation (other than any liquidation permitted under Section 6.03(a)(v)), reorganization or other relief under any Federal, State or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article VII, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any other Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any

such proceeding or (v) make a general assignment for the benefit of creditors, or the board of directors (or similar governing body) of the Borrower or any other Loan Party (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to above in this clause (i) or clause (h) of this Article VII;

(j) the Borrower or any other Loan Party shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$25,000,000 (other than any such judgment covered by insurance (other than under a self-insurance program) to the extent a claim therefor has been made in writing and liability therefor has not been denied by the insurer) outstanding at any given time, shall be rendered against the Borrower, any other Loan Party or any combination thereof and the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any other Loan Party to enforce any such judgment;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral with the priority required by the applicable Security Document, except as a result of (i) the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents, (ii) the release thereof as provided in the applicable Security Document or Section 9.14 or (iii) as a result of the Administrative Agent's failure to take action within its control, including without limitation, (A) failure to maintain possession of any stock certificate, promissory note or other instrument delivered to it under the Collateral Agreement or (B) file continuation statements under the applicable Uniform Commercial Code (or similar provisions under applicable law);

(n) This Agreement and any Guarantee purported to be created under any Loan Document shall cease to be, or shall be asserted by any Loan Party not to be, in full force and effect, except as a result of the release thereof or any limitation in respect thereof, in each case as provided in the applicable Loan Document or Section 9.14; or

(o) a Change in Control shall occur.

then, (i) in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Section 7.01), and at any time after the Restatement Effective Date and thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by written notice to the Borrower, take any or all of the following actions, at the same or different times: (A) terminate the Revolving Credit Commitments and the Letter of Credit Commitments, and thereupon the Revolving Credit Commitments and the Letter

of Credit Commitments shall terminate immediately and (B) declare the Loans then outstanding to be due and payable in whole (or in part (but ratably as among the Loans at such time outstanding), in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued or owing hereunder, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and (ii) in the case of any event with respect to the Borrower described in clause (h) or (i) of this Article VII, the Revolving Credit Commitments and the Letter of Credit Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower hereunder, shall immediately and automatically become due, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

SECTION 7.02. Actions in Respect of the Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Administrative Agent may with the consent, or shall at the request, of the Majority Facility Lenders under the Revolving Facility, irrespective of whether it is taking any of the actions described in Section 7.01 or otherwise, make written demand upon the Borrower to, and forthwith upon such written demand the Borrower will, (a) pay to the Administrative Agent on behalf of the Revolving Lenders one Business Day after such written demand in immediately available funds at the Administrative Agent's designated office, for deposit in the L/C Cash Collateral Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be reasonably acceptable to the Majority Facility Lenders under the Revolving Facility; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Federal Bankruptcy Code, the Borrower will pay to the Administrative Agent on behalf of the Revolving Lenders one Business Day after such written demand in immediately available funds at the Administrative Agent's designated office, for deposit in the L/C Cash Collateral Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower. If at any time the Administrative Agent determines that any funds held in the L/C Cash Collateral Account are subject to any right or claim of any Person other than the Administrative Agent and the Revolving Lenders or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, the Borrower will, forthwith upon written demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the L/C Cash Collateral Account, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, then held in the L/C Cash Collateral Account that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Collateral Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable law. After all such Letters of Credit shall have expired or been fully drawn upon and all other Obligations of the Borrower hereunder and under the Notes shall have been paid in full, the balance, if any, in such L/C Cash Collateral Account shall be promptly returned to the Borrower.

ARTICLE VIII

The Administrative Agent

Each of the Lenders hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its permitted successors to serve as administrative agent and collateral agent under the Loan Documents and authorizes the Administrative Agent, in its capacity as Administrative Agent, to execute and deliver the Loan Documents and to take such actions and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto (including, as trustee under any Security Document governed by English or other relevant law). It is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty 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.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and 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.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or to exercise any discretionary power (including with respect to enforcement and collection), except discretionary rights and powers expressly contemplated by the 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 necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion, could expose the Administrative Agent to liability or be contrary to this Agreement or any other Loan Document or applicable law, and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any Subsidiary or any other Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Notwithstanding clause (b) of the immediately preceding sentence, the Administrative Agent shall not be required to take, or to omit to take, any action hereunder or under the Loan Documents unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the

Administrative Agent, any other Secured Party) against all liabilities, costs and expenses that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Party thereof. The Administrative Agent shall not be liable for any action taken or not taken by it 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 to be necessary, under the circumstances as provided in the Loan Documents) or in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and nonappealable judgment). The Administrative Agent shall be deemed not to have actual knowledge of any Default unless and until written notice thereof (stating that it is a "notice of default") is given to the Administrative Agent by the Borrower or a Lender, and 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 in any Loan Document or the occurrence of any Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent.

The Administrative Agent shall be entitled to rely, 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 or sent or otherwise authenticated by the proper Person (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the signatory, sender or authenticator thereof). The Administrative Agent also shall be entitled to rely, and shall not incur any liability for relying, upon any statement made to it orally or by telephone and believed by it to be made by the proper Person (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the signatory, sender or authenticator thereof), and may act upon any such statement prior to receipt of written confirmation thereof. In determining compliance with any condition hereunder to the making of a Loan 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. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any of and all 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 of and all their duties and exercise their rights and powers through their respective Related Parties. The exculpatory provisions of this Article VIII shall apply to any

such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Subject to the terms of this paragraph, the Administrative Agent may resign at any time from its capacity as such. In connection with such resignation, the Administrative Agent shall give written notice of its intent to resign to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower (and so long as no Event of Default shall have occurred and be continuing, with the consent of the Borrower, not to be unreasonably withheld or delayed), to appoint a successor which will be a bank with an office in New York, New York or an Affiliate of any such bank. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank subject, so long as no Event of Default shall have occurred and be continuing, to the approval by the Borrower (which approval shall not be unreasonably withheld or delayed). Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed by the Borrower and such successor. Notwithstanding the foregoing, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Security Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest and be subject to such compliance as collateral agent for the benefit of the Secured Parties and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this paragraph (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Security Document, including any action required to maintain the perfection of any such security interest), and (b) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (i) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (ii) all notices and other communications required or

contemplated to be given or made to the Administrative Agent shall also directly be given or made to each Lender. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article VIII and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring 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 it was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

Each Lender and Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Restatement Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, this Agreement and each other Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Restatement Effective Date.

Except with respect to the exercise of setoff rights of any Lender in accordance with Section 9.08 or with respect to a Lender's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Loan Document Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent on behalf of the Secured Parties at such sale or other disposition.

In furtherance of the foregoing and not in limitation thereof, no Hedging Agreement the obligations under which constitute Secured Hedging Obligations will create (or

be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under this Agreement or any other Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such Hedging Agreement shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(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.

In case of the pendency of any proceeding with respect to any Loan Party under any Federal, State or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the 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 and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim under Sections 2.09, 2.10, 2.12, 2.13, 2.14 and 9.03) 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 proceeding is hereby authorized by each Lender and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03).

Notwithstanding anything herein to the contrary, the Arranger shall have no duties or obligations under this Agreement or any other Loan Document (except in its capacity, as applicable, as a Lender), but all such Persons shall have the benefit of the indemnities provided for hereunder.

The provisions of this Article VIII are solely for the benefit of the Administrative Agent and the Lenders, and, except solely to the extent of the Borrower's rights to consent and notice pursuant to and subject to the conditions set forth in this Article VIII, none of the Borrower or any Subsidiary shall have any rights as a third party beneficiary of any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and the Guarantees of the Obligations provided under the Loan Documents, to have agreed to the provisions of this Article VIII.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or electronic mail (and subject to paragraph (b) of this Section 9.01), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(i) if to the Borrower, to it at Aspen Technology, Inc., 20 Crosby Drive, Bedford, MA 01730, Attention: Chief Financial Officer and General Counsel (Telecopy No. (781) 221-5215) (email: karl.johnsen@aspentech.com and frederic.hammond@aspentech.com);

(ii) if to the Administrative Agent, as follows (A) if such notice relates to a Loan or Borrowing denominated in Dollars, or does not relate to any particular Loan, Borrower or Letter of Credit, to it at JPMorgan Chase Bank, N.A., 10 South Dearborn Street, Floor L2, Suite IL1-0480, Chicago, Illinois 60603, Attention of Julius C. Williams (Telecopy No. (844) 490-5663) (email: Julius.C.Williams@JPMorgan.com), with a copy to JPMorgan Chase Bank, N.A., Middle Market Servicing, 10 South Dearborn, Floor L2, Suite IL1-0480, Chicago, IL, 60603-2300, Attention of Commercial Banking Group (Telecopy No. (844) 490-5663 (email: jpm.agency.cri@jpmorgan.com; jpm.agency.servicing.l@jpmorgan.com) and (B) if such notice relates to a Loan or Borrowing denominated in a Designated Foreign Currency, to J.P. Morgan Europe Limited, Loans Agency 6th Floor, 25 Bank Street, Canary Wharf, London E14 5JP, United Kingdom, Attention of Loans Agency (Fax No. +44 20-7777-2360) (email: loan_and_agency_London@jpmorgan.com) with copy to JPMorgan Chase Bank, N.A., 10 South Dearborn Street, Floor L2, Suite IL1-0480, Chicago, Illinois 60603, Attention of Julius C. Williams (Telecopy No. (844) 490-5663) (email: Julius.C.Williams@JPMorgan.com);

(iii) if to any other Lender, to it at its address (or fax number) set forth in its Administrative Questionnaire.

Notices and communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent

by fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) of this Section 9.01 shall be effective as provided in such paragraph.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet and intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices under Article II to any Lender if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. Any notices or other communications to the Administrative Agent, the Borrower may be delivered or furnished by electronic communications pursuant to procedures approved by the recipient thereof prior thereto; provided that approval of such procedures may be limited or rescinded by any such Person by notice to each other such Person.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment) and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefore; provided that, for both clauses (i) and (ii) above, 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 fax number for notices and other communications hereunder by notice to the other parties hereto.

(d) the Borrower agree that the Administrative Agent may, but shall not be obligated to, make any communication by posting such communications on Debt Domain, Intralinks, Syndtrak or a similar electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available". Neither the Administrative Agent nor any of its Related Parties warrants, or shall be deemed to 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 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, or shall be deemed to be made, by the Administrative Agent or any of its Related Parties in connection with the communications or the Platform.

SECTION 9.02. Waivers; Amendments.

(a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any

abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Without limiting the generality of the foregoing, the execution and delivery of this Agreement or the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Except as otherwise expressly provided in this Agreement, none of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower, the Administrative Agent and the Required Lenders and, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders (unless the Administrative Agent has express authority herein or therein to consent unilaterally), provided that (i) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any ambiguity, omission, defect or inconsistency so long as, in each case, (A) such amendment does not adversely affect in any material respect the rights of any Lender or (B) the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; provided, further that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender; (ii) reduce the principal amount of any Loan of any Lender or reduce the rate of interest thereon (including reduction of the Applicable Rate or amending the ratio used in the definition of "Applicable Rate" (but not the definition of such ratio)) (other than waivers, amendments or modifications to the interest rates set forth in Section 2.10(c) and the financial covenants set forth in Sections 6.13 and 6.14), or reduce any fees payable hereunder (including reduction of the Applicable Rate or amending the ratio used in the definition of "Applicable Rate" (but not the definition of such ratio)) (other than waivers, amendments or modifications to the interest rate payable with respect to fees under Section 2.10(c)), without the written consent of such Lender, (iii) postpone the scheduled date of payment of the principal amount of any Loan of any Lender, or any interest thereon, or any fees payable hereunder to any Lender, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of such Lender, (iv) change Section 2.15(a), (b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender adversely affected thereby, (v) change any of the provisions of this Section or the percentage 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, without the written consent of each Lender, (vi)

release all or substantially all of the value of the Guarantees provided by the Loan Parties under the Guarantee Agreement without the written consent of each Lender (except as expressly provided in Section 9.14 or the Guarantee Agreement (including any such release by the Administrative Agent in connection with any sale or other disposition of any Subsidiary upon the exercise of remedies under the Security Documents), it being understood and agreed that an amendment or other modification of the type of obligations guaranteed under the Guarantee Agreement shall not be deemed to be a release or limitation of any Guarantee), (vii) release all or substantially all the Collateral from the Liens of the Security Documents without the written consent of each Lender (except as expressly provided in Section 9.14 or the applicable Security Document (including any such release by the Administrative Agent in connection with any sale or other disposition of the Collateral upon the exercise of remedies under the Security Documents), it being understood and agreed that an amendment or other modification of the type of obligations secured by the Security Documents shall not be deemed to be a release of the Collateral from the Liens of the Security Documents), (viii) consent to the subordination of the Obligations of the Loan Parties under the Loan Documents to any other Indebtedness, or to the subordination of all or substantially all the Liens of the Security Documents to the Liens securing any other Indebtedness, without the written consent of each Lender, (ix) reduce the amount of Net Cash Proceeds required to be applied to prepay Term Loans under this Agreement without the written consent of the Majority Facility Lenders with respect to the Term Facility; (x) reduce the percentage specified in the definition of Majority Facility Lenders with respect to any Facility without the written consent of all Lenders under such Facility and (xi) amend, modify or waive any provision of Section 4.02 with respect to any Borrowing to be made after the Restatement Effective Date without the written consent of the Majority Facility Lenders with respect to the Revolving Facility; provided further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent without the prior written consent of the Administrative Agent. Notwithstanding any of the foregoing, no consent with respect to any amendment, waiver or other modification of this Agreement or any other Loan Document shall be required of any Defaulting Lender, except with respect to any amendment, waiver or other modification referred to in clause (i), (ii) or (iii) of the second proviso of this paragraph and then only in the event such Defaulting Lender shall be affected by such amendment, waiver or other modification.

(c) Notwithstanding the foregoing, upon the execution and delivery of all documentation required by Section 2.20 to be delivered in connection with an Incremental Facility, the Administrative Agent, the Borrower and the new or existing Lenders providing such Incremental Facility may enter into an amendment hereof (which shall be binding on all parties hereto and the new Lenders) solely for the purpose of reflecting any new Lenders and their Incremental Revolving Commitments and/or Incremental Term Loans.

(d) In connection with any proposed amendment, modification, waiver, consent or termination (a "Proposed Change") requiring the consent of all Lenders or all affected Lenders, if the consent of the Required Lenders to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section 9.02 being referred to as a "Non-Consenting Lender"), then, so long as the Lender that is acting as Administrative Agent is not a Non-Consenting Lender, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require

such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, (iii) the Borrower or such assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b), (iv) such assignment does not conflict with applicable law and (v) the assignee shall have given its consent to such Proposed Change.

(e) Notwithstanding anything herein to the contrary, the Administrative Agent may, without the consent of any Secured Party, consent to a departure by any Loan Party from any covenant of such Loan Party set forth in this Agreement, the Guarantee Agreement, the Collateral Agreement or any other Security Document to the extent such departure is consistent with the authority of the Administrative Agent set forth in the definition of the term "Collateral and Guarantee Requirement".

SECTION 9.03. Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arranger and their respective Affiliates, including the reasonable and documented fees, charges and disbursements of one primary counsel and, one firm of local counsel in each jurisdiction as the Administrative Agent shall deem reasonably advisable in connection with the creation and perfection of the security interests in the Collateral provided under the Loan Documents, in connection with the structuring, arrangement and syndication of the credit facilities provided for herein and any credit or similar facility refinancing or replacing, in whole or in part, any of the credit facilities provided for herein, as well as the preparation, execution, delivery and administration of this Agreement, 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), provided that the Administrative Agent shall provide (A) an estimate to the Borrower of the expected aggregate costs and expenses (i) prior to the Restatement Effective Date, with respect to the transaction contemplated to occur on or prior to the Restatement Effective Date and (ii) prior to any other material transaction occurring after the Restatement Effective Date, with respect to any such transaction and (B) in each case, will provide the Borrower with periodic updates on the accrual of costs and expenses to the extent such accruals exceed the estimate provided in subsection (A) above, and (ii) all out-of-pocket expenses incurred by the Administrative Agent, the Arranger or any Lender, including the reasonable and documented fees, charges and disbursements of any outside counsel for any of the foregoing, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section 9.03, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided that expenses set forth in this clause (ii) shall be limited to (A) one counsel to the Administrative Agent and for the Lenders (taken together as a single group or client), (B) if necessary, one local counsel required in any relevant local

jurisdiction and applicable special regulatory counsel, (C) additional counsel retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed) and (D) if representation of the Administrative Agent and/or all Lenders in such matter by a single counsel would be inappropriate based on the advice of legal counsel due to the existence of an actual or potential conflict of interest, one additional counsel for each party subject to such conflict.

(b) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Arranger and each 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, penalties, liabilities and related expenses, including reasonable and documented fees, charges and disbursements of outside counsel (limited to reasonable fees, disbursements and other charges of one primary counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees, taken as a whole (and, in the case of an actual or perceived conflict of interest, where an Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected Indemnitee and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for such affected Indemnitee) and other reasonable and documented out-of-pocket expenses, incurred by or asserted against any Indemnitee arising out of, in connection with or as a result of (i) the structuring, arrangement and syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of this Agreement, the other Loan Documents or any other agreement or instrument contemplated hereby or thereby, the performance by the parties to this Agreement or the other Loan Documents of their respective obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any premises leased or operated by the Borrower or any Subsidiary, or any Environmental Liability related in any way to the Borrower or any Subsidiary 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 and whether initiated against or by any party to this Agreement or any other Loan Document, any Affiliate of any of the foregoing or any third party (and regardless of whether any Indemnitee is a party thereto); provided that the foregoing indemnity shall not, as to any Indemnitee, apply to any losses, claims, damages, penalties, liabilities or related expenses to the extent they (A) are found in a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of such Indemnitee, (B) result from a claim brought by the Borrower or any of its Subsidiaries for a material breach of such Indemnitee's obligations under this Agreement or any other Loan Document if the Borrower or such Subsidiary has obtained a final and non-appealable judgment of a court of competent jurisdiction in the Borrower's or its Subsidiary's favor on such claim as determined by a court of competent jurisdiction or (C) result from a proceeding that does not involve an act or omission by the Borrower or any of its Affiliates and that is brought by an Indemnitee against any other Indemnitee (other than a proceeding that is brought against the Administrative Agent or any Arranger in its capacity as such or in fulfilling its roles as an agent or arranger hereunder or any similar role with respect to the Indebtedness incurred or to be incurred hereunder). This

paragraph shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(c) To the extent that the Borrower fails to indefeasibly pay any amount required to be paid by it under paragraph (a) or (b) of this Section 9.03 to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing (and without limiting their obligation to do so), each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as applicable, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as applicable, was incurred by or asserted against the Administrative Agent (or such sub-agent) or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. For purposes of this Section 9.03, a Lender's "pro rata share" shall be determined based upon its Pro Rata Share under the relevant Facility at that time.

(d) To the fullest extent permitted by applicable law, the Borrower shall not assert, or permit any of its Affiliates or Related Parties to assert, and each hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet) or (ii) 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 or thereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section 9.03 shall be payable within ten Business Days after written demand therefor.

SECTION 9.04. Assignments and Participations.

(a) Successors and Assigns Generally. No Lender may assign, delegate or otherwise transfer any of its rights or obligations hereunder except to an Eligible Assignee (i) in accordance with the provisions of Section 9.04(b), (ii) by way of participation in accordance with the provisions of Section 9.04(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.04(f) (and any other attempted assignment or transfer by any Lender 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, and shall as provided in Sections 2.16(b) and (c), 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 Commitment and the

Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans under any Facility at the time owing to it or in the case of an assignment to a Lender, no minimum amount need be assigned; and

(B) in any case not described in Section 9.04(b)(i)(A), the aggregate amount of the applicable Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 in the case of the Revolving Facility or \$1,000,000 in the case of the Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents.

(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 or the Commitment assigned under any Facility, except that this clause (ii) shall not prohibit any Lender or Issuing Bank from assigning all or a portion of its rights and obligations among the Revolving Credit Commitments and the Letter of Credit Commitments on a non-pro rata basis; provided that, at no time shall the Letter of Credit Commitment of any Issuing Bank exceed the Revolving Credit Commitment of such Issuing Bank.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 9.04(b)(i)(B) and this Section 9.04(b)(iii):

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund of such Lender; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund of such Lender with respect to such Lender; and

(C) the consent of each Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Commitments.

(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 an Administrative Questionnaire.

(v) [Reserved].

(vi) [Reserved].

(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, each Issuing Bank 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 in accordance with its Pro Rata Share. 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 2.12 and 9.03 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 Section 9.04 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 the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal 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 or the Administrative Agent, sell participations to one or more Eligible Assignees (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Banks and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 9.03 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 or any other Loan Document; 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 of any provision of this Agreement or any Note, or any consent to any departure by any Loan Party therefrom, to the extent that such amendment, waiver or consent otherwise requires such Lender's affirmative consent pursuant to the provisions of Section 9.02 and then only to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Notes or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, the Notes or any fees or other amounts payable hereunder, in each case to the extent subject to such participation. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 9.03 and 2.14 (subject to the requirements and limitations therein, including the

requirements under Section 2.14(f) (it being understood that the documentation required under Section 2.14(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.12, 2.14 and 2.16 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 2.12 or 2.14, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and reasonable expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.16 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.15 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Revolving 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, or is necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA or other applicable law. 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) Subject to Sections 9.12 and 9.17, any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.04, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Loan Parties furnished to such Lender by or on behalf of the Loan Parties; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree for the benefit of the Loan Parties to preserve the confidentiality of any Borrower Information relating to the Loan Parties received by it from such Lender subject to the terms of this Agreement.

(f) 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 of a security interest shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything else to the contrary contained in this Agreement, any attempted assignment or sale of a participation to a Person who is not an Eligible Assignee shall be null and void.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in this Agreement and the other Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Arranger, any Lender or any Affiliate of any of the foregoing may have had notice or knowledge of any Default or incorrect representation or warranty at the time this Agreement or any other Loan Document is executed and delivered or any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.12, 2.14, 2.15(e), 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Notwithstanding any other provision of this Agreement to the contrary, upon the Administrative Agent's request, the Loan Parties agree to promptly execute and deliver such amendments to this Agreement as shall be necessary to implement any modifications to this Agreement pursuant to any separate letter agreements between the Borrower and the Administrative Agent during the period permitted therein. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality

and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing and the making of the request or the granting of the consent specified in Article VII to authorize the Administrative Agent to declare the Loans due and payable pursuant to Article VII shall have occurred, each Lender and each of its Affiliates, is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) or other amounts at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Loan Parties against any of and all the obligations then due of the Borrower now or hereafter existing under this Agreement held by such Lender or any such Affiliates, irrespective of whether or not such Lender or any such Affiliate shall have made any demand under this Agreement and although such obligations of the Loan Parties are owed to a branch or office of such Lender or any such Affiliate different from the branch or office holding such deposit or obligated on such Indebtedness. Each Lender agrees to notify the applicable Loan Parties and the Administrative Agent promptly after any such setoff and application; provided that the failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender or any Related Party of any of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of such courts and agrees that all claims in respect of any action, litigation or proceeding may be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each party hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action, litigation or proceeding relating to this Agreement or any other Loan Document against any Loan Party or any of its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the

laying of venue of any action, litigation or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Related Parties, including accountants, legal counsel and other agents and advisors, it being understood and agreed 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), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that the Administrative Agent or such Lender, as applicable, agrees that it will, to the extent practicable and other than with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, notify the Borrower promptly thereof, unless such notification is prohibited by law), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, in each case, only such information as is reasonably necessary to exercise such remedies or enforce such rights, (f) subject to an agreement containing confidentiality

undertakings substantially similar to those of this Section 9.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its Related Parties) to any Hedging Agreement relating to the Borrower or any Subsidiary and its obligations hereunder or under any other Loan Document, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided for herein or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facilities provided for herein, (h) with the consent of the Borrower or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.12 or (ii) becomes available to the Administrative Agent, any Lender or any Affiliate of any of the foregoing on a nonconfidential basis from a source other than the Borrower or its Subsidiary. For purposes of this Section 9.12, "Information" means all information received from the Borrower or its Related Parties relating to the Borrower or any Subsidiary or their businesses, other than any such information that is available to the Administrative Agent or any Lender prior to disclosure by the Borrower or its Subsidiaries on a nonconfidential basis from a Person that is not subject to a confidentiality obligation to the Borrower or any of its Related Parties. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if it has complied with the requirements set forth in this Section 9.12 and 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 (absent gross negligence or willful misconduct). For the avoidance of doubt, the Borrower has the right to review and approve in advance, with such approval not to be unreasonably withheld or delayed, all press releases, advertisements and similar materials and disclosures (other than any disclosures to industry trade organizations of information that is customary for inclusion in league table measurements) that the Administrative Agent or any Lender prepares or that is prepared on the Administrative Agent's or any Lender's behalf that contain the Borrower's name or the name of any of its respective Affiliates.

SECTION 9.13. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 9.13 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.14. Release of Liens and Guarantees. A Loan Party (other than the Borrower) shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Security Documents in Collateral owned by such Loan Party shall be automatically released, upon the consummation of any transaction permitted by this

Agreement as a result of which such Loan Party ceases to be a Subsidiary (or becomes an Excluded Subsidiary (other than solely as a result of such Subsidiary ceasing to be a Significant Subsidiary)); provided that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise; provided further that as of any date upon which a Loan Party (other than the Borrower) becomes an Excluded Subsidiary (other than solely as a result of such Subsidiary ceasing to be a Significant Subsidiary), the Borrower shall be deemed to have made an Investment in a Person that is not a Loan Party in an amount equal to the fair market value of the assets (net of third-party liabilities) of such Subsidiary as of such date (as determined reasonably and in good faith by a Financial Officer of the Borrower).

Upon any sale or other transfer by any Loan Party (other than to the Borrower or any other Loan Party) of any Collateral in a transaction permitted under this Agreement, or upon the effectiveness of any written consent to the release of the security interest created under any Security Document in any Collateral pursuant to Section 9.02, the security interests in such Collateral created by the Security Documents shall be automatically released. In connection with any termination or release pursuant to this Section 9.14, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's reasonable expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 9.14 shall be without recourse to or warranty by the Administrative Agent. Each of the Secured Parties irrevocably authorizes the Administrative Agent, at its option and in its discretion, to effect the releases set forth in this Section 9.14.

SECTION 9.15. USA PATRIOT Act Notice. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that, pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.16. No Fiduciary Relationship. Each of the Borrower, on behalf of itself and its Subsidiaries, agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, the Borrower, the Subsidiaries and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger, the Lenders and their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Administrative Agent, the Lenders or their Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications. The Administrative Agent, the Arranger, the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower, the Subsidiaries and their respective Affiliates, and none of the Administrative Agent, the Arranger, the Lenders or any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower the Subsidiaries or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower hereby waives and releases any claims that it or any of its Affiliates may have against the Administrative Agent, the Arranger, the Lenders or any of their respective Affiliates with respect to any breach or

alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.17. Non-Public Information.

(a) Each Lender acknowledges that all information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to or in connection with, or in the course of administering, this Agreement will be syndicate-level information, which may contain MNPI. Each Lender represents to the Borrower and the Administrative Agent that (i) it has developed compliance procedures regarding the use of MNPI and that it will handle MNPI in accordance with such procedures and applicable law, including Federal, State and foreign securities laws, and (ii) it has identified in its Administrative Questionnaire a credit contact who may receive information that may contain MNPI in accordance with its compliance procedures and applicable law, including Federal, State and foreign securities laws.

(b) The Borrower and each Lender acknowledge that, if information furnished by the Borrower pursuant to or in connection with this Agreement is being distributed by the Administrative Agent through the Platform, (i) the Administrative Agent may post any information that the Borrower has indicated as containing MNPI solely on that portion of the Platform designated for Private Side Lender Representatives and (ii) if the Borrower has not indicated whether any information furnished by it pursuant to or in connection with this Agreement contains MNPI, the Administrative Agent reserves the right to post such information solely on that portion of the Platform as is designated for Private Side Lender Representatives. The Borrower agrees to clearly designate all information provided to the Administrative Agent by or on behalf of the Borrower that is suitable to be made available to Public Side Lender Representatives, and the Administrative Agent shall be entitled to rely on any such designation by the Borrower without liability or responsibility for the independent verification thereof.

SECTION 9.18. Judgment Currency.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in Dollars into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction Dollars could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of each party hereto in respect of any sum due to any other party hereto or any holder of the obligations owing hereunder (the "Applicable Creditor") shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than Dollars, be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase Dollars with the Judgment Currency; if the amount of Dollars so purchased is less than the sum originally due to the Applicable Creditor in Dollars, such party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such

deficiency. The obligations of the parties contained in this Section 9.18 shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

SECTION 9.19. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 9.20. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the

event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 9.21. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger, any Syndication Agent, any Co-Documentation Agent or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent, and each Arranger, Syndication Agent and Co-Documentation Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE X AMENDMENT AND RESTATEMENT

Upon the Restatement Effective Date, this Agreement shall amend and restate the Existing Credit Agreement, but shall not constitute a novation thereof or in any way impair or otherwise affect the rights or obligations of the parties thereunder (including with respect to Loans and representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. The Existing Credit Agreement as amended and restated hereby shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Existing Credit Agreement not amended and restated in connection with the entry of the parties into this Agreement shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement to the same extent as if the modifications to the Existing Credit Agreement contained herein were set forth in an amendment to the Existing Credit Agreement in a customary form, unless such

document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Agreement, the Existing Credit Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ASPEN TECHNOLOGY, INC., as Borrower

By: _____

Name:

Title:

JPMORGAN CHASE BANK, N.A., as
Administrative Agent and as Issuing Bank

By: _____

Name:

Title:

[], as a Lender

By: _____

Name:

Title:

Exhibit B

[Exhibit B to Waiver and Second Amendment]

[FORM OF] BORROWING REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent
10 South Dearborn Street, Floor L2
Suite IL1-0480
Chicago, IL, 60603-2300
Attention: Julius C. Williams
(Telephone No. (312) 954-3750)
(Telecopy No. (844) 490-5663)
Email: Julius.C.Williams@JPMorgan.com

with a copy to,
JPMorgan Chase Bank, N.A.
Middle Market Servicing
10 South Dearborn, Floor L2
Suite IL1-0480
Chicago, IL, 60603-2300
Attention: Commercial Banking Group
Fax No: (844) 490-5663
Email: jpm.agency.cri@jpmorgan.com
jpm.agency.servicing.1@jpmorgan.com

[]

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement, dated as of December 23, 2019 (as amended, supplemented or otherwise modified as of the date hereof, the "Credit Agreement") among Aspen Technology, Inc. (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Credit Agreement.

This notice constitutes a Borrowing Request and the Borrower hereby gives you notice, pursuant to Section 2.03 of the Credit Agreement, that it requests a Borrowing under the Credit Agreement, and in connection therewith specifies the following information with respect to such Borrowing:

- (A) Aggregate principal amount of Borrowing:¹ _____
- (B) Facility under which Borrowing is requested: _____
- (C) Date of Borrowing (which is a Business Day): _____
- (D) Type of Borrowing:² _____

¹ Must comply with Section 2.02(c) of the Credit Agreement.

² In the case of a Borrowing to be denominated in Dollars, specify Eurodollar or ABR Borrowing. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing.

(E) Interest Period and the last day thereof:³ _____

(F) Currency of Borrowing:⁴ _____

(G) Location and number of the account to which proceeds of the requested Borrowing are to be disbursed: [Name of Bank] (Account No.: _____)⁵

Very truly yours,

ASPEN TECHNOLOGY, INC.

By: _____
Name:
Title:

³ Applicable to Eurodollar Borrowings and EURIBOR Benchmark Borrowings, shall be subject to the definition of "Interest Period" and can be a period of one, ~~two~~, three or six months (or, to the extent made available by all Lenders participating in the requested Borrowing, twelve months). If an Interest Period is not specified, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

⁴ In the case of Revolving Loans, Specify Dollars, Euros or Pounds Sterling.

⁵ Must comply with Section 2.04 of the Credit Agreement.

Exhibit C

[Exhibit C to Waiver and Second Amendment]

[FORM OF] INTEREST ELECTION REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent
10 South Dearborn Street, Floor L2
Suite IL1-0480
Chicago, IL, 60603-2300
Attention: Julius C. Williams
(Telephone No. (312) 954-3750)
(Telecopy No. (844) 490-5663)
Email: Julius.C.Williams@JPMorgan.com

with a copy to,
JPMorgan Chase Bank, N.A.
Middle Market Servicing
10 South Dearborn, Floor L2
Suite IL1-0480
Chicago, IL, 60603-2300
Attention: Commercial Banking Group
Fax No: (844) 490-5663
Email: jpm.agency.cri@jpmorgan.com
jpm.agency.servicing.1@jpmorgan.com

[Date]

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement, dated as of December 23, 2019 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Credit Agreement"), among Aspen Technology, Inc. (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Credit Agreement. This notice constitutes an Interest Election Request and the Borrower hereby gives you notice, pursuant to Section 2.05 of the Credit Agreement, that it requests the conversion or continuation of a Borrowing under the Credit Agreement, and in that connection the Borrower specifies the following information with respect to such Borrowing and each resulting Borrowing:

1. Borrowing to which this request applies:
- | | |
|-------------------------------|-------|
| Principal Amount: | _____ |
| Facility | _____ |
| Type: ¹ | _____ |
| Interest Period: ² | _____ |

¹ Specify ABR Borrowing ~~or~~ Eurodollar Borrowing or EURIBOR Benchmark Borrowing (provided that ~~Eurodollar~~ EURIBOR Benchmark Borrowings ~~denominated in a Designated Foreign Currency~~ and SONIA Borrowings may not be converted to ABR Borrowings).

² In the case of a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing, specify the last day of the current Interest Period therefor.

2. Effective date of this election:³ _____
3. Resulting Borrowing[s]⁴
- Principal Amount:⁵ _____
- Type:⁶ _____
- Interest Period:⁷ _____

³ Must be a Business Day.

⁴ If different options are being elected with respect to different portions of the Borrowing, provide the information required by this item 3 for each resulting Borrowing. Each resulting Borrowing shall be in an aggregate amount that is an integral multiple of, and not less than, the amount specified for a Borrowing of such Type in Section 2.02(c) of the Credit Agreement.

⁵ Indicate the principal amount of the resulting Borrowing and the percentage of the Borrowing in item 1 above.

⁶ In the case of a Borrowing to be denominated in Dollars, specify whether the resulting Borrowing is to be an ABR Borrowing or Eurodollar Borrowing.

⁷ Applicable only if the resulting Borrowing is to be a Eurodollar Borrowing or a EURIBOR Benchmark Borrowing, shall be subject to the definition of "Interest Period" and can be a period of one, ~~two~~, three or six months (or, to the extent made available by all Lenders participating in the requested Borrowing, twelve months), and cannot extend beyond the Maturity Date. If an Interest Period is not specified, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

Very truly yours,

ASPEN TECHNOLOGY, INC.

By

Name:
Title:

Exhibit D

[Exhibit D to Waiver and Second Amendment]

[FORM OF] REVOLVING NOTE

Lender: [_____], 20[_____]

FOR VALUE RECEIVED, the undersigned, Aspen Technology, Inc., a Delaware corporation, hereby promises to pay on each date specified for the payment of principal and on the Maturity Date (as defined in the Credit Agreement referred to below), to the order of above-named Lender (the "Lender") at the office of JPMorgan Chase Bank, N.A. specified in Section 9.01 of the Credit Agreement (or such other office as the Administrative Agent may designate in writing upon reasonable advance notice), in lawful money of the United States of America and in immediately available funds, the aggregate unpaid principal amount of all Revolving Loans (as defined in the Credit Agreement) made by the Lender to the undersigned pursuant to the Credit Agreement. The undersigned further agrees to pay interest in like money at such office on the unpaid principal amount of this Note from time to time from the date hereof until payment in full of the principal amount hereof, at the rates and on the dates set forth in the Credit Agreement.

The holder of this Note is authorized to endorse the date and amount of each Revolving Loan made pursuant to the Credit Agreement and each payment of principal and interest with respect thereto and its character as a Eurodollar Loan (as defined in the Credit Agreement) or an ABR Loan (as defined in the Credit Agreement) on Schedule 1 annexed hereto and made a part hereof, or on a continuation thereof which shall be attached hereto and made a part hereof, which endorsement shall constitute prima facie evidence (absent manifest error) of the accuracy of the information endorsed; provided, however, that the failure to make any such endorsement shall not affect the obligations of the undersigned under this Note.

This Note is one of the Notes referred to in the Amended and Restated Credit Agreement, dated as of December 23, 2019 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Credit Agreement") among Aspen Technology, Inc. (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent (in such capacity, the "Administrative Agent"), and is entitled to the benefits thereof. Terms used but not otherwise defined herein shall have the meanings provided in the Credit Agreement.

Upon the occurrence and during the continuance of any one or more of the Events of Default specified in the Credit Agreement and subject to the terms of the Credit Agreement, all amounts then remaining unpaid on this Note may become, or may be declared to be, immediately due and payable, all as provided therein. In the event this Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, solely to the extent provided in the Credit Agreement, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

ASPEN TECHNOLOGY, INC.

By: _____
Name:
Title:

**Schedule 1
to
Note**

LOANS AND PAYMENTS OF PRINCIPAL

<u>Date</u>	<u>Amount of Loan</u>	<u>Type of Loan¹</u>	<u>Interest Rate</u>	<u>Interest Period</u>	<u>Maturity Date</u>	<u>Principal Paid or Converted</u>	<u>Principal Balance</u>	<u>Notation Made By</u>
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____

¹ The type of Loan may be represented by "E" for Eurodollar Loans ~~or~~ "ABR" for ABR Loans, "EB" for EURIBOR Benchmark Loans or "S" for SONIA Loans.

Exhibit E

[Exhibit E to Waiver and Second Amendment]

[FORM OF] TERM NOTE

Lender: [_____] [_____], 20[__]

FOR VALUE RECEIVED, the undersigned, Aspen Technology, Inc., a Delaware corporation, hereby promises to pay on each date specified for the payment of principal and on the Maturity Date (as defined in the Credit Agreement referred to below), to the order of above-named Lender (the "Lender") at the office of JPMorgan Chase Bank, N.A. specified in Section 9.01 of the Credit Agreement (or such other office as the Administrative Agent may designate in writing upon reasonable advance notice), in lawful money of the United States of America and in immediately available funds, the aggregate unpaid principal amount of the Term Loans (as defined in the Credit Agreement) made by the Lender to the undersigned pursuant to the Credit Agreement. The undersigned further agrees to pay interest in like money at such office on the unpaid principal amount of this Note from time to time from the date hereof until payment in full of the principal amount hereof, at the rates and on the dates set forth in the Credit Agreement.

The holder of this Note is authorized to endorse the date and amount of the Term Loan made pursuant to the Credit Agreement and each payment made on account of principal each payment of principal and interest with respect thereto and its character as a Eurodollar Loan (as defined in the Credit Agreement) or an ABR Loan (as defined in the Credit Agreement) on Schedule 1 annexed hereto and made a part hereof, or on a continuation thereof which shall be attached hereto and made a part hereof, which endorsement shall constitute prima facie evidence (absent manifest error) of the accuracy of the information endorsed; provided, however, that the failure to make any such endorsement shall not affect the obligations of the undersigned under this Note.

This Note is one of the Notes referred to in the Amended and Restated Credit Agreement, dated as of December 23, 2019 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Credit Agreement") among Aspen Technology, Inc. (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent (in such capacity, the "Administrative Agent"), and is entitled to the benefits thereof. Terms used but not otherwise defined herein shall have the meanings provided in the Credit Agreement.

Upon the occurrence and during the continuance of any one or more of the Events of Default specified in the Credit Agreement and subject to the terms of the Credit Agreement, all amounts then remaining unpaid on this Note may become, or may be declared to be, immediately due and payable, all as provided therein. In the event this Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, solely to the extent provided in the Credit Agreement, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

ASPEN TECHNOLOGY, INC.

By: _____
Name:
Title:

**Schedule 1
to
Note**

LOANS AND PAYMENTS OF PRINCIPAL

<u>Date</u>	<u>Amount of Loan</u>	<u>Type of Loan¹</u>	<u>Interest Rate</u>	<u>Interest Period</u>	<u>Maturity Date</u>	<u>Principal Paid or Converted</u>	<u>Principal Balance</u>	<u>Notation Made By</u>
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____

¹ The type of Loan may be represented by "E" for Eurodollar Loans ~~or~~ "ABR" for ABR Loans, "EB" for EURIBOR Benchmark Loans or "S" for SONIA Loans.

ASPEN TECHNOLOGY, INC.
List of Subsidiaries as of June 30, 2023

	Name of Subsidiary	State or Country of Incorporation
1	AGI Mexicana S.A. De C.V.	Mexico
2	Alias Investment LLC	Delaware
3	Apex Optimisation SRO	Czech Republic
4	Apex Optimisation Technologies B.V.	Netherlands
5	Argent & Waugh Limited	United Kingdom
6	Aspen Paradigm Holding LLC	Delaware
7	Aspen Technology (Asia) Inc.	Delaware
8	Aspen Technology Australia Pty. Ltd.	Australia
9	Aspen Technology Holdings Corporation	Delaware
10	Aspen Technology, Inc.	Delaware
11	Aspen Technology International, Inc.	Delaware
12	Aspen Technology LLC	Russia
13	Aspen Technology S.A.S.	Colombia
14	Aspen Technology S.L.	Spain
15	Aspen Technology Services Corporation	Delaware
16	AspenTech (Beijing) Ltd.	PRC
17	AspenTech (Shanghai) Co.Ltd.	PRC
18	AspenTech (Thailand) Ltd.	Thailand
19	AspenTech Africa (Pty.) Ltd.	South Africa
20	AspenTech Argentina, S.R.L.	Argentina
21	AspenTech Australia Holding Pty Ltd	Australia
22	AspenTech Canada Corporation	Canada
23	AspenTech Canada Holdings, LLC	Delaware
24	AspenTech Corporation	Delaware
25	AspenTech de Mexico S. de R.L. de C.V.	Mexico
26	AspenTech Europe BV	Netherlands
27	AspenTech Europe, SA/NV	Belgium
28	AspenTech Holding Corporation	Delaware
29	AspenTech India Private Ltd.	India
30	AspenTech Japan Co. Ltd.	Japan
31	AspenTech Ltd.	United Kingdom
32	AspenTech Norway AS	Norway
33	AspenTech Pte. Ltd.	Singapore
34	AspenTech S.r.l.	Italy
35	AspenTech Software Brasil Ltda.	Brazil
36	AspenTech Software Corporation	Delaware
37	AspenTech Solutions Sdn. Bhd.	Malaysia
38	AspenTech SRL	Romania
39	AspenTech Venezuela C.A.	Venezuela
40	CAMO Smart Software Inc.	New Jersey
41	Camo Software Japan Co Ltd	Japan
42	Inmation BNX B.V.	Netherlands
43	Inmation Lux S.a.r.l.	Luxembourg

44	Inmation UK Ltd.	United Kingdom
45	Inmation Software GmbH	Germany
46	Mnubo Solutions Inc.	Canada
47	Open Systems International Australia Pty Ltd	Australia
48	Open Systems International Europe SL	Spain
49	OSI du Canada Inc.	Canada
50	OSI Energy Automation India Private Limited	India
51	Paradigm (UK) Holding Limited	United Kingdom
52	Paradigm B.V.	Netherlands
53	Paradigm France S.A.	France
54	Paradigm Geophysical (India) Private Limited	India
55	Paradigm Geophysical (KL) Sdn. Bhd.	Malaysia
56	Paradigm Geophysical (Nigeria) Limited	Nigeria
57	Paradigm Geophysical (U.K.) Limited	United Kingdom
58	Paradigm Geophysical B.V.	Netherlands
59	Paradigm Geophysical Corp.	Delaware
60	Paradigm Geophysical de Venezuela C.A.	Venezuela
61	Paradigm Geophysical do Brasil Ltda.	Brazil
62	Paradigm Geophysical Italy SRL	Italy
63	Paradigm Geophysical Limited	Israel
64	Paradigm Geophysical Pty Ltd	Australia
65	Paradigm Geophysical S.A.	Argentina
66	Paradigm Geophysical Sdn. Bhd.	Malaysia
67	Paradigm Geophysical Spain S.L.	Spain
68	Paradigm Geoservices Canada Ltd.	Canada
69	Paradigm Geotechnology (Egypt) S.A.E.	Egypt
70	Paradigm Kazakhstan LLP	Kazakhstan
71	Paradigm Middle East FZ-LLC	UAE
72	Paradigm Technology (Beijing) Co., Ltd.	PRC
73	PT. Paradigm Geophysical Indonesia	Indonesia
74	Roxar Paradigm, E&P Software Services LLC	Russia
75	Roxar Services AS	Norway
76	Roxar Services OOO	Russia
77	Roxar Software Solutions AS	Norway
78	Roxar Technologies AS	Norway
79	Sabisu Ltd.	United Kingdom
80	The Fidelis Group, LLC	Texas

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the registration statement (No. 333-265145) on Form S-8 of our report dated August 21, 2023, with respect to the consolidated and combined financial statements of Aspen Technology, Inc. and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

Boston, Massachusetts

August 21, 2023

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Antonio J. Pietri, certify that:

1. I have reviewed this Annual Report on Form 10-K of Aspen Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 21, 2023

/s/ ANTONIO. J. PIETRI

Antonio J. Pietri
President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Chantelle Breithaupt, certify that:

1. I have reviewed this Annual Report on Form 10-K of Aspen Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 21, 2023

/s/ CHANTELE BREITHAUPT

Chantelle Breithaupt

Senior Vice President, Chief Financial Officer and Treasurer

(Principal Financial Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Aspen Technology, Inc. (the "Company") for the year ended June 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned hereby certifies in his capacity as an officer of the Company, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 21, 2023

/s/ ANTONIO J. PIETRI
Antonio J. Pietri
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 21, 2023

/s/ CHANTELE BREITHAUPT
Chantelle Breithaupt
Senior Vice President, Chief Financial Officer and Treasurer
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to Aspen Technology, Inc. and will be retained by Aspen Technology, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

