

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM 8-K**

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

Date of Report (Date of earliest event reported)  
**January 12, 2016**

**ASPEN TECHNOLOGY, INC.**

(Exact name of registrant as specified in its charter)

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

**0-24786**  
(Commission File Number)

**04-2739697**  
(I.R.S. Employer  
Identification No.)

**20 Crosby Drive, Bedford, MA**  
(Address of principal executive offices)

**01730**  
(Zip Code)

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

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

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

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

On January 12, 2016, Aspen Technology, Inc. ("AspenTech") issued an announcement under Rule 2.7 of the United Kingdom City Code on Takeovers and Mergers (the "Rule 2.7 Announcement") disclosing the terms of a recommended cash offer for the entire issued and to be issued share capital of KBC Advanced Technologies plc, a public limited company organized under the laws of England and Wales ("KBC") (the "Offer"). In connection with the Offer, AspenTech, as borrower, JPMorgan Chase Bank, N.A. ("JPMCB"), as the administrative agent, J.P. Morgan Securities LLC, as sole lead arranger and sole bookrunner, and the lenders party thereto entered into a 364-Day Bridge Credit Agreement, dated as of January 12, 2016 (the "Bridge Credit Agreement"). Capitalized terms used but not defined in this report have the meanings given to them in the Bridge Credit Agreement.

*Rule 2.7 Announcement*

On January 12, 2016, AspenTech issued a Rule 2.7 Announcement, disclosing that the boards of directors of AspenTech and KBC, had agreed on the terms of a recommended cash offer by AspenTech of 185 pence per ordinary share to acquire the entire issued and to be issued share capital of KBC. The Offer will be effected by ATI Global Optimisation Ltd, a wholly owned subsidiary of AspenTech. The acquisition values the entire issued and to be issued share capital of KBC at approximately £158 million (approximately \$230.0 million based upon an exchange rate of USD:GBP 1.4557).

The Offer is to be effected by way of a scheme of arrangement under the UK Companies Act 2006, which requires the approval of the High Court of Justice in England and Wales and the approval of a majority in number of KBC's shareholders who vote representing not less than 75% in value of the shares voted, in person or by proxy, at the KBC shareholders' meeting. AspenTech has obtained irrevocable undertakings to vote or procure votes in favor of the scheme in respect of KBC shares representing approximately 42.6% of the issued share capital of KBC. The Rule 2.7 Announcement also sets out other conditions in Appendix I thereto, which include receipt of regulatory approvals. Subject to the satisfaction or waiver of all relevant conditions, the transaction is expected to close in the first calendar quarter of 2016.

The Offer will be funded by cash on hand of approximately \$91.0 million and borrowings under the Bridge Credit Agreement or a revolving credit facility expected to be entered into following the date of the Rule 2.7 Announcement.

Subject to the consent of the UK Panel on Takeovers and Mergers, AspenTech reserves the right to elect to effect the acquisition by way of a takeover offer under the UK City Code on Takeovers and Mergers on such other terms being no less favorable (subject to appropriate amendments), so far as applicable, as those which would apply to the scheme of arrangement.

To provide financing in connection with the Offer, on January 12, 2016, AspenTech entered into the Bridge Credit Agreement for a principal amount of up to \$140.0 million. The Bridge Credit Agreement has a maturity of 364 days from the date of the first drawdown. Borrowings under the Bridge Credit Agreement bear interest, at AspenTech's option, at a rate equal to either (x) the sum of (a) the highest of (1) the rate of interest publicly announced by JPMCB as its prime rate in effect, (2) the Federal Funds Effective Rate plus 0.5%, and (3) the one-month Adjusted LIBO Rate plus 1.0%, plus (b) a margin initially of 1.0% for the first full fiscal quarter ending after the drawdown of any borrowings and thereafter based on AspenTech's Leverage Ratio or (y) the Adjusted LIBO Rate plus a margin initially of 2.0% for the first full fiscal quarter ending after the drawdown of any borrowings and thereafter based on AspenTech's Leverage Ratio. Borrowings under the Bridge Credit Agreement are secured by liens on

substantially all of the assets of AspenTech. AspenTech is required to grant such liens in favor of the lenders prior to the first drawdown.

The Bridge Credit Agreement requires either mandatory prepayment of borrowings thereunder or reductions in the commitments issued thereunder, or a combination of each, in the event of certain asset sales and from the proceeds of certain subsequent equity offerings and certain debt financings. In addition, the Bridge Credit Agreement contains affirmative covenants customary for facilities of this type, including a requirement to substantially simultaneously with entering into any subsequent credit agreement request loans thereunder for the purpose of repaying outstanding borrowings under the Bridge Credit Agreement. The Bridge Credit Agreement also contains 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 Bridge Credit Agreement contains the following customary financial covenants: (i) maintenance of a maximum Leverage Ratio of 3.0 to 1.0 as of the last day of each fiscal quarter, and (ii) maintenance of a minimum Interest Coverage Ratio of 3.0 to 1.0 as of the end of each fiscal quarter, in each case after the first drawdown.

AspenTech intends to obtain permanent financing prior to the closing of the acquisition to replace the Bridge Credit Agreement.

The foregoing descriptions of the Rule 2.7 Announcement and the Bridge Credit Agreement are only summaries, do not purport to be complete, and are qualified in their entirety by reference to the Rule 2.7 Announcement, a copy of which is filed as Exhibit 2.1 to this Current Report on Form 8-K, and the Bridge Credit Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K, and each of which is incorporated herein by reference.

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

On January 12, 2016, AspenTech entered into the Bridge Credit Agreement as described under Item 1.01 above. The description of the Bridge Credit Agreement set forth in Item 1.01 above is incorporated into this Item 2.03 by reference.

#### **Item 8.01 Other Events.**

On January 12, 2016, AspenTech issued an announcement in relation to the terms of a recommended cash offer for all of the issued and to be issued share capital of KBC.

#### **Forward Looking Statements**

This Current Report on Form 8-K contains "forward-looking" statements concerning future events and financial performance. These forward-looking statements include statements regarding AspenTech's proposed acquisition of KBC (including financing of the proposed transaction and timing of the transaction) and statements containing the use of forward-looking words such as "expects," "believes," "plans," "will" and similar expressions. Such statements are subject to risks and uncertainties, which could cause actual results to differ materially from those expressed or implied. Risks and uncertainties related to the proposed acquisition include the risk that KBC's stockholders do not approve the acquisition, potential adverse reactions or changes to business relationships resulting from the announcement, pendency or completion of the acquisition, uncertainties as to the timing of the acquisition, the possibility that the closing conditions to the proposed acquisition may not be satisfied or waived, including that a governmental entity may prohibit, delay or refuse to grant a necessary approval, adverse effects on AspenTech's stock price resulting from the announcement or completion of the

acquisition, competitive responses to the announcement or completion of the acquisition, costs and difficulties related to the integration of KBC's businesses and operations with AspenTech's businesses and operations, the inability to obtain, or delays in obtaining, cost savings and synergies from the acquisition, uncertainties as to whether the completion of the acquisition or any transaction will have the accretive effect on AspenTech's earnings or cash flows that it expects, unexpected costs, liabilities, charges or expenses resulting from the acquisition, litigation relating to the acquisition, the inability to retain key personnel, and any changes in general economic and/or industry-specific conditions. Other factors that may affect AspenTech's plans, results or stock price are set forth in its filings with the Securities and Exchange Commission, including its most recent Annual Report on Form 10-K and Quarterly Report on Form 10-Q, which are available on AspenTech's website and at [www.sec.gov](http://www.sec.gov). AspenTech undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

#### **No Offer or Solicitation**

This Current Report on Form 8-K is not intended to and does not constitute or form part of an offer or invitation to purchase or otherwise acquire any securities or the solicitation of any vote or approval in any jurisdiction, pursuant to the Offer or otherwise in contravention of applicable law.

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

(d) *Exhibits.*

2.1	Rule 2.7 Announcement, dated January 12, 2016.
10.1	364-Day Bridge Credit Agreement, dated as of January 12, 2016, among Aspen Technology, Inc., as borrower, the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and J.P. Morgan Securities LLC, as sole lead arranger and sole bookrunner.
99.1	Press Release, dated January 12, 2016.

**SIGNATURES**

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

**ASPEN TECHNOLOGY, INC.**

By: /s/Frederic G. Hammond  
Senior Vice President, General Counsel and Secretary

Date: January 19, 2016

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
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99.1	Press Release, dated January 12, 2016.

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OF SUCH JURISDICTION

For immediate release  
12 January 2016

**RECOMMENDED CASH ACQUISITION**  
of  
**KBC Advanced Technologies plc**  
by  
**ATI Global Optimisation Ltd (a wholly-owned subsidiary of Aspen Technology, Inc.)**  
(to be implemented by way of a scheme of arrangement under Part 26 of the Companies Act)

**Summary**

- The boards of AspenTech and KBC are pleased to announce that they have agreed a recommended all cash acquisition by Global Optimisation (a wholly-owned subsidiary of AspenTech) of the entire issued and to be issued share capital of KBC. It is intended that the Acquisition be implemented by means of a Court-sanctioned scheme of arrangement under Part 26 of the Companies Act.
  - Under the terms of the Acquisition, KBC Shareholders will be entitled to receive:
 

<b>for each KBC Share</b>	<b>185 pence in cash</b>
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  - The Acquisition values the entire issued and to be issued share capital of KBC at approximately £158 million on a fully diluted basis.
  - The Acquisition price represents a premium of approximately:
    - 49.2 per cent. to the Closing Price per KBC Share of 124 pence on 11 January 2016 (being the last Business Day prior to this announcement);
    - 37.2 per cent. to the volume weighted average Closing Price per KBC Share of 135 pence for the one-month period ended on 11 January 2016 (being the last Business Day prior to this announcement); and
    - 40.7 per cent. to the volume weighted average Closing Price per KBC Share of 132 pence for the three-month period ended on 11 January 2016 (being the last Business Day prior to this announcement).
  - The consideration payable under the terms of the Acquisition is being financed by cash from AspenTech's balance sheet and short term borrowings arranged for the purpose. AspenTech intends that such borrowings will be replaced by a revolving credit facility following the date of this announcement.
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- It is intended that the Acquisition will be implemented by means of a Court-sanctioned scheme of arrangement under Part 26 of the Companies Act (or, if AspenTech elects, with the consent of the Takeover Panel, a Takeover Offer). The Acquisition is conditional on, among other things: (i) the approval of Scheme Shareholders at the Court Meeting and the passing of the Resolutions by KBC Shareholders at the General Meeting; and (ii) the sanction of the Scheme by the Court.
  - The KBC Directors, who have been so advised by Evercore, consider the terms of the Acquisition to be fair and reasonable. In providing advice to the KBC Directors, Evercore has taken into account the commercial assessments of the KBC Directors.
  - The KBC Directors intend to recommend unanimously that KBC Shareholders vote or procure votes in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting, as the KBC Directors who hold KBC Shares (in a personal capacity or through a nominee(1)) have irrevocably undertaken to do in respect of their entire beneficial holdings of 417,006 KBC Shares, in aggregate, representing approximately 0.51 per cent. of KBC's issued share capital as at 11 January 2016 (being the last Business Day prior to this announcement).
  - Global Optimisation has also received irrevocable undertakings to vote or procure votes in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting from Kestrel Partners LLP, AXA Investment Management UK Limited, Hargreave Hale Limited, Herald Investment Trust plc, Killik & Co LLP and Ari Zaphiriou-Zarifi in respect of 34,687,142 KBC Shares, in aggregate, representing approximately 42.1 per cent. of KBC's issued share capital as at 11 January 2016 (being the last Business Day prior to this announcement).
  - Accordingly, Global Optimisation has received irrevocable undertakings to vote or procure votes in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting from the holders of 35,104,148 KBC Shares in total representing approximately 42.6 per cent. of KBC's issued share capital as at 11 January 2016 (being the last Business Day prior to this announcement).
  - Full details of the irrevocable undertakings received by Global Optimisation (including the circumstances in which the irrevocable undertakings cease to be binding) are set out in Appendix III to this announcement.
  - AspenTech is a leading supplier of software that optimises process manufacturing for energy, chemicals, engineering and construction, and for other industries that manufacture and produce products from a chemical process.

(1) Oliver Scott does not hold shares in his personal capacity or through a nominee and therefore has not provided an irrevocable undertaking to Global Optimisation. As a shareholder in Kestrel Opportunities, Mr Scott is deemed to have a beneficial interest in 10,857,550 KBC Shares that are held by Kestrel Opportunities through its registered holder BNY Mellon a/c (Butterfield Bank Guernsey Limited). Global Optimisation has received an irrevocable undertaking from Kestrel Partners LLP (being the investment manager to Kestrel Opportunities) in respect of 13,006,871 KBC Shares (which include the afore-mentioned 10,857,550 KBC Shares).

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- KBC is a leading provider of software and consultancy to the oil and gas industry, focused on operational excellence and profit improvement for both the upstream (oil production) and downstream (oil refining and refinery-integrated petrochemicals) segments.
- Further details of the Acquisition will be contained in the Scheme Document which is intended to be posted to KBC Shareholders along with notices of the Court Meeting and General Meeting and the Forms of Proxy within 28 days of the date of this announcement, unless KBC and AspenTech otherwise agree, and the Takeover Panel consents, to a later date. At this stage, subject to the approval and availability of the Court (which is subject to change), KBC and AspenTech expect the Meetings to be held in February 2016 and the Acquisition to become Effective during the first quarter of 2016.

- Commenting on the Acquisition, Antonio Pietri, President and Chief Executive Officer of AspenTech, said:

*“We are excited to announce the proposed acquisition of KBC, which is a trusted adviser to C level executives in the oil and gas industry. We believe KBC’s operational excellence expertise and customer relationships, particularly in emerging markets, will help drive greater adoption and usage of AspenTech’s broad and expanding suite of software solutions.*

*In addition, we believe combining KBC’s industry leading reactor software models with AspenTech’s strength in engineering design will create a highly differentiated solution for the refining industry. Also, KBC’s software assets would meaningfully accelerate the build out of our vertical-specific analytics solutions.*

*KBC’s domain expertise and software would be important additions to our asset optimisation strategy, which focuses on driving improved capital and operational efficiency for owner-operators across an asset’s entire lifecycle. Acquiring KBC would enhance AspenTech’s ability to capitalise on the asset optimisation opportunity and leadership position and generate substantial value for our customers.”*

- Commenting on the Acquisition, Ian Godden, Chairman of KBC, said:

*“Over the last few years, KBC has proactively reshaped and broadened its business to make it more adaptable and successful. We have continued to perform well notwithstanding the challenging operating conditions in the hydrocarbon industry. In the current market environment, however, we believe that there are advantages in being part of a larger, broader and better capitalised group. The offer from AspenTech represents a compelling opportunity for KBC’s shareholders to realise an attractive value for their investment in cash at a significant premium.*

*AspenTech is a strong partner that can continue to develop KBC’s business. Following the transaction, KBC will become a key part of AspenTech’s business and will continue to provide its market leading solutions to the customers we serve.*

*We are therefore pleased to recommend this transaction to our shareholders.”*

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- This summary should be read in conjunction with, and is subject to, the full text of the announcement and its Appendices.
- The Acquisition is subject to the Conditions and further terms that are set out in Appendix I. Appendix II contains details of sources and bases of certain information contained in this announcement. Appendix III contains certain details relating to the irrevocable undertakings referred to in this announcement. Appendix IV contains definitions of certain terms used in this announcement. The appendices form part of, and should be read in conjunction with, this announcement.

## Conference Call and Webcast

AspenTech will host a conference call and webcast today, 12 January 2016, at 1.00 pm (London time) / 8.00 am (Eastern time), to discuss the details of the Acquisition.

The live dial-in number is +1 (866) 604-6127 or +1 (706) 634-5625, conference ID code 24843348. Interested parties may also listen to a live webcast of the call by logging on to the Investor Relations section of AspenTech’s website, <http://www.aspentech.com/corporate/investor.cfm>, and clicking on the “webcast” link. A replay of the call will be archived on AspenTech’s website and will also be available via telephone at +1 (855) 859-2056 or +1 (404) 537-3406, conference ID code 24843348, until 12 February 2016.

## Enquiries

AspenTech		KBC	
David Grip	Tel: +1 781 221 5273	Eric Dodd, Chief Financial Officer	Tel: +44 (0)20 7357 0800
J.P. Morgan		Evercore	
(Financial Adviser to AspenTech)		(Financial Adviser to KBC)	
Brian Truesdale	Tel: +1 888 963 5089	Edward Banks	Tel: +44 (0)20 7653 6000
Rupert Sadler	Tel: +44 (0) 20 7742 4000	Cenkos	

*J.P. Morgan, which conducts its UK investment banking business as J.P. Morgan Cazenove and which is authorised and regulated in the United Kingdom by the Financial Conduct Authority, is acting exclusively for AspenTech in connection with the Acquisition and the matters set out in this announcement and will not regard any other person as its client in relation to the matters set out in this announcement and will not be responsible to anyone other than AspenTech for providing the protections afforded to clients of J.P. Morgan or its affiliates, or for providing advice in relation to the Acquisition, the contents of this announcement or any other matters referred to herein.*

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*Evercore Partners International LLP, which is authorised and regulated in the United Kingdom by the Financial Conduct Authority, is acting exclusively for KBC and no one else in connection with the Acquisition and the matters set out in this announcement and will not regard any other person as its client in connection with the matters referred to in this announcement and will not be responsible to anyone other than KBC for providing the protections afforded to clients of Evercore or its affiliates, or for providing advice in relation to the Acquisition, the contents of this announcement or any other matters referred to herein. Neither Evercore nor any of its subsidiaries, branches or affiliates owes or accepts any duty, liability or responsibility whatsoever (whether direct or indirect, whether in contract, in tort, under statute or otherwise) to any person who is not a client of Evercore in connection with this announcement, any statement contained herein or otherwise.*

*Cenkos Securities Plc, which is authorised and regulated in the United Kingdom by the Financial Conduct Authority, is acting exclusively as corporate broker and nominated adviser to KBC and no-one else in connection with the Acquisition and other matters described in this announcement and will not be responsible to anyone other than KBC for providing the protections afforded to clients of Cenkos Securities Plc or for providing advice in relation to the Acquisition, the contents of this announcement or any other matter referred to herein.*

*This announcement is for information purposes only and is not intended to and does not constitute, or form any part of, an offer to sell or an invitation to purchase or subscribe for any securities or the solicitation of any vote or approval in any jurisdiction pursuant to the Acquisition or otherwise. The Acquisition will be made solely by the Scheme Document (or, if applicable, the Offer Document) which will contain the full terms and conditions of the Acquisition, including details of how to vote in respect of the Acquisition. Any decision in respect of, or other response to, the Acquisition should be made only on the basis of the information contained in the Scheme Document (or, if applicable, the Offer Document).*

*This announcement does not constitute a prospectus or a prospectus equivalent document.*

*This announcement has been prepared for the purpose of complying with English law, the Code and the AIM Rules and the information disclosed may not be the same as that which would have been disclosed if this announcement had been prepared in accordance with the laws of jurisdictions outside the United Kingdom.*

#### **Overseas shareholders**

*The laws of the relevant jurisdictions may affect the availability of the Acquisition to persons who are not resident in the United Kingdom. Persons who are not resident in the United Kingdom or who are subject to laws of any jurisdiction other than the United Kingdom, should inform themselves about, and observe, any applicable requirements. Any person (including, without limitation, nominees, trustees and custodians) who would, or otherwise intends to, forward this announcement, the Scheme Document or any accompanying document to any jurisdiction outside the United Kingdom should refrain from doing so and seek appropriate professional advice before taking any action. In particular, the ability of persons who are not resident in the United Kingdom to vote their KBC Shares at the Court Meeting or the General Meeting or to execute and deliver Forms of Proxy appointing another*

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*to vote their KBC Shares in respect of the Court Meeting or the General Meeting on their behalf, may be affected by the laws of the relevant jurisdiction in which they are located.*

*Any failure to comply with the applicable legal or regulatory requirements may constitute a violation of the laws and/or regulations of any such jurisdiction. To the fullest extent permitted by applicable law, the companies and persons involved in the Acquisition disclaim any responsibility and liability for the violation of such restrictions by any person.*

*The Acquisition will not be made, directly or indirectly, in or into or by use of the mails or any other means or instrumentality (including, without limitation, telephonic or electronic) of interstate or foreign commerce of, or any facility of a national, state or other securities exchange of, a Restricted Jurisdiction, and the Acquisition will not be capable of acceptance by any such use, means, instrumentality or facility or from within a Restricted Jurisdiction. Accordingly, copies of this announcement and formal documentation relating to the Acquisition are not being, and must not be, directly or indirectly, mailed or otherwise forwarded or distributed in, into or from a Restricted Jurisdiction and persons receiving this announcement (including custodians, nominees and trustees) must not distribute or send it into or from a Restricted Jurisdiction. In the event that the Acquisition is implemented by way of a Takeover Offer and extended into the US, AspenTech will do so in satisfaction of the procedural and filing requirements of the US securities laws at that time, to the extent applicable thereto.*

*The Acquisition relates to the shares of a UK company and it is proposed to be made by means of a scheme of arrangement provided for under the laws of England and Wales. The Scheme will relate to the shares of a UK company that is a "foreign private issuer" as defined under Rule 3b-4 under the US Securities Exchange Act of 1934, as amended (the "Exchange Act"). A transaction effected by means of a scheme of arrangement is not subject to the*

shareholder vote, proxy solicitation and tender offer rules under the Exchange Act. Accordingly, the Acquisition is subject to the disclosure requirements and practices applicable in the UK to schemes of arrangement, which differ from the disclosure requirements and practices of US shareholder vote, proxy solicitation and tender offer rules. Financial information included in the relevant documentation will have been prepared in accordance with accounting standards applicable in the UK and may not be comparable to the financial statements of US companies. However, if AspenTech were to elect to implement the Acquisition by means of a Takeover Offer, such Takeover Offer shall be made in compliance with all applicable laws and regulations, including Section 14(e) of the Exchange Act and Regulation 14E thereunder. Such Takeover Offer would be made in the US by AspenTech and no one else. In addition to any such Takeover Offer, AspenTech, certain affiliated companies and the nominees or brokers (acting as agents) may make certain purchases of, or arrangements to purchase, shares in KBC outside such Takeover Offer during the period in which such Takeover Offer would remain open for acceptance. If such purchases or arrangements to purchase are made they would be made outside the United States in compliance with applicable law, including the Exchange Act.

### **Forward looking statements**

This announcement contains certain forward-looking statements with respect to AspenTech, Global Optimisation and KBC. These forward-looking statements can be identified by the fact that they do not relate only to historical or current facts. Forward-looking statements often use words such as “anticipate”, “target”, “expect”, “estimate”, “intend”, “plan”,

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“goal”, “believe”, “aim”, “will”, “may”, “would”, “could” or “should” or other words of similar meaning or the negative thereof. Forward-looking statements include statements relating to the following: (i) future capital expenditures, expenses, revenues, economic performance, financial conditions, dividend policy, losses and future prospects; (ii) business and management strategies and the expansion and growth of the operations of the AspenTech Group or the KBC Group; and (iii) the effects of government regulation on the business of the AspenTech Group or the KBC Group.

These forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of any such person, or industry results, to be materially different from any results, performance or achievements expressed or implied by such forward-looking statements. These forward-looking statements are based on numerous assumptions regarding the present and future business strategies of such persons and the environment in which each will operate in the future. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All subsequent oral or written forward-looking statements attributable to AspenTech, Global Optimisation or KBC or any persons acting on their behalf are expressly qualified in their entirety by the cautionary statement above. None of AspenTech, Global Optimisation or KBC undertake any obligation to update publicly or revise forward-looking or other statements contained in this announcement, whether as a result of new information, future events or otherwise, except to the extent legally required.

### **No profit forecasts or estimates**

No statement in this announcement is intended as a profit forecast or estimate for any period and no statement in this announcement should be interpreted to mean that earnings or earnings per ordinary share, for AspenTech or KBC, respectively for the current or future financial years would necessarily match or exceed the historical published earnings or earnings per ordinary share for AspenTech or KBC, respectively.

### **Right to switch to a Takeover Offer**

AspenTech reserves the right to elect, with the consent of the Takeover Panel, to implement the Acquisition by way of a Takeover Offer for the entire issued and to be issued share capital of KBC as an alternative to the Scheme. In such an event, the Takeover Offer will be implemented on the same terms or, if AspenTech so decides, on such other terms being no less favourable (subject to appropriate amendments), so far as applicable, as those which would apply to the Scheme and subject to the amendment referred to in Appendix I to this announcement.

### **Publication on website**

In accordance with Rule 26.1 of the Code, a copy of this announcement will be made available (subject to certain restrictions relating to persons resident in Restricted Jurisdictions), free of charge, at AspenTech’s website at [www.aspentech.com/corporate/press/press-releases.aspx](http://www.aspentech.com/corporate/press/press-releases.aspx) and KBC’s website at <http://ir.kbcat.com/home/> by no later than 12 noon on 13 January 2016.

Neither the contents of these websites nor the content of any other website accessible from hyperlinks on such websites is incorporated into, or forms part of, this announcement.

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In accordance with Rule 30.2 of the Code, a person so entitled may request a hard copy of this announcement, free of charge, by contacting J.P. Morgan on +44 (0)20 7742 4000 or Evercore on +44 (0)20 7653 6000. For persons who receive a copy of this announcement in electronic form or via a website notification, a hard copy of this announcement will not be sent unless so requested. In accordance with Rule 30.2 of the Code, a person so entitled may also request that all future documents, announcements and information to be sent to them in relation to the Acquisition should be in hard copy form.

### **Information relating to KBC Shareholders**

Please be aware that addresses, electronic addresses and certain other information provided by KBC Shareholders, persons with information rights and other relevant persons for the receipt of communications from KBC may be provided to AspenTech during the Offer Period as required under Section 4 of Appendix 4 of the Code to comply with Rule 2.12(c) of the Code.

### **Rounding**

Certain figures included in this announcement have been subjected to rounding adjustments. Accordingly, figures shown for the same category presented in different tables may vary slightly and figures shown as totals in certain tables may not be an arithmetic aggregation of the figures that precede them.

## Disclosure Requirements of the Code

Under Rule 8.3(a) of the Code, any person who is interested in 1% or more of any class of relevant securities of an offeree company or of any securities exchange offeror (being any offeror other than an offeror in respect of which it has been announced that its offer is, or is likely to be, solely in cash) must make an Opening Position Disclosure following the commencement of the offer period and, if later, following the announcement in which any securities exchange offeror is first identified. An Opening Position Disclosure must contain details of the person's interests and short positions in, and rights to subscribe for, any relevant securities of each of (i) the offeree company and (ii) any securities exchange offeror(s). An Opening Position Disclosure by a person to whom Rule 8.3(a) applies must be made by no later than 3.30 pm (London time) on the 10th business day following the commencement of the offer period and, if appropriate, by no later than 3.30 pm (London time) on the 10th business day following the announcement in which any securities exchange offeror is first identified. Relevant persons who deal in the relevant securities of the offeree company or of a securities exchange offeror prior to the deadline for making an Opening Position Disclosure must instead make a Dealing Disclosure.

Under Rule 8.3(b) of the Code, any person who is, or becomes, interested in 1% or more of any class of relevant securities of the offeree company or of any securities exchange offeror must make a Dealing Disclosure if the person deals in any relevant securities of the offeree company or of any securities exchange offeror. A Dealing Disclosure must contain details of the dealing concerned and of the person's interests and short positions in, and rights to subscribe for, any relevant securities of each of (i) the offeree company and (ii) any securities exchange offeror(s), save to the extent that these details have previously been disclosed under Rule 8. A Dealing Disclosure by a person to whom Rule 8.3(b) applies must be made by no

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later than 3.30 pm (London time) on the business day following the date of the relevant dealing.

If two or more persons act together pursuant to an agreement or understanding, whether formal or informal, to acquire or control an interest in relevant securities of an offeree company or a securities exchange offeror, they will be deemed to be a single person for the purpose of Rule 8.3.

Opening Position Disclosures must also be made by the offeree company and by any offeror and Dealing Disclosures must also be made by the offeree company, by any offeror and by any persons acting in concert with any of them (see Rules 8.1, 8.2 and 8.4).

Details of the offeree and offeror companies in respect of whose relevant securities Opening Position Disclosures and Dealing Disclosures must be made can be found in the Disclosure Table on the Takeover Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk), including details of the number of relevant securities in issue, when the offer period commenced and when any offeror was first identified. You should contact the Takeover Panel's Market Surveillance Unit on +44 (0)20 7638 0129 if you are in any doubt as to whether you are required to make an Opening Position Disclosure or a Dealing Disclosure.

### Rule 2.10 Requirement

In accordance with Rule 2.10 of the Code, KBC confirms that as at the close of business on 11 January 2016, being the last Business Day prior to this announcement, it had 82,341,156 ordinary shares in issue and admitted to trading on AIM under ISIN reference GB0004804646.

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**NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OF SUCH JURISDICTION**

For immediate release  
12 January 2016

## RECOMMENDED CASH ACQUISITION

of

**KBC Advanced Technologies plc**

by

**ATI Global Optimisation Ltd (a wholly-owned subsidiary of Aspen Technology, Inc.)**

(to be implemented by way of a scheme of arrangement under Part 26 of the Companies Act)

### 1. INTRODUCTION

The boards of AspenTech and KBC are pleased to announce that they have agreed the terms of a recommended all cash acquisition by Global Optimisation (a wholly-owned subsidiary of AspenTech) of the entire issued and to be issued share capital of KBC. It is intended that the Acquisition be implemented by means of a Court-sanctioned scheme of arrangement under Part 26 of the Companies Act.

### 2. THE ACQUISITION

The Acquisition, which will be on the terms and subject to the Conditions set out below and in Appendix I, and to be set out in the Scheme Document, will be made on the following basis:

**for each KBC Share**

**185 pence in cash**

The Acquisition values the entire issued and to be issued share capital of KBC at approximately £158 million on a fully diluted basis.

The Acquisition price represents a premium of approximately:



- 49.2 per cent. to the Closing Price per KBC Share of 124 pence on 11 January 2016 (being the last Business Day prior to this announcement);
- 37.2 per cent. to the volume weighted average Closing Price per KBC Share of 135 pence for the one-month period ended on 11 January 2016 (being the last Business Day prior to this announcement); and

- 40.7 per cent. to the volume weighted average Closing Price per KBC Share of 132 pence for the three-month period ended on 11 January 2016 (being the last Business Day prior to this announcement).

The Acquisition is conditional, amongst other things, on the Scheme becoming Effective no later than the Long Stop Date.

The KBC Shares will be acquired by Global Optimisation (or its nominee) with full title guarantee, fully paid and free from all liens, equitable interests, charges, encumbrances, rights of pre-emption and any other third party rights or interests whatsoever and together with all rights existing at the date of this announcement or thereafter attaching thereto, including (without limitation) the right to receive and retain, in full, all dividends and other distributions (if any) declared, made or paid or any other return of capital (whether by way of reduction of share capital or share premium account or otherwise) made on or after the date of this announcement in respect of the KBC Shares.

If any dividend or other distribution in respect of the KBC Shares is declared, paid or made on or after the date of this announcement, AspenTech reserves the right to reduce the consideration payable for each KBC Share under the terms of the Acquisition by the amount per KBC Share of such dividend or distribution.

### **3. BACKGROUND TO AND REASONS FOR THE ACQUISITION**

AspenTech (NASDAQ: AZPN) is a leading global supplier of optimisation software for plant and process design, operational performance, and supply-chain planning. Its solutions are mission-critical and have been specifically created for process industries, including energy, chemicals, engineering and construction, and other industries that manufacture and produce products from a chemical process. KBC is a leading technical consultancy for hydrocarbon facilities around the world and has a growing portfolio of optimisation software. KBC provides a variety of strategic, operational and environmental solutions.

The Acquisition combines AspenTech's leading process optimisation software with KBC's leading process technology and operational excellence consulting business, representing a highly attractive and complementary opportunity. AspenTech expects the addition of KBC to help drive increased usage and adoption of its software from existing and new customers, especially in emerging markets and geographies where KBC has significant experience and presence. Furthermore, KBC's software portfolio adds new and complementary technology to AspenTech's extensive set of solutions, including in the area of refinery operations. The combination of these technology portfolios should increase AspenTech's ability to address customers' process optimisation requirements — especially in refinery operations and reactor modelling — and enable further innovation in refining and upstream operations. AspenTech believes this will assist in accelerating its asset optimisation strategy, generating significant value for customers from improved capital and operating efficiency as well as operations benchmarking, best practices and increased safety.

The Acquisition is expected to be accretive in fiscal year 2017 to Non-GAAP EPS and Free Cash Flow per share, excluding the impact of one-time and Acquisition-related costs and purchase accounting adjustments(2).

### **4. BACKGROUND TO AND REASONS FOR THE RECOMMENDATION**

The hydrocarbon industry is continuing to experience significant volatility, driven primarily by a material decline in crude oil prices. This is creating a particularly challenging operating environment in most upstream (and integrated downstream) segments of the industry, causing major project cutbacks throughout the world and headwinds in discretionary spending budgets. In parts of the downstream market, however, refinery and petrochemical margins have improved, and the search for profit improvement has continued, leading to sustained demand for KBC's solutions.

In addition, the competitive landscape for industrial automation and process engineering software vendors has been changing, with consolidation occurring in order to offer customers more integrated platforms and solutions. There has also been consolidation among engineering and consulting services vendors as they seek broader and deeper technical expertise.

Since 2012, KBC has been proactively reshaping and repositioning its business to make it more adaptable and successful. KBC has expanded its product offering through organic development as well as add-on acquisitions, such as Infochem Computer Services Limited in 2012 and FEESA Limited in 2014. KBC has also sought to focus on larger consulting projects to improve revenue visibility and margins and to better align its software and consulting business. In addition, KBC has reduced its cost base, including consolidation of offices in North America and reduction of staff in more mature regions. The KBC Group has continued its expansion in parts of the world where hydrocarbon projects are still well-funded such as the Middle East.

Whilst KBC has not altered its long-term strategy of increasing and strengthening the more profitable software-related business, expanding its resources in growth regions and breaking further into the upstream sector, the KBC Group has in the short term adjusted its tactics to reflect the new market conditions in the upstream sector. KBC has therefore continued to develop its core business in the downstream market, particularly in Europe and North Africa; regions whose downstream markets are experiencing a boost from lower oil and gas prices. In the downstream sector KBC is executing its technology strategy of adding its content to third-party alliance software to deliver software as a service.

KBC's traditional strengths in the downstream area have resulted in a number of consulting contracts and opportunities which are helping to buffer the KBC Group from the full hydrocarbon downturn.

- (2) This statement should not be construed as a profit forecast or interpreted to mean that the future earnings, earnings per share, profits, margins or cash-flows of the Combined Group will necessarily be greater than historic published figures.

Over the last twelve months, KBC's financial performance has been robust and KBC has delivered a Total Shareholder Return of 29.2 per cent., notwithstanding the difficult market backdrop.

When considering the proposal from AspenTech, the KBC Directors have taken into account the current market conditions in the hydrocarbon industry and the short and long term opportunities and risks for KBC. The KBC Directors have also considered the benefits that being part of a larger group would bring to the KBC business in terms of long-term stability and access to capital.

The KBC Board has considered the proposal with regard to price, deliverability and with reference to the range of other strategic options available to KBC. In particular, the KBC Directors have evaluated the terms of the Acquisition in relation to the prospects of the underlying business and the potential medium term standalone value of KBC Shares. The KBC Directors have also considered the interests of KBC employees, customers and other stakeholders in addition to the economic benefits to KBC Shareholders.

The KBC Board believes that AspenTech is a strong, well-capitalised partner which can continue to develop the KBC business. AspenTech provides KBC with significantly greater access to a broader and deeper customer base. The KBC Board expects that AspenTech will be able to accelerate the growth of KBC's technology business by expanding its routes to market and exploiting the greater scale and reach of AspenTech's sales force. KBC's consulting business will also benefit from the greater range of products and technical expertise provided by AspenTech.

The terms of the Acquisition represent a significant premium, in cash, of approximately 49.2 per cent. to the Closing Price of 124 pence per KBC Share on 11 January 2016 (being the last Business Day prior to this announcement). This cash premium is on top of a 27.8 per cent. increase in the KBC share price over the last twelve months.

The KBC Directors have balanced the premium and the certainty that the Acquisition provides against the current market environment and the risks inherent in the continued successful execution of KBC's business plan.

Following careful consideration of the above factors, the KBC Directors, who have been so advised by Evercore, consider the terms of the Acquisition to be fair and reasonable. In providing advice to the KBC Directors, Evercore has taken into account the commercial assessments of the KBC Directors. Accordingly, the KBC Directors intend unanimously to recommend that KBC Shareholders vote in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting, as the KBC Directors who hold KBC Shares (in a personal capacity or through a nominee(3)) have irrevocably undertaken to do in respect of their entire holdings of 417,006 KBC Shares, representing approximately 0.51 per

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- (3) Oliver Scott does not hold shares in his personal capacity or through a nominee and therefore has not provided an irrevocable undertaking to Global Optimisation. As a shareholder in Kestrel Opportunities, Mr Scott is deemed to have a beneficial interest in 10,857,550 KBC Shares that are held by Kestrel Opportunities through its registered holder BNY Mellon a/c (Butterfield Bank Guernsey Limited). Global Optimisation has received an irrevocable undertaking from Kestrel Partners LLP (being the investment manager to Kestrel Opportunities) in respect of 13,006,871 KBC Shares (which include the afore-mentioned 10,857,550 KBC Shares).

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cent. of KBC's issued share capital as at 11 January 2016 (being the last Business Day prior to this announcement).

## 5. IRREVOCABLE UNDERTAKINGS

Global Optimisation has received irrevocable undertakings to vote or procure votes in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting (or in the event that the Acquisition is implemented by way of a Takeover Offer, to accept or procure acceptance of the Takeover Offer) from all of the KBC Directors who hold KBC Shares (in a personal capacity or through a nominee(4)), in respect of their entire beneficial holdings of KBC Shares, amounting in aggregate to 417,006 KBC Shares and representing approximately 0.51 per cent. of KBC's issued share capital as at 11 January 2016 (being the last Business Day prior to this announcement).

Global Optimisation has also received irrevocable undertakings to vote or procure votes in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting from Kestrel Partners LLP, AXA Investment Management UK Limited, Hargreave Hale Limited, Herald Investment Trust plc, Killik & Co LLP and Ari Zaphiriou-Zarifi in respect of 34,687,142 KBC Shares, in aggregate, representing approximately 42.1 per cent. of KBC's issued share capital as at 11 January 2016 (being the last Business Day prior to this announcement).

In aggregate, therefore, Global Optimisation has received irrevocable undertakings to vote or procure votes in favour of the Scheme at the Court Meeting and in favour of the Resolutions to be proposed at the General Meeting in respect of a total of 35,104,148 KBC Shares, representing approximately 42.6 per cent. of the entire share capital of KBC as at 11 January 2016 (being the last Business Day prior to this announcement). Further details of these irrevocable undertakings (including details of the circumstances in which they cease to be binding) are set out in Appendix III to this announcement.

## 6. INFORMATION ON ASPENTECH AND GLOBAL OPTIMISATION

### AspenTech

AspenTech is a leading supplier of software that optimises process manufacturing for energy, chemicals, engineering and construction, and for other industries that manufacture and produce products from a chemical process. With integrated AspenONE solutions, process manufacturers can implement best practices for optimising their engineering, manufacturing

- (4) Oliver Scott does not hold shares in his personal capacity or through a nominee and therefore has not provided an irrevocable undertaking to Global Optimisation. As a shareholder in Kestrel Opportunities, Mr Scott is deemed to have a beneficial interest in 10,857,550 KBC Shares that are held by Kestrel Opportunities through its registered holder BNY Mellon a/c (Butterfield Bank Guernsey Limited). Global Optimisation has received an irrevocable undertaking from Kestrel Partners LLP (being the investment manager to Kestrel Opportunities) in respect of 13,006,871 KBC Shares (which include the afore-mentioned 10,857,550 KBC Shares).

and supply chain operations. As a result, AspenTech customers are better able to increase capacity, improve margins, reduce costs and become more energy efficient.

### Global Optimisation

Global Optimisation is a newly incorporated English company which is a wholly-owned subsidiary of AspenTech established to effect the Acquisition. Global Optimisation has not traded prior to the date of this announcement (except for entering into transactions relating to the Acquisition).

## 7. INFORMATION ON KBC

KBC is a leading provider of software and consultancy to the oil and gas industry, focused on operational excellence and profit improvement for both the upstream (oil production) and downstream (oil refining and refinery-integrated petrochemicals) segments. KBC was incorporated in the UK in 1978. KBC Shares are admitted to trading on AIM and it has a current market capitalisation of £102 million.

KBC employs more than 300 staff primarily based out of three main hubs in the UK, USA and Singapore, plus a number of other smaller offices. KBC's clients include national oil companies (NOCs), international oil companies (IOCs), independent oil companies and engineering companies.

KBC deploys an integrated operating model which yields two main revenue streams:

- Consulting: technical / engineering and operational effectiveness consulting
- Technology: proprietary engineering-oriented process optimisation / simulation software

The focus of KBC's consulting offering is operational excellence and profit improvement programmes for refiners and refinery-integrated petrochemicals, with the majority of consulting revenue from downstream clients. The services are delivered via in-house highly skilled engineering and management consultants, supported by a small pool of contracted associates. From recent acquisitions KBC has moved into the upstream oil and gas consulting space with flow assurance and life of field solutions. KBC's advice is delivered by consultants with deep industry / domain-specific knowledge and operating experience and KBC has a strong reputation for improving the safety and profitability of hydrocarbon operations.

KBC's technology offering comprises upstream flow assurance, fluid characterisation and facilities process simulation and optimisation software, spanning from the wellhead in upstream through the facilities in midstream and downstream. The technology is delivered through access to, and implementation of, process simulation platforms and/or specialised "plug-ins" for upstream and downstream. KBC's flagship technology product is Petro-SIM™. Through organic development as well as add-on acquisitions, such as Infochem Computer Services Limited in 2012 and FEESA Limited in 2014, KBC has added significant intellectual property to its technology offering. KBC has a clear focus on quality, usability and innovation in its software products and is particularly recognised as a leader in PVT (pressure-volume-temperature) thermodynamics, thermal hydraulics, assay synthesis and

reactor modelling. By the end of 2014, KBC's annual technology revenue had increased to more than £20 million.

For the year ended 31 December 2014, KBC's revenues were £76.0 million and its adjusted profit before tax was £9.5 million.

For the half year ended 30 June 2015, KBC's revenues were £36.2 million and its adjusted profit before tax was £4.2 million.

## 8. KBC SHARE SCHEMES

Appropriate proposals will be made in due course to participants in the KBC Share Schemes. The Acquisition will extend to any KBC Shares which are unconditionally allotted or issued as a result of the exercise of existing options and vesting of awards under the KBC Share Schemes on or prior to the Scheme Record Time.

## 9. FINANCING

The cash consideration payable under the terms of the Acquisition is being financed through existing cash resources and from the proceeds of a US\$140,000,000 facility agreement (the "Facility Agreement") which AspenTech (as borrower) has entered into with J.P.Morgan Chase Bank, N.A. (as administrative agent), J.P. Morgan Securities LLC (as sole lead arranger and sole bookrunner) and certain Lenders (as defined in the Facility Agreement).

Under the Facility Agreement, AspenTech (as borrower) has agreed on behalf of itself and its affiliates, among other things:

- (a) that it shall not without the prior consent of the Administrative Agent (as defined in the Facility Agreement), amend or waive any condition of the Scheme in a manner materially adverse to the interests of the Lenders (as defined in the Facility Agreement) unless such action is required by the Takeover Panel, the Code, the Court or other applicable law, regulation or regulatory body; and

- (b) in the event that the Acquisition is implemented by way of a Takeover Offer, that it shall not without the prior consent of the Administrative Agent (as defined in the Facility Agreement) declare the Takeover Offer unconditional as to acceptances until AspenTech (directly or indirectly) has acquired or unconditionally contracted to acquire not less than 75 per cent. of the votes attaching to shares in the capital of KBC.

It is AspenTech's intention to replace the Facility Agreement by drawing down against a new US\$250,000,000 revolving credit facility proposed to be entered into following the date of this announcement.

J.P. Morgan, financial adviser to AspenTech, is satisfied that Global Optimisation has the necessary financial resources available to it to satisfy in full the cash consideration payable under the terms of the Acquisition.

## 10. MANAGEMENT AND EMPLOYEES

AspenTech attaches great importance to retaining the skills, knowledge and expertise of KBC's existing management and employees and also believes that they will benefit from enhanced career and business opportunities as part of AspenTech and from the shared vision of the combined business. AspenTech also recognises that KBC is a people based business with a solid depth in industry skills and that retention of key leaders and expertise will be important to the success of the Combined Group. Whilst no firm retention arrangements are in place at this stage, AspenTech has reassured the KBC Board that appropriate measures will be put in place as part of transaction closure and further integration activities led by an integration team comprised of key AspenTech and KBC personnel.

The analysis carried out to date has indicated the potential to generate cost savings for the Combined Group in areas where there is an overlap of functions and duplicate facilities, which could involve some headcount reductions, although AspenTech has not yet developed proposals as to how or when such headcount reductions or facilities rationalisation will be implemented. AspenTech has given assurances to the KBC Directors that the existing contractual and statutory employment rights, including in relation to pensions, of KBC's management and employees will be fully observed in accordance with applicable law.

It is intended that the non-executive KBC Directors will resign as KBC Directors immediately following the Effective Date.

## 11. ACQUISITION RELATED ARRANGEMENTS

### *Confidentiality Agreement*

AspenTech and KBC entered into a confidentiality agreement dated 18 November 2015 (the "**Confidentiality Agreement**") pursuant to which each of AspenTech and KBC have agreed to keep confidential information about the other party and not to disclose to third parties (other than permitted recipients) confidential information exchanged by them unless required by law or regulation. These confidentiality obligations will remain in force until completion of the Acquisition, or for a period of four years expiring on 17 November 2019. The parties have also agreed not to solicit the employees of the other for a period expiring on 17 November 2016. AspenTech has agreed not to acquire any interest in the securities of KBC or undertake related actions other than pursuant to a recommended offer for a period expiring on 17 November 2016.

### *Open Source Audit Agreement*

AspenTech and KBC entered into an agreement dated 22 December 2015 in relation to the Open Source Audit Report (the "**Open Source Audit Agreement**"). Under the Open Source Audit Agreement, AspenTech irrevocably undertook to reimburse KBC in relation to all fees and expenses (subject to a limit of \$125,600) due and payable by KBC to Black Duck Software, Inc. in connection with the Open Source Audit Report, save in circumstances where any offer (as such term is defined in the Code) made by a third party is declared wholly unconditional in all respects or, if structured as a scheme of arrangement, becomes effective in accordance with its terms.

## 12. STRUCTURE OF THE ACQUISITION

### *Scheme*

It is intended that the Acquisition will be effected by a Court-sanctioned scheme of arrangement between KBC and the Scheme Shareholders under Part 26 of the Companies Act. The purpose of the Scheme is to provide for AspenTech to become the owner of the whole of the issued and to be issued share capital of KBC. Under the Scheme, the Acquisition is to be principally achieved by the:

- (a) transfer of the Scheme Shares held by Scheme Shareholders to AspenTech in consideration for which the Scheme Shareholders will receive the Consideration; and
- (b) passing of the Resolutions at the General Meeting.

### *Approval by Court Meeting and General Meeting*

In order to become Effective, the Scheme requires the:

- (a) satisfaction (or, where applicable, waiver) of the Conditions;
- (b) approval of a majority in number of the Scheme Shareholders who vote, representing not less than 75 per cent. in value of the Scheme Shares voted, either in person or by proxy, at the Court Meeting; and

- (c) approval by the requisite majority of the Resolutions at the General Meeting (to be held directly after the Court Meeting) necessary in order to implement the Scheme.

### ***Application to Court to sanction the Scheme***

Once the approvals have been obtained at the Court Meeting and the General Meeting, and the other Conditions have been satisfied or (where applicable) waived, the Scheme must be sanctioned by the Court at the Court Hearing.

The Scheme will become Effective in accordance with its terms on delivery of the Court Order to the Registrar of Companies. Upon the Scheme becoming Effective, it will be binding on all Scheme Shareholders, irrespective of whether or not they attended or voted at the Court Meeting or General Meeting, or whether they voted in favour of or against the Scheme.

### ***Full details of the Scheme to be set out in the Scheme Document***

The Scheme will be subject to the satisfaction (or, where applicable, waiver) of the Conditions and the full terms and conditions to be set out in the Scheme Document. Further details of the Scheme will be set out in the Scheme Document, including the expected timetable and the action to be taken by Scheme Shareholders.

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The Scheme will be governed by the laws of England and Wales. The Scheme will be subject to the applicable requirements of the Code, the Takeover Panel, the London Stock Exchange, the FCA and the AIM Rules.

It is expected that the Scheme Document will be despatched to KBC Shareholders and, for information only, to participants in the KBC Share Schemes within 28 days of the date of this announcement, unless AspenTech and KBC otherwise agree, and the Takeover Panel consents, to a later date.

### ***Conditions to the Acquisition***

The Acquisition will be subject to the Conditions and further terms set out in Appendix I to this announcement and to be set out in the Scheme Document.

The Scheme will be conditional, amongst other things, upon:

- (a) the Scheme becoming Effective by the Long Stop Date, failing which the Scheme will lapse;
- (b) the approval of the Scheme by a majority in number representing not less than 75 per cent. in value of the KBC Shareholders entitled to vote and present and voting, either in person or by proxy, at the Court Meeting (or at any adjournment, postponement or reconvention of such meeting) on or before the 22<sup>nd</sup> day after the expected date of the Court Meeting to be set out in the Scheme Document in due course (or such later date as may be agreed between AspenTech and KBC and the Court may allow);
- (c) the passing of the Resolutions by the requisite majority at the General Meeting or at any adjournment, postponement or reconvention of that meeting to be held on or before the 22<sup>nd</sup> day after the expected date of the General Meeting to be set out in the Scheme Document (or such later date, if any, as AspenTech and KBC may agree and the Court may allow); and
- (d) the sanction of the Scheme on or before the 22<sup>nd</sup> day after the expected date of the Court Hearing to be set out in the Scheme Document in due course (or such later date as may be agreed between AspenTech and KBC and the Court may allow) and the delivery of an office copy of the Court Order to the Registrar of Companies.

### ***Scheme timetable/further information***

A full anticipated timetable will be set out in the Scheme Document which will be posted to KBC Shareholders within 28 days of the date of this announcement unless AspenTech and KBC otherwise agree, and the Takeover Panel consents, to a later date. Subject to certain restrictions relating to persons resident in Restricted Jurisdictions, the Scheme Document will also be made available on AspenTech's website at [www.aspentech.com/corporate/press/press-releases.aspx](http://www.aspentech.com/corporate/press/press-releases.aspx) and KBC's website at <http://ir.kbcat.com/home/>.

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At this stage, subject to the approval and availability of the Court (which is subject to change), KBC and AspenTech expect the Meetings to be held in February 2016 and the Acquisition to become Effective during the first quarter of 2016.

### ***Right to switch to a Takeover Offer***

AspenTech reserves the right to elect, with the consent of the Takeover Panel, to implement the Acquisition by way of a Takeover Offer for the entire issued and to be issued share capital of KBC as an alternative to the Scheme. In such an event, the Takeover Offer will be implemented on the same terms or, if AspenTech so decides, on such other terms being no less favourable (subject to appropriate amendments), so far as applicable, as those which would apply to the Scheme and subject to the amendment referred to in Appendix I to this announcement.

## **13. DE-LISTING AND COMPULSORY ACQUISITION**

Prior to the Scheme becoming Effective and subject to any applicable requirements of the AIM Rules, AspenTech intends to procure the making of an application by KBC for cancellation of the trading in KBC Shares on AIM on the first Business Day following the Effective Date.

Share certificates in respect of the KBC Shares will cease to be valid and should be destroyed following the Effective Date. In addition, entitlements to KBC Shares held within the CREST system will be cancelled.

As soon as practicable after the Effective Date and after the KBC Shares are de-listed, it is intended that KBC will be re-registered as a private limited company under the relevant provisions of the Companies Act.

#### **14. DISCLOSURE OF INTERESTS IN KBC**

AspenTech confirms that it is making on the date of this announcement an Opening Position Disclosure, setting out the details required to be disclosed by it under Rule 8.1(a) of the Code.

As at the close of business on 11 January 2016, being the last Business Day prior to this announcement, save for the irrevocable undertakings referred to in paragraph 5 (*Irrevocable undertakings*) above, none of AspenTech or any AspenTech Directors or, so far as AspenTech is aware, any person acting, or deemed to be acting, in concert with AspenTech:

- (a) had an interest in, or right to subscribe for, relevant securities of KBC;
- (b) had any short position in (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery of, relevant securities of KBC;
- (c) had procured an irrevocable commitment or letter of intent to accept the terms of the Acquisition in respect of relevant securities of KBC; or
- (d) had borrowed or lent any KBC Shares.

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Furthermore, save for the irrevocable undertakings described in paragraph 5 (*Irrevocable undertakings*) above, no arrangement exists between AspenTech or KBC or a person acting in concert with AspenTech or KBC in relation to KBC Shares. For these purposes, an “arrangement” includes any indemnity or option arrangement, any agreement or any understanding, formal or informal, of whatever nature, relating to KBC Shares which may be an inducement to deal or refrain from dealing in such securities.

#### **15. GENERAL**

The Acquisition will be subject to the Conditions and other terms set out in this announcement and to the full terms and conditions which will be set out in the Scheme Document. Appendix I to this announcement contains a summary of the principal terms and conditions. It is expected that the Scheme Document will be despatched to KBC Shareholders as soon as practicable and, in any event, (save with the consent of the Takeover Panel) within 28 days of this announcement.

In deciding whether or not to vote or procure votes in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting, KBC Shareholders should rely on the information contained, and follow the procedures described, in the Scheme Document.

J.P. Morgan and Evercore have each given and not withdrawn their consent to the publication of this announcement with the inclusion herein of the references to their names in the form and context in which they appear.

Appendix II contains details of sources and bases of certain information contained in this announcement. Appendix III contains certain details relating to the irrevocable undertakings referred to in this announcement. Appendix IV contains definitions of certain terms used in this announcement. The appendices form part of, and should be read in conjunction with, this announcement.

#### **16. DOCUMENTS ON DISPLAY**

Copies of this announcement and the following documents will, by no later than 12 noon (London time) on the Business Day following the date of this announcement, be made available on AspenTech’s website at [www.aspentech.com/corporate/press/press-releases.aspx](http://www.aspentech.com/corporate/press/press-releases.aspx) and KBC’s website at <http://ir.kbcat.com/home/> until the end of the Offer Period:

- (a) a copy of this announcement;
- (b) the Confidentiality Agreement;
- (c) the Irrevocable Undertakings;
- (d) the Facility Agreement;
- (e) the Fee and Syndication Letter; and
- (f) the Open Source Audit Agreement.

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Neither the contents of KBC’s website or the contents of AspenTech’s website, nor the content of any other website accessible from hyperlinks on either such website, is incorporated into or forms part of, this announcement.

## Conference Call and Webcast

AspenTech will host a conference call and webcast today, 12 January 2016, at 1.00 pm (London time) / 8.00 am (Eastern time), to discuss the details of the Acquisition.

The live dial-in number is +1 (866) 604-6127 or +1 (706) 634-5625, conference ID code 24843348. Interested parties may also listen to a live webcast of the call by logging on to the Investor Relations section of AspenTech's website, <http://www.aspentech.com/corporate/investor.cfm>, and clicking on the "webcast" link. A replay of the call will be archived on AspenTech's website and will also be available via telephone at +1 (855) 859-2056 or +1 (404) 537-3406, conference ID code 24843348, until 12 February 2016.

## Enquiries

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*J.P. Morgan, which conducts its UK investment banking business as J.P. Morgan Cazenove and which is authorised and regulated in the United Kingdom by the Financial Conduct Authority, is acting exclusively for AspenTech in connection with the Acquisition and the matters set out in this announcement and will not regard any other person as its client in relation to the matters in this announcement and will not be responsible to anyone other than AspenTech for providing the protections afforded to clients of J.P. Morgan or its affiliates, or for providing advice in relation to the Acquisition, the contents of this announcement or any other matters referred to herein.*

*Evercore Partners International LLP, which is authorised and regulated in the United Kingdom by the Financial Conduct Authority, is acting exclusively for KBC and no one else in connection with the Acquisition and the matters set out in this announcement and will not regard any other person as its client in connection with the matters referred to in this*

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*announcement and will not be responsible to anyone other than KBC for providing the protections afforded to clients of Evercore or its affiliates, or for providing advice in relation to the Acquisition, the contents of this announcement or any other matters referred to herein. Neither Evercore nor any of its subsidiaries, branches or affiliates owes or accepts any duty, liability or responsibility whatsoever (whether direct or indirect, whether in contract, in tort, under statute or otherwise) to any person who is not a client of Evercore in connection with this announcement, any statement contained herein or otherwise.*

*Cenkos Securities Plc, which is authorised and regulated in the United Kingdom by the Financial Conduct Authority, is acting exclusively as corporate broker and nominated adviser to KBC and no-one else in connection with the Acquisition and other matters described in this announcement and will not be responsible to anyone other than KBC for providing the protections afforded to clients of Cenkos Securities Plc or for providing advice in relation to the Acquisition, the contents of this announcement or any other matter referred to herein.*

*This announcement is for information purposes only and is not intended to and does not constitute, or form any part of, an offer to sell or an invitation to purchase or subscribe for any securities or the solicitation of any vote or approval in any jurisdiction pursuant to the Acquisition or otherwise. The Acquisition will be made solely by the Scheme Document (or, if applicable, the Offer Document) which will contain the full terms and conditions of the Acquisition, including details of how to vote in respect of the Acquisition. Any decision in respect of, or other response to, the Acquisition should be made only on the basis of the information contained in the Scheme Document (or, if applicable, the Offer Document).*

*This announcement does not constitute a prospectus or a prospectus equivalent document.*

*This announcement has been prepared for the purpose of complying with English law, the Code and the AIM Rules and the information disclosed may not be the same as that which would have been disclosed if this announcement had been prepared in accordance with the laws of jurisdictions outside the United Kingdom.*

## Overseas shareholders

*The laws of the relevant jurisdictions may affect the availability of the Acquisition to persons who are not resident in the United Kingdom. Persons who are not resident in the United Kingdom or who are subject to laws of any jurisdiction other than the United Kingdom, should inform themselves about, and observe, any applicable requirements. Any person (including, without limitation, nominees, trustees and custodians) who would, or otherwise intends to, forward this announcement, the Scheme Document or any accompanying document to any jurisdiction outside the United Kingdom should refrain from doing so and seek appropriate professional advice before taking any action. In particular, the ability of persons who are not resident in the United Kingdom to vote their KBC Shares at the Court Meeting or the General Meeting or to execute and deliver Forms of Proxy appointing another to vote their KBC Shares in respect of the Court Meeting or the General Meeting on their behalf, may be affected by the laws of the relevant jurisdiction in which they are located.*

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permitted by applicable law, the companies and persons involved in the Acquisition disclaim any responsibility and liability for the violation of such restrictions by any person.

The Acquisition will not be made, directly or indirectly, in or into or by use of the mails or any other means or instrumentality (including, without limitation, telephonic or electronic) of interstate or foreign commerce of, or any facility of a national, state or other securities exchange of, a Restricted Jurisdiction, and the Acquisition will not be capable of acceptance by any such use, means, instrumentality or facility or from within a Restricted Jurisdiction. Accordingly, copies of this announcement and formal documentation relating to the Acquisition are not being, and must not be, directly or indirectly, mailed or otherwise forwarded or distributed in, into or from a Restricted Jurisdiction and persons receiving this announcement (including custodians, nominees and trustees) must not distribute or send it into or from a Restricted Jurisdiction. In the event that the Acquisition is implemented by way of a Takeover Offer and extended into the US, AspenTech will do so in satisfaction of the procedural and filing requirements of the US securities laws at that time, to the extent applicable thereto.

The Acquisition relates to the shares of a UK company and it is proposed to be made by means of a scheme of arrangement provided for under the laws of England and Wales. The Scheme will relate to the shares of a UK company that is a “foreign private issuer” as defined under Rule 3b-4 under the US Securities Exchange Act of 1934, as amended (the “Exchange Act”). A transaction effected by means of a scheme of arrangement is not subject to the shareholder vote, proxy solicitation and tender offer rules under the Exchange Act. Accordingly, the Acquisition is subject to the disclosure requirements and practices applicable in the UK to schemes of arrangement, which differ from the disclosure requirements and practices of US shareholder vote, proxy solicitation and tender offer rules. Financial information included in the relevant documentation will have been prepared in accordance with accounting standards applicable in the UK and may not be comparable to the financial statements of US companies. However, if AspenTech were to elect to implement the Acquisition by means of a Takeover Offer, such Takeover Offer shall be made in compliance with all applicable laws and regulations, including Section 14(e) of the Exchange Act and Regulation 14E thereunder. Such Takeover Offer would be made in the US by AspenTech and no one else. In addition to any such Takeover Offer, AspenTech, certain affiliated companies and the nominees or brokers (acting as agents) may make certain purchases of, or arrangements to purchase, shares in KBC outside such Takeover Offer during the period in which such Takeover Offer would remain open for acceptance. If such purchases or arrangements to purchase are made they would be made outside the United States in compliance with applicable law, including the Exchange Act.

#### **Forward looking statements**

This announcement contains certain forward-looking statements with respect to AspenTech, Global Optimisation and KBC. These forward-looking statements can be identified by the fact that they do not relate only to historical or current facts. Forward-looking statements often use words such as “anticipate”, “target”, “expect”, “estimate”, “intend”, “plan”, “goal”, “believe”, “aim”, “will”, “may”, “would”, “could” or “should” or other words of similar meaning or the negative thereof. Forward-looking statements include statements relating to the following: (i) future capital expenditures, expenses, revenues, economic performance, financial conditions, dividend policy, losses and future prospects; (ii) business and management strategies and the expansion and growth of the operations of the AspenTech

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Group or the KBC Group; and (iii) the effects of government regulation on the business of the AspenTech Group or the KBC Group.

These forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of any such person, or industry results, to be materially different from any results, performance or achievements expressed or implied by such forward-looking statements. These forward-looking statements are based on numerous assumptions regarding the present and future business strategies of such persons and the environment in which each will operate in the future. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All subsequent oral or written forward-looking statements attributable to AspenTech, Global Optimisation or KBC or any persons acting on their behalf are expressly qualified in their entirety by the cautionary statement above. None of AspenTech, Global Optimisation or KBC undertake any obligation to update publicly or revise forward-looking or other statements contained in this announcement, whether as a result of new information, future events or otherwise, except to the extent legally required.

#### **No profit forecasts or estimates**

No statement in this announcement is intended as a profit forecast or estimate for any period and no statement in this announcement should be interpreted to mean that earnings or earnings per ordinary share, for AspenTech or KBC, respectively for the current or future financial years would necessarily match or exceed the historical published earnings or earnings per ordinary share for AspenTech or KBC, respectively.

#### **Right to switch to a Takeover Offer**

AspenTech reserves the right to elect, with the consent of the Takeover Panel, to implement the Acquisition by way of a Takeover Offer for the entire issued and to be issued share capital of KBC as an alternative to the Scheme. In such an event, the Takeover Offer will be implemented on the same terms or, if AspenTech so decides, on such other terms being no less favourable (subject to appropriate amendments), so far as applicable, as those which would apply to the Scheme and subject to the amendment referred to in Appendix I to this announcement.

#### **Publication on website**

In accordance with Rule 26.1 of the Code, a copy of this announcement will be made available (subject to certain restrictions relating to persons resident in Restricted Jurisdictions), free of charge, at AspenTech’s website at [www.aspentech.com/corporate/press/press-releases.aspx](http://www.aspentech.com/corporate/press/press-releases.aspx) and KBC’s website at <http://ir.kbcat.com/home/> by no later than 12 noon on 13 January 2016.



Neither the contents of these websites nor the content of any other website accessible from hyperlinks on such websites is incorporated into, or forms part of, this announcement.

In accordance with Rule 30.2 of the Code, a person so entitled may request a hard copy of this announcement, free of charge, by contacting J.P. Morgan on +44 (0)20 7742 4000 or Evercore on +44 (0)20 7653 6000. For persons who receive a copy of this announcement in electronic form or via a website notification, a hard copy of this announcement will not be

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sent unless so requested. In accordance with Rule 30.2 of the Code, a person so entitled may also request that all future documents, announcements and information to be sent to them in relation to the Acquisition should be in hard copy form.

#### **Information relating to KBC Shareholders**

Please be aware that addresses, electronic addresses and certain other information provided by KBC Shareholders, persons with information rights and other relevant persons for the receipt of communications from KBC may be provided to AspenTech during the Offer Period as required under Section 4 of Appendix 4 of the Code to comply with Rule 2.12(c) of the Code.

#### **Rounding**

Certain figures included in this announcement have been subjected to rounding adjustments. Accordingly, figures shown for the same category presented in different tables may vary slightly and figures shown as totals in certain tables may not be an arithmetic aggregation of the figures that precede them.

#### **Disclosure Requirements of the Code**

Under Rule 8.3(a) of the Code, any person who is interested in 1% or more of any class of relevant securities of an offeree company or of any securities exchange offeror (being any offeror other than an offeror in respect of which it has been announced that its offer is, or is likely to be, solely in cash) must make an Opening Position Disclosure following the commencement of the offer period and, if later, following the announcement in which any securities exchange offeror is first identified. An Opening Position Disclosure must contain details of the person's interests and short positions in, and rights to subscribe for, any relevant securities of each of (i) the offeree company and (ii) any securities exchange offeror(s). An Opening Position Disclosure by a person to whom Rule 8.3(a) applies must be made by no later than 3.30 pm (London time) on the 10th business day following the commencement of the offer period and, if appropriate, by no later than 3.30 pm (London time) on the 10th business day following the announcement in which any securities exchange offeror is first identified. Relevant persons who deal in the relevant securities of the offeree company or of a securities exchange offeror prior to the deadline for making an Opening Position Disclosure must instead make a Dealing Disclosure.

Under Rule 8.3(b) of the Code, any person who is, or becomes, interested in 1% or more of any class of relevant securities of the offeree company or of any securities exchange offeror must make a Dealing Disclosure if the person deals in any relevant securities of the offeree company or of any securities exchange offeror. A Dealing Disclosure must contain details of the dealing concerned and of the person's interests and short positions in, and rights to subscribe for, any relevant securities of each of (i) the offeree company and (ii) any securities exchange offeror(s), save to the extent that these details have previously been disclosed under Rule 8. A Dealing Disclosure by a person to whom Rule 8.3(b) applies must be made by no later than 3.30 pm (London time) on the business day following the date of the relevant dealing.

If two or more persons act together pursuant to an agreement or understanding, whether formal or informal, to acquire or control an interest in relevant securities of an offeree

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company or a securities exchange offeror, they will be deemed to be a single person for the purpose of Rule 8.3.

Opening Position Disclosures must also be made by the offeree company and by any offeror and Dealing Disclosures must also be made by the offeree company, by any offeror and by any persons acting in concert with any of them (see Rules 8.1, 8.2 and 8.4).

Details of the offeree and offeror companies in respect of whose relevant securities Opening Position Disclosures and Dealing Disclosures must be made can be found in the Disclosure Table on the Takeover Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk), including details of the number of relevant securities in issue, when the offer period commenced and when any offeror was first identified. You should contact the Takeover Panel's Market Surveillance Unit on +44 (0)20 7638 0129 if you are in any doubt as to whether you are required to make an Opening Position Disclosure or a Dealing Disclosure.

#### **Rule 2.10 Requirement**

In accordance with Rule 2.10 of the Code, KBC confirms that as at the close of business on 11 January 2016, being the last Business Day prior to this announcement, it had 82,341,156 ordinary shares in issue and admitted to trading on AIM under ISIN reference GB0004804646.

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The Acquisition will be subject to the applicable requirements of the Code, the Takeover Panel, the London Stock Exchange, the AIM Rules and the FCA. The Acquisition will be governed by the laws of England and Wales and will be subject to the exclusive jurisdiction of the English courts and to the Conditions and further terms set out in this Appendix I and to be set out in the Scheme Document.

AspenTech reserves the right to elect (with the consent of the Takeover Panel) to implement the Acquisition by way of a Takeover Offer.

Each of the Conditions shall be regarded as a separate Condition and shall not be limited by reference to any other Condition.

## 1. CONDITIONS OF THE ACQUISITION

The Acquisition will be conditional upon the Scheme becoming unconditional and effective, subject to the Code, by no later than 6.00 pm on the Long Stop Date, or such later date (if any) as AspenTech and KBC may (with the consent of the Takeover Panel) agree and, if required, the Takeover Panel and the Court may allow.

The Acquisition will be subject to the satisfaction of, or (to the extent permitted by the Takeover Panel) waiver of, the following Conditions:

### Scheme approval

(A) The Scheme will be conditional upon:

- (i) its approval by a majority in number representing not less than 75 per cent. in value of the KBC Shareholders entitled to vote and present and voting, either in person or by proxy, at the Court Meeting and at any separate class meeting which may be required by the Court (or at any adjournment, postponement or reconvention of such meeting) on or before the 22<sup>nd</sup> day after the expected date of the Court Meeting to be set out in the Scheme Document (or such later date, if any, as AspenTech and KBC may agree and the Court may allow);
- (ii) the passing of the Resolutions by the requisite majority at the General Meeting or at any adjournment, postponement or reconvention of that meeting to be held on or before the 22<sup>nd</sup> day after the expected date of the General Meeting to be set out in the Scheme Document (or such later date, if any, as AspenTech and KBC may agree and the Court may allow);
- (iii) the sanction of the Scheme by the Court without modification or with modification on terms acceptable to AspenTech and KBC, on or before the 22<sup>nd</sup> day after the expected date of the Court Hearing to be set out in the Scheme Document (or such later date, if any, as AspenTech and KBC may agree and the Court may allow) and the delivery of a copy of the Court Order to the Registrar of Companies; and

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- (iv) the Scheme becoming Effective on or before 6.00 pm on the Long Stop Date.

In addition, subject to the requirements of the Takeover Panel, the Acquisition will be conditional upon the following Conditions and, accordingly, the Court Order shall not be delivered to the Registrar of Companies unless the following Conditions (as amended if appropriate) have been satisfied (and continue to be satisfied pending the commencement of the Court Hearing) or, where relevant, waived in writing prior to the Scheme being sanctioned by the Court:

### General regulatory

- (B) No Third Party having decided, threatened or given notice of its decision to take, institute, implement or threaten any action, proceeding, suit, investigation, enquiry or reference or withdrawal of a clearance decision, or having required any action or step to be taken or otherwise having done anything or having enacted, made or proposed any statute, regulation, decision or order (and in each case, not having withdrawn the same) and there not continuing to be outstanding any statute, regulation, decision or order which would or might reasonably be expected to (in any case to an extent or in a manner which is material in the context of, and adverse to, the Acquisition):
  - (i) make the Acquisition, its implementation or the acquisition or proposed acquisition of any shares or other securities in, or control or management of, KBC by any member of the Wider AspenTech Group, void, illegal and/or unenforceable under the laws of any relevant jurisdiction, or otherwise directly or indirectly prevent, prohibit, or restrain, restrict, materially delay or otherwise to a material extent interfere with the implementation of, or impose material additional conditions or obligations with respect to, or otherwise impede, challenge, interfere, hinder the Acquisition or its implementation or require material amendment to the terms of the Acquisition or the acquisition or proposed acquisition of any shares or other securities in, or control or management of, KBC by any member of the Wider AspenTech Group, or otherwise challenge or interfere therewith;
  - (ii) require any member of the Wider AspenTech Group or any member of the Wider KBC Group to sell, divest, hold separate, or otherwise dispose of all or any material part of their respective businesses, operations, product lines or assets or property or to prevent or materially delay any of the above;
  - (iii) require, prevent or materially delay the divestiture or materially alter the terms envisaged for any proposed divestiture by any member of the Wider AspenTech Group or by any member of the Wider KBC Group of all or any material part of their respective businesses, assets or property or impose any material limitation on the ability of all or any of them to conduct their respective businesses (or any part thereof) or to own, control or manage any of their material assets or material properties (or any part thereof);
  - (iv) impose any material limitation on, or result in a material delay in, the ability of any member of the Wider AspenTech Group directly or indirectly to acquire, hold or to exercise effectively all or any rights of ownership in respect of shares or loans or securities convertible into shares or any other securities (or

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the equivalent) in KBC or on the ability of any member of the Wider KBC Group or any member of the Wider AspenTech Group directly or indirectly to hold or exercise effectively all or any rights of ownership in respect of shares or loans or securities convertible into shares or any other securities (or the equivalent) in, or to exercise voting or management control over, any member of the Wider KBC Group;

- (v) require, prevent or materially delay a divestiture, or materially alter the terms envisaged for any proposed divestiture by any member of the Wider AspenTech Group or the Wider KBC Group of any shares or other securities (or the equivalent) in any member of the Wider KBC Group or any member of the Wider AspenTech Group;
- (vi) except pursuant to Chapter 3 of Part 28 of the Companies Act in the event that AspenTech elects to implement the Acquisition by way of a Takeover Offer, require any member of the Wider AspenTech Group or the Wider KBC Group to acquire, or offer to acquire any shares or other securities (or the equivalent) or interest in any member of the Wider KBC Group or any asset owned by any third party (other than in connection with the implementation of the Acquisition);
- (vii) impose any material limitation on, or result in a material delay in, the ability of any member of the Wider AspenTech Group or any member of the Wider KBC Group to integrate all or any part of its business with all or any part of the business of any other member of the Wider AspenTech Group and/or the Wider KBC Group;
- (viii) require any member of the Wider KBC Group to relinquish, terminate or amend in any material way any material contract to which any member of the Wider KBC Group or the Wider AspenTech Group is a party;
- (ix) result in any member of the Wider KBC Group or any member of the Wider AspenTech Group ceasing to be able to carry on business under any name under which it currently does so in any jurisdiction;
- (x) require any member of the Wider AspenTech Group or any member of the Wider KBC Group or any of their respective affiliates to:  
(A) invest, contribute or loan any capital or assets to; or (B) guarantee or pledge capital assets for the benefit of any member of the Combined Group, which in each such case or together is material and adverse in the context of the Combined Group or in the context of the Acquisition; or
- (xi) otherwise materially adversely affect all or any of the business, assets, liabilities, profits, financial or trading position or prospects of any member of the Wider KBC Group or any member of the Wider AspenTech Group,

and all applicable waiting and other time periods (including any extensions thereof) during which any such Third Party could decide to take, institute, implement or threaten any such action, proceeding, suit, investigation, enquiry or reference or take any other step under the laws of any jurisdiction in respect of the Acquisition or the acquisition or proposed acquisition of any KBC Shares or

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other securities in, or control or management of, KBC or otherwise intervene having expired, lapsed or been terminated, in any case where the absence of the expiry, lapse or termination of such waiting or other time period, would have a material adverse effect on the Wider AspenTech Group or the Wider KBC Group, in each case taken as a whole;

#### **Other regulatory approvals**

- (C) Each Governmental Entity (other than any anti-trust authority) which regulates or licences any member of the KBC Group or any other body corporate in which any member of the KBC Group has an interest in shares, and whose prior approval, consent or non-objection to any change in control, or acquisition of (or increase in) control in respect of that or any other member of the KBC Group is required, or any Governmental Entity (other than any anti-trust authority) whose prior approval, consent or non-objection to the Acquisition is otherwise required, or from whom one or more material licences or permissions are required in order to complete the Acquisition, having given its approval, non-objection or legitimate deemed consent or consent in writing thereto and, as the case may be, having granted such licences and permissions (in each case where required and on terms reasonably satisfactory to AspenTech) and where a failure to receive such approval, non-objection or legitimate consent or to be granted such licences and permissions would be material and adverse in the context of the Acquisition;

#### **Notifications, waiting periods and Authorisations**

- (D) All material notifications, filings or applications which are necessary having been made in connection with the Acquisition and all necessary waiting and other time periods (including any extensions thereof) under any applicable legislation or regulations of any relevant jurisdiction having expired, lapsed or been terminated (as appropriate) and all applicable statutory and regulatory obligations in any jurisdiction having been complied with in each case in respect of the Acquisition in each case where the absence of such notification, filing or application would have a material effect on the Wider KBC Group or the Wider AspenTech Group, as the case may be, in each case taken as a whole, and all Authorisations which are necessary in any relevant jurisdiction for or in respect of the Acquisition or the acquisition or the proposed acquisition of any shares or other securities in, or control or management of, KBC or any other member of the Wider KBC Group by any member of the Wider AspenTech Group having been obtained in terms and in a form reasonably satisfactory to AspenTech from all relevant Third Parties or (without prejudice to the generality of the foregoing) from any persons or bodies with whom any member of the Wider KBC Group or the Wider AspenTech Group has entered into contractual arrangements, in each case where the absence of an Authorisation from such a person would have a material adverse effect on the Wider KBC Group taken as a whole, and all such Authorisations necessary to carry on the business of any member of the Wider KBC Group in any jurisdiction having been obtained and all such Authorisations remaining in full force and effect at the time at which the Acquisition becomes Effective and there being no written notice of any intention to revoke, suspend, restrict, impede, modify or not to renew such Authorisations in each such case to an extent or in a manner which is material and adverse in the context of the Wider KBC Group or the Wider

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### **KBC Shareholder resolutions**

- (E) No resolution of KBC Shareholders in relation to any acquisition or disposal of assets or shares (or the equivalent thereof) in any undertaking or undertakings (or in relation to any merger, consolidation, demerger, reconstruction, amalgamation or scheme) being passed at a meeting of KBC Shareholders other than in relation to the implementation of the Acquisition or the Scheme and, other than with the consent or the agreement of AspenTech, no member of the KBC Group having taken (or agreed or proposed to take) any action that requires, or would require, the consent of the Takeover Panel or the approval of KBC Shareholders in general meeting in accordance with, or as contemplated by, Rule 21.1 of the Code;

### **Certain matters arising as a result of any arrangement, agreement, etc.**

- (F) Except as Disclosed, there being no provision of any agreement, arrangement, lease, licence, franchise, permit or other instrument to which any member of the Wider KBC Group is a party, or by or to which any such member or any of its assets is or are or may be bound, entitled or subject or any event or circumstance, which, in each case as a consequence of the Acquisition, or the acquisition or proposed acquisition of any shares in, or because of a change in the control or management of KBC or any other member of the Wider KBC Group or otherwise, would or might reasonably be expected to result in (in any case to an extent that is or would be material and adverse in the context of the Wider KBC Group taken as a whole):
- (i) any monies borrowed by, or any other indebtedness or liabilities (actual or contingent) of, or any grant available to, any such member being or becoming repayable or capable of being declared repayable immediately or prior to its or their stated maturity date or repayment date, or the ability of any such member to borrow monies or incur any indebtedness being withdrawn or being capable of becoming or being withdrawn;
  - (ii) any such agreement, arrangement, lease, licence, franchise, permit or other instrument or the rights, liabilities, obligations, interests or business of any such member thereunder, or the interests or business of any such member in or with any other person (or any arrangement or arrangements relating to any such interests or business) being, or becoming capable of being terminated or adversely affected or any onerous obligation or liability arising or any adverse action occurring thereunder;
  - (iii) any such member ceasing to be able to carry on its business under any name under which it currently does so;
  - (iv) any material assets or material interests of or used by any such member being or being required to be disposed of or charged or ceasing to be available to any such member or any right arising under which any such material asset or material interest could be required to be disposed of or charged or could cease

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to be available to any such member, in each case otherwise than in the ordinary course of business;

- (v) the creation, save in the ordinary course of business, or enforcement of any mortgage, charge or other security interest over the whole or any part of the business, property or assets of any such member or any such mortgage, charge or other security interest (whenever created, arising or having arisen) becoming enforceable;
- (vi) the creation or acceleration of any liability, actual or contingent, by any such member (other than creation of trade creditors or other liabilities incurred in the ordinary course of business);
- (vii) any material liability of any such member to make any severance, termination, bonus or other payment to any of its directors or other officers;
- (viii) any requirement on any such member to acquire, subscribe, pay up or repay any shares or other securities;
- (ix) the rights, liabilities, obligations or interests of any such member in, or the business of any such member with, any person, firm, company or body (or any arrangement or arrangements relating to any such interest or business) being or becoming capable of being terminated, or adversely modified or affected or any onerous obligation or liability arising or any adverse action being taken thereunder; or
- (x) the value of any such member or its financial or trading position or prospects being prejudiced or adversely affected,

and no event having occurred which, under any provision of any agreement, arrangement, lease, licence, franchise, permit or other instrument to which any member of the Wider KBC Group is a party or by or to which any such member or any of its assets are or may be bound, entitled or subject, would or might reasonably be expected to result in any of the events or circumstances as are referred to in sub-paragraphs (i) to (x) of this Condition (F) (*Certain matters arising as a result of any arrangement, agreement, etc.*);

### **Certain events occurring since 31 December 2014**

- (G) Since 31 December 2014, except as Disclosed, no member of the Wider KBC Group having:
- (i) save for transactions between KBC and any of its wholly-owned subsidiaries or between the wholly-owned subsidiaries of KBC or upon the exercise of rights to subscribe for KBC Shares pursuant to the vesting of awards or the exercise of options granted under any of the KBC Share Schemes in the ordinary course of business consistent with past practice on or prior to 31 December 2014, issued or agreed to issue or authorised or proposed or announced its intention to authorise or propose the issue of additional shares (or other securities) of any class, or securities or securities convertible into or exchangeable for, or rights, warrants or options to subscribe for or acquire, any

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such shares, securities or convertible securities or transferred or sold, or agreed to transfer or sell or authorised or proposed the transfer or sale of any shares out of treasury (except to satisfy awards or the exercise of options under the KBC Share Schemes) or purchased, redeemed or repaid or announced any proposal to purchase, redeem or repay any of its own shares or other securities or reduced or made any other change to any part of its share capital;

- (ii) other than dividends (or other distributions whether payable in cash or otherwise) lawfully paid or made by any wholly-owned subsidiary of KBC to KBC or any of its wholly-owned subsidiaries, recommended, declared, paid or made or proposed to recommend, declare, pay or make any bonus issue, dividend or other distribution whether payable in cash or otherwise;
- (iii) save for transactions between KBC and any of its wholly-owned subsidiaries or between the wholly-owned subsidiaries of KBC or pursuant to the Acquisition, merged or demerged with any body corporate or acquired or disposed of or transferred, mortgaged or charged or created any security interest over any material assets or any right, title or interest in any material asset (including shares or loan capital (or the equivalent thereof) in any undertaking or undertakings and further including trade investments) or implemented, effected, authorised or proposed or announced any intention to implement, effect, authorise or propose any such merger, demerger, reconstruction, amalgamation, scheme, commitment, acquisition, disposal, transfer, mortgage, charge or security interest (which, in the case of an acquisition or disposal is material in the context of the Wider KBC Group taken as a whole or in the context of the Acquisition and in the case of any transfer, mortgage, charge or security interest, is other than in the ordinary course of business);
- (iv) save for transactions between KBC and any of its wholly-owned subsidiaries or between the wholly-owned subsidiaries of KBC, made or authorised or proposed or announced an intention to propose any change to the terms of any of its loan capital, debentures or other indebtedness, which in any case is material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition;
- (v) entered into, implemented or authorised the entry into of, or amended, terminated or permitted to be terminated, any joint venture, asset or profit sharing arrangement, partnership or merger of business or corporate entities which in any case is material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition;
- (vi) save for transactions between KBC and any of its wholly-owned subsidiaries or between the wholly-owned subsidiaries of KBC, issued or agreed to issue, authorised or proposed or announced an intention to authorise or propose the issue of, any debentures or (except in the ordinary course of business), incurred or increased, or agreed to incur or increase, any indebtedness which is material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition, or become, or agreed to become, subject to any liability (actual or contingent) to an extent which is

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material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition;

- (vii) implemented, effected, authorised or proposed or announced its intention to implement, effect, authorise or propose any composition, assignment, reconstruction, amalgamation, scheme, commitment or other transaction or arrangement otherwise than in the ordinary course of business or in respect of the Acquisition or entered into or materially varied, or made any offer to enter into or materially vary, the terms of any contract, agreement or arrangement with any director or senior executive of any member of the Wider KBC Group other than in the ordinary course of business or in respect of the Acquisition, in each case other than with the agreement of AspenTech or the Takeover Panel;
- (viii) entered into or varied or authorised, proposed or announced its intention to enter into or vary any material agreement, contract, transaction, arrangement or commitment (whether in respect of capital expenditure or otherwise) other than in the ordinary course of business which is of a long-term, onerous or unusual nature or magnitude or which is or involves or would or might reasonably be expected to involve an obligation of a nature or magnitude which is or would be or might reasonably be likely to be materially restrictive or onerous on the business of any member of the Wider KBC Group or the Wider AspenTech Group which taken together with any other such material agreement, contract, transaction, arrangement or commitment is or would be or might reasonably be expected to be material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition;
- (ix) other than in respect of a member which is dormant and was solvent at the relevant time, taken or proposed any step or corporate action, or had any legal proceedings instituted or threatened against it or petition presented or order made, in relation to the suspension of payments, a moratorium of any indebtedness, its winding-up (voluntary or otherwise), dissolution or reorganisation or for the appointment of a receiver, administrative receiver, administrator, manager, trustee or similar officer of all or any material part of its assets or revenues or any analogous or equivalent steps or proceedings in any jurisdiction or appointed any analogous person in any jurisdiction or had any such person appointed, which in any case is material in the context of the Wider KBC Group taken as a whole;
- (x) been unable, or admitted in writing that it is unable, to pay its debts as they fall due or commenced negotiations with one or more of its creditors with a view to rescheduling or restructuring any of its indebtedness, or having stopped or suspended (or threatened to stop or suspend) payment of its debts generally or ceased or threatened to cease carrying on all or a substantial part of its business, which in any case is material in the context of the Wider KBC Group taken as a whole;
- (xi) entered into or changed the terms of, or made any offer (which remains open for acceptance) to enter into or vary the terms of, any contract, service agreement, commitment, transaction or arrangement which would be materially restrictive on the business of any member of the Wider KBC Group

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or the Wider AspenTech Group other than in the ordinary course of the business concerned;

- (xii) waived, compromised or settled any claim which is material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition otherwise than in the ordinary course of business;
- (xiii) terminated or varied the terms of any agreement or arrangement between any member of the Wider KBC Group and any other person in a manner which would or might reasonably be expected to have a material adverse effect on the financial position of the Wider KBC Group taken as a whole;
- (xiv) except in relation to changes made or agreed as a result of, or arising from, legislation or changes to legislation, made or agreed or consented to any change in any material respect to:
  - (a) the terms of the trust deeds (or other terms) constituting the pension scheme(s) established by any member of the Wider KBC Group for its directors, officers, employees or their dependants;
  - (b) the contributions payable to any such scheme(s) or to the benefits which accrue or to the pensions which are payable thereunder;
  - (c) the basis on which qualification for, or accrual or entitlement to, such benefits or pensions are calculated or determined;
  - (d) the basis upon which the liabilities (including pensions) of such pension schemes are funded, valued or made, or agreed or consented to; or
  - (e) the trustees involving the appointment of a trust corporation,in a manner which, in any such case or together, is material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition;
- (xv) save as agreed in writing by AspenTech, proposed, agreed to provide or modified the terms of any share option scheme, incentive scheme or other benefit relating to the employment or termination of employment of any person employed by the Wider KBC Group which are material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition;
- (xvi) (except as disclosed on publicly available registers) made any material alteration to the articles of association or other incorporation documents of KBC or any material alteration to the memorandum or articles of association of any other member of the KBC Group (in each case, other than an alteration in connection with the Acquisition) which in any such case or together is material and adverse in the context of the KBC Group taken as a whole or material and adverse in the context of the Acquisition; or

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- (xvii) entered into any contract, commitment, arrangement or agreement otherwise than in the ordinary course of business or passed any resolution or made any offer (which remains open for acceptance) with respect to or announced any intention to, or to propose to, effect any of the transactions, matters or events referred to in this Condition G (*Certain events occurring since 31 December 2014*), which in any case is material in the context of the Wider KBC Group taken as a whole or in the context of the Acquisition;

#### **No adverse change, litigation or regulatory enquiry**

- (H) Since 31 December 2014, except as Disclosed, there having been:
  - (i) no material adverse change or deterioration in the business, assets, liabilities, shareholders' equity, financial or trading position or profits, operational performance or prospects of any member of the Wider KBC Group which, in any such case or together, is material in the context of the Wider KBC Group taken as a whole and no circumstance having arisen which would or might reasonably be expected to result in any such adverse change or deterioration;
  - (ii) no agreement or arrangement between any member of the Wider KBC Group and any other person has been terminated or varied in a manner which, in any such case or together, would or might reasonably be expected to have a material adverse effect on the financial position of the Wider KBC Group taken as a whole;
  - (iii) no litigation, arbitration proceedings, prosecution or other legal proceedings to which any member of the Wider KBC Group is or may become a party (whether as a claimant, defendant or otherwise) and no enquiry, review or investigation by, or complaint or reference to, any Third Party against or in respect of any member of the Wider KBC Group (or any person in respect of which any such member has or may have responsibility or liability) having been threatened in writing, announced, implemented or instituted by or against or remaining outstanding against or in respect of any member of the Wider KBC Group which, in any such case or together, has had, or might reasonably be expected to have, a material adverse effect on the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition;
  - (iv) no contingent or other material liability having arisen or become apparent to AspenTech or increased other than in the ordinary course of business which has had, or might reasonably be expected to have, a material adverse effect on the business, assets, financial or trading position or profits or prospects of any member of the Wider KBC Group to an extent which, in any such case or together, is material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition; and
  - (v) no action having been taken and no omissions having been made which are reasonably likely to lead to or result in the withdrawal, cancellation, termination, modification or variation of any Authorisation held by or on behalf of any member of the Wider KBC Group which is necessary for the proper carrying on of its business and the withdrawal, cancellation,

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termination or modification of which has had, or would reasonably be expected to have, a material adverse effect on the Wider KBC Group taken as a whole or in the context of the Acquisition;

#### **No discovery of certain matters regarding information and liabilities**

- (I) Except as Disclosed, AspenTech not having discovered:
- (i) that any financial, business or other information concerning the Wider KBC Group as contained in the information publicly disclosed prior to the date of this announcement at any time by or on behalf of any member of the Wider KBC Group or disclosed in the information contained in the data rooms established by KBC for the purposes of the Acquisition is materially misleading, contains a misrepresentation of any material fact or omits to state a fact necessary to make that information not misleading in any material respect where in each case the relevant information has not subsequently been corrected prior to the date of this announcement by disclosure either publicly or otherwise to AspenTech, in each case to an extent which is in any case, material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition; or
  - (ii) that any member of the Wider KBC Group or any partnership, company or other entity in which any member of the Wider KBC Group has a significant economic interest and which is not a subsidiary undertaking of KBC is, otherwise than in the ordinary course of business, subject to any liability (contingent or otherwise) which, in any such case or together, is material and adverse in the context of the Wider KBC Group taken as a whole or material and adverse in the context of the Acquisition; and

#### **Anti-corruption, sanctions and criminal property**

- (J) Except as Disclosed, AspenTech not having discovered:
- (i) any past or present member, director, officer or employee of the Wider KBC Group, or any other person for whom any such person may be liable or responsible, has not (in the course of the business of the Wider KBC Group or their engagement on it) complied with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and any laws implementing the same, the UK Bribery Act 2010 and/or the US Foreign Corrupt Practices Act of 1977;
  - (ii) any past or present member, director, officer or employee of the Wider KBC Group, or any other person for whom any such person may be liable or responsible, has (in the course of the business of the Wider KBC Group or their engagement on it) engaged in any business with or made any investments in, or made any payments to, (a) any government, entity or individual with which US or EU persons are prohibited from engaging in activities or doing business by US or EU laws or regulations, including the economic sanctions administered by the United States Office of Foreign Assets Control, or (b) any government, entity or individual targeted by any of the economic sanctions of

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the United Nations or the European Union or any of their respective member states; and

- (iii) any asset of any member of the Wider KBC Group constitutes criminal property as defined by section 340(3) of the Proceeds of Crime Act 2002 (but disregarding paragraph (b) of that definition).

## **2. WAIVER AND AMENDMENT OF CONDITIONS**

Subject to the requirements of the Takeover Panel, AspenTech reserves the right in its sole discretion to waive (if capable of waiver) in whole or in part:

- (A) any of the Conditions set out in the above Condition (A) relating to the dates of the Court Meeting, General Meeting, the Court Hearing and the sanctioning of the Scheme. If any of the deadlines for those events are not met, AspenTech shall release an announcement via a Regulatory Information Service by 8.00 am on the Business Day following such deadline confirming whether it has invoked or waived the relevant Condition or agreed with KBC to extend the relevant deadline in respect of all or any of the above Conditions; and
- (B) any of the above Conditions (B) (*General regulatory*) to (J) (*Anti-corruption, sanctions and criminal property*) (inclusive).

Conditions (B) (*General regulatory*) to (J) (*Anti-corruption, sanctions and criminal property*) (inclusive) must be fulfilled or waived by no later than 11.59 pm on the date immediately preceding the date of the Court Hearing, failing which the Scheme will lapse or if the Acquisition is implemented by way of a Takeover Offer, no later than as permitted by the Takeover Panel. AspenTech shall be under no obligation to waive or treat as satisfied any of Conditions by a date earlier than the latest date specified above for the fulfilment or waiver thereof, notwithstanding that any such Condition or the other Conditions of the Scheme and the Acquisition may at such earlier date have been waived or fulfilled and that there are at such earlier date no circumstances indicating that any of such Conditions may not be capable of fulfilment.

If AspenTech is required by the Takeover Panel to make an offer for KBC Shares under the provisions of Rule 9 of the Code, AspenTech may make such alterations to the Conditions and further terms of the Acquisition as are necessary to comply with the provisions of that Rule.

## **3. IMPLEMENTATION BY WAY OF A TAKEOVER OFFER**

AspenTech may, with the consent of the Takeover Panel, implement the Acquisition by making, directly or indirectly through a subsidiary or nominee of AspenTech a Takeover Offer as an alternative to the Scheme. In such event, the Takeover Offer will be implemented on the same terms or, if AspenTech so decides, on such other terms being no less favourable, subject to appropriate amendments, so far as applicable, as those which would apply to the Scheme. The acceptance condition would be set at 90 per cent. of the shares to which such Takeover Offer relates (or such lesser percentage (being more than 50 per cent.) as AspenTech may decide with the consent of the Takeover Panel). Further, if sufficient acceptances of the Takeover Offer are received and/or sufficient KBC Shares are otherwise

acquired, it is the intention of AspenTech to apply the provisions of the Companies Act to compulsorily acquire any outstanding KBC Shares to which such Takeover Offer relates.

#### 4. CERTAIN FURTHER TERMS OF THE ACQUISITION

- (A) The Acquisition will lapse (unless otherwise agreed with the Takeover Panel) if:
- (i) in so far as the Acquisition or any matter arising from or relating to the Scheme or Acquisition constitutes a concentration with a Community dimension within the scope of the Regulation, the European Commission either initiates proceedings under Article 6(1)(c) of the Regulation or makes a referral to a competent authority in the United Kingdom under Article 9(1) of the Regulation and there is then a CMA Phase 2 Reference; or
  - (ii) in so far as the Acquisition or any matter arising from the Scheme or Acquisition does not constitute a concentration with a Community dimension within the scope of the Regulation, the Scheme or Acquisition or any matter arising from or relating to the Acquisition becomes subject to a CMA Phase 2 Reference,
- in each case, before the date of the Court Meeting.
- (B) AspenTech reserves the right for any other member of the AspenTech Group from time to time to implement the Acquisition.
- (C) The availability of the Acquisition to KBC Shareholders who are not resident in the United Kingdom may be affected by the laws of relevant jurisdictions. Therefore any persons who are subject to the laws of any jurisdiction other than the United Kingdom and any KBC Shareholders who are not resident in the United Kingdom will need to inform themselves about, and observe, any applicable requirements.
- (D) Unless otherwise determined by AspenTech or required by the Code and permitted by applicable law and regulation, the Acquisition is not being, and will not be, made, directly or indirectly, in or into or by the use of the mails of, or by any other means or instrumentality (including, without limitation, facsimile transmission, telex, telephone, internet or other forms of electronic transmission) of interstate or foreign commerce of, or by any facility of a national, state or other securities exchange of, any Restricted Jurisdiction and will not be capable of acceptance by any such use, means, instrumentality or facility or from within any Restricted Jurisdiction.
- (E) KBC Shares which will be acquired under the Acquisition will be acquired with full title guarantee, fully paid and free from all liens, equities, charges, encumbrances, options, rights of pre-emption and any other third party rights and interests of any nature and together with all rights now or hereafter attaching or accruing to them, including voting rights and the right to receive and retain in full all dividends and other distributions (if any), and any other return of capital (whether by way of reduction of share capital or share premium account or otherwise), declared, made or paid on or after the date of this announcement.

## APPENDIX II

### SOURCES OF INFORMATION AND BASES OF CALCULATION

In this announcement:

- (i) Unless otherwise stated, financial information concerning KBC has been extracted from the Annual Report and Accounts of KBC or KBC's half-year report for the six months ended 30 June 2015.
- (ii) The value of the Acquisition is based upon the following share count:
  - 82,341,156 KBC Shares in issue on 11 January 2016 (net of 214,000 Treasury Shares)
  - Plus 3,756,699 KBC Shares which are the subject of the expected vesting of awards and the exercise of options granted and to be granted under the KBC Share Schemes
  - Less 507,790 KBC Shares currently held in KBC's employee benefit trusts and included in the existing issued share capital which may be utilised to satisfy awards under the KBC Share Schemes
  - Resulting in a fully diluted share capital of 85,590,065 KBC Shares.
- (iii) Unless otherwise stated, all prices for KBC Shares are the Closing Price for the relevant date.
- (iv) The exchange rate of 0.6881 for the conversion of US dollars into pounds sterling has been derived from Bloomberg and is based on the exchange rate as at 4:00 pm (London time) on 11 January 2016 (being the last Business Day prior to this announcement).
- (v) The premia implied by the Acquisition price have been calculated with reference to prices of:
  - 124 pence per KBC Share on 11 January 2016 (being the last Business Day prior to this announcement);



- the volume weighted average Closing Price of 135 pence per KBC Share for the one month ended on 11 January 2016 (being the last Business Day prior to this announcement); and
- the volume weighted average Closing Price of 132 pence per KBC Share for the three months ended on 11 January 2016 (being the last Business Day prior to this announcement).

(vi) Total Shareholder Return has been derived from Bloomberg.

### APPENDIX III

#### IRREVOCABLE UNDERTAKINGS

##### KBC Directors' Irrevocable Undertakings

Global Optimisation has received irrevocable commitments from each of the members of the KBC Board who hold KBC Shares (in a personal capacity or through a nominee(5)), as listed below, in respect of their own beneficial holdings of KBC Shares and (to the extent relevant) the beneficial holdings of each KBC Board member's spouse, civil partner, de facto partner, or similarly-related person, representing in aggregate approximately 0.51 per cent. of KBC's issued share capital as at 11 January 2016 (being the last Business Day prior to this announcement). These commitments require each relevant member of the KBC Board to vote or procure that the registered holder votes in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting (or, in the event the Acquisition is implemented by means of a Takeover Offer, to accept, or procure acceptance of, the Takeover Offer).

Name of KBC Director	Number of KBC Shares	Approximate % of KBC issued share capital
Ian Godden	276,000	0.34
Andrew Howell	83,164	0.10
Kevin Smith	57,842	0.07
<b>TOTAL</b>	<b>417,006</b>	<b>0.51</b>

These irrevocable commitments will continue to be binding in the event that a higher competing offer is made for KBC.

These irrevocable commitments will cease to be binding on the earliest to occur of the following events:

- if the Scheme does not become Effective, or if AspenTech elects to implement the Acquisition by way of a Takeover Offer, the Takeover Offer does not become unconditional as to acceptances, in each case by 12 May 2016 (or such later date as AspenTech and KBC agree in writing);
- if the Acquisition lapses or is withdrawn, except in circumstances where such lapse or withdrawal is solely as a result of AspenTech exercising its right to implement the Acquisition by way of a Takeover Offer rather than the Scheme or vice versa; or

(5) Oliver Scott does not hold shares in his personal capacity or through a nominee and therefore has not provided an irrevocable undertaking to Global Optimisation. As a shareholder in Kestrel Opportunities, Mr Scott is deemed to have a beneficial interest in 10,857,550 KBC Shares that are held by Kestrel Opportunities through its registered holder BNY Mellon a/c (Butterfield Bank Guernsey Limited). Global Optimisation has received an irrevocable undertaking from Kestrel Partners LLP (being the investment manager to Kestrel Opportunities) in respect of 13,006,871 KBC Shares (which include the afore-mentioned 10,857,550 KBC Shares).

- if AspenTech announces, with the consent of the Takeover Panel and before the Scheme Document or Offer Document is posted, that it does not intend to proceed with the Acquisition and no new, revised or replacement Scheme or Takeover Offer is contemporaneously announced by AspenTech.

##### KBC Shareholder Irrevocable Undertakings

Global Optimisation has received irrevocable commitments from the following KBC Shareholders in respect of their beneficial holdings of KBC Shares representing in aggregate approximately 42.1 per cent. of KBC's issued share capital as at 11 January 2016 (being the last Business Day prior to this announcement). These commitments are subject to certain limitations and exceptions as described below.

These commitments require each such shareholder to vote or procure that the registered holder votes in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting.

Name of KBC Shareholder	Number of KBC Shares	Approximate % of KBC issued share capital
Kestrel Partners LLP	13,006,871	15.8
AXA Investment Management UK Limited	8,106,000	9.8
Hargreave Hale Limited	4,750,000	5.8
Herald Investment Trust plc	3,955,000	4.8
Killik & Co LLP	3,724,271	4.5
Ari Zaphiriou-Zarifi	1,145,000	1.4
<b>TOTAL</b>	<b>34,687,142</b>	<b>42.1</b>

The irrevocable commitments given by Kestrel Partners LLP will cease to be binding on the earliest to occur of the following:

- AspenTech announces that the Acquisition will not proceed;
- the Takeover Panel announces that it has released AspenTech from its obligation under the Code to make or proceed with the Acquisition or the Takeover Panel confirms to AspenTech or its financial advisers or Kestrel Partners LLP that it has released AspenTech from that obligation;
- a majority of the KBC Directors cease to recommend on an unqualified basis that holders of KBC Shares vote in favour of the Resolutions;
- AspenTech ceases to be permitted under the Code to proceed with the Acquisition;
- an announcement is released by any person of a firm intention to make a competing offer for KBC at a value that is (in the opinion of Kestrel Partners LLP) in excess of that set out in this announcement; and

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- the Long Stop Date.

*AXA Investment Management UK Limited*

The irrevocable commitments given by AXA Investment Management UK Limited will cease to be binding on the earliest to occur of the following:

- AspenTech announces that the Acquisition will not proceed;
- the Takeover Panel announces that it has released AspenTech from its obligation under the Code to make or proceed with the Acquisition or the Takeover Panel confirms to AspenTech or its financial advisers or AXA Investment Management UK Limited that it has released AspenTech from that obligation;
- a majority of the KBC Directors cease to recommend on an unqualified basis that holders of KBC Shares vote in favour of the Resolutions;
- AspenTech ceases to be permitted under the Code to proceed with the Acquisition;
- an announcement is released by any person of a firm intention to make a competing offer for KBC at a value that is reasonably considered by AXA Investment Management UK Limited to be in excess of that set out in this announcement;
- the Long Stop Date; and
- the date falling six months from the date of this announcement.

*Hargreave Hale Limited*

The irrevocable commitments given by Hargreave Hale Limited will cease to be binding on the earliest to occur of the following:

- AspenTech announces that the Acquisition will not proceed;
- the Takeover Panel announces that it has released AspenTech from its obligation under the Code to make or proceed with the Acquisition or the Takeover Panel confirms to AspenTech or its financial advisers or Hargreave Hale Limited that it has released AspenTech from that obligation;
- a majority of the KBC Directors cease to recommend on an unqualified basis that holders of KBC Shares vote in favour of the Resolutions;
- AspenTech ceases to be permitted under the Code to proceed with the Acquisition;
- an announcement is released by any person of a firm intention to make a competing offer for KBC at a value that is (in the opinion of Hargreave Hale Limited) in excess of that set out in this announcement; and
- the Long Stop Date.

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*Herald Investment Trust plc*

The irrevocable commitments given by Herald Investment Trust plc will cease to be binding on the earliest to occur of the following:

- AspenTech announces that the Acquisition will not proceed;
- the Takeover Panel announces that it has released AspenTech from its obligation under the Code to make or proceed with the Acquisition or the Takeover Panel confirms to AspenTech or its financial advisers or Herald Investment Trust plc that it has released AspenTech from that obligation;
- a majority of the KBC Directors cease to recommend on an unqualified basis that holders of KBC Shares vote in favour of the Resolutions;

- AspenTech ceases to be permitted under the Code to proceed with the Acquisition;
- an announcement is released by any person of a firm intention to make a competing offer for KBC at a value that is (in the opinion of Herald Investment Trust plc) in excess of that set out in this announcement; and
- the Long Stop Date.

#### *Killik & Co LLP*

The irrevocable commitments given by Killik & Co LLP will cease to be binding on the earliest to occur of the following:

- AspenTech announces that the Acquisition will not proceed (or will proceed otherwise than by way of a scheme of arrangement);
- the Takeover Panel announces that it has released AspenTech from its obligation under the Code to make or proceed with the Acquisition or the Takeover Panel confirms to AspenTech or its financial advisers or Killik & Co LLP that it has released AspenTech from that obligation;
- a majority of the KBC Directors cease to recommend on an unqualified basis that holders of KBC Shares vote in favour of the Resolutions;
- AspenTech ceases to be permitted under the Code to proceed with the Acquisition;
- an announcement is released by any person of a firm intention to make a competing offer for KBC at a value that is (in the opinion of Killik & Co LLP) in excess of that set out in this announcement; and
- 22 May 2016.

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#### *Ari Zaphiriou-Zarifi*

The irrevocable commitments given by Ari Zaphiriou-Zarifi will cease to be binding on the earliest to occur of the following:

- AspenTech announces that the Acquisition will not proceed (or will proceed otherwise than by way of a scheme of arrangement);
- the Takeover Panel announces that it has released AspenTech from its obligation under the Code to make or proceed with the Acquisition or the Takeover Panel confirms to AspenTech or its financial advisers or Ari Zaphiriou-Zarifi that it has released AspenTech from that obligation;
- a majority of the KBC Directors cease to recommend on an unqualified basis that holders of KBC Shares vote in favour of the Resolutions;
- AspenTech ceases to be permitted under the Code to proceed with the Acquisition;
- an announcement is released by any person of a firm intention to make a competing offer for KBC at a value that is (in the opinion of Ari Zaphiriou-Zarifi) in excess of that set out in this announcement; and
- the Long Stop Date.

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## APPENDIX IV

### DEFINITIONS

The following definitions apply throughout this announcement, unless the context otherwise requires:

“ <b>Acquisition</b> ”	the recommended all-cash acquisition of the entire issued and to be issued share capital of KBC by Global Optimisation to be effected by the Scheme as described in this announcement (or by a Takeover Offer under certain circumstances as described in this announcement) on the terms and subject to the conditions to be set out in the Scheme Document including, where the context requires, any subsequent revision, variation, extension or renewal of such offer and includes any election available thereunder
“ <b>AIM</b> ”	the Alternative Investment Market of the London Stock Exchange
“ <b>AIM Rules</b> ”	the AIM Rules for Companies as published by the London Stock Exchange (as amended from time to time)
“ <b>Annual Report and Accounts of KBC</b> ”	the annual report and audited financial statements of KBC for the year ended 31 December 2014
“ <b>AspenTech</b> ”	Aspen Technology, Inc., a Delaware corporation with its headquarters at 20 Crosby Drive, Bedford, MA 01730 USA
“ <b>AspenTech Directors</b> ”	the directors of AspenTech and “ <b>AspenTech Director</b> ” means any one of them
“ <b>AspenTech Group</b> ”	AspenTech and its subsidiary undertakings and associated undertakings

“associated undertaking”	has the meaning given by the Companies Act
“Authorisations”	for the purposes of the Conditions, means authorisations, orders, grants, recognitions, determinations, confirmations, consents, licences, clearances, permissions, exemptions and approvals
“Business Day”	a day on which banks are generally open for business in the United Kingdom and New York, USA, not including Saturdays, Sundays or any public holiday
“Cenkos”	Cenkos Securities Plc

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“Closing Price”	the closing middle market price of an KBC Share on a particular trading day as derived from the AIM appendix to the Daily Official List
“CMA”	the independent public body which conducts second phase, in-depth inquiries into mergers, markets and the regulation of the major regulated industries in the United Kingdom (or any successor body or bodies carrying out the same functions in the United Kingdom from time to time)
“Code”	the City Code on Takeovers and Mergers
“Combined Group”	the enlarged group following the Acquisition, comprising the AspenTech Group and the KBC Group
“Community”	the European Community
“Companies Act”	the UK Companies Act 2006, as amended from time to time
“Conditions”	the conditions of the Acquisition, as set out in Appendix I to this announcement and to be set out in the Scheme Document
“Confidentiality Agreement”	has the meaning given to that term in paragraph 11 of this announcement ( <i>Acquisition related arrangements</i> )
“Consideration”	the cash payment of 185 pence per Scheme Share to be made pursuant to the Scheme to the Scheme Shareholders
“Court”	the High Court of Justice in England and Wales
“Court Hearing”	the hearing of the Court to sanction the Scheme under section 899 of the Companies Act and if such hearing is adjourned references to commencement of any such hearing shall mean the commencement of the final adjournment thereof
“Court Meeting”	the meeting or meetings of the Scheme Shareholders (or the relevant class or classes thereof) as may be convened pursuant to an order of the Court under section 896 of the Companies Act for the purposes of considering and, if thought fit, approving the Scheme (with or without amendment) including any adjournment thereof, notice of which is to be contained in the Scheme Document

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“Court Order”	the order of the Court sanctioning the Scheme under section 899 of the Companies Act
“CREST”	the relevant system (as defined in the Uncertificated Securities Regulations 2001 (SI 2001/3755)) in respect of which Euroclear UK & Ireland Limited is the Operator (as defined in the CREST Regulations)
“CREST Regulations”	the Uncertificated Securities Regulations 2001 (SI 2001/3755)
“Daily Official List”	the Daily Official List of the London Stock Exchange
“Dealing Disclosure”	an announcement pursuant to Rule 8 of the Code containing details of dealings in interests in relevant securities of a party to an offer
“Disclosed”	(i) matters fairly disclosed in the information made available to AspenTech (or AspenTech’s advisers) in the data rooms established by KBC for the purposes of the Acquisition; (ii) any other information that is fairly disclosed by or on behalf of KBC to AspenTech or AspenTech’s financial, accounting, tax or legal advisers (specifically as AspenTech’s advisers in relation to the Acquisition); (iii) information included in KBC’s annual report and audited accounts for the relevant financial period or periods referred to in the relevant Condition and published prior to the date of this announcement; (iv) information included in KBC’s half-year report for the six months ended 30 June 2015; (v) disclosed in a public announcement to a Regulatory Information Service made by KBC prior to the date of this announcement; or (vi) disclosed in this announcement

<b>“Disclosure Table”</b>	the disclosure table on the Takeover Panel’s website at <a href="http://www.thetakeoverpanel.org.uk">www.thetakeoverpanel.org.uk</a> , including details of the offeree and offeror companies in respect of whose relevant securities any Opening Position Disclosures and Dealing Disclosures must be made
<b>“Effective”</b>	in the context of the Acquisition: (i) if the Acquisition is implemented by way of a Scheme, the Scheme having become effective in accordance with its terms, upon the delivery of the Court Order to the Registrar of Companies and, if the Court so orders, registration by the Registrar of Companies; or (ii) if the Acquisition is implemented by way of a Takeover Offer, the Takeover Offer having been declared or become unconditional in all respects in accordance with the requirements of the

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	Code
<b>“Effective Date”</b>	the date upon which: (a) the Scheme becomes Effective; or (b) if AspenTech elects and the Takeover Panel consents to implement the Acquisition by way of a Takeover Offer, the Takeover Offer becomes Effective
<b>“EU”</b>	European Union
<b>“Evercore”</b>	Evercore Partners International LLP
<b>“Exchange Act”</b>	the US Securities Exchange Act of 1934, as amended
<b>“Facility Agreement”</b>	has the meaning given to that term in paragraph 9 of this announcement ( <i>Financing</i> )
<b>“FCA” or “Financial Conduct Authority”</b>	the UK Financial Conduct Authority or its successor from time to time
<b>“Fee and Syndication Letter”</b>	the fee and syndication letter entered into in connection with the Facility Agreement between J.P. Morgan Securities LLC (as sole bookrunning agent and sole lead arranger), J.P. Morgan Chase Bank, N.A. (as administrative agent) and AspenTech (as borrower)
<b>“Forms of Proxy”</b>	the forms of proxy in connection with the Court Meeting and the General Meeting respectively, which shall accompany the Scheme Document
<b>“Free Cash Flow”</b>	cash flow from operations less (1) purchases of property, equipment and leasehold improvements and (2) capitalised software development costs, plus non-capitalised acquired technology and excess tax benefits from stock based compensation
<b>“General Meeting”</b>	the general meeting (or any adjournment, postponement or reconvention thereof) of KBC Shareholders to be convened to consider and if thought fit pass, inter alia, the Resolutions
<b>“Global Optimisation”</b>	ATI Global Optimisation Ltd, a wholly-owned subsidiary of AspenTech, incorporated for the purpose of effecting the Acquisition, with company number 09941172
<b>“Governmental Entity”</b>	any supranational, national, state, municipal, local or foreign government, any instrumentality, subdivision,

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	court, arbitrator or arbitrator panel, regulatory or administrative agency or commission, or other authority thereof, or any regulatory or quasi-regulatory organisation or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority
<b>“Irrevocable Undertakings”</b>	the irrevocable undertakings to vote (to procure votes) in favour of the Scheme at the Court Meeting and the Resolutions to be proposed at the General Meeting from the KBC Directors who hold KBC Shares (in a personal capacity or through a nominee) and certain other KBC Shareholders received by Global Optimisation, details of which are set out in Appendix III to this announcement
<b>“ISIN”</b>	International Securities Identification Number
<b>“J.P. Morgan”</b>	J.P. Morgan Limited
<b>“KBC”</b>	KBC Advanced Technologies plc, a public limited company incorporated in England and Wales with company number 01357958 and its registered office at 42-50 Hersham Road, Walton on Thames, Surrey KT12 1RZ
<b>“KBC Board”</b>	the Board of Directors of KBC
<b>“KBC Directors”</b>	the directors of KBC and “ <b>KBC Director</b> ” means any one of them

“KBC Group”	KBC and its subsidiary undertakings and associated undertakings and, where the context permits, each of them
“KBC Share Schemes”	the Long Term Incentive Plan 2006, the Discretionary Share Option Plan 2013 and a deed made between KBC and Godden Associates Limited granting an option to acquire KBC Shares to Godden Associates Limited dated 26 June 2013 (as amended)
“KBC Shareholders”	holders of KBC Shares
“KBC Shares”	the ordinary shares of 2.5 pence each in the capital of KBC
“Kestrel Opportunities”	The Kestrel Opportunities Fund (a cell of Guernsey Portfolios PCC Limited)

“London Stock Exchange”	London Stock Exchange plc
“Long Stop Date”	12 May 2016, or such later date, if any, as AspenTech and KBC may agree and, if required, the Court and the Takeover Panel may allow
“Meetings”	the Court Meeting and the General Meeting
“Non-GAAP EPS”	Generally Accepted Accounting Principles (GAAP) diluted income per share plus (1) stock base compensation, (2) non-capitalised acquired technology, (3) restructuring charges and (4) amortisation of purchase technology intangibles; less (1) income tax effect on non-GAAP items
“Offer Document”	in the event AspenTech elects to implement the Acquisition by means of a Takeover Offer, the document containing the Takeover Offer to be sent to KBC Shareholders
“Offer Period”	the period which commenced on the date of this announcement and ending on the date on which the Acquisition becomes Effective, lapses or is withdrawn (or such other date as the Takeover Panel may decide)
“Official List”	the Official List of the FCA
“Open Source Audit Agreement”	has the meaning given to that term in paragraph 11 of this announcement ( <i>Acquisition related arrangements</i> )
“Open Source Audit Report”	a report dated 31 December 2015 from Black Duck Software, Inc. to KBC (and subsequently made available by KBC to AspenTech) that sets out the results of the following services undertaken by Black Duck Software, Inc. for KBC in relation to certain software code of KBC: <ul style="list-style-type: none"> <li>(a) an open source and third party software code audit; and</li> <li>(b) an open source risk assessment</li> </ul>
“Opening Position Disclosure”	has the meaning given to that term in the Code
“Registrar of Companies”	the Registrar of Companies in England and Wales
“Regulation”	Council Regulation (EC) No139/2004
“Regulatory Information Service”	any information service authorised from time to time by the FCA for the purpose of disseminating regulatory

“Resolutions”	the resolutions to be proposed by KBC at the General Meeting in connection with, amongst other things, the approval of the Scheme, the amendment of KBC’s articles of association and such other matters as may be necessary to implement the Scheme and the de-listing of the KBC Shares
“Restricted Jurisdiction”	any jurisdiction where local laws or regulations may result in a significant risk of civil, regulatory or criminal exposure if information concerning the Acquisition is sent or made available to KBC Shareholders (or other persons with information rights) in that jurisdiction
“Scheme”	the proposed acquisition of the KBC Shares by AspenTech by way of a scheme of arrangement of KBC under Part 26 of the Companies Act proposed to be entered into between KBC and the Scheme Shareholders to be described in the Scheme Document, the principal terms of which are set out in this announcement (with or subject to any modification, addition or condition which KBC and AspenTech may agree and, if required, the Court may approve or impose) subject to the Conditions set out in this announcement and to be set out in the Scheme Document

<b>“Scheme Document”</b>	the document to be despatched to (among others) KBC Shareholders containing the terms and conditions of the Acquisition, the notices convening the Court Meeting and the General Meeting and the particulars required by section 897 of the Companies Act
<b>“Scheme Record Time”</b>	the time and date to be specified in the Scheme Document, expected to be 6.00 pm (London time) on the Business Day immediately prior to the Effective Date
<b>“Scheme Shareholders”</b>	holders of Scheme Shares
<b>“Scheme Shares”</b>	shall mean: <ul style="list-style-type: none"> <li>(i) KBC Shares in issue at the date of the Scheme Document;</li> <li>(ii) any KBC Shares issued after the date of the Scheme Document and prior to the Voting Record Time; and</li> <li>(iii) any KBC Shares issued at or after the Voting Record Time but at or prior to the Scheme</li> </ul>

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	Record Time in respect of which the original or any subsequent holder thereof is bound by the Scheme or shall by such time have agreed in writing to be bound by the Scheme, in each case, save for: <ul style="list-style-type: none"> <li>(A) any KBC Shares legally or beneficially held by any member of the AspenTech Group; or</li> <li>(B) any Treasury Shares</li> </ul>
<b>“subsidiary undertaking”</b>	has the meaning given by the Companies Act
<b>“Takeover Offer”</b>	should the Acquisition be implemented by way of a takeover offer as defined in Chapter 3 of Part 28 of the Companies Act, the recommended offer to be made by or on behalf of AspenTech to acquire the entire issued and to be issued share capital of KBC and, where the context requires, any subsequent revision, variation, extension or renewal of such offer and includes any election available thereunder
<b>“Takeover Panel”</b>	the UK Panel on Takeovers and Mergers
<b>“Third Party”</b>	a central bank, government or governmental, quasi-governmental, supranational, statutory, regulatory, professional, or investigative body or authority (including any anti-trust or merger control authority), court, trade agency, professional association, institution, works council, employee representative body or any other similar body or person whatsoever in any jurisdiction
<b>“Total Shareholder Return”</b>	the total return of a stock to an investor (capital gains and dividends)
<b>“Treasury Shares”</b>	any KBC Shares which are for the time being held by KBC as treasury shares (within the meaning of the Companies Act)
<b>“UK” or “United Kingdom”</b>	the United Kingdom of Great Britain and Northern Ireland
<b>“undertaking”</b>	has the meaning given by the Companies Act
<b>“US” or “United States”</b>	the United States of America, its possessions and territories, all areas subject to its jurisdiction or any subdivision thereof, any state of the United States and the District of Columbia

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<b>“Voting Record Time”</b>	the time and date to be specified in the Scheme Document by reference to which entitlement to vote on the Scheme will be determined, expected to be 6.00 pm on the day which is two days prior to the date of the Court Meeting or, if the Court Meeting is adjourned, 6.00 pm on the day which is two days prior to the day of such adjourned meeting
<b>“Wider AspenTech Group”</b>	means AspenTech and its subsidiary undertakings, associated undertakings and any other undertaking, body corporate, partnership, joint venture or person in which AspenTech and/or such undertakings (aggregating their interests) have a direct or indirect interest in 20% or more of the voting rights or equity share capital (as defined in the Companies Act) or the equivalent
<b>“Wider KBC Group”</b>	means KBC and its subsidiary undertakings, associated undertakings and any other undertaking, body corporate, partnership, joint venture or person in which KBC and/or such undertakings (aggregating their interests) have a direct or indirect interest in 20% or more of the voting rights or equity share capital (as defined in the Companies Act) or the equivalent

- (i) All times referred to are London time unless otherwise stated.
- (ii) All references to “GBP”, “pence”, “pounds sterling” or “£” are to the lawful currency of the United Kingdom.
- (iii) All references to “US dollar”, “USD”, “US\$” or “\$” are to the lawful currency of the United States.

- (iv) All references to statutory provision or law or to any order or regulation shall be construed as a reference to that provision, law, order or regulation as extended, modified, replaced or re-enacted from time to time and all statutory instruments, regulations and orders from time to time made thereunder or deriving validity therefrom.



## 364-DAY BRIDGE CREDIT AGREEMENT

dated as of

January 12, 2016,

Among

ASPEN TECHNOLOGY, INC.,  
as Borrower,

The LENDERS Party Hereto,

and

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent\_\_\_\_\_  
J.P. MORGAN SECURITIES LLC,  
as Sole Lead Arranger and Sole Bookrunner**Table of Contents**

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Exhibit G	—	Form of Closing Certificates
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The parties hereto agree 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.

“Acceptance Condition” means, in respect of a Takeover Offer, the condition to the Takeover Offer with respect to the number of acceptances to the Takeover Offer which must be secured to declare the Takeover Offer unconditional as to acceptances (as set out in the Offer Press Announcement and which shall be acceptances having been received that would, when aggregated with all Target Shares (excluding shares held in treasury) directly or indirectly owned by the Borrower, result in the Borrower (directly or indirectly) holding shares representing at least 75 of all Target Shares (excluding any shares held in treasury) as at the date on which the Takeover Offer is declared unconditional as to acceptances).

“Adjusted LIBO Rate” means with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) 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.

“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 364-Day Bridge Credit Agreement, as the same may be modified, amended, restated 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 Federal Funds Effective 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 U.S. Dollars with a maturity of one month plus 1%. For purposes of clause (c) above, the Adjusted LIBO Rate on any day shall be based on the rate per annum determined in accordance with the definition of “LIBO Rate” herein, as the screen or quoted rate at approximately 11:00 a.m., London time, on such day for deposits in U.S. Dollars with a maturity of one month. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“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 Funding Account” means the applicable account of the Borrower that shall be specified in a written notice signed by a Financial Officer and delivered to (and, in the case of any account located outside the United States, reasonably approved by) the Administrative Agent pursuant to Section 4.01(g).

“Applicable Rate” means, (i) from the Closing 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 Closing Date, the Applicable Rate under Level II below shall apply and (ii) thereafter, (a) with respect to any Eurocurrency Loan, the applicable rate per annum set forth below under the caption “Applicable Rate — Eurocurrency 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 (b) 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):

Status	Leverage Ratio	Applicable Rate— Eurocurrency Loans	Applicable Rate — ABR Loans
Level I	Less than or equal to 0.50 to 1.00	1.75%	0.75%
Level II	Greater than 0.50 to 1.00, but less than or equal to 1.25 to 1.00	2.00%	1.00%
Level III	Greater than 1.25 to 1.00, but less than or equal to 2.25 to 1.00	2.25%	1.25%
Level IV	Greater than 2.25 to 1.00	2.50%	1.50%

“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 J.P. Morgan Securities LLC in its capacity as sole lead arranger and sole bookrunner for the credit facilities provided for herein.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee, with the consent of any Person 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 starting on the Closing Date and ending on the Commitment Termination Date.

“Bankruptcy Event” means, with respect to any Person, that such Person has become the subject of a 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.

“BidCo” means ATI Global Optimisation Ltd., an English private limited company and a wholly-owned subsidiary of the Borrower.

“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 made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” means \$5,000,000.

“Borrowing Multiple” means \$1,000,000.

“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.

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“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, when used in connection with a Eurocurrency Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in deposits in U.S. Dollars in the London interbank market.

“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 (without giving effect to any subsequent changes in GAAP arising out of a change described in the Proposed Accounting Standards Update to Leases (Topic 840) dated August 17, 2010, or a substantially similar pronouncement). 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.

“Certain Funds Commitments” means any commitment to lend provided by a bank or other financial institution to finance the Target Acquisition that is subject to conditions no more restrictive in substance than those contained in Section 4.02.

“Certain Funds Default” means an Event of Default arising from any of the following with respect to the Borrower and BidCo only:

(a) clauses (a) and (b)(i) of Article VII;

(b) clause (c) of Article VII as it relates to a Certain Funds Representation;

(c) clause (d) of Article VII as it relates to the failure to perform any of the following covenants: (i) Section 5.04 (with respect to the existence of the Borrower), (ii) Section 5.18 (other than paragraphs (f), (i) and (j) thereof), (iii) Section 6.01, (iv) Section 6.02, (v) Section 6.03, (vi) Section 6.04, (vii) Section 6.05 and (viii) Section 6.08(a);

(d) clauses (h), (i) and (j) of Article VII in relation the Borrower or any Guarantor, but excluding, in relation to involuntary proceedings, any Event of

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Default caused by a frivolous or vexatious (and in either case, lacking in merit) action, proceeding or petition in respect of which no order or decree in respect of such involuntary proceeding shall have been entered; or

(e) clause (n) of Article VII.

“Certain Funds Period” means the period commencing on the Effective Date and ending on the date on which a Mandatory Cancellation Event occurs or exists, for the avoidance of doubt, on such date but immediately after the relevant Mandatory Cancellation Event occurs or first exists.

“Certain Funds Purposes” means:

(a) where the Target Acquisition proceeds by way of a Scheme:

(i) payment (directly or indirectly) of the cash price payable by the Borrower to the holders of the Scheme Shares in consideration of such Scheme Shares being acquired by the Borrower;

(ii) financing (directly or indirectly) the consideration payable to holders of options to acquire Target Shares pursuant to any proposal in respect of those options as required by the City Code;

(iii) financing (directly or indirectly) the fees, costs and expenses in respect of the Transactions; and

(iv) repayment of Existing Target Indebtedness; or

(b) where the Target Acquisition proceeds by way of a Takeover Offer:

(i) payment (directly or indirectly) of all or part of the cash price payable by the Borrower to the holders of the Target Shares subject to the Takeover Offer in consideration of the acquisition of such Target Shares pursuant to the Takeover Offer;

(ii) payment (directly or indirectly) of the cash consideration payable to the holders of Target Shares pursuant to the operation by the Borrower of the procedures contained in Sections 979 to 981 of the Companies Act 2006;

(iii) financing (directly or indirectly) the consideration payable to holders of options to acquire Target Shares pursuant to any proposal in respect of those options as required by the City Code;

(iv) financing (directly or indirectly) the fees, costs and expenses in respect of the Transactions; and

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(v) repayment of Existing Target Indebtedness.

“Certain Funds Replacement Credit Agreement” means any credit agreement which includes Certain Funds Commitments.

“Certain Funds Representations” means each of the representations set out in Sections 3.01(a), 3.02 (but only as it relates to due authorization of the Transactions), 3.03(a) (but only as it relates to receipt of required Governmental Authority approvals as of the Effective Date or the Closing Date), 3.03(b), 3.03(c), 3.20 (but excluding the first sentence thereof), and 3.21 (but only to the extent Sections 3.20 and 3.21 relate to the then current actual method of the Target Acquisition) in each case only insofar as such representations apply to the Borrower and BidCo only.

“Certain Funds Termination Date” means the first date on which a Mandatory Cancellation Event occurs or exists.

“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 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 Closing 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.

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“Charges” has the meaning set forth in Section 9.13.

“City Code” means the City Code on Takeovers and Mergers.

“Clean-Up Date” has the meaning set forth in Article VII.

“Closing Date” means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Section 9.02).

“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.

“Collateral Agreement” means the U.S. Collateral Agreement.

“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 Closing 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 paragraphs (d)(i), (d)(ii) and (d)(iii) of Section 4.01 and, to the extent reasonably requested by the Administrative Agent, opinions of the type referred to in paragraph (d)(iv) of Section 4.01, 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;

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(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 (x) Section 5.17 to satisfy the Collateral and Guarantee Requirement with respect to the items specified in Schedule 5.17 and (y) Section 5.11 to satisfy the Collateral and Collateral Requirement with respect to Designated Subsidiaries newly acquired or formed (or which first become Designated Subsidiaries) after the Closing Date and with respect to assets acquired after the Closing 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

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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 Closing 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 Closing Date or in connection with assets acquired, or Designated Subsidiaries formed or acquired, after the Closing 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

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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 with respect to any Lender, such Lender's Initial Term Loan Commitment.

"Commitment Register" means the register agreed to by the Borrower and the Administrative Agent prior to the issuance of a Press Release or, as the case may be, an Offer Press Announcement, and, with respect to the portion applicable to such Lender, furnished to the Lenders party hereto as of the Closing Date, setting forth the Initial Term Loan Commitments of the Lenders on the Closing Date.

"Commitment Termination Date" means the date on which a Mandatory Cancellation Event occurs or exists, for the avoidance of doubt, on such date but immediately after the relevant Mandatory Cancellation Event occurs or first exists.

"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.

"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 EBITDA" means, for any period, Consolidated Net Income for such period, plus without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of:

- (a)
  - (i) Consolidated Interest Expense for such period (including imputed interest expense in respect of Capital Lease Obligations),
  - (ii) provision for taxes based on income, profits or losses, including foreign withholding taxes, and for corporate franchise, capital stock, net worth and value-added taxes, in each case during such period,
  - (iii) all amounts attributable to depreciation, depletion and amortization for such period (excluding amortization expense attributable to a prepaid cash expense that was paid in a prior period),
  - (iv) any extraordinary losses or charges for such period, determined on a consolidated basis in accordance with GAAP,
  - (v) any Non-Cash Charges for such period; provided that any cash payment made with respect to any Non-Cash Charges added back in computing Consolidated EBITDA for any prior period pursuant to this clause (a)(v) (or that would have been added back had this Agreement

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been in effect during such prior period) shall be subtracted in computing Consolidated EBITDA for the period in which such cash payment is made,

- (vi) any losses for such period attributable to early extinguishment of Indebtedness or obligations under any Hedging Agreement,



- (vii) any unrealized losses for such period attributable to the application of “mark to market” accounting in respect of Hedging Agreements,
  - (viii) the cumulative effect for such period of a change in accounting principles,
  - (ix) 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,
  - (x) any integration costs related to the Transactions and any Permitted Acquisitions or other Specified Transactions; provided that any such amount added back pursuant to this clause (x), together with any amount added back pursuant to clause (xiii) below, shall not exceed an amount equal to 15% of Consolidated EBITDA, calculated after giving effect to such add-back for the Test Period most recently ended prior to the date of determination,
  - (xi) any impact for expenses related to an asset acquisition that would have otherwise been capitalized if it were treated as the acquisition of a business, in each case, consistent with past practices,
  - (xii) any revenue that would have been recognized but for a reduction related to the application of purchase accounting (including, without limitation, revenues of the Target or of any target for a Permitted Acquisition or Specified Transaction),
  - (xiii) any impact from restructuring charges or impairment charges, provided that cash impact is included in Consolidated EBITDA when any such amount is actually paid; provided further that any such amount added back pursuant to this clause (xiii), together with any amount added back pursuant to clause (x) above, shall not exceed an amount equal to 15% of Consolidated EBITDA, calculated after giving effect to such add-back for the Test Period most recently ended prior to the date of determination; minus
- (b) without duplication and to the extent included in determining such Consolidated Net Income:

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- (i) any extraordinary gains for such period, determined on a consolidated basis in accordance with GAAP,
- (ii) any non-cash gains for such period, including with respect to write-ups of assets or goodwill, determined on a consolidated basis in accordance with GAAP,
- (iii) any gains attributable to the early extinguishment of Indebtedness or obligations under any Hedging Agreement, determined on a consolidated basis in accordance with GAAP,
- (iv) the cumulative effect for such period of a change in accounting principles; and
- (v) any unrealized gains for such period attributable to the application of “mark to market” accounting in respect of Hedging Agreements.

provided further that, Consolidated EBITDA for any period shall be calculated (A) so as to exclude (without duplication of any adjustment referred to above) non-cash foreign translation gains and losses and (B) with respect to changes in accounting standards, in accordance with Section 1.04.

“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 Net Income” means, for any period, the net income or loss of the Borrower and its consolidated Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income of any Person (other than the Borrower) that is not a consolidated Subsidiary except to the extent of the amount of cash dividends or other cash distributions actually paid by such Person to the Borrower or, subject to clauses (b) and (c) of this proviso, any consolidated Subsidiary during such period, (b) the income of, and any amounts referred to in clause (a) of this proviso paid to, any Subsidiary (other than a Loan Party) to the extent that, on the date of determination, the declaration or payment of cash dividends or other cash distributions by such Subsidiary of that income is not at the time permitted by a Requirement of Law or any agreement or instrument applicable to such Subsidiary, unless such restrictions with respect to the payment of cash dividends and other cash distributions have been legally and effectively waived, and (c) the income or loss of, and any amounts referred to in clause (a) of this proviso paid to, any consolidated Subsidiary that is not wholly-owned by the Borrower to the extent such income or loss or such amounts are attributable to the noncontrolling interest in such consolidated Subsidiary.

“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.

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“Court” means the Companies Court in the Chancery Division of the High Court of Justice of England and Wales.

“Court Meeting” means the meeting or meetings of Scheme Shareholders (or any adjournment thereof) to be convened at the direction of the Court for the purposes of considering and, if thought fit, approving the Scheme.

“Court Order” means the perfected Order of the Court sanctioning the Scheme.

“Credit Party” means the Administrative Agent and each Lender.

“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, subject to Section 2.20(b), any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans or (ii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified in such writing, including, if applicable, by reference to a specific Default and supported by reasonable background information provided by such Lender in writing) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent to funding (specifically identified in such writing, including, if applicable, by reference to a specific Default and supported by reasonable background information provided by such Lender in writing) cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, made in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund Loans under this Agreement; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s receipt of such written certification, (d) has become the subject of a Bankruptcy Event or (e) has had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or its Lender Parent by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the

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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 2.20) upon delivery of written notice of such determination to the Borrower and each Lender.

“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 Closing Date, the Closing 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

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Administrative Agent prior to the Effective Date, (ii) the competitors of the Borrower and the Subsidiaries (including the Target and its 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.

“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.

“Effective Date” means the date the conditions set forth in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Effective Date Guarantor” means each entity listed on Schedule 1.01(b).

“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 or (ii) except to the extent permitted under Section 9.04(e), 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

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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.

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“Escrow Account” means any account established for the purpose of depositing funds prior to their being applied towards Certain Funds Purposes, which shall be subject to conditions no more restrictive in substance than those contained in Section 4.02

“Eurocurrency”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning set forth in Article VII.

“Exchange Act” means the United States Securities Exchange Act of 1934.

“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 constitute Collateral).

“Excluded Equity Interests” means (a) any Equity Interests described on Schedule 1.01(a), (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

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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 Sources” means (a) proceeds of any incurrence or issuance of Long-Term Indebtedness or Capital Lease Obligations, (b) the Net Proceeds of any Disposition of assets made in reliance on Section 6.05(k), and (c) proceeds of any issuance or sale of Equity Interests in the Borrower or any capital contributions to the Borrower.

“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 Closing Date, in each case that is prohibited by Requirements of Law from guaranteeing the Loan Document Obligations and (ii) 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.

“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 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such

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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 2.17(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Target Indebtedness” means Indebtedness of Target existing on the Closing Date.

“FATCA” means Sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, 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 weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Filing Date” means the date on which the Court Order and Minute are delivered to the Registrar of Companies of England for registration.

“Financial Officer” means, with respect to any Person, the chief executive officer, chief financial officer, principal accounting officer or treasurer of such Person.

“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.

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“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.

“General Meeting” means the general meeting of the holders of Target Shares (or any adjournment thereof) to be convened in connection with the implementation of a Scheme.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, registrations and filings with, and reports to, Governmental Authorities.

“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 Guarantee Agreement among the Borrower, the other Loan Parties and the Administrative Agent, substantially in the form of Exhibit H.

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“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.

“Impacted Interest Period” has the meaning set forth in the definition of LIBO Rate.

“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. 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).

"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 U.S. Collateral Agreement.

"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 (i) the amortization of debt discounts, (ii) the amortization of all fees (including fees with respect to Hedge Agreements (other than as set forth below)) payable in connection with the incurrence of Indebtedness to the extent included in interest expense, (iii) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense and (iv) 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 Hedge 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 Hedge Agreements.

"Initial Term Loan" means a Loan made pursuant to clause (a) of Section 2.01.

"Initial Term Loan Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Initial Term Loans during the Availability Period, expressed as an amount representing the maximum aggregate principal amount of the Initial Term Loans to be made by such Lender, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 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 Initial Term Loan Commitment is set forth in the Commitment Register or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Initial Term Loan Commitment, as applicable. The initial aggregate amount of the Lenders' Initial Term Loan Commitments is \$140,000,000.

"Interest Coverage Ratio" means, as of the end of any Fiscal Quarter of the Borrower, the ratio of Consolidated EBITDA to Consolidated Interest Expense (excluding non-cash interest), in each case, as calculated for the Test Period then ending; provided that the Interest Coverage Ratio shall be calculated on an annualized basis for the first three Fiscal Quarters ending after the Closing Date.

"Interest Election Request" means a request by the Borrower to convert or continue a Term Loan Borrowing in accordance with Section 2.07, 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 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 Eurocurrency 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 Eurocurrency Borrowing with an Interest Period of more than three months' duration, such day or days prior to the last day of such Interest Period as shall occur at intervals of three months' duration after the first day of such Interest Period.

"Interest Period" means, with respect to any Eurocurrency 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 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, the rate per annum 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 applicable Screen Rate for the longest period (for which that Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) 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

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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 Closing 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 U.S. 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 U.S. Collateral Agreement.

“IRS” means the United States Internal Revenue Service.

“Judgment Currency” has the meaning set forth in Section 9.18(b).

“Lender Parent” means, with respect to any Lender, any Person in respect of which such Lender is a subsidiary.

“Lenders” means the Persons listed in the Commitment Register and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that shall have ceased to be a party hereto pursuant to an Assignment and Assumption.

“Leverage Ratio” means, on any date of determination, the ratio of (a) an amount equal to Total Indebtedness as of such date to (b) Consolidated EBITDA for the Test Period recently ended on or prior to such date; provided that the Leverage Ratio shall be calculated on an annualized basis for the first three Fiscal Quarters ending after the Closing Date.

“LIBO Rate” means, with respect to any Eurocurrency Borrowing for any Interest Period, (a) the applicable Screen Rate, (b) if the applicable Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”), then the LIBO Rate shall be the Interpolated Rate at such time or (c) if no Screen Rate is available, the arithmetic mean (rounded up to four decimal places) of the rates quoted by the Administrative Agent to leading banks in the London interbank market for the offering of deposits in U.S. Dollars for such Interest Period, in each case as of 11:00 a.m. London time, two Business Days prior to the commencement of such Interest Period; provided that the LIBO Rate shall never be less than zero with respect to any Loans.

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“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 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 and, except for purposes of Section 9.02, any promissory notes delivered pursuant to Section 2.09(c) (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.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Local Time” means New York City time.

“Long-Term Indebtedness” means any Indebtedness that, in accordance with GAAP, constitutes (or, when incurred, constituted) a long-term liability.

“Long Stop Date” means the date that is 4 months after the Effective Date.

“Mandatory Cancellation Event” means the occurrence of any of the following conditions or events:

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(a) where the Target Acquisition proceeds by way of a Scheme:

(i) a Court Meeting is held (and not adjourned or otherwise postponed) to approve the Scheme at which a vote is held to approve the Scheme, but the Scheme is not so approved by the requisite majority of the Scheme Shareholders at such Court Meeting;

(ii) a General Meeting is held (and not adjourned or otherwise postponed) to pass the Scheme Resolutions at which a vote is held on the Scheme Resolutions, but the Scheme Resolutions are not passed by the shareholders of the Target at such General Meeting;

(iii) applications for the issuance of the Court Order are made to the Court (and not adjourned or otherwise postponed) but the Court (in its final judgment) refuses to grant the Court Order;

(iv) the Scheme lapses or is withdrawn with the consent of the Panel or by order of the Court;

(v) a Court Order is issued but not filed with the Registrar within five Business Days of its issuance; or

(vi) the date which is 15 days after the Scheme Effective Date,

unless, in respect of clauses (i) to (v) inclusive above, for the purpose of switching from a Scheme to a Takeover Offer, within five Business Days of such event the Borrower has notified the Administrative Agent it intends to issue, and then within ten Business Days after delivery of such notice does issue, an Offer Press Announcement and provides a copy to the Administrative Agent (in which case no Mandatory Cancellation Event shall have occurred);

(b) where the Target Acquisition proceeds by way of a Takeover Offer:

(i) such Takeover Offer lapses, terminates or is withdrawn with the consent of the Panel unless, for the purpose of switching from a Takeover Offer to a Scheme, within 5 Business Days of such event the Borrower has notified the Administrative Agent it intends to issue, and then within 10 Business Days after delivery of such notice does issue, a Press Release and provides a copy to the Administrative Agent (in which case no Mandatory Cancellation Event shall have occurred);

(ii) the date which is six weeks after the date (or to the extent necessary to address a minority shareholder’s application to Court in protest thereof and written notice is provided to the Administrative Agent on or prior to the end of such initial six week period, twelve weeks after the date) that the Borrower serves notice under Section 979 of the Companies Act 2006 to buy out minority shareholders;

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(iii) the date upon which all payments made or to be made for Certain Funds Purposes have been paid in full in cleared funds;

or

(iv) the Long Stop Date.



“Material Adverse Effect” means an event or condition (other than one relating to the Target Group) 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 legality, validity or enforceability of 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 the Term Maturity Date.

“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.

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“Net Proceeds” means, with respect to any event, (a) the cash proceeds (which term, for purposes of this definition, shall include Permitted Investments) (including, in the case of any casualty, condemnation or similar proceeding, insurance, condemnation or similar proceeds) received in respect of such event, including any cash received in respect of any noncash proceeds, but only as and when received, net of (b) the sum, without duplication, of (i) all fees and out-of-pocket expenses paid in connection with such event by the Borrower and the Subsidiaries, (ii) in the case of a Disposition (including pursuant to a Sale/Leaseback Transaction or a casualty or a condemnation or similar proceeding) of an asset, (A) the amount of all payments required to be made by the Borrower and the Subsidiaries as a result of such event to repay Indebtedness (other than Loans) secured by such asset, (B) the pro rata portion of net cash proceeds thereof (calculated without regard to this subclause (B)) attributable to minority interests and not available for distribution to or for the account of the Borrower and the Subsidiaries as a result thereof, and (C) the amount of any liabilities directly associated with such asset and retained by the Borrower or any Subsidiary and (iii) the amount of all taxes paid (or reasonably estimated to be payable) by the Borrower and the Subsidiaries (including any taxes paid or payable in connection with transferring or distributing any such amounts to the Borrower or any other Loan Party), and the amount of any reserves established by the Borrower and the Subsidiaries in accordance with GAAP to fund purchase price adjustment, indemnification and similar contingent liabilities (other than any earnout, holdback or similar obligations) reasonably estimated to be payable and that are attributable to the occurrence of such event (as determined reasonably and in good faith by a Financial Officer of the Borrower). For purposes of this definition, in the event any taxes estimated to be payable with respect to any event as described in clause (b)(iii) above are determined by the Borrower or the applicable Subsidiary not to be payable or any contingent liability reserve established with respect to any event as described in clause (b)(iii) above shall be reduced, in an aggregate amount equal to or greater than \$5,000,000, the amount of such estimated taxes not payable or reduction shall, except to the extent such reduction is made as a result of a payment having been made in respect of the contingent liabilities with respect to which such reserve has been established, be deemed to be receipt, on the date of such determination or reduction, of cash proceeds in respect of such event.

“Non-Cash Charges” means any non-cash charges, including (a) any write-off for impairment of long lived assets (including goodwill, intangible assets and fixed assets such as property, plant and equipment), or of deferred financing fees or investments in debt and equity securities, in each case, pursuant to GAAP, (b) non-cash expenses resulting from the grant of stock options, restricted stock awards or other equity-based incentives to any director, officer or employee of the Borrower or any Subsidiary (excluding, for the avoidance of doubt, any cash payments of income taxes made for the benefit of any such Person in consideration of the surrender of any portion of such options, stock or other incentives upon the exercise or vesting thereof), (c) any non-cash charges resulting from (i) the application of purchase accounting or (ii) investments in minority interests in a Person, to the extent that such investments are subject to the equity method of accounting; provided that Non-Cash Charges shall not include additions to bad debt reserves or bad debt expense and any noncash charge that results from the write-down or write-off of accounts receivable, (d) the non-cash impact

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of accounting changes or restatements and (e) non-cash charges and expenses resulting from pension adjustments.

“Non-Consenting Lender” has the meaning set forth in Section 9.02(c).

“Obligations” means, collectively, (a) the Loan Document Obligations, (b) the Secured Cash Management Obligations and (c) the Secured Hedging Obligations.

“OFAC” means the United States Treasury Department Office of Foreign Assets Control.

“Offer Documents” means the Takeover Offer Document and the Offer Press Announcement.

“Offer Press Announcement” means a press announcement released by or on behalf of the Borrower announcing that the Target Acquisition is to be effected by a Takeover Offer and setting out the terms and conditions of the Takeover Offer.

“Original Offer Press Announcement” has the meaning specified in Section 5.18(a).

“Original Press Release” has the meaning specified in Section 5.18(a).

“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 2.19).

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“Panel” means the Panel on Takeovers and Mergers.

“Participant” has the meaning set forth in Section 9.04(c).

“Participant Register” has the meaning set forth in Section 9.04(c).

“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. For the avoidance of doubt, the Target Acquisition shall be deemed to be a Permitted Acquisition for all purposes under this Agreement.

“Permitted Amount” means, as of any date, (a) \$25,000,000 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(i) 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:

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(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 or are being contested in compliance with Section 5.05;

(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 clause (k) of Article VII;

(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

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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;

(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;

(o) Deposits in the ordinary course of business to secure liability to insurance carriers; and

(p) Precautionary financing statement filings.

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, other than Liens referred to 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

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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 Effective Date (as may be modified by the Borrower after the 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

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under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” has the meaning set forth in Section 9.01(d).

“Prepayment Event” means:

(a) any Disposition (including pursuant to a sale and leaseback transaction and by way of merger or consolidation) (for purposes of this defined term, collectively, “dispositions”) of any asset of the Borrower or any Subsidiary, other than (i) dispositions described in clauses (a) through (j) and (l) through (o) of Section 6.05 and (ii) other dispositions resulting in aggregate Net Proceeds not exceeding \$20,000,000 for all such dispositions during the term of this Agreement;

(b) [Reserved];

(c) (i) the incurrence by the Borrower or any Subsidiary of any Indebtedness, other than any Indebtedness permitted to be incurred under Section 6.01 (except for Indebtedness incurred under Section 6.01(g) during the Certain Funds Period), (ii) the entry by the Borrower or any of its Subsidiaries into a Certain Funds Replacement Credit Agreement (to the extent of any Certain Funds Commitments available thereunder) or (iii) the incurrence by the Borrower or any Subsidiary of any Indebtedness under Section 6.01(g) (including, but not limited to, loans drawn under a Replacement Credit Agreement) during the Certain Funds Period, which funds shall be required to be placed into an Escrow Account within one Business Day after such incurrence; or

(d) the receipt by the Borrower or any Subsidiary of Net Proceeds from the issuance of any Equity Interests (including hybrid or convertible equity interests) other than (i) issuances pursuant to stock plans or other benefit or incentive plans and (ii) issuances to the Borrower or any Subsidiary,

other than any of the events in paragraphs (a) to (d) inclusive above occurring during the Certain Funds Period with respect to any member of the Target Group.

“Press Release” means a press announcement released by or on behalf of the Borrower announcing that the Target Acquisition is to be effected by a Scheme and setting out the terms and conditions of the Scheme.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Private Side Lender Representatives” means, with respect to any Lender, representatives of such Lender that are not Public Side Lender Representatives.

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“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” or designation of an Unrestricted Subsidiary as a Subsidiary, 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 Forma Financials” has the meaning set forth in Section 4.02(g).

“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(c).

“Public Side Lender Representatives” means, with respect to any Lender, representatives of such Lender that do not wish to receive MNPI.

“Purchasing Borrower Party” means any of the Borrower or any Subsidiary.

“Qualified Equity Interests” means Equity Interests of the Borrower other than Disqualified Equity Interests.

“Recipient” means the Administrative Agent and any Lender, or any combination thereof (as the context requires).

“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

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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 Term 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(b)(iv).

“Registrar” means the Registrar of Companies for England and Wales.

“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.

“Replacement Credit Agreement” means any credit agreement entered into by the Borrower or any of its Subsidiaries after the Effective Date (i) pursuant to Section 6.01(g) or (ii) in violation of this Agreement.

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“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 (a) from the Effective Date until the Closing Date, Lenders having unused Commitments representing more than 50% of the sum of the aggregate unused Commitments at such time (excluding for purposes of any such calculation Defaulting Lenders) and (b) from the Closing Date and thereafter, Lenders having Term Loans representing more than 50% of the sum of the aggregate outstanding Term Loans at such time (excluding for purposes of any such calculation Defaulting Lenders).

“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.

“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.

“S&P” means Standard & Poor’s Financial Services LLC.

“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.

“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, Cuba, Iran, North Korea, Sudan 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.

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“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.

“Scheme” means a scheme of arrangement under Part 26 of the Companies Act 2006 between Target and the Scheme Shareholders pursuant to which the Borrower and its nominees will become the holder of all of the Scheme Shares in accordance with the Scheme Documents, subject to such changes and amendments to the extent not prohibited by the Loan Documents.

“Scheme Circular” means the document issued by or on behalf of the Target to shareholders of the Target setting out the terms and conditions of and an explanatory statement in relation to the Scheme, stating the recommendation of the Target Acquisition and the Scheme to the shareholders of the Target by the board of directors of the Target and setting out the notices of the Court Meeting and the General Meeting as such document may be amended from time to time to the extent such amendment is not prohibited by the Loan Documents.

“Scheme Documents” means, collectively, (i) the Scheme Circular, (ii) the Press Release, (iii) the Scheme Resolutions and (iv) any other document issued by or on behalf of Target to its shareholders in respect of the Scheme and any other document designated as a “Scheme Document” by the Administrative Agent and the Borrower (or any of its Affiliates).

“Scheme Effective Date” means the date on which the Court Order sanctioning the Scheme is duly delivered on behalf of the Target to the Registrar.

“Scheme Resolutions” means the resolutions of the Target Shareholders which are required to implement the Scheme and which are referred to and substantially in the form set out in the Scheme Circular and which are to be proposed at the General Meeting.

“Scheme Shareholders” means the registered holders of Scheme Shares at the relevant time.

“Scheme Shares” means the Target Shares which are subject to the Scheme in accordance with its terms.

“Screen Rate” means for any Interest Period, the Intercontinental Exchange Benchmark Administration Ltd. rate for U.S. Dollars and such Interest Period as set forth on the applicable page of the Reuters Service (and if such page is replaced or such service ceases to be available, another page or service displaying the appropriate rate designated by the Administrative Agent after consultation with the Borrower).

“SEC” means the United States Securities and Exchange Commission.

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“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 Closing Date, entered into with a party that was a Lender as of the Closing Date or an Affiliate thereof, or (b) are owed pursuant to a Cash Management Agreement entered into after the Closing 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 Closing Date with a counterparty that was a Lender as of the Closing Date or an Affiliate thereof, or (b) is entered into after the Closing 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 Parties” means, collectively, (a) the Lenders, (b) the Administrative Agent, (c) the Arranger, (d) each provider of Cash Management Services under a Cash Management Agreement the obligations under which constitute Secured Cash Management Obligations, (e) each counterparty to any Hedging Agreement the obligations under which constitute Secured Hedging Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under this Agreement or any other Loan Document and (g) 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 5.17 or the requirements of the Collateral and Guarantee Requirement to secure the Obligations.

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“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 15% 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 15% 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 15% of the consolidated total assets of the Borrower and its Subsidiaries or 15% 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 (it being understood that no Subsidiary that is not wholly-owned or is otherwise an Excluded Subsidiary pursuant to the operation of clauses (b) or (c) of the definition thereof shall be designated a Significant Subsidiary pursuant to this proviso so long as there are other Subsidiaries that are not Significant Subsidiaries, are wholly-owned and are not otherwise Excluded Subsidiaries pursuant to the operation of clauses (b) or (c) of the definition thereof).

“Software” has the meaning set forth in the U.S. Collateral Agreement.

“Specified Transaction” means, with respect to any period, any Investment, acquisition (including the Target 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. Eurocurrency 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.

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“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.

“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.

“Subsidiary Designation” has the meaning set forth in Section 1.04(b).

“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.

“Takeover Offer” means an offer by the Borrower in accordance with the City Code to acquire all of the Target Shares not already held by it at the date of the offer (within the meaning of Section 975 of the Companies Act 2006), substantially on the terms and conditions set out in an Offer Press Announcement (as such offer may be amended in any way which is not prohibited by the terms of the Loan Documents).

“Takeover Offer Document” means the document issued by or on behalf of the Borrower and dispatched to shareholders of the Target in respect of a Takeover Offer containing the terms and conditions of the Takeover Offer and reflecting the Offer Press Announcement in all material respects as such document may be amended from time to time to the extent such amendment is not prohibited by the Loan Documents.

“Target” means KBC Advanced Technologies plc (company number 01357958 - 42-50 Hersham Road, Walton On Thames, Surrey, KT12 1RZ).

“Target Acquisition” means the acquisition by the Borrower (directly or indirectly) of all the outstanding Equity Interests in Target which are subject to the Scheme or Takeover Offer (as the case may be) pursuant to the Offer Documents or Scheme Documents, as applicable, which acquisition will be effected pursuant to a Scheme or a Takeover Offer.

“Target Group” means the Target and its Subsidiaries.

“Target Shares” means all of the issued share capital of the Target.

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“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 Commitment” means an Initial Term Loan Commitment.

“Term Lender” means a Lender with a Term Commitment or an outstanding Term Loan.

“Term Loan” means an Initial Term Loan.

“Term Maturity Date” means the date that is 364 days after the Closing Date.

“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(a), 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 Effective Date and Closing Date, as applicable.

“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 and perfection of the security interests provided for in the Security Documents, (c) the consummation of the Target Acquisition and (d) 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.

“U.S. Collateral Agreement” means the 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.

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“U.S. Dollars” or “\$” refers to lawful money of the United States of America.

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

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 2.17(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.



SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Type (e.g., a “Eurocurrency Loan” or “Eurocurrency 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,

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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 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 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 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,

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Consolidated EBITDA, 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).

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.

## ARTICLE II

### The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Term Loans in U.S. Dollars to the Borrower from time to time within the Availability Period in an aggregate principal amount not exceeding its Initial Term Loan Commitment. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed.

SECTION 2.02. Loans and Borrowings. (a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their Commitments. 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 2.14, each Term Loan Borrowing shall be comprised entirely of ABR Loans or Eurocurrency Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that

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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 Eurocurrency Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; provided that a Eurocurrency Borrowing that results from a continuation of an outstanding Eurocurrency Borrowing may be in an aggregate amount that is equal to such outstanding Borrowing. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$5,000,000 and not less than \$1,000,000. Borrowings of more than one Type may be outstanding at the same time.

(d) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert to or continue, any Eurocurrency Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date applicable thereto.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by hand delivery or facsimile to the Administrative Agent of an executed written Borrowing Request (a) in the case of a Eurocurrency Borrowing, not later than 11:00 a.m., Local Time, three Business Days before the date of the proposed Borrowing (or such shorter period of time as may be agreed to by the Administrative Agent and the Lenders) or (b) in the case of an ABR Borrowing, not later than 11:00 a.m., Local Time, on the day of the proposed Borrowing. Each such Borrowing Request shall be irrevocable. Each such written Borrowing Request for a Term Loan Borrowing shall specify the following information in compliance with Section 2.02:

- (i) [Reserved];
- (ii) the aggregate amount of such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day within the Availability Period;
- (iv) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing;
- (v) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vi) the Applicable Funding Account.

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 Eurocurrency Borrowing, then the Borrower shall be deemed to have selected

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an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, 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. Maximum Number of Loans. No more than a total of ten Term Loans may be outstanding hereunder at any one time during the Availability Period.

SECTION 2.05. [Reserved].

SECTION 2.06. 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 in U.S. Dollars by 2:00 p.m. (or in the case of the Loans to be made on the Closing Date, 9:00 a.m.), Local 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 remitting the amounts so received, in like funds, to the Applicable Funding Account.

(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 2.06 and may, in reliance on 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 a payment to be made by 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 a payment to be made by the Borrower, the interest rate applicable to ABR Term Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays 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 2.07. Interest Elections. (a) Each Borrowing initially shall be of the Type and, in the case of a Eurocurrency Borrowing, shall have an initial Interest Period as specified in the applicable Borrowing Request or as otherwise provided in Section 2.03. Thereafter, the Borrower may elect to convert such

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Borrowing to a Borrowing of a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. 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 2.07, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Term Loan Borrowing of the Type resulting from such election to be made on the effective date of such election (it being understood and agreed that such an election may be made prior to the Closing Date). Each such telephonic Interest Election Request shall be irrevocable and shall, to the extent requested by the Administrative Agent, be confirmed promptly by hand delivery or facsimile to the Administrative Agent of an executed written Interest Election Request. Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

- (i) the Borrowing 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) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and
- (iv) if the resulting Borrowing is to be a Eurocurrency 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 Eurocurrency 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.

(c) Promptly following receipt of an Interest Election Request in accordance with this Section 2.07, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of

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such Interest Period such Borrowing shall be continued as a Eurocurrency Borrowing for an additional Interest Period of one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing with respect to the Borrower, then, so long as such Event of Default is continuing, (i) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing and (ii) unless repaid, each Eurocurrency Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08. Termination and Reduction of Commitments. (a) Unless previously terminated, the Initial Term Loan Commitments shall automatically terminate at 5:00 p.m., New York City time on the earliest of (x) the Long Stop Date, (y) the Certain Funds Termination Date and (z) the date on which all of the Certain Funds Purposes have been achieved without the making of any Initial Term Loans. In the event and on each occasion that any Net Proceeds are received by or on behalf of the Borrower or any Subsidiary in respect of any Prepayment Event during the Certain Funds Period, the Borrower or any such Subsidiary shall deposit such Net Proceeds in an Escrow Account within one Business Day after the receipt of such Net Proceeds, and upon such deposit, the Commitments shall be reduced in an aggregate amount equal to 100% of the amount of such Net Proceeds.

(b) The Borrower may at any time terminate, or from time to time permanently reduce, the Commitments; provided that each partial reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section 2.08 at least three Business Days prior to the effective date of such termination or reduction, specifying 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 2.08 shall be irrevocable. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.09. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Initial Term Loan of such Lender on the Term Maturity Date.

(b) The records maintained by the Administrative Agent and the Lenders shall be prima facie evidence (absent manifest error) of the existence and amounts of the obligations of the Borrower in respect of Loans, interest and fees due or accrued hereunder; provided that the failure of the Administrative Agent or any Lender to maintain such records or any error therein shall not in any manner affect the obligation of the Borrower to pay any amounts due hereunder in accordance with the terms of this Agreement.

(c) 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 (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. 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 (or to such payee and its registered assigns) to the extent requested and required by such Lender.

SECTION 2.10. [Reserved].

SECTION 2.11. Prepayment of 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 the requirements of this Section 2.11.

(b) [Reserved].

(c) In the event and on each occasion that any Net Proceeds (other than from Excluded Sources) are received by or on behalf of the Borrower or any Subsidiary in respect of any Prepayment Event, the Borrower shall, not later than the fifth Business Day following the day such Net Proceeds are received, prepay Term Loan Borrowings in an aggregate amount equal to 100% of the amount of such Net Proceeds;

(d) [Reserved].

(e) Prior to any optional or mandatory prepayment of Borrowings under this Section 2.11, the Borrower shall, subject to the next sentence, specify the Borrowing or Borrowings to be prepaid in the notice of such prepayment delivered pursuant to paragraph (f) of this Section 2.11. Notwithstanding the foregoing, any Term Lender may elect, by notice to the Administrative Agent by telephone (confirmed by hand delivery or facsimile) at least one Business Day (or such shorter period as may be established by the Administrative Agent) prior to the required prepayment date, to decline all or any portion of any prepayment of its Term Loans pursuant to this Section 2.11 (other than an optional prepayment pursuant to paragraph (a) of this Section 2.11, which may not be declined), in which case the aggregate amount of the payment that would have been applied to prepay Term Loans but was so declined shall be retained by the Borrower.

(f) The Borrower shall notify the Administrative Agent by telephone (confirmed by hand delivery or facsimile) of any optional prepayment and, to the extent practicable, any mandatory prepayment hereunder (i) in the case of prepayment of a Eurocurrency Borrowing, not later than 1:00 p.m., Local 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., Local Time, one Business Day (or two Business Days, in the case of a mandatory prepayment) before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each

Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that a notice of prepayment of Term Loans pursuant to paragraph (a) of this Section 2.11 may state that such notice is conditioned upon the occurrence of one or more events specified therein, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified date of prepayment) if such condition is not satisfied. Promptly following receipt of any such notice, 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 Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

SECTION 2.12. Fees.

(a) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(b) All fees payable hereunder shall be paid in U.S. Dollars on the dates due, in immediately available funds, to the Administrative Agent. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. 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 Eurocurrency Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing 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 2.13 or (ii) in the case of any other amount, 2.00% per annum plus the rate applicable to ABR Term Loans as provided in paragraph (a) of this Section 2.13.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section 2.13 shall be payable on written demand, (ii) in the event of any repayment or prepayment of any Loan, 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 a Eurocurrency 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 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). The applicable Alternate Base Rate and Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

(a) the Administrative Agent determines in good faith (which determination shall be conclusive absent manifest error) that adequate and reasonable means (including by means of an Interpolated Rate) do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Eurocurrency Borrowing for such Interest Period;

(c) then the Administrative Agent shall give notice (which may be telephonic) thereof to the Borrower and the Lenders as promptly as practicable 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 Eurocurrency Borrowing shall be ineffective, and (ii) any Borrowing Request for a Eurocurrency Borrowing denominated in U.S. Dollars shall be treated as a request for an ABR Borrowing.

SECTION 2.15. Increased Costs. (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 Eurocurrency Loans made by such Lender; or

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(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) [Reserved].

(d) 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 2.15 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.

(e) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.15 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 2.15 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.

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SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency 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 Eurocurrency Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert or continue any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto, (d) the failure to prepay any Eurocurrency Loan on a date specified therefor in any notice of prepayment given by the Borrower (whether or not such notice may be revoked in accordance with the terms hereof) or (e) the assignment of any Eurocurrency 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 2.19 or 9.02(c), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. 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 that 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 (but not including the Applicable Rate applicable thereto), 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 that would accrue on such principal amount for such period at the interest rate such Lender would bid if it were to bid, at the commencement of such period, for deposits in U.S. Dollars of a comparable amount and period from other banks in the London interbank market. A certificate of any Lender delivered to the Borrower and setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 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 2.17. 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 2.17) 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 reimburse it for the payment of, any Other Taxes.

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(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 2.17, 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 written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) 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 Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such 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.

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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 2.17(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 copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN 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 copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit 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

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Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, 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 copies 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

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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 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), 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 2.17 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 has 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.

SECTION 2.18.

Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) 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 2.15 or 2.17, or otherwise) in U.S. Dollars prior to 1:00 p.m., Local Time, on the date when due, in immediately available funds, without any setoff or counterclaim. All such payments in U.S. Dollars shall be made to the Administrative Agent at its designated office, except payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. Any amounts received after the time required to be received hereunder 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. The Administrative Agent shall distribute any such payment received by it for the account of

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any other Person to the appropriate recipient promptly following receipt thereof. If any payment 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 required to be made by any Loan Party under any Loan Document shall be made in U.S. Dollars except that any amounts payable under Section 2.15, 2.16 or 9.03 (or any indemnification or expense reimbursement provision of any other Loan Document) that are invoiced in a currency other than U.S. Dollars shall be payable in the currency so invoiced.

(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) Except to the extent that this Agreement provides for payments to be disproportionately allocated to or retained by a particular Lender or group of Lenders, each Lender agrees that if it shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall notify the Administrative Agent of such fact and shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the aggregate amount of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amounts of principal of and accrued interest on their Loans; 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 (for the avoidance of doubt, as in effect from time to time), or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any Person that is an Eligible Assignee (as such term is defined from time to time). 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 setoff 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.

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(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 hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the 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 hereunder to or for the account of the Administrative Agent, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations in respect of such payment until all such unsatisfied obligations have been discharged or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender pursuant to Sections 2.06(a), 2.17(e), 2.18(d) and 9.03(c), in each case in such order as shall be determined by the Administrative Agent in its discretion.

SECTION 2.19.

Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if any Loan Party is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to Section 2.17, 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 2.15 or 2.17, 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 2.15, (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 2.17 or (iii) any Lender has become 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), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this

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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 (in the case of such 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 2.15 or payments required to be made pursuant to Section 2.17, 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.

SECTION 2.20. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Waivers and Amendments. The Commitment and Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder or under any other Loan Document (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); provided that any amendment, waiver or other modification requiring the consent of all Lenders or all Lenders affected thereby shall, except as otherwise provided in Section 9.02, require the consent of such Defaulting Lender in accordance with the terms hereof.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will cease to be a Defaulting Lender; provided, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

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### ARTICLE III

#### Representations and Warranties

The Borrower represents and warrants to 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", (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, (iii) the Panel, as directed by the Panel pursuant to the requirements of the City Code and (iv) as contemplated by the Scheme Documents or (as the case may be) the Takeover Offer Documents, (b) will not violate any material 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.

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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, 2013, 2014 and 2015, 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, 2015. 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 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, 2015, 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 Effective Date and the Closing 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

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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 Effective Date and the Closing 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 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

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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 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 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 Effective Date.

SECTION 3.13. Solvency. (i) Immediately after giving effect to the portion of the Transactions that will occur on the Effective Date and (ii) immediately after giving effect to the Transactions that will occur on the Closing 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;

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(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. 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 Effective Date, as of the 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).

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 U.S. 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 U.S. 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 U.S. 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

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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 U.S. 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 U.S. 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 U.S. 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 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, 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

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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 will not violate Anti-Corruption Laws or applicable Sanctions.

SECTION 3.18. Use of Proceeds. The Borrower will use the proceeds of the Term Loans 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. Scheme and Takeover Offer Matters. The Borrower has delivered to the Administrative Agent a complete and correct copy of the Scheme Documents (if and when issued) or, as the case may be, the Offer Documents (if and when issued), including all schedules and exhibits thereto. The release of the Offer Press Announcement and the posting of the Takeover Offer Documents if a Takeover Offer is pursued has been or will be, prior to their release or posting (as the case may be) duly authorized by the Borrower. Each of the material obligations of the Borrower under the Takeover Offer Documents is or will be, when entered into and delivered, the legal, valid and binding obligation of the Borrower, enforceable against such Persons in accordance with its terms in each case, except as may be limited by (a) bankruptcy, insolvency, examination or other similar laws affecting the rights and remedies of creditors generally and (b) general principles of equity.

SECTION 3.21. Press Release and Scheme Circular. The Press Release and the Scheme Circular (in each case if and when issued) when taken as a whole: (a) except for the information that relates to the Target or the Target Group, do not (or will not if and when issued) contain (to the best of its knowledge and belief (having taken all reasonable care to ensure that such is the case)) any statements which are not in accordance with the material facts, or where appropriate, do not omit anything likely to affect the import of such information and (b) contain all the material terms of the Scheme.

#### ARTICLE IV

##### Conditions

SECTION 4.01. Effective Date. Subject to Section 4.04, this Agreement shall become effective on and as of the first date on which the

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following conditions precedent have been satisfied (with the Administrative Agent acting reasonably in assessing whether the conditions precedent are satisfactory) (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 Guarantee Agreement (if applicable) signed on behalf of such party or (ii) written evidence reasonably satisfactory to the Administrative Agent (which may include .pdf or facsimile transmission of a signed signature page of this Agreement and the Guarantee Agreement (if applicable)) that such party has signed a counterpart of this Agreement and the Guarantee Agreement (if applicable).

(b) All fees and other amounts then due and payable by the Borrower to the Administrative Agent, the Lead Arrangers 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 Effective Date and to the extent such amounts are payable on or prior to the Effective Date.

(c) On the Effective Date, the Borrower shall have at least \$115,066,642 cash on hand to consummate the Transactions evidenced by a certificate of the Borrower, dated the Effective Date and delivered to the Administrative Agent, to such effect.

(d) The Administrative Agent shall have received on or before the 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 Effective Date and such Person to enter into and perform its obligations under the Loan Documents to

which it is a party;

(ii) A good standing certificate or similar certificate dated a date reasonably close to the Effective Date from the jurisdiction of formation of each Loan Party, but only where such concept is applicable;

(iii) 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;

(iv) A favorable opinion letter of K&L Gates LLP, special counsel to the Borrower, in form and substance reasonably satisfactory to the Administrative Agent; and

(v) A certificate of the Borrower signed by an officer certifying that (A) each condition set forth in this Section 4.01 shall have been satisfied and (B) each Loan Document to be delivered on the Closing Date is in a form agreed by the Borrower and the Administrative Agent (other than the schedules thereto, which, for the avoidance of doubt, are in the Borrower's control) such that due

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delivery of such Loan Documents will satisfy the conditions precedent in Section 4.02(i) (Closing Date) of the Credit Agreement.

(e) The Administrative Agent shall have received a copy, certified by the Borrower, of a draft of the Press Release or Offer Press Announcement (as applicable, depending upon whether it is proposed to effect the Target Acquisition by way of a Scheme or Takeover Offer) substantially in the form in which it is proposed to be issued.

(f) The Administrative Agent shall have received, at least 3 Business Days prior to the Effective Date all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, in each case relating to the Borrower and its Subsidiaries.

(g) The Applicable Funding Account shall have been specified in a written notice signed by a Financial Officer and delivered to (and, in the case of any account located outside the United States, reasonably approved by) the Administrative Agent.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date in writing promptly upon such conditions precedent being satisfied (or waived in accordance with Section 9.02), and such notice shall be conclusive and binding.

SECTION 4.02. Closing Date. Subject to Section 4.04, the obligation of each Lender to make a Loan on the Closing Date is subject to the satisfaction (or waiver in accordance with Section 9.02) of the following conditions:

(a) The Effective Date shall have occurred.

(b) If the Target Acquisition is effected by way of a Scheme, the Administrative Agent shall have received:

(i) a certificate of the Borrower signed by a director certifying:

(A) the date on which the Scheme Circular was posted to the shareholders of the Target;

(B) the date on which the Court has sanctioned the Scheme and that the Court Order has been duly delivered to the Registrar;

(C) as to the satisfaction of each condition set forth in clauses (d) and (e) (to the extent relating to the Scheme) below; and

(D) each copy of the documents specified in paragraph (ii) below is correct and complete and has not been amended or superseded on or prior to the Closing Date, except to the extent

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such changes thereto have been required pursuant to the City Code or required by the Panel or to the extent not prohibited by the Loan Documents; and

(ii) a copy of the Scheme Circular which is consistent in all material respects with the terms and conditions in the Press Release and the Scheme Resolutions, in each case, except to the extent changes thereto have been required pursuant to the City Code or required by the Panel or by a court of competent jurisdiction or are not prohibited by the Loan Documents.

(c) If the Target Acquisition is effected by way of a Takeover Offer, the Administrative Agent shall have received:

(i) a certificate of the Borrower signed by a director certifying:

(A) the date on which the Takeover Offer Document was posted to the shareholders of the Target;

(B) as to the satisfaction of each condition set forth in clauses (d) and (e) (to the extent relating to the Takeover Offer) below;

(C) each copy of the documents specified in paragraph (ii) below is correct and complete and has not been amended or superseded on or prior to the Closing Date, except to the extent such changes thereto have been required pursuant to the City Code or required by the Panel or are not prohibited by the Loan Documents; and

(D) that the Takeover Offer has been declared unconditional in all respects without any material amendment, modification or waiver of the conditions to the Takeover Offer or of the Acceptance Condition except to the extent not prohibited by the Loan Documents.

(ii) a copy of the Takeover Offer Document which is consistent in all material respects with the terms and conditions in the Offer Press Announcement, except to the extent changes thereto have been required pursuant to the City Code or required by the Panel or are permitted under the Loan Documents.

(d) On the date of the applicable borrowing request and on the proposed date of such borrowing (x) no Certain Funds Default is continuing or would result from the proposed Borrowing and (y) all the Certain Funds Representations are true or, if a Certain Funds Representation does not include a materiality concept, true in all material respects.

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(e) Where the Target Acquisition is to be implemented by way of a Scheme, the Target Acquisition shall have been, or substantially concurrently with the occurrence of the Closing Date shall be, consummated in all material respects in accordance with the terms and conditions of the Scheme Documents (it being understood that substantially concurrently shall include the payment for Scheme Shares being made) or, where the Target Acquisition is to be implemented by way of a Takeover Offer, the Takeover Offer shall have become unconditional in accordance with the terms of the Offer Document, without giving effect to (and there shall not have been) any modifications, amendments, consents, requests or waivers by the Borrower (or its applicable Affiliate) thereunder that are materially adverse to the interests of the Lenders, without the prior written consent of the Administrative Agent, except, in each case, to the extent such modifications, amendments, consents, requests or waivers have been required pursuant to the City Code or the Panel or are not prohibited by the Loan Documents.

(f) The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.03.

(g) The Administrative Agent shall have received a pro forma consolidated balance sheet and related pro forma consolidated statement of income of the Borrower and its Subsidiaries (including the Target Group to the extent available, subject to the provisos below) as of and for the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period ended at least 45 days prior to the Closing Date, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income) (the “Pro Forma Financials”), it being acknowledged that neither the Administrative Agent nor any Lender shall have any approval right as regards to the form or contents of the Pro Forma Financials; provided that the Borrower shall use commercially reasonable efforts to request the Target to provide the financial statements for the Target Group and the Administrative Agent and Lenders acknowledge and agree that the financial statements for the Target Group are prepared in accordance with IFRS (not GAAP); provided, further, that (i) the Borrower shall not be required to make any representation as to the financial statements of the Target Group that have been included in the Pro Forma Financials, other than a representation that the Borrower does not have any actual knowledge of any material misstatement in the financial statements of the Target Group that have been included in the Pro Forma Financials and (ii) the parties agree that the Pro Forma Financials will be compiled using publicly available/filed financial information of the Borrower and the Target.

(h) It is not illegal for any Lender to lend and there is no injunction, restraining order or equivalent prohibiting any Lender from lending its portion of the Loans or restricting the application of the proceeds thereof; provided, that such Lender has used commercially reasonable efforts to make the Loan through an Affiliate of such Lender not subject to such legal restriction; provided further, that the occurrence of such event in relation to one Lender shall not relieve any other Lender of its obligations hereunder.

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(i) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of each Loan Document (other than this Agreement and the Guarantee (to the extent the Administrative Agent has received them on the Effective Date)) to which it is a party signed on behalf of such party or (ii) written evidence reasonably satisfactory to the Administrative Agent (which may include .pdf or facsimile transmission of a signed signature page of each such Loan Document) that such party has signed a counterpart of each such Loan Document.

(j) The Collateral and Guarantee Requirements shall have been satisfied (subject to the ultimate paragraph of this Section 4.02). The Administrative Agent shall have received the IP Security Agreements and 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.

The Administrative Agent shall notify the Borrower and the Lenders of the Closing Date as soon as practicable upon its occurrence, and such notice shall be conclusive and binding.

Notwithstanding the foregoing, but subject to the requirement to execute and deliver the items referred to in clause (j) above, if the Borrower shall have used commercially reasonable efforts to procure and deliver, but shall nevertheless be unable to deliver, any document or take any action that is required to be delivered or taken in order to satisfy the requirements of the Collateral and Guarantee Requirement, such delivery or action (other than the creation of and perfection (including by delivery of stock or other equity certificates, if any) of security interests in (i) the Equity Interests of Significant Domestic Subsidiaries (other than in respect of Target’s U.S. subsidiaries, which shall be required to be delivered to the extent made available by Target on the Closing Date) and (ii) other assets located in the United States with respect to which a Lien may be perfected by the filing of a financing statement under the Uniform Commercial Code) shall not be a condition precedent to the obligations of the Lenders hereunder on the Closing Date, but shall be required to be accomplished as provided in Section 5.17.

SECTION 4.03. Conditions to Loans after the Closing Date. Subject to Section 4.04, the obligation of each Lender to make a Loan on any date after the Closing Date and during the Availability Period is subject to the satisfaction (or waiver in accordance with

Section 9.02) of the following conditions:

- (a) Each of the Effective Date and the Closing Date shall have occurred.
- (b) The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.03.
- (c) On the date of the applicable Borrowing Request and on the proposed date of such Borrowing (i) no Certain Funds Default is continuing or would result from the proposed Borrowing and (ii) all the Certain Funds Representations are true or, if a Certain Funds Representation does not include a materiality concept, true in all material respects.

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(d) All fees and other amounts due and payable by the Borrower and its Subsidiaries to the Lead Arranger, the Administrative Agent and the Lenders under the Loan Documents or pursuant to any fee or similar letters relating to the Loan Documents shall be paid to the extent invoiced at least two Business Days prior to the date of the Loan by the relevant person.

(e) It is not illegal for any Lender to lend and there is no injunction, restraining order or equivalent prohibiting any Lender from lending its portion of the Loans or restricting the application of the proceeds thereof.

SECTION 4.04. Action by Lenders During Certain Funds Period. During the Certain Funds Period and notwithstanding (i) any provision to the contrary in the Loan Documents or (ii) that any condition set out in Sections 4.01, 4.02 or 4.03 may subsequently be determined to not have been satisfied or any representation given was incorrect in any material respect, none of the Lenders nor the Administrative Agent shall, unless a Certain Funds Default has occurred and is continuing or would result from a proposed borrowing or a Certain Funds Representation remains incorrect or, if a Certain Funds Representation does not include a materiality concept, incorrect in any material respect, be entitled to:

- (a) cancel any of its Commitments;
- (b) rescind, terminate or cancel the Loan Documents or the Commitments or exercise any similar right or remedy or make or enforce any claim under the Loan Documents it may have to the extent to do so would prevent or limit (i) the making of a Loan for Certain Funds Purposes or (ii) the application of amounts standing to the credit of an Escrow Account for Certain Funds Purposes;
- (c) refuse to participate in the making of a Loan for Certain Funds Purposes unless the conditions set forth in Section 4.01, 4.02 or 4.03, as applicable, have not been satisfied;
- (d) exercise any right of set-off or counterclaim in respect of a Loan to the extent to do so would prevent or limit (i) the making of a Loan for Certain Funds Purposes or (ii) the application of amounts standing to the credit of an Escrow Account for Certain Funds Purposes; or
- (e) cancel, accelerate or cause repayment or prepayment of any amounts owing under any Loan Document to the extent to do so would prevent or limit (i) the making of a Loan for Certain Funds Purposes or (ii) the application of amounts standing to the credit of an Escrow Account for Certain Funds Purposes;

provided that immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Lenders and the Administrative Agent notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

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## ARTICLE V

### Affirmative Covenants

Until the Commitments shall have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full, 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];

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(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 Closing 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

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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. (a) 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. Within sixty (60) days after the Closing Date, 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. The proceeds of the Initial Term Loans made on the Closing Date will be used solely to provide a portion of the funds necessary for the Certain Funds Purposes. 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 Closing 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. [Reserved].

SECTION 5.13. [Reserved].

SECTION 5.14. 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

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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.

SECTION 5.15. After-Acquired Real Property. Each Loan Party shall grant to the Collateral 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 Closing 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 5.16. 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 5.16(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.

SECTION 5.17. Certain Post-Closing Collateral Obligations. As promptly as practicable, and in any event within 90 days after the Closing Date (or such other time period as may be set forth in Schedule

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5.17 or such longer time as the Administrative Agent may reasonably agree), the Borrower and each other Loan Party will deliver all documents and take all actions set forth on Schedule 5.17 or that would have been required to be delivered or taken on the Closing Date but for the ultimate sentence of Section 4.02, in each case, except to the extent otherwise agreed by the Administrative Agent pursuant to its authority as set forth in the definition of Collateral and Guarantee Requirements.

SECTION 5.18. The Scheme and Related Matters. The Borrower shall (or shall cause its applicable Affiliates

to):

(a) Issue a Press Release or, as the case may be, an Offer Press Announcement, (in the form delivered to the Administrative Agent pursuant to Section 4.01(e)), subject to such amendments as are not materially adverse to the interests of the Lenders or have been approved by the Administrative Agent in writing acting reasonably) within 7 Business Days of the Effective Date, unless during the Certain Funds Period the Borrower has elected to convert the Target Acquisition from a Scheme to a Takeover Offer, or vice versa (in which case the Press Release or Offer Press Announcement, as applicable, shall be issued within 7 Business Days of such conversion) (such issued document, the “Original Press Release” or “Original Offer Press Announcement”, as applicable).

(b) Provide evidence that a Scheme Circular or (if the Target Acquisition is effected by way of a Takeover Offer) a Takeover Offer Document is issued and dispatched as soon as is reasonably practicable and in any event within 28 days (or such longer period as may be agreed with the Panel) after the issuance of the Press Release or Offer Press Announcement, as applicable unless, during that period the Borrower has elected to convert the Target Acquisition from a Scheme to a Takeover Offer, or vice versa (in which case the Scheme Circular or Takeover Offer Document, as applicable, shall be issued and dispatched as soon as is reasonably practicable and in any event within 28 days (or such longer period as may be agreed with the Panel) after the issuance of the Press Release or Offer Press Announcement, as applicable).

(c) Comply in all material respects with the City Code (subject to any waivers or dispensations granted by the Panel) and all other applicable laws and regulations in relation to any Takeover Offer or Scheme.

(d) Except as consented to by the Administrative Agent in writing and save to the extent that following the issue of a Press Release or an Offer Press Announcement the Borrower elects to proceed with the Target Acquisition by way of Takeover Offer or Scheme respectively, ensure that (i) if the Target Acquisition is effected by way of a Scheme, the Scheme Circular corresponds in all material respects to the terms and conditions of the Scheme as contained in the Press Release to which it relates or (ii) if the Target Acquisition is effected by way of a Takeover Offer, the Takeover Offer Document corresponds in all material respects to the terms and conditions of the Takeover Offer as contained in the corresponding Offer Press Announcement, subject in the case of a Scheme

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to any variation required by the Court and in either such case to any variations required by the Panel or which are not materially adverse to the interests of the Lenders (or where the prior written consent of the Administrative Agent acting reasonably has been given).

(e) Ensure that the Scheme Documents or, if the Target Acquisition is effected by way of a Takeover Offer, the Offer Documents, provided to the Administrative Agent contain all the material terms and conditions of the Scheme or Takeover Offer, as at that date, as applicable.

(f) Not make or approve any modification in the proposed price per Target Share or make any other acquisition of any Target Share (including pursuant to a Takeover Offer) at a price that is different from the price per Target Share stated in the Original Press Release or Original Offer Press Announcement, (as the case may be), unless such modification in price is not materially adverse to the interests of the Lenders (or where the prior written consent of the Administrative Agent has been given).

(g) Except as consented to by the Administrative Agent in writing, not amend or waive (i) any term of the Scheme Documents or the Takeover Offer Documents, as applicable, in a manner materially adverse to the interests of the Lenders from those in the Original Press Release or the Original Offer Press Announcement, as the case may be, or (ii) if the Target Acquisition is proceeding as a Takeover Offer, the Acceptance Condition, save for, (A) in the case of clause (i), any amendment or waiver required by the Panel, the City Code, a court or any other applicable law, regulation or regulatory body or (B) in the case of clause (ii), a waiver of the Acceptance Condition to permit the Takeover Offer to become unconditional with acceptance of Target Shares (excluding any shares held in treasury) which, when aggregated with all Target Shares owned by the Borrower (directly or indirectly), represent not less than 75% of all Target Shares (excluding any shares held in treasury) as at the date on which the Takeover Offer is declared unconditional as to acceptances.

(h) Not take any action which would require the Borrower to make a mandatory offer for the Target Shares in accordance with Rule 9 of the City Code.

(i) Provide the Administrative Agent with copies of each Offer Document and such information as it may reasonably request regarding, in the case of a Takeover Offer, the current level of acceptances subject to any confidentiality, legal, regulatory or other restrictions relating to the supply of such information.

(j) Promptly deliver to the Administrative Agent the receiving agent certificate issued under Rule 10 of the City Code (where the Target Acquisition is being pursued pursuant to a Takeover Offer), any written agreement between the Borrower or its Affiliates and the Target to the extent material to the interests of the Lenders in relation to the consummation of the Target Acquisition (in each

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case, upon such documents or agreements being entered into by the Borrower or its Affiliates), and all other material announcements and documents published by the Borrower or delivered by the Borrower to the Panel pursuant to the Takeover Offer or Scheme (other than the cash confirmation) and all legally binding agreements entered into by the Borrower in connection with a Takeover Offer or Scheme, in each case to the extent the Borrower, acting reasonably, anticipates they will be material to the interests of the Lenders in connection with the Transactions, except to the extent it is prohibited by legal (including contractual) or regulatory obligations from doing so.

(k) In the event that a Scheme is switched to a Takeover Offer or vice versa, (which the Borrower shall be entitled to do on multiple occasions provided that it complies with the terms of this Agreement), (i) within the applicable time periods provided in the definition of “Mandatory Cancellation Event”, procure that the Offer Press Announcement or Press Release, as the case may be, is issued, and (ii) except as consented to by the Administrative Agent in writing, ensure that (A) where the Target Acquisition is then proceeding by way of a Takeover Offer, the terms and conditions contained in the Offer Document include the Acceptance Condition and (B) the conditions to be satisfied in connection with the Target Acquisition and contained in the Offer Documents or the Scheme Documents (whichever is applicable) are otherwise consistent in all material respects with those contained in the Offer Documents or Scheme Documents (whichever applied to the immediately preceding manner in which it

was proposed that the Target Acquisition would be effected) (to the extent applicable for the legal form of a Takeover Offer or Scheme, as the case may be), in each case other than (i) in the case of clause (B), any changes permitted or required by the Panel or the City Code or are required to reflect the change in legal form to a Takeover Offer or Scheme or (ii) changes that could have been made to the Scheme or a Takeover Offer in accordance with the relevant provisions of this Agreement or which reflect the requirements of the terms of this Agreement and the manner in which the Target Acquisition may be effected, including without limitation, Section 4.02(e) and including changes to the price per Target Share which are made in accordance with the relevant provisions of this Agreement or any other agreement between the Borrower and the Administrative Agent.

(l) In the case of a Takeover Offer, (i) not declare the Takeover Offer unconditional as to acceptances until the Acceptance Condition has been satisfied and (ii) promptly upon the Borrower acquiring Target Shares which represent not less than 90% in nominal value of the Target Shares to which the Takeover Offer relates, ensure that notices under Section 979 of the Companies Act 2006 in respect of Target Shares that the Borrower has not yet agreed to directly or indirectly acquire are issued.

(m) In the case of a Scheme, within 90 days of the Scheme Effective Date, and in relation to a Takeover Offer, within 90 days after the later of (i) the Closing Date and (ii) the date upon which the Borrower (directly or indirectly)

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owns and/or has agreed to own or acquire and has received valid acceptances (which have not been withdrawn or cancelled) of Target Shares (excluding any shares held in treasury) in respect of, which, when aggregated with all other Target Shares owned by the Borrower (directly or indirectly), represent not less than 75% of all Target Shares (excluding any shares held in treasury), procure that such action as is necessary is taken to cancel trading in the Target Shares on the Alternative Investment Market of the London Stock Exchange (AIM) and as soon as reasonably practicable thereafter, and subject always to the Companies Act 2006, use its reasonable endeavors to re-register the Target as a private limited company.

(n) In the case of a Scheme, upon the occurrence of the Scheme Effective Date the Borrower shall beneficially own (directly or indirectly) 100% of the Target Shares.

SECTION 5.19. Replacement Credit Agreement. The Borrower and any of its Subsidiaries (other than, during the Certain Funds Period, any member of the Target Group) that enters into a Replacement Credit Agreement shall, substantially simultaneously with the entering into of such Replacement Credit Agreement, request loans under such Replacement Credit Facility in an amount equal to the lesser of (a) the aggregate amount of Loans and/or Commitments outstanding under this Agreement and (b) the aggregate amounts of commitments available thereunder. The proceeds of such drawing under the Replacement Credit Agreement shall be deposited into an Escrow Account within one Business Day after the entry into such Replacement Credit Agreement and the Borrower shall concurrently repay all Loans and/or terminate all Commitments outstanding under this Agreement (or, if the available commitments under the Replacement Credit Agreement shall be less than the aggregate amount of Loans and/or Commitments outstanding hereunder, repay Loans and/or terminate Commitments outstanding under this Agreement in an amount equal to the amount of such available commitments).

## ARTICLE VI

### Negative Covenants

Until the Commitments shall have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full, 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 Effective Date and set forth on Schedule 6.01 and Refinancing Indebtedness in respect of any of the foregoing;

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(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 Closing 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

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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 Hedge 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'

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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; and

(q) intercompany loans or other Indebtedness of BidCo made in order to consummate the Transactions and owed to the Borrower or its Subsidiaries.

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 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 Closing 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 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

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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 \$10,000,000 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

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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 Effective Date and the Closing 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) the Target Acquisition;

(b) Permitted Investments;

(c) (i) Investments existing or contemplated by investment agreements existing on the Effective Date in Subsidiaries and (ii) other Investments existing or contemplated by investment agreements existing on the 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;

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(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 Closing Date or of a Person merged or consolidated with or into the Borrower or a Subsidiary after the Closing Date, in each case as permitted hereunder, to the extent that such Investments were not made in contemplation of or in connection with such

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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 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;
- (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 \$10,000,000; provided, however, that at the time any such Investment is made pursuant to this clause (t), no Default shall have occurred and be continuing or would result therefrom; and
- (x) intercompany loans or other Investments by the Borrower or its Subsidiaries in BidCo made in order to consummate the Transactions.

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 promptly applied to the purchase price of similar or replacement assets;
- (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) 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) and (iv) the requirements of Section 2.11(c), to the extent applicable, are complied with in connection therewith; 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 (l) shall not have an aggregate fair market value in excess of \$10,000,000 in the aggregate;

(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

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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;

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(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).

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(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

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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 Closing 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

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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 5.17 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 Closing Date, the Borrower will not permit the Leverage Ratio to exceed 3.0 to 1.0 as of the last day of any fiscal quarter of the Borrower.

SECTION 6.14. Interest Coverage Ratio. Beginning with the first full fiscal quarter ending after the Closing Date, the Borrower will not permit the Interest Coverage Ratio to be less than 3.0 to 1.0 as of the end of any fiscal quarter of the Borrower.

## ARTICLE VII

### 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 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 Article VII) 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

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shall prove to have been incorrect in any material respect when made or deemed made and such failure shall continue unremedied for a period of 21 Business Days;

(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, 5.18 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 Article VII), 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;

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(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 by reason of insolvency;

(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);

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(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 (i) the release thereof or any limitation in respect thereof, in each case as provided in the applicable Loan Document or Section 9.14 or (ii) any legal reservation identified in the opinion letter of K&L Gates LLP delivered to the Administrative Agent pursuant to Section 4.01(d)(iv) or any other opinion letter delivered pursuant to this Agreement; or

(o) a Change in Control shall occur.

then, subject to Section 4.04, and (i) in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article VII), and at any time after the Closing 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 Commitments, and thereupon the 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 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.

Notwithstanding anything in this Agreement to the contrary, for a period commencing on the Closing Date and ending on the date falling 180 days after the Closing Date (the "Clean-Up Date"), notwithstanding any other provision of any Loan Document, any breach of covenants, misrepresentation or other default

which arises with respect to the Target Group will be deemed not to be a breach of representation or warranty, a breach of covenant or an Event of Default, as the case may be, if:

- (i) it is capable of remedy and reasonable steps are being taken to remedy it;
- (ii) the circumstances giving rise to it have not knowingly been procured by or approved by the Borrower; and
- (iii) it is not reasonably likely to have a material adverse effect on the Borrower and its Subsidiaries, on a consolidated basis.

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If the relevant circumstances are continuing on or after the Clean-Up Date, there shall be a breach of representation or warranty, breach of covenant or Event of Default, as the case may be, notwithstanding the above.

## 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, Israeli 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,

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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 Person 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 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 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 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 Effective Date (and the Closing Date, as applicable).

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(f). 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

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advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.16, 2.17 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 (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);

(ii) if to the Administrative Agent, to it at JPMorgan Chase Bank, N.A., 10 South Dearborn Street, Chicago, Illinois 60603, Attention of J.P. Morgan Loan & Agency Servicing (Telecopy No. (888) 303-9732), with a copy to JPMorgan Chase Bank, N.A., 270 Park Avenue, 43rd Floor,

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New York, New York 10017, Attention of Justin B. Kelley (Telecopy No. (917) 464-6072);

(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

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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 the other Loan Documents 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 and (ii) no such agreement shall (A) increase the Commitment of any Lender without the written consent of such Lender, (B) reduce the principal amount of any Loan or reduce the rate of interest thereon (except in connection with the waiver of applicability of any post-default increase in interest rates), or reduce any fees payable hereunder, in each case, without the written consent of each Lender directly and adversely effected thereby (in which case the separate consent of the Required Lenders shall not be required), (C) postpone the scheduled maturity date of any Loan, or the date of any scheduled payment of the principal amount of any Term Loan under Section 2.10,

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or any date for the payment of any interest or fees payable hereunder, 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 each Lender directly and adversely effected thereby (in which case the separate consent of the Required Lenders shall not be required), (D) change Section 2.18(b) or 2.18(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, (E) change any of the provisions of this Section 9.02 or the percentage set forth in the definition of the term "Required Lenders" or any other provision of this Agreement or any other Loan Document specifying the number or percentage of Lenders required to waive, amend or otherwise modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender; provided that, with the consent of the Required Lenders, the provisions of this Section 9.02 and the definition of the term "Required Lenders" may be amended to include references to any new class of loans created under this Agreement (or to lenders extending such loans) on substantially the same basis as the corresponding references relating to the existing classes of Loans or Lenders, (F) 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), (G) 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) or (H) waive any of the conditions specified in Sections 4.01, 4.02 or 4.03 without the written consent of each Lender directly and adversely affected thereby; provided further that no such agreement shall amend, modify, extend or otherwise affect the rights or obligations 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 (A), (B) or (C) of clause (ii) of the first proviso of this paragraph and then only in the event such Defaulting Lender shall be affected by such amendment, waiver or other modification.

(c) 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 (and, to the extent any Proposed Change requires the consent of Lenders holding Loans pursuant to paragraph (b) of this Section 9.02, the consent of a majority in interest of the outstanding

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Loans and unused Commitments) 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.

(d) 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”.

(e) The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, waivers or other modifications on behalf of such Lender. Any amendment, waiver or other modification effected in accordance with this Section 9.02 shall be binding upon each Person that is at the time thereof a Lender and each Person that subsequently becomes a Lender.

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

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expected aggregate costs and expenses (i) prior to the Effective Date, with respect to the transaction contemplated to occur on or prior to the Closing Date and (ii) prior to any other material transaction occurring after the Closing 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

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 share of the sum of the outstanding Term Loans and unused Term Commitments, in each case, 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. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) neither the Borrower nor the Borrower may assign, delegate or otherwise transfer any of their rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment, delegation or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign, delegate or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. 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 (c) of this Section 9.04), the Arranger and, to the extent expressly contemplated hereby, the sub-agents of the Administrative Agent and the Related Parties of any of the Administrative Agent, the Arranger and any Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign and delegate to one or more Eligible Assignees after the funding of the Initial Term Loans on the Closing Date 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) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower (it being agreed that notwithstanding anything herein, during the Certain Funds Period the Borrower may withhold such consent in its sole discretion unless a Certain Funds Default is continuing); provided that no consent of the Borrower shall be required (1) for an assignment and delegation to a Lender, an Affiliate of a Lender or an Approved Fund, (2) if an Event of Default (or during the Certain Funds Period a Certain Funds Default) has occurred and is continuing, for any other assignment and delegation; provided further that the Borrower shall be deemed to have consented to any such assignment and delegation unless it shall object thereto by written notice to the Administrative Agent within ten Business Days after having received notice thereof; and

(B) the Administrative Agent (not to be unreasonably withheld or delayed); provided that no consent of the Administrative Agent shall be required for an assignment and delegation of any Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment and delegation to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment and delegation of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the

Commitment or Loans of the assigning Lender subject to each such assignment and delegation (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment and delegation or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment and delegation is delivered to the Administrative Agent) shall not be less than \$10,000,000;

(B) each partial assignment and delegation shall be made as an assignment and delegation of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause (B) shall not be construed to prohibit the assignment and delegation of a proportionate part of all the assigning Lender's rights and obligations in respect of Commitments or Loans;

(C) the parties to each assignment and delegation shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, provided that (1) only one such processing and recordation fee shall be payable in the event of simultaneous assignments and delegations from any Lender or its Approved Funds to one or more other Approved Funds of such Lender and (2) with respect to any assignment and delegation pursuant to Section 2.19(b) or 9.02(c), the parties hereto agree that such assignment and delegation may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment and delegation need not be a party thereto; and

(D) the assignee, if it shall not be a Lender, shall (1) deliver to the Administrative Agent and to the Borrower any tax forms required by Section 2.17(f) and (2) to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain MNPI) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable law, including Federal, State and foreign securities laws.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section 9.04, from and after the effective date specified in each Assignment and Assumption the assignee thereunder

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shall be a party hereto and, to the extent of the interest assigned and delegated 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 and delegated by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all 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 (and subject to the obligations and limitations of) Sections 2.15, 2.16, 2.17 and 9.03). Any assignment, delegation or other 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 Section 9.04(c).

(iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (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, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and, as to entries pertaining to it, any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon receipt by the Administrative Agent of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and any tax forms required by Section 2.17(f) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.04 and any written consent to such assignment and delegation required by paragraph (b) of this Section 9.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that the Administrative Agent shall not be required to accept such Assignment and Assumption or so record the information contained therein if the Administrative Agent reasonably believes that such Assignment and Assumption lacks any written consent required by this Section 9.04 or is otherwise not in proper form, it being acknowledged that the Administrative Agent shall have no duty or obligation (and shall incur no liability) with respect to obtaining (or confirming the receipt) of any such written consent or with respect to the form of (or any defect in)

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such Assignment and Assumption, any such duty and obligation being solely with the assigning Lender and the assignee. No assignment or delegation shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph, and following such recording, unless otherwise determined by the Administrative Agent (such determination to be made in the sole discretion of the Administrative Agent, which determination may be conditioned on the consent of the assigning Lender and the assignee), shall be effective notwithstanding any defect in the Assignment and Assumption relating thereto. Each assigning Lender and the assignee, by its execution and delivery of an Assignment and Assumption, shall be deemed to have represented to the Administrative Agent that all written consents required by this Section 9.04 with respect thereto (other than the consent of the Administrative Agent) have been obtained and that such Assignment and Assumption is otherwise duly completed and in proper form, and each assignee, by its execution and delivery of an Assignment and Assumption, shall be deemed to have represented to the assigning Lender and the Administrative Agent that such assignee is an Eligible Assignee.

(vi) The words "execution", "signed", "signature" and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as applicable, to the extent and as

(c) Any Lender may, 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 obligations under this Agreement (including all or a portion of its Commitments and Loans ); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. 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 described in the first proviso to Section 9.02(b) that affects such Participant or requires the approval of all the Lenders. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the

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requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood and agreed that the documentation required under Section 2.17(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 9.04; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section 9.04 and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, 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 or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof 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 2.19(b) 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 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under this Agreement or any other Loan Document (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 or its other obligations under this Agreement or any other Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) 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.

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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 2.15, 2.16, 2.17, 2.18(e) 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 (other than any amendment to the definition of Certain Funds Default, Certain Funds Period, Certain Funds Purposes, Long Stop Date, Mandatory Cancellation Event, Certain Funds Representations (or any Section or definition referred to therein or any Section including any of those terms, or cross-references to any of the Sections referred to in this Section to the extent modifying the conditionality or availability of the Initial Term Loans in a manner adverse to the Borrower), Section 4.02, Section 4.03, Section 4.04, Sections 9.04, 9.19 or this Section 9.06 or that would otherwise impair the availability of the Initial Term Loans for Certain Funds Purposes during the Certain Funds Period or would otherwise conflict with restrictions set out in Section 4.04 (it being understood this parenthetical shall not restrict modifications to the fees and pricing of the Initial Term Loans nor shall it restrict immaterial changes to such provisions)) 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

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. Subject to Section 4.04, 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 VI to authorize the Administrative Agent to declare the Loans due and payable pursuant to Article VI 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 each irrevocably and unconditionally agree 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 courts of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits, 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 New York State court or, to the fullest extent permitted by applicable law, in such Federal 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 waive, 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 Lender acknowledges that its ability to disclose information concerning the Transactions is restricted by the City Code and the Panel and that Section 9.12 is subject to those restrictions. 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 or the Target's name or the name of any of their 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. Each Lender acknowledges that its ability to disclose information concerning the Transactions is restricted by the City Code and the Panel and that Section 9.12 is subject to those restrictions.

(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

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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 U.S. 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 U.S. 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 U.S. 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 U.S. Dollars with the Judgment Currency; if the amount of U.S. Dollars so purchased is less than the sum originally due to the Applicable Creditor in U.S. 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. Debt Syndication During the Certain Funds Period. Each of the Lenders and the Administrative Agent confirms that it is aware of the terms and requirements of Practice Statement No. 25 (Debt Syndication during Offer Periods) issued by the Panel.

[Signature pages follow]

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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 the Borrower

by

/s/ Karl Johnsen

\_\_\_\_\_  
Name: Karl Johnsen

Title: Chief Financial Officer

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JPMORGAN CHASE BANK, N.A., as  
Administrative Agent,

by

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**DISCLOSURE SCHEDULES**

**Schedule 1.01(a)  
Scheduled Excluded Equity Interests**

None.

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**Schedule 1.01(b)  
Effective Date Guarantors**

None.

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EXHIBIT A

**[FORM OF] ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Assignment Effective Date set forth below and is entered into by and between the Assignor (as defined below) and the Assignee (as defined below). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions referred to above and the Credit Agreement, as of the Assignment Effective Date inserted by the Administrative Agent as contemplated below, (a) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facilities identified below (including any Guarantees) and (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned pursuant to clauses (a) and (b) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor:
2. Assignee:  
[and is [a Lender] [an Affiliate/Approved Fund of [Identify Lender]]](1)
3. Borrower: Aspen Technology, Inc.
4. Administrative Agent: JPMorgan Chase Bank, N.A., as the Administrative Agent under the Credit Agreement
5. Credit Agreement: The 364-Day Bridge Credit Agreement dated as of January [11], 2016, among Aspen Technology, Inc., the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent, as amended, restated, supplemented or otherwise modified as of the date hereof
6. Assigned Interest:(2)

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(1) Select as applicable.

(2) Must comply with the minimum assignment amount set forth in Section 9.04(b)(ii)(A) of the Credit Agreement, to the extent such minimum assignment amounts are applicable.

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Term Commitment/ Loans	\$	\$	%
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Assignment Effective Date: \_\_\_\_\_, 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE ASSIGNMENT EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR]

*The Assignee, if not already a Lender, agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain MNPI) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable law, including federal, state and foreign securities laws.*

(3) Set forth, to at least nine decimals, as a percentage of the Commitments/Loans of all Term Lenders.

The terms set forth in this Assignment and Assumption are hereby agreed to:

[NAME OF ASSIGNOR], as Assignor

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ASSIGNEE], as Assignee

By: \_\_\_\_\_  
Name:  
Title:

[Consented to and](1) Accepted:

JPMORGAN CHASE BANK, N.A., as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[Consented to:](2)

[ASPEN TECHNOLOGY, INC., as Borrower]

By: \_\_\_\_\_  
Name:  
Title:

(1) To be included only if the consent of the Administrative Agent is required by Section 9.04(b)(i)(B) or 9.04(b)(ii)(A) of the Credit Agreement.

(2) To be included only if the consent of the Borrower is required by Section 9.04(b)(i)(A) or 9.04(b)(ii)(A) of the Credit Agreement.

**STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender and

(b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, other than statements made by it herein, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any Subsidiary or any Affiliate of the Borrower or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any Subsidiary or any Affiliate of the Borrower or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Assignment Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof (or, prior to the first such delivery, the financial statements referred to in Section 3.04 thereof), and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent, the Assignor or any other Lender, (v) if it is a Lender that is a U.S. Person, attached to this Assignment and Assumption is an executed copy of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax, (vi) if it is a Foreign Lender, attached to this Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement (including Section 2.17(f) thereof), duly completed and executed by the Assignee, and (vii) it does not bear a relationship to the Borrower as described in Section 108(e)(4) of the Code; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Assignment Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to or on or after the Assignment Effective Date. The Assignor and the Assignee shall make all such adjustments in payments by the Administrative Agent for periods prior to the Assignment Effective Date or with respect to the making of this assignment directly between themselves as they shall have agreed, and the Administrative Agent shall have no obligations with respect to any such adjustment.

3. Effect. As of the Assignment Effective Date, (a) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and the Credit Agreement, have the rights and obligations of a Lender under the Credit Agreement and (b) the Assignor shall, to the extent provided in this Assignment, relinquish its rights (except those surviving the termination of the Commitments and payment in full of the Obligations) and be released from its obligations under the Loan Documents other than those obligations relating to events and circumstances occurring prior to the Assignment Effective Date.

4. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. This Assignment and Assumption may be executed in any number of counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by and construed in accordance with the laws of the State of New York.

EXHIBIT B

**[FORM OF] BORROWING REQUEST**

JPMorgan Chase Bank, N.A.,  
as Administrative Agent  
10 South Dearborn Street  
Chicago, Illinois 60603  
Attention of J.P. Morgan Loan & Agency Servicing  
(Telecopy No. (888) 303-9732)

with a copy to,  
JPMorgan Chase Bank, N.A.  
270 Park Avenue, 43rd Floor  
New York, New York 10017  
Attention of Justin B. Kelley  
(Telecopy No. (917) 464-6072)

[Date]

Ladies and Gentlemen:

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (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 :(6)

(B) Date of Borrowing (which is a Business Day):

(C) Type of Borrowing:(7)

(D) Interest Period and the last day thereof:(8)

(E) Location and number of the Borrower's account to which proceeds of the requested Borrowing are to be disbursed: [Name of Bank]  
(Account No.: )

(6) Must comply with Section 2.02(c) of the Credit Agreement.

(7) Specify Eurocurrency or ABR Borrowing. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing.

(8) Applicable to Eurocurrency 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.

Very truly yours,

ASPEN TECHNOLOGY, INC.

By:

Name:

Title:

EXHIBIT C

**FORM OF U.S. COLLATERAL AGREEMENT**

COLLATERAL AGREEMENT

dated as of

[ ], 2016,

among

ASPEN TECHNOLOGY, INC.,

THE OTHER SUBSIDIARIES OF Aspen Technology, Inc.  
IDENTIFIED HEREIN

and

JPMORGAN CHASE BANK, N.A.,

as Administrative Agent

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COLLATERAL AGREEMENT dated as of [ ], 2016 (this “*Agreement*”), among the Borrower, the Domestic Subsidiary Loan Parties from time to time party hereto and JPMorgan Chase Bank, N.A. (“*JPMCB*”), as Administrative Agent.

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among Aspen Technology, Inc. (the “*Borrower*”), the Lenders from time to time party thereto and JPMCB, as Administrative Agent. The Lenders have agreed to extend credit to the Borrower on the terms and subject to the conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. The Domestic Subsidiary Loan Parties are Affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. (a) Each capitalized term used but not defined herein and defined in the Credit Agreement shall have the meaning specified in the Credit Agreement. Each other term used but not defined herein that is defined in the New York UCC (as defined herein) shall have the meaning specified in the New York UCC. The term “instrument” shall have the meaning specified in Article 9 of the New York UCC.

(b) The rules of construction specified in Section 1.03 of the Credit Agreement also apply to this Agreement, *mutatis mutandis*.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“*After-Acquired Intellectual Property*” has the meaning assigned to such term in Section 3.05(b).

“*Agreement*” has the meaning assigned to such term in the Preamble hereto.

“*Article 9 Collateral*” has the meaning assigned to such term in Section 3.01(a).

“*Borrower*” has the meaning assigned to such term in the Recitals hereto.

“*Claiming Party*” has the meaning assigned to such term in Section 5.02.

“*Collateral*” means, collectively, the Article 9 Collateral and the Pledged Collateral.

“*Contributing Party*” has the meaning assigned to such term in Section 5.02.

“*Copyright License*” means any written agreement to which a Grantor is a party, now or hereafter in effect, granting to any Person any right to use any Copyright owned by such Grantor or that such Grantor otherwise has the right to license, or granting to such Grantor any right to use any Copyright owned by any other Person or that such other Person otherwise has the right to license, and all rights of

such Grantor under any such agreement, including, in the case of such Grantor, the exclusive Copyright licenses set forth under its name on Schedule III.

“*Copyrights*” means, with respect to any Person, all the following now owned or hereafter acquired by such Person: (a) all copyright rights in any work subject to the copyright laws of the United States of America or any other country or any political subdivision thereof, whether as author, assignee, transferee or otherwise, (b) all registrations and applications for registration of any such copyright in the United States of America or any other country, including registrations, recordings, supplemental registrations, pending applications for registration, and renewals in the United States Copyright Office (or any similar office in any other country or any political subdivision thereof), including, in the case of any Grantor, any of the foregoing set forth under its name on Schedule III and (c) any other adjacent or other rights related or appurtenant to the foregoing, including moral rights.

“*Credit Agreement*” has the meaning assigned to such term in the Recitals hereto.

“*Domestic Subsidiary Loan Parties*” means, collectively, (a) the Designated Subsidiaries identified on Schedule I and (b) each other Designated Subsidiary that becomes a party to this Agreement after the Closing Date.

“*Federal Securities Laws*” has the meaning assigned to such term in Section 4.04.

“*Grantors*” means, collectively, the Borrower and each Domestic Subsidiary Loan Party party hereto from time to time.

“*Intellectual Property*” means all intellectual and similar property of every kind and nature, including inventions, designs, utility models, Patents, Copyrights, Licenses, Trademarks, trade secrets, domain names (including global top level domain names), confidential or proprietary technical and business information, know-how or other data or information, Software and databases, all modifications, derivatives, additions and improvements thereon, and all embodiments or fixations thereof and applications therefor, and related documentation, registrations and franchises.

“*IP Security Agreements*” has the meaning assigned to such term in Section 3.02(b).

“*JPMCB*” has the meaning assigned to such term in the Preamble.

“*License*” means any Patent License, Trademark License, Copyright License or other license or sublicense agreement granting rights in or to Intellectual Property to which any Grantor is a party.

“*New York UCC*” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“*Obligations*” means (a) all the Loan Document Obligations, (b) all the Secured Cash Management Obligations and (c) all the Secured Hedging Obligations (other than any Excluded Swap Obligation).

“*Patent License*” means any written agreement to which a Grantor is a party, now or hereafter in effect, granting to any Person any right to make, use or sell any invention on which a Patent has been granted to such Grantor or that such Grantor otherwise has the right to license, or granting to such Grantor any right to make, use or sell any invention on which a Patent has been granted to any other

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Person or that such other Person otherwise has the right to license, and all rights of such Grantor under any such agreement.

“*Patents*” mean, with respect to any Person, all the following now owned or hereafter acquired by such Person: (a) all letters patent of the United States of America or the equivalent thereof in any other country, all registrations and recordings thereof and all applications for letters patent of the United States of America or the equivalent thereof in any other country or any political subdivision thereof, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other country or any political subdivision thereof, including, in the case of any Grantor, any of the foregoing set forth under its name on Schedule III, and (b) all reissues, continuations, divisionals, continuations-in-part, reexaminations, supplemental examinations, *inter partes* reviews, renewals, adjustments or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, have made, use, sell, offer to sell, import or export the inventions disclosed or claimed therein.

“*Payment In Full*” means when all Loan Document Obligations have been paid in full (except contingent indemnification and expense reimbursement obligations and tax gross-up or yield protection obligations which, in each case, survive the termination of the Loan Documents and in respect of which no claim has been made) and the Lenders have no further commitment to lend under the Credit Agreement.

“*Pledged Collateral*” has the meaning assigned to such term in Section 2.01.

“*Pledged Debt Securities*” has the meaning assigned to such term in Section 2.01.

“*Pledged Equity Interests*” has the meaning assigned to such term in Section 2.01.

“*Pledged Securities*” means any promissory notes, stock certificates, unit certificates, limited liability membership interest certificates and other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“*Security Interest*” has the meaning assigned to such term in Section 3.01(a).

“*Software*” means any and all (i) computer programs, systems, applications, and code, including any and all software implementations of algorithms, models, and methodologies, whether in source code or object code, (ii) databases and compilations, including any and all libraries, data and collections of data whether machine-readable, on paper or otherwise, (iii) description, flow charts, and other work product used to design, plan, organize, and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons, and icons, (iv) the technology supporting, and the contents and audiovisual displays of, any Internet site(s), and (v) all documentation, other works of authorship and media, including user manuals and other training documentation, related to or embodying any of the foregoing or on which any of the foregoing is recorded.

“*Supplement*” means an instrument substantially in the form of Exhibit I hereto, or any other form approved by the Administrative Agent, and in each case reasonably satisfactory to the Administrative Agent.

“*Trademark License*” means any written agreement to which a Grantor is a party, now or hereafter in effect, granting to any Person any right to use any Trademark owned by such Grantor or that

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such Grantor otherwise has the right to license, or granting to such Grantor any right to use any Trademark owned by any other Person or that such other Person otherwise has the right to license, and all rights of such Grantor under any such agreement.

“*Trademarks*” means, with respect to any Person, all of the following now owned or hereafter acquired by such Person: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, and other source or business identifiers, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar office in any State of the United States of America

or any other country or any political subdivision thereof, all extensions or renewals thereof, and all common law rights related thereto, including, in the case of any Grantor, any of the foregoing set forth under its name on Schedule III and (b) all goodwill associated therewith or symbolized thereby.

## ARTICLE II

### Pledge of Securities

SECTION 2.01. Pledge. As security for the Payment In Full of the Obligations, each Grantor hereby assigns as security and pledges to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in, all such Grantor's right, title and interest in, to and under: (a)(i) the Equity Interests now or at any time hereafter owned by or on behalf of such Grantor, including those set forth opposite the name of such Grantor on Schedule II, and (ii) all certificates and other instruments representing all such Equity Interests, but excluding any Excluded Assets ((i) and (ii) collectively, the "Pledged Equity Interests"); (b)(i) the debt securities now owned or at any time hereafter acquired by such Grantor, including those listed opposite the name of such Grantor on Schedule II, but excluding any Excluded Assets and (ii) all promissory notes and other instruments evidencing all such debt securities, but excluding any Excluded Assets ((i) and (ii) collectively, the "Pledged Debt Securities"); (c) all other property of such Grantor that may be delivered to and held by the Administrative Agent pursuant to the terms of this Section 2.01 or Section 2.02; (d) subject to Section 2.05, all payments of principal, and all interest, dividends or other distributions, whether paid or payable in cash, instruments or other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the Pledged Equity Interests and Pledged Debt Securities; (e) subject to Section 2.05, all rights and privileges of such Grantor with respect to the securities, instruments and other property referred to in clauses (a), (b), (c) and (d) above; and (f) all Proceeds of any of the foregoing, but in each case in respect of clauses (a) through (e), excluding any Excluded Assets (the items referred to in clauses (a) through (f) above being collectively referred to as the "Pledged Collateral").

SECTION 2.02. Delivery of the Pledged Securities; Uncertificated Securities. (a) Each Grantor agrees to deliver or cause to be delivered to the Administrative Agent any and all Pledged Securities evidencing or representing Pledged Equity Interests (other than (x) Equity Interests (other than those issued by a Subsidiary) that are publicly traded securities subject to a depository such as DTC, or otherwise held through a securities intermediary in a securities account and (y) Permitted Investments), subject, in each case, to Sections 4.02 and 4.04 of the Credit Agreement (i) on the Closing Date, in the case of any such Pledged Securities (other than those referred to in clause (ii) below) owned by such Grantor on the Closing Date (or such longer period as may be reasonably agreed by the Administrative Agent), (ii) as promptly as reasonably practicable, and in any event within 30 Business Days after the Closing Date (or such longer period as may be reasonably agreed by the Administrative Agent), in the case of any such Pledged Securities owned by such Grantor on the Closing Date if such Grantor or the

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issuer of such Pledged Securities was a subsidiary of the Target prior to the consummation of the acquisition of the Target pursuant to the Acquisition Agreement on the Closing Date and (iii) promptly after the acquisition thereof, in the case of any such Pledged Securities acquired by such Grantor after the Closing Date.

(b) Each Grantor will cause (i) all Indebtedness for borrowed money owed to such Grantor by the Borrower or any Subsidiary in an aggregate principal amount in excess of \$10,000,000 to be evidenced by a promissory note and (ii) each such promissory note to be pledged and delivered to the Administrative Agent pursuant to Section 3.04.

(c) Upon delivery to the Administrative Agent as required hereunder, any Pledged Securities shall be accompanied by undated stock powers or allonges, as applicable, duly executed by the applicable Grantor in blank or other undated instruments of transfer reasonably satisfactory to the Administrative Agent and such other instruments and documents as the Administrative Agent may reasonably request. Each delivery of Pledged Securities after the Closing Date shall be accompanied by a schedule providing the information required by Schedule II with respect to such Pledged Securities; provided that failure to attach any such schedule thereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered after the Closing Date shall be deemed attached hereto and made a part hereof as a supplement to Schedule II and any prior schedules so delivered.

(d) Each Grantor acknowledges and agrees that (i) to the extent any interest in any United States limited liability company or United States limited partnership controlled now or in the future by such Grantor (or by such Grantor and one or more other Loan Parties) and pledged hereunder is a "security" within the meaning of Article 8 of the New York UCC and is governed by Article 8 of the New York UCC, such interest shall be certificated; and such certificate shall be delivered to the Administrative Agent in accordance with Section 2.02(a) and (ii) each such interest shall at all times hereafter continue to be such a security and represented by such certificate. Each Grantor further acknowledges and agrees that with respect to any interest in any United States limited liability company or United States limited partnership controlled now or in the future by such Grantor (or by such Grantor and one or more other Loan Parties) and pledged hereunder that is not a "security" within the meaning of Article 8 of the New York UCC, the terms of such interest shall at no time provide that such interest is a "security" within the meaning of Article 8 of the New York UCC, nor shall such interest be represented by a certificate, unless such Grantor provides prior written notification to the Administrative Agent that the terms of such interest so provide that such interest is a "security" within the meaning of Article 8 of the New York UCC and such interest is thereafter represented by a certificate; and such certificate shall be delivered to the Administrative Agent in accordance with Section 2.02(a).

SECTION 2.03. Representations and Warranties. Each Grantor represents and warrants to the Administrative Agent, for the benefit of the Secured Parties, that:

(a) Schedule II sets forth, as of the Closing Date, a true and complete list, with respect to such Grantor, of (i) all the Pledged Equity Interests owned by such Grantor and the percentage of the issued and outstanding units of each class of the Equity Interests of the issuer thereof represented by such Pledged Equity Interests and (ii) all the Pledged Debt Securities owned by such Grantor (other than any Pledged Equity Interests or Pledged Debt Securities that are not or are not yet required to have been delivered to the Administrative Agent under the terms of this Agreement or the Credit Agreement);

(b) the Pledged Equity Interests and Pledged Debt Securities issued by such Grantor or its wholly-owned Subsidiary issuer have been duly and validly authorized and issued by the issuers thereof and (i) in the case of Pledged Equity Interests issued by such Grantor or its

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wholly-owned Subsidiary issuers, are fully paid and nonassessable and (ii) in the case of Pledged Debt Securities owed by such Grantor or its wholly-owned Subsidiary issuers, are legal, valid and binding obligations of the issuers thereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

(c) except for the security interests granted hereunder, such Grantor (i) is as of the Closing Date and, subject to any Dispositions made in compliance with the Credit Agreement or any repayment or other satisfaction of indebtedness represented as evidenced by such Pledged Securities, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule II as owned by such Grantor, (ii) holds the same free and clear of all Liens, other than Liens created by the Security Documents, Permitted Encumbrances and other Liens permitted under Section 6.02 of the Credit Agreement, (iii) will make no further assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than Liens created by the Security Documents, Permitted Encumbrances, other Liens permitted under Section 6.02 of the Credit Agreement and transfers made in compliance with the Credit Agreement, and (iv) will defend its title or interest thereto or therein against any and all Liens (other than the Liens created by the Security Documents, Permitted Encumbrance and other Liens permitted under Section 6.02 of the Credit Agreement), however arising, of all Persons whomsoever;

(d) subject to applicable local laws in the case of Pledged Collateral issued by any non-United States entity or governed by laws outside of the United States, such Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(e) subject to applicable local laws in the case of Pledged Collateral issued by any non-United States entity or governed by laws outside of the United States, by virtue of the execution and delivery by such Grantor of this Agreement, when any Pledged Securities are delivered to the Administrative Agent in accordance with this Agreement, the Administrative Agent will obtain a legal, valid and perfected Lien upon and security interest in such Pledged Securities as security for the payment of the Obligations and such Lien is and shall be prior to any other Lien on such Pledged Securities, other than Liens permitted under Section 6.02 of the Credit Agreement that have priority as a matter of law or are expressly contemplated under Section 6.02 of the Credit Agreement to have equal or greater priority; and

(f) subject to applicable local law in the case of any Pledged Collateral issued by any non-United States entity or governed by laws outside of the United States, the pledge effected hereby is effective to vest in the Administrative Agent, for the benefit of the Secured Parties, the rights of the Administrative Agent in the Pledged Collateral as set forth herein and all action by such Grantor required by the terms of this Agreement to perfect the Lien on the Pledged Collateral has been, or will be, as applicable, duly taken.

SECTION 2.04. Registration in Nominee Name; Denominations. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, on behalf of the Secured Parties, shall have the right (in its sole and absolute discretion) to hold the Pledged Securities in its own name as pledgee, in the name of its nominee (as pledgee or as sub-agent) or in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Administrative Agent for the benefit of the Secured Parties. Upon the occurrence and during the continuance of an Event of Default, each Grantor will promptly give to the Administrative Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. Upon the

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occurrence and during the continuance of an Event of Default, the Administrative Agent shall have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

SECTION 2.05. Voting Rights; Dividends and Interest. (a) Unless and until an Event of Default shall have occurred and be continuing and, other than in the case of an Event of Default under paragraph (h) or (i) of Article VII of the Credit Agreement, the Administrative Agent shall have provided 5 Business Days' notice to the Grantors that the Grantors' rights, in whole or in part, under this Section 2.05 are being suspended:

(i) each Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement and the other Loan Documents; provided that such rights and powers shall not be exercised in any manner that could reasonably be expected to materially and adversely affect the rights and remedies of any of the Administrative Agent or any other Secured Party under this Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same;

(ii) the Administrative Agent shall promptly execute and deliver to each Grantor, or cause to be promptly executed and delivered to such Grantor, all proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to Section 2.05(a)(i); and

(iii) each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral; provided that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity Interests or Pledged Debt Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities or received in exchange for Pledged Securities or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral and, if received by any Grantor, required to be delivered to the Administrative Agent hereunder, shall be held in trust for the benefit of the Administrative Agent and the other Secured Parties and shall be promptly delivered to the Administrative Agent in the form in which they shall have been received (with any endorsements, stock or note powers, allonges and other instruments of transfer reasonably requested by the Administrative Agent).

(b) Upon the occurrence and during the continuance of an Event of Default, and, other than in the case of an Event of Default under paragraph (h) or (i) of Article VII of the Credit Agreement, after the Administrative Agent shall have notified the Grantors of the suspension of the Grantors' rights under Section 2.05(a)(iii), all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to Section 2.05(a)(iii), shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal and other distributions received by any Grantor



contrary to the provisions of this Section 2.05 shall be held in trust for the benefit of the Administrative Agent and the other Secured Parties and shall be promptly delivered to the Administrative Agent upon written demand in the form in which they shall have been received (with any necessary endorsements, stock powers or other instruments of transfer). Any and all money and other property paid over to or received by the Administrative Agent pursuant to the provisions of this Section 2.05(b) shall be retained by the Administrative Agent in an

account to be established by the Administrative Agent upon receipt of such money or other property, shall be held as security for the payment of the Obligations and shall be applied in accordance with the provisions of Section 4.02. After all Events of Default have been cured or waived, the Administrative Agent shall promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise have been permitted to retain pursuant to the terms of Section 2.05(a)(iii) and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default, and, other than in the case of an Event of Default under paragraph (h) or (i) of Article VII of the Credit Agreement, after the Administrative Agent shall have notified the Grantors of the suspension of the Grantors' rights under Section 2.05(a)(i), all rights of any Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to Section 2.05(a)(i), shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided that, unless otherwise directed by the Required Lenders, the Administrative Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all Events of Default have been cured or waived or, all rights vested in the Administrative Agent pursuant to this paragraph (c) shall cease, the Grantors shall have the exclusive right to exercise the voting and consensual rights and powers they would otherwise be entitled to exercise prior to such vesting.

(d) Any notice given by the Administrative Agent to the Grantors suspending the Grantors' rights under Section 2.05(a): (i) may be given by telephone if promptly confirmed in writing, (ii) may be given to one or more of the Grantors at the same or different times and (iii) may suspend the rights and powers of the Grantors under Section 2.05(a)(i) or Section 2.05(a)(iii) in part without suspending all such rights or powers (as specified by the Administrative Agent in its sole and absolute discretion) and without waiving or otherwise affecting the Administrative Agent's right to give additional notices from time to time suspending other rights and powers so long as an Event of Default has occurred and is continuing.

### ARTICLE III

#### Security Interests in Personal Property

SECTION 3.01. Security Interest. (a) As security for the Payment In Full of the Obligations, and subject to Section 3.01(d), each Grantor hereby grants to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest (the "Security Interest") in all such Grantor's right, title and interest in, to and under any and all of the following assets now owned or at any time hereafter acquired by such Grantor or in, to or under which such Grantor now has or at any time hereafter may acquire any right, title or interest (collectively, the "Article 9 Collateral"):

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all cash, cash equivalents and Deposit Accounts;
- (iv) all Documents;
- (v) all Equipment;
- (vi) all General Intangibles, including all Intellectual Property;

- (vii) all Instruments;
- (viii) all Inventory;
- (ix) all other Goods;
- (x) all Investment Property;
- (xi) all Letter-of-Credit Rights;
- (xii) all Commercial Tort Claims described on Schedule IV, as such schedule may be supplemented from time to time pursuant to Section 3.05;
- (xiii) all books and records pertaining to the Article 9 Collateral; and
- (xiv) all Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

(b) Each Grantor hereby irrevocably authorizes the Administrative Agent (or its designee) at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Article 9 Collateral or any part thereof and amendments thereto that (i) indicate the Article 9 Collateral as "all assets" of such Grantor or words of similar effect or of a lesser scope or with greater detail and (ii) contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or

amendment, including (A) whether such Grantor is an organization, the type of organization and any organizational identification number, if any, issued to such Grantor and (B) in the case of a financing statement filed as a fixture filing or covering Article 9 Collateral constituting minerals or the like to be extracted or timber to be cut, a sufficient description of the real property to which such Article 9 Collateral relates. Each Grantor agrees to provide the information required for any such filing to the Administrative Agent promptly upon request.

The Administrative Agent (or its designee) is further authorized by each Grantor to file with the United States Patent and Trademark Office or the United States Copyright Office (or any successor office) such documents as may be necessary for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest in Article 9 Collateral consisting of registrations and applications for United States Patents, United States Trademarks, United States Copyrights and United States exclusive Copyright Licenses for registered Copyrights granted by such Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Administrative Agent as secured party.

(c) The Security Interest and the security interest granted pursuant to Article II are granted as security only and shall not subject the Administrative Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral.

(d) Notwithstanding anything herein to the contrary, to the extent and for so long as any asset is an Excluded Asset, the Security Interest granted under this Section 3.01 shall not attach to, and the Article 9 Collateral shall not include, such asset; provided, however that the Security Interest shall immediately attach to, and the Article 9 Collateral shall immediately include, any such asset (or portion thereof) upon such asset (or such portion) ceasing to be an Excluded Asset.

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SECTION 3.02. Representations and Warranties. Each Grantor represents and warrants to the Administrative Agent for the benefit of the Secured Parties that:

(a) Such Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant the Security Interest hereunder (except for Permitted Encumbrances and Liens permitted under Section 6.02 of the Credit Agreement) and has full power and authority to grant to the Administrative Agent, for the benefit of the Secured Parties the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained.

(b) Schedule V sets forth, as of the Closing Date, (i) the exact legal name of such Grantor, as such name appears in its certificate of organization or like document, (ii) each other legal name such Grantor has had in the past five years, together with the date of the relevant name change, (iii) to our knowledge, each other name (including trade names or similar appellations) used by such Grantor or any of its divisions or other business units in connection with the conduct of its business or the ownership of its properties at any time during the past five years, (iv) the jurisdiction of organization and the form of organization of such Grantor, (v) the organizational identification number, if any, assigned by such jurisdiction, (vi) the address (including, the county) of the chief executive office of such Grantor or the registered office of such Grantor, if applicable, and (vii) the federal taxpayer identification number of such Grantor. The filing of Uniform Commercial Code financing statements (including fixture filings, as applicable) prepared by the Administrative Agent for filing in each governmental, municipal and other offices specified in Schedule V are all the filings, recordings and registrations that are necessary (other than filings required to be made in the United States Patent and Trademark Office and the United States Copyright Office in order to perfect the Security Interest in the Article 9 Collateral consisting of registrations and applications for United States Patents, United States Trademarks, United States Copyrights and United States exclusive Copyright Licenses for registered Copyrights) to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Administrative Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States of America (or any political subdivision thereof) and its territories and possessions. No further or subsequent filing, refile, recording, rerecording, registration or reregistration is necessary with respect to any such Article 9 Collateral in any such jurisdiction, except as provided under applicable law with respect to the filing of continuation statements. A Patent Security Agreement in the form of Exhibit II-A hereto, a Trademark Security Agreement in the form of Exhibit II-B hereto, and a Copyright Security Agreement in the form of Exhibit II-C hereto (such agreements being collectively referred to herein as the "*IP Security Agreements*"), in each case containing a description of the Article 9 Collateral consisting of registrations and applications for United States Patents, United States Trademarks, United States Copyrights and United States exclusive Copyright Licenses for registered Copyrights, as applicable, and executed by such Grantor owning any such Article 9 Collateral, have been delivered to the Administrative Agent for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable, to protect the validity of and to establish a legal, valid and perfected security interest in favor of the Administrative Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral consisting of registrations and applications for United States Patents, United States Trademarks, United States Copyrights and United States exclusive Copyright Licenses for registered Copyrights in which a security interest may be perfected by filing, recording or registration in the United States of America (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refile, recording, rerecording, registration or reregistration is necessary with respect to any such Article 9 Collateral in any such jurisdiction (other than such actions as are necessary to perfect the Security Interest with respect to any Article 9 Collateral consisting of registrations and applications for

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United States Patents, United States Trademarks and United States Copyrights and United States exclusive Copyright Licenses for registered Copyrights acquired or developed after the Closing Date).

(c) The Security Interest constitutes (i) a legal and valid security interest in all the Article 9 Collateral securing the payment of the Obligations, (ii) subject to the filings described in Section 3.02(b), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States of America (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code in such jurisdictions and (iii) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of the IP Security Agreements with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral with respect to which a Uniform Commercial Code statement has been filed or that is subject to an IP Security Agreement, other than

Permitted Encumbrances and Liens permitted under Section 6.02 of the Credit Agreement that have priority as a matter of law, are permitted under clauses (b), (d), (e) and (h) thereof or are otherwise expressly contemplated under Section 6.02 of the Credit Agreement to have equal or greater priority.

(d) Schedule III sets forth, as of the Closing Date, a true and complete list, with respect to such Grantor, of (i) all Patents owned by such Grantor that have been granted by or applied for with the United States Patent and Trademark Office, (ii) all Copyrights owned by such Grantor that have been registered with the United States Copyright Office, (iii) all Trademarks owned by such Grantor that have been registered with the United States Patent and Trademark Office and Trademarks for which United States registration applications are pending and (iv) all exclusive Copyright Licenses under which such Grantor is a licensee, in each case truly and completely, specifying the name of the registered owner, title, type of mark, registration or application number, expiration date (if already registered) or filing date, and, if applicable, the licensee, licensor and date of license agreement. In the event any Supplement shall set forth any Intellectual Property, Schedule III shall be deemed to be supplemented to include the reference to such Intellectual Property, in the same form as such reference is set forth on such Supplement.

(e) Schedule IV sets forth, as of the Closing Date, a true and complete, in all material respects, list, with respect to such Grantor, of each Commercial Tort Claim in respect of which a complaint or a counterclaim has been filed by such Grantor, seeking damages in an amount reasonably estimated to exceed \$5,000,000.

(f) Such Grantor has not filed or consented to the filing of (i) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral, (ii) any assignment in which such Grantor assigns any Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office, (iii) any notice under the Assignment of Claims Act, or (iv) any assignment in which such Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for any of the foregoing related solely to Liens expressly permitted pursuant to Section 6.02 of the Credit Agreement.

(g) Schedule VI sets forth, as of the Closing Date, a true and complete list, with respect to such Grantor, of all real property owned by such Grantor having a fair market value in excess of \$10,000,000 (or its equivalent), together with (i) the fair market value of such real property, to the extent an appraisal exists, or, in the absence of any such appraisal, the book value of such real property,

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(ii) the exact name of the Person that owns such real property as such name appears in its certificate of incorporation or other organizational document, (iii) if different from the name identified pursuant to clause (ii), the exact name of the current mortgagor/grantor of such real property reflected in the records of the filing office or registry for such real property identified pursuant to the following clause and (iv) the filing office or registry in which a Mortgage with respect to such real property must be filed or recorded in order for the Administrative Agent to obtain a perfected security interest therein.

SECTION 3.03. Covenants. (a) Such Grantor (other than the Borrower) agrees (i) to be bound by the provisions of Section 5.03 of the Credit Agreement with the same force and effect, and to the same extent, as if each reference therein to the Borrower were a reference to such Grantor, (ii) reasonably promptly to provide the Administrative Agent with certified organizational documents reflecting any of the changes described in Section 5.03 of the Credit Agreement and (iii) to be bound by the provisions of Sections 2.17, 5.04, 5.05, 5.06, 5.07, 5.08, 5.09, 5.14, 5.15 and 5.16 of the Credit Agreement with the same force and effect, and to the same extent, as if such Grantor were a party to the Credit Agreement. Such Grantor agrees promptly to notify the Administrative Agent if any material portion of its Article 9 Collateral constituting Goods, Equipment or Inventory owned or held by such Grantor is damaged, destroyed, or subject to condemnation.

(b) Such Grantor shall, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Administrative Agent in the Article 9 Collateral and the priority thereof against any Lien not permitted pursuant to Section 6.02 of the Credit Agreement.

(c) [Reserved]

(d) [Reserved]

(e) At its option, the Administrative Agent may discharge past due Taxes, assessments, charges, fees and Liens at any time levied or placed on the Article 9 Collateral that are not permitted by the Credit Agreement, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent such Grantor fails to do so as required by this Agreement or the other Loan Documents, in each case, after the Administrative Agent has requested in writing that such Grantor do so at least ten (10) days prior to the Administrative Agent taking any such action, and such Grantor agrees to reimburse the Administrative Agent reasonably promptly on written demand for any reasonable payment made or any reasonable expense incurred by the Administrative Agent pursuant to the foregoing authorization (and any such payment made or expense waived shall be an additional Obligation secured hereby); provided, however that nothing in this Section 3.03(e) shall be interpreted as excusing such Grantor from the performance of, or imposing any obligation on the Administrative Agent or any Secured Party to cure or perform, any covenants or other obligations of such Grantor with respect to Taxes, assessments, charges, fees and Liens and maintenance as set forth herein or in the other Loan Documents.

(f) None of the Administrative Agent or the Secured Parties shall have any responsibility for, or liability for its failure in, observing or performing any obligations to be observed and performed by such Grantor under any contract, agreement or instrument relating to the Article 9 Collateral, and such Grantor agrees to indemnify and hold harmless the Administrative Agent and the Secured Parties from and against any and all liability for such performance.

(g) Such Grantor shall not make or permit to be made any transfer of the Article 9 Collateral (other than Dispositions permitted under the Credit Agreement).

(h) [Reserved]

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(i) Such Grantor irrevocably makes, constitutes and appoints the Administrative Agent (and its designees) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, upon the occurrence and during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that such Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required pursuant to Section 5.07 of the Credit Agreement, or to pay any premium in whole or part relating thereto, the Administrative Agent may, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Administrative Agent deems reasonably necessary after providing ten (10) days' notice to such Grantor. All sums disbursed by the Administrative Agent in connection with this paragraph, including reasonable and documented out-of-pocket outside counsel attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable reasonably promptly upon written demand by such Grantor to the Administrative Agent and shall be additional Obligations secured hereby. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, all insurance payments, proceeds of insurance and any awards arising from condemnation of any Collateral of such Grantor received by the Administrative Agent in connection with any loss, damage or destruction of any Collateral shall be transferred to such Grantor.

SECTION 3.04. Instruments and Tangible Chattel Paper. Without limiting such Grantor's obligations under Article II, if such Grantor shall at any time after the Closing Date acquire any Instruments (other than any instrument with a face amount of less than \$10,000,000) or Tangible Chattel Paper (other than Tangible Chattel Paper with a value less than \$10,000,000) constituting Collateral, such Grantor shall within 30 days (or such other period as may be reasonably acceptable to the Administrative Agent) after acquisition thereof endorse, assign and deliver the same to the Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time reasonably request.

SECTION 3.05. Intellectual Property Covenant.

(a) Such Grantor agrees that it will do or cause to be done all things necessary to preserve, renew, and keep in full force and effect the legal existence of all Intellectual Property, which, in the reasonable judgment of the Borrower, is material to the conduct of the business of the Borrower and its Subsidiaries taken as a whole.

(b) Such Grantor agrees that, should it acquire an ownership or other interest in any Article 9 Collateral consisting of Intellectual Property after the Closing Date ("*After-Acquired Intellectual Property*"), (i) the provisions of this Agreement shall automatically apply thereto, and (ii) any such After-Acquired Intellectual Property shall automatically become part of the Collateral consisting of Intellectual Property subject to the terms and conditions of this Agreement with respect thereto. Such Grantor shall (i) within twenty (20) days of such acquisition, with respect to any United States registered Copyrights or exclusive Copyright Licenses for United States registered Copyrights, provide the Administrative Agent with an updated Schedule III, Part 3, (ii) within sixty (60) days of such acquisition, with respect to any United States registered Patents, Trademarks and applications therefor, provide the Administrative Agent with an updated Schedule III, Parts 1 and 2 and (iii) promptly after providing such updates, execute and deliver to the Administrative Agent an appropriate IP Security Agreement supplement to evidence the Administrative Agent's security interest in any United States registered or applied for After-Acquired Intellectual Property. In each case, such Grantor will promptly cooperate as reasonably necessary to enable the Administrative Agent to make any necessary or advisable recordings with the United States Patent and Trademark Office and the United States Copyright Office, as applicable.

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(c) With respect to each item of its material registered Intellectual Property and material applications therefor, such Grantor agrees to take all commercially reasonable steps (i) to maintain the validity and enforceability of any such Intellectual Property and to maintain such Intellectual Property in full force and effect and (ii) to pursue the registration and maintenance of each such registration or application, now or hereafter included in the Intellectual Property of such Grantor, including the payment of required fees and taxes, the filing of responses to office actions issued by the United States Patent and Trademark Office, the United States Copyright Office or other governmental authorities, the filing of applications for renewal or extension, the filing of affidavits under Sections 8 and 15 of the United States Trademark Act, the filing of divisional, continuation, continuation-in-part, reissue and renewal applications or extensions, the payment of maintenance fees and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings, in each case with respect to clauses (i) and (ii), except to the extent the failure to take such commercially reasonable steps would not reasonably be expected to result in a Material Adverse Effect.

(d) Such Grantor shall not do or permit any act or knowingly omit to do any act whereby any of its material Intellectual Property may lapse, be terminated, or become invalid or unenforceable or placed in the public domain (or in case of a trade secret, lose its competitive value), except to the extent that so acting or the failure to so act would not reasonably be expected to result in a Material Adverse Effect.

(e) Such Grantor shall take all commercially reasonable steps to preserve and protect each item of its material Intellectual Property, including maintaining the quality of any and all products or services used or provided in connection with any of the Trademarks, consistent with the quality of the products and services as of the date hereof, and taking all reasonable steps to ensure that all licensed users of any of the Trademarks abide by the applicable license's terms with respect to the standards of quality, except to the extent that the failure to so act would not reasonably be expected to result in a Material Adverse Effect.

(f) In the event that such Grantor has reason to believe that any Intellectual Property material to the conduct of the business of the Borrower and its Subsidiaries, taken as a whole, has been or is likely to be infringed, misappropriated or diluted by a third party, such Grantor shall, if consistent with reasonable business judgment, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as appropriate in such Grantor's reasonable business judgment.

SECTION 3.06. Commercial Tort Claims. In the event any Supplement shall set forth any Commercial Tort Claim, Schedule IV shall be deemed to be supplemented to include the reference to such Commercial Tort Claim (and the description thereof), in the same form as such reference and description are set forth on such Supplement.

## ARTICLE IV

### Remedies

Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, after the Administrative Agent shall have notified the Grantors that it is exercising its rights under this Section 4.01, each Grantor agrees to deliver each item of Collateral to the Administrative Agent on written demand, and it is agreed that the Administrative Agent shall have the right to take any of or all the following actions at the same or different times: (a) with respect to any Article 9 Collateral consisting of Intellectual Property, on written demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the

applicable Grantors to the Administrative Agent, for the benefit of the Secured Parties, or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Administrative Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained using commercially reasonable efforts), and (b) with or without legal process or demand for performance, to take upon prior notice possession of the Article 9 Collateral and without liability for trespass to enter upon prior notice any premises where the Article 9 Collateral may be located for the purpose of taking possession of or removing the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing, each Grantor agrees that the Administrative Agent shall have the right upon the occurrence and during the continuance of an Event of Default, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Administrative Agent shall deem appropriate. The Administrative Agent shall be authorized to take the actions set forth in Sections 4.03, 4.04 and 4.05. Each such purchaser at any sale of Collateral shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Administrative Agent shall give the applicable Grantors no less than 10 days' prior written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the New York UCC or its equivalent in other jurisdictions) of the Administrative Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Administrative Agent may (in its sole and absolute discretion) determine. The Administrative Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative Agent and the other Secured Parties shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. 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, at the direction of the Required Lenders, 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. As an alternative to exercising the power of sale herein conferred upon it, the Administrative Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof

pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 4.01 shall be deemed to conform to commercially reasonable standards as provided in Section 9-610(b) of the New York UCC or its equivalent in other jurisdictions.

## SECTION 4.02.

Application of Proceeds. The Administrative Agent shall apply the proceeds of any collection, sale, foreclosure or other realization upon any Collateral, including any Collateral consisting of cash, as follows:

FIRST, subject to Section 9.03 of the Credit Agreement, to the payment of all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent in connection with such collection, sale, foreclosure or realization or otherwise in connection with this Agreement, any other Loan Document or any of the Obligations, including all court costs and the reasonable and documented out-of-pocket fees and expenses of its agents and outside legal counsel, the repayment of all advances made by the Administrative Agent hereunder or under any other Loan Document on behalf of any Grantor and any other reasonable and documented out-of-pocket costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document;

SECOND, to the Payment In Full of the Obligations (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of the Obligations owed to them on the date of any such distribution); and

THIRD, to the Grantors, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Administrative Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Administrative Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Administrative Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Administrative Agent or such officer or be answerable in any way for the misapplication thereof. The Grantors shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations, including any outside counsel attorneys' fees and other documented expenses incurred by Administrative Agent or any Lender to collect such deficiency. Notwithstanding the foregoing, the proceeds of any

collection, sale, foreclosure or realization upon any Collateral of any Grantor, including any collateral consisting of cash, shall not be applied to any Excluded Swap Obligation of such Grantor and shall instead be applied to other obligations.

SECTION 4.03. Grant of License To Use Intellectual Property. For the purpose of enabling the Administrative Agent to exercise rights and remedies under this Agreement at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Administrative Agent an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Grantors) to use, license or sublicense any of the Article 9 Collateral consisting of Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, the right to prosecute and maintain all Intellectual Property and the right to sue for past, present or future infringement of the Intellectual Property, to the extent that such non-exclusive license (a) does not violate the express terms of any agreement between a Grantor and a third

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party governing the applicable Grantor's use of such Collateral consisting of Intellectual Property, or gives such third party any right of acceleration, modification or cancellation therein and (b) is not prohibited by any Requirements of Law other than, in each case, to the extent that any such term or prohibition would be rendered ineffective pursuant to any other applicable Requirements of Law, including pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the New York UCC or any other applicable law. The use of such license by the Administrative Agent may be exercised, at the option of the Administrative Agent, only upon the occurrence and during the continuation of an Event of Default; provided that any license, sublicense or other transaction entered into by the Administrative Agent in accordance herewith shall be binding upon the Grantors notwithstanding any subsequent cure of an Event of Default.

SECTION 4.04. Securities Act. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act as now or hereafter in effect or any similar statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the "Federal Securities Laws") with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Administrative Agent if the Administrative Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Administrative Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable blue sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor recognizes that in light of such restrictions and limitations the Administrative Agent may, with respect to any sale of the Pledged Collateral, and shall be authorized to, limit the purchasers to those who will agree, among other things, to acquire such Pledged Collateral for their own account for investment, and not with a view to the distribution or resale thereof, and upon consummation of any such sale may assign, transfer and deliver to the purchaser or purchasers thereof the Pledged Collateral so sold. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Administrative Agent, in its sole and absolute discretion, (a) may proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, blue sky or other state securities laws to the extent the Administrative Agent has determined that such registration is not required by any Requirement of Law and (b) may approach and negotiate with a limited number of potential purchasers (including a single potential purchaser) to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Administrative Agent shall incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Administrative Agent, in its sole and absolute discretion, may in good faith deem fair under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a limited number of potential purchasers (or a single purchaser) were approached. The provisions of this Section 4.04 will apply notwithstanding the existence of a private market upon which the quotations or sales prices may exceed substantially the price at which the Administrative Agent sells.

## ARTICLE V

### Indemnity, Subrogation, Contribution and Subordination

SECTION 5.01. Indemnity and Subrogation. In addition to all such rights of indemnity as the Grantors may have under applicable law (but subject to Section 5.03), each of the Borrower and each Domestic Subsidiary Loan Party agrees that in the event any assets of any Grantor

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shall be sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part any Obligation of the Borrower or such Domestic Subsidiary Loan Party, the Borrower (if such Obligation is an obligation of the Borrower), or such Domestic Subsidiary Loan Party (if such Obligation is an obligation of such Domestic Subsidiary Loan Party), shall indemnify such Grantor therefor.

SECTION 5.02. Contribution and Subrogation. Each Grantor (each such Grantor (other than, in the case of any payment referred to in this sentence in respect of any Obligation of the Borrower or any Domestic Subsidiary Loan Party, the Borrower or such Domestic Subsidiary Loan Party, as applicable) being called a "Contributing Party") agrees (subject to Section 5.03) that, in the event assets of any other Grantor shall be sold pursuant to any Security Document to satisfy any Obligation (other than any assets of the Borrower or of any Domestic Subsidiary Loan Party sold to satisfy its own Obligations) and such other Grantor (the "Claiming Party") shall not have been fully indemnified by the Borrower or the applicable Domestic Subsidiary Loan Party, as applicable, as provided in Section 5.01, such Contributing Party shall indemnify the Claiming Party therefor. Any Contributing Party making any payment to a Claiming Party pursuant to this Section 5.02 shall (subject to Section 5.03) be subrogated to the rights of such Claiming Party under Section 5.01 to the extent of such payment. Notwithstanding the foregoing, to the extent that any Claiming Party's right to indemnification hereunder arises from a sale of Collateral made to satisfy Obligations constituting Swap Obligations, only those Contributing Parties for whom such Swap Obligations do not constitute Excluded Swap Obligations shall indemnify such Claiming Party.

SECTION 5.03. Subordination. (a) Notwithstanding any provision of this Agreement to the contrary, all rights of the Grantors under Sections 5.01 and 5.02 and all other rights of the Grantors of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to Payment In Full. No failure on the part of the Borrower or any other Grantor to make the payments required by Sections 5.01 and 5.02 (or

any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Grantor with respect to its obligations hereunder, and each Grantor shall remain liable for the full amount of the obligations of such Grantor hereunder.

(b) Each Grantor hereby agrees that all Indebtedness and other monetary obligations owed by it to, or to it by, any other Grantor or any other Subsidiary shall be fully subordinated to Payment In Full.

## ARTICLE VI

### Miscellaneous

SECTION 6.01. Notices. All communications and notices to the Administrative Agent and the Borrower hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to any Domestic Subsidiary Loan Party shall be given to it in care of the Borrower as provided in Section 9.01 of the Credit Agreement.

SECTION 6.02. Waivers; Amendment. (a) No failure or delay by any Secured Party 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 Secured Parties hereunder and under the other Loan Documents 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 consent to any departure by any

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Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 6.02, and then such waiver or consent shall be effective only in the specific instance and for the 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. No notice or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified (other than supplements expressly contemplated hereby) except pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is applicable, subject to any consent required in accordance with Section 9.02 of the Credit Agreement; provided that 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 herein or in any other Security Document to the extent such departure is not inconsistent with the Collateral and Guarantee Requirement or with any other limitation on the authority of the Administrative Agent set forth in the Credit Agreement.

(c) This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

SECTION 6.03. Administrative Agent's Fees and Expenses; Indemnification. (a) The Loan Parties party hereto jointly and severally agree to reimburse the Administrative Agent for its fees and expenses incurred hereunder as provided in Section 9.03(a) of the Credit Agreement as if each reference therein to the Borrower were a reference to the Grantors.

(b) The Grantors jointly and severally agree to indemnify and hold harmless each Indemnitee as provided in Section 9.03(b) of the Credit Agreement as if each reference to the Borrower therein were a reference to the Grantors.

(c) Any amounts payable hereunder, including as provided in Section 6.03(a) or 6.03(b), shall be additional Obligations secured hereby and by the other Security Documents. All amounts due under Section 6.03(a) or 6.03(b) shall be payable promptly after written demand therefor.

(d) To the extent permitted by applicable law, no Grantor shall assert, or permit any of its subsidiaries to assert, and each Grantor 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), unless determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, or (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) BY ACCEPTING THE BENEFITS OF THIS AGREEMENT AND THE SECURITY INTERESTS CREATED HEREBY, EACH SECURED PARTY ACKNOWLEDGES THE PROVISIONS OF ARTICLE VIII OF THE CREDIT AGREEMENT AND AGREES TO BE BOUND BY SUCH PROVISIONS AS FULLY AS IF THEY WERE SET FORTH HEREIN.

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SECTION 6.04. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the 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 Secured Parties and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by or on behalf of any Secured Party and notwithstanding that any Secured Party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any Loan Document is executed and delivered or any credit is extended under the Credit Agreement, and, subject to Section 6.11 hereof, shall continue in full force and effect until Payment In Full.

SECTION 6.05. Counterparts; Effectiveness; Successors and Assigns. 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. This Agreement shall become effective as to any Loan Party when a counterpart hereof executed on behalf of such Loan Party shall have been delivered to the Administrative Agent and a counterpart hereof shall have been executed on behalf of the Administrative Agent, and thereafter shall be binding upon such Loan Party and the Administrative Agent and their respective successors and assigns, and shall inure to the benefit of such Loan Party, the Administrative Agent and the other Secured Parties and their respective successors and assigns, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or any interest herein or in the Collateral (and any attempted assignment or transfer by any Loan Party shall be null and void), except as expressly contemplated by this Agreement or the Credit Agreement. 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 6.06. 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 6.07. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Each party hereto irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of the courts of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the Loan Parties hereby irrevocably and unconditionally agrees that all claims arising out of or relating to this Agreement brought by it or any of its Affiliates shall be brought, and shall be heard and determined, exclusively in such New York State or, to the extent permitted by law, in such federal court. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Loan Party or any of its properties in the courts of any jurisdiction.

(c) Each of the Loan Parties hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of

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any suit, action or proceeding arising out of or relating to this Agreement or in any court referred to in paragraph (b) of this Section 6.07. Each of the Loan 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 hereto irrevocably consents to service of process in the manner provided for notices in Section 6.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 6.08. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY 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 THE TRANSACTIONS CONTEMPLATED HEREBY (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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.08.

SECTION 6.09. 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 6.10. Security Interest Absolute. All rights of the Administrative Agent hereunder, the Security Interest, the grant of the security interest in the Pledged Collateral and all obligations of each Loan Party hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment to or waiver of, or any consent to any departure from, the Credit Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (c) any exchange, release or non-perfection of any Lien on other collateral securing, or any release or amendment to or waiver of, or any consent to any departure from, any guarantee of, all or any of the Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party in respect of the Obligations or this Agreement (other than a release of any Grantor or Collateral in accordance with Section 6.11).

SECTION 6.11. Termination or Release. (a) This Agreement, the Security Interest and all other security interests granted hereby shall terminate and be released upon Payment In Full.

(b) The Security Interest and the other security interests granted hereby shall also terminate and be released (in whole or in part) at the time or times and in the manner set forth in Section 9.14 of the Credit Agreement. In the event of any such termination or release, Schedules II, III and IV to this Agreement shall be deemed to be modified to remove the Collateral with respect to which the Security Interest and the other security interests granted hereby have been so released.

(c) In connection with any termination or release pursuant to this Section 6.11, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request and hereby authorizes any amendments to or

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terminations of financing statements necessary to evidence such termination or release. Any execution and delivery of documents by the Administrative Agent pursuant to this Section 6.11 shall be without recourse to or warranty by the Administrative Agent.

SECTION 6.12. Additional Subsidiaries. Pursuant to the Credit Agreement, certain Subsidiaries not party hereto on the Closing Date may be required to enter into this Agreement. Upon the execution and delivery by the Administrative Agent and any such Subsidiary of a Supplement, such Subsidiary shall become a Domestic Subsidiary Loan Party and a Grantor hereunder, with the same force and effect as if originally named as such herein. The execution and delivery of any Supplement shall not require the consent of any other Loan Party. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any new Domestic Subsidiary Loan Party as a party to this Agreement.

SECTION 6.13. Administrative Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Administrative Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Administrative Agent may deem necessary to accomplish the purposes hereof at any time after and during the continuance of an Event of Default, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the Administrative Agent shall have the right, upon the occurrence and during the continuance of an Event of Default and notice by the Administrative Agent to the Borrower of its intent to exercise such rights, with full power of substitution either in the Administrative Agent's name or in the name of such Grantor (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral; (d) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (e) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; and (f) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Administrative Agent were the absolute owner of the Collateral for all purposes; provided that nothing herein contained shall be construed as requiring or obligating the Administrative Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Administrative Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Administrative Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their Related Parties shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

SECTION 6.14. Secured Cash Management Obligations and Secured Hedging Obligations. No Secured Party that obtains the benefit of this Agreement shall have any right to notice of any action or to consent to, direct or object to, any action hereunder or otherwise in respect of the Collateral (including, without limitation, the release or impairment of any Collateral) other than in its capacity as a Lender or the Administrative Agent, as applicable, and, in any such case, only to the extent expressly provided in the Loan Documents, including without limitation Article VIII of the Credit Agreement. Each Secured Party not a party to the Credit Agreement that obtains the benefit of this Agreement shall be deemed to have acknowledged and accepted the appointment of the Administrative

Agent pursuant to the terms of the Credit Agreement, including, without limitation, under Article VIII of the Credit Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

ASPEN TECHNOLOGY, INC.

By: \_\_\_\_\_  
Name:  
Title:

[·]

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

Schedule I to  
the Collateral Agreement

DOMESTIC SUBSIDIARY LOAN PARTIES

Subsidiary Name	Jurisdiction of Incorporation

Schedule II to  
the Collateral Agreement

PLEGDED EQUITY INTERESTS

Loan Party	Issuer	Number of Certificate	Number and Class of Equity Interest	Percentage of Equity Interests

PLEGDED DEBT SECURITIES

Schedule III to  
the Collateral Agreement

INTELLECTUAL PROPERTY

PART 1

Patents and Patent Applications

Loan Party	Title	Application No.	Jurisdiction	Patent No.

PART 2

Trademarks and Trademark Applications

*Registered*

Registered Owner	Mark	Registration No.

*Applications*

Registered Owner	Mark	Application No.

PART 3

Copyrights and Copyright Applications

*Registered*

Exclusive Copyright Licenses

Schedule IV to  
the Collateral Agreement

COMMERCIAL TORT CLAIMS

Schedule V to  
the Collateral Agreement

NAMES, JURISDICTIONS AND LOCATIONS

Grantor's Exact Legal Name	Other Legal Names (including date of change)	Other Names (including trade names or similar appellations)	Changes in Corporate Structure

Grantor	Jurisdiction of Organization	Form of Organization	Organizational Identification Number (if any)	Chief Executive Office (including county)	Registered Office Address (including county)	Federal Taxpayer Identification Number

Schedule VI to  
the Collateral Agreement

REAL PROPERTY

Grantor	Common Name and Address	Tax Assessed Value	Exact Name of Owner	Exact Name of Mortgagor / Grantor	Filing Office / Registry

Exhibit I to  
the Collateral Agreement

SUPPLEMENT NO. [ ] dated as of [ ] (this "Supplement"), to the Collateral Agreement dated as of [ ], 2016 (the "Collateral Agreement"), among Aspen Technology, Inc. (the "Borrower"), each subsidiary of the Borrower listed on Schedule I thereto (each such subsidiary individually a "Subsidiary Grantor" and, collectively, the "Subsidiary Grantors"; the Subsidiary Grantors and the Borrower are referred to collectively herein as the "Grantors") and JPMORGAN CHASE BANK, N.A., a national banking association ("JPMCB"), as Administrative Agent (in such capacity, the "Administrative Agent").

A. Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the lenders from time to time party thereto and JPMCB, as Administrative Agent.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Collateral Agreement and the Credit Agreement referred to therein, as applicable.

C. The Grantors have entered into the Collateral Agreement in order to induce the Lenders to make extensions of credit to the Borrower under the Credit Agreement. Section 6.12 of the Collateral Agreement provides that additional Subsidiaries may become Domestic Subsidiary Loan Parties under the Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "New Subsidiary") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Domestic Subsidiary Loan Party under

the Collateral Agreement [in order to induce the Lenders to make additional extensions of credit under the Credit Agreement] and as consideration for such extensions of credit previously made.

Accordingly, the Administrative Agent and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 6.12 of the Collateral Agreement, the New Subsidiary by its signature below becomes a Loan Party, a Domestic Subsidiary Loan Party and a Grantor under the Collateral Agreement with the same force and effect as if originally named therein as such, and the New Subsidiary hereby (a) agrees to all the terms and provisions of the Collateral Agreement applicable to it in such capacities and (b) represents and warrants that the representations and warranties made by it in such capacities thereunder are true and correct on and as of the date hereof. In furtherance of the foregoing, the New Subsidiary, as security for the Payment In Full of the Obligations (as defined in the Collateral Agreement), does hereby create and grant to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Subsidiary's right, title and interest in, to and under the Collateral (as defined in the Collateral Agreement) of the New Subsidiary. Each reference to a "Loan Party," "Domestic Subsidiary Loan Party" or "Grantor" in the Collateral Agreement shall be deemed to include the New Subsidiary. The Collateral Agreement is hereby incorporated herein by reference.

SECTION 2. The New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

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SECTION 3. This Supplement 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. This Supplement shall become effective when a counterpart hereof executed on behalf of the New Subsidiary shall have been delivered to the Administrative Agent and a counterpart hereof shall have been executed on behalf of the Administrative Agent. Delivery of an executed counterpart of a signature page of this Supplement by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Supplement.

SECTION 4. The New Subsidiary hereby represents and warrants that (a) Schedule I sets forth, as of the date hereof, the true and correct legal name of the New Subsidiary, its jurisdiction of organization and the location of its chief executive office; (b) Schedule II sets forth, as of the date hereof, a true and complete list of (i) all the Pledged Equity Interests owned by the New Subsidiary and the percentage of the issued and outstanding units of each class of the Equity Interests of the issuer thereof represented by the Pledged Equity Interests owned by the New Subsidiary and (ii) all the Pledged Debt Securities owned by the New Subsidiary; (c) Schedule III sets forth, as of the date hereof, a true and complete list of (i) all Patents that have been granted by the United States Patent and Trademark Office, (ii) all Copyrights that have been registered with the United States Copyright Office, (iii) all Trademarks that have been registered with the United States Patent and Trademark Office and Trademarks for which United States registration applications are pending and (iv) all exclusive Copyright Licenses under which such Grantor is a licensee and that, in the case of clauses (i), (ii) and (iii) are owned by the New Subsidiary, in each case truly and completely specifying the name of the registered owner, title, type or mark, registration or application number, expiration date (if already registered) or filing date, a brief description thereof and, if applicable, the licensee and licensor; (d) Schedule IV sets forth, as of the date hereof, each Commercial Tort Claim in respect of which a complaint or counterclaim has been filed by the New Subsidiary seeking damages in an amount reasonably estimated to exceed \$5,000,000, including a summary description of such claim; (e) Schedule V sets forth, as of the date hereof, (i) the exact legal name of the New Subsidiary, as such name appears in its certificate of organization or like document, (ii) each other legal name the New Subsidiary has had in the past five years, together with the date of the relevant name change, (iii) to our knowledge, each other name (including trade names or similar appellations) used by the New Subsidiary or any of its divisions or other business units in connection with the conduct of its business or the ownership of its properties at any time during the past five years, (iv) the jurisdiction of organization and the form of organization of the New Subsidiary, (v) the organizational identification number, if any, assigned by such jurisdiction, (vi) the address (including, the county) of the chief executive office of the New Subsidiary or the registered office of the New Subsidiary, if applicable, and (vii) the federal taxpayer identification number of the New Subsidiary and (f) Schedule VI sets forth, as of the date hereof, a list of all real property owned by the New Subsidiary having a fair market value in excess of \$10,000,000 (or its equivalent), together with (i) the fair market value of such real property, to the extent an appraisal exists, or, in the absence of any such appraisal, the book value of such real property, (ii) the exact name of the Person that owns such real property as such name appears in its certificate of incorporation or other organizational document, (iii) if different from the name identified pursuant to clause (ii), the exact name of the current mortgagor/grantor of such real property reflected in the records of the filing office or registry for such real property identified pursuant to the following clause and (iv) the filing office or registry in which a Mortgage with respect to such real property must be filed or recorded in order for the Administrative Agent to obtain a perfected security interest therein.

SECTION 5. Except as expressly supplemented hereby, the Collateral Agreement shall remain in full force and effect.

**SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

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SECTION 7. Any provision of this Supplement 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 8. All communications and notices hereunder shall be in writing and given as provided in Section 6.01 of the Collateral Agreement.

SECTION 9. Subject to the terms of the Loan Documents, the New Subsidiary agrees to reimburse the Administrative Agent for its reasonable and documented out-of-pocket expenses, including the reasonable fees, charges and disbursements of outside counsel, incurred by it in connection with this Supplement, including the preparation, execution and delivery thereof.

IN WITNESS WHEREOF, the New Subsidiary and the Administrative Agent have duly executed this Supplement to the Collateral Agreement as of the day and year first above written.

[NAME OF NEW SUBSIDIARY]

by

Name:

Title:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

by

Name:

Title:

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Schedule I  
to Supplement No. to the  
Collateral Agreement

SCHEDULE I

New Subsidiary Information

Name	Jurisdiction of Organization	Chief Executive Office

Schedule II  
to Supplement No. to the  
Collateral Agreement

SCHEDULE II

Pledged Equity Interests

Loan Party	Issuer	Certificate Number	Number and Class of Equity Interests	Percentage of Equity Interests

Pledged Debt Securities

Loan Party Creditor	Debtor	Type	Amount

Schedule III  
to Supplement No. to the  
Collateral Agreement

SCHEDULE III

Intellectual Property

Schedule IV  
to Supplement No. to the  
Collateral Agreement

SCHEDULE IV

Commercial Tort Claims

Schedule V to Supplement No. to the Collateral Agreement

NAMES, JURISDICTIONS AND LOCATIONS

Grantor's Exact Legal Name	Other Legal Names (including date of change)	Other Names (including trade names or similar appellations)	Changes in Corporate Structure
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Grantor	Jurisdiction of Organization	Form of Organization	Organizational Identification Number (if any)	Chief Executive Office (including county)	Registered Office Address (including county)	Federal Taxpayer Identification Number
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Schedule VI to Supplement No. to the Collateral Agreement

REAL PROPERTY

Grantor	Common Name and Address	Tax Assessed Value	Exact Name of Owner	Exact Name of Mortgagor / Grantor	Filing Office / Registry
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Exhibit II-A to the Collateral Agreement

[FORM OF] PATENT SECURITY AGREEMENT dated as of [ ], 2016 (this "Agreement"), among Aspen Technology, Inc. (the "Borrower"), the other Domestic Subsidiary Loan Parties from time to time party hereto and JPMorgan Chase Bank, N.A. ("JPMCB"), as Administrative Agent.

Reference is made to (a) the 364-Day Bridge Credit Agreement dated as of January [11], 2016, (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Lenders from time to time party thereto and JPMCB, as Administrative Agent, and (b) the Collateral Agreement dated as of [ ], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "Collateral Agreement"), among the Borrower, the other Domestic Subsidiary Loan Parties from time to time party thereto and JPMCB, as Administrative Agent. The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. The Domestic Subsidiary Loan Parties party hereto (other than the Borrower) are Affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit. Accordingly, the parties hereto agree as follows:

SECTION 1. Terms. Each capitalized term used but not otherwise defined herein shall have the meaning specified in the Credit Agreement or the Collateral Agreement, as applicable. The rules of construction specified in Section 1.03 of the Credit Agreement also apply to this Agreement, mutatis mutandis.

SECTION 2. Grant of Security Interest. As security for the Payment In Full of the Obligations, each Grantor pursuant to the Collateral Agreement did, and hereby does, grant to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in all right, title and interest in, to and under any and all of the following assets now owned or at any time hereafter acquired by such Grantor or in, to or under which such Grantor now has or at any time hereafter may acquire any right, title or interest (collectively, the "Patent Collateral"):

(a) all letters patent of the United States of America or the equivalent thereof in any other country, all registrations and recordings thereof and all applications for letters patent of the United States of America or the equivalent thereof in any other country or any political subdivision thereof, including registrations, recordings and pending applications in the United States Patent and Trademark Office, including, in the case of any Grantor, any of the foregoing set forth under its name on Schedule I; and

(b) all reissues, continuations, divisionals, continuations-in-part, reexaminations, supplemental examinations, *inter partes* reviews, renewals, adjustments or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, have made, use, sell, offer to sell, import or export the inventions disclosed or claimed therein.

SECTION 3. Collateral Agreement. The security interests granted to the Administrative Agent herein are granted in furtherance, and not in limitation of, the security interests granted to the Administrative Agent pursuant to the Collateral Agreement. Each Grantor hereby acknowledges and affirms that the rights and remedies of the Administrative Agent with respect to the Patent Collateral are more fully set forth in the Collateral Agreement, the terms and provisions of which are hereby

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incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the Collateral Agreement, the terms of the Collateral Agreement shall govern.

SECTION 4. Counterparts. 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. 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.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

[NAME OF GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

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SCHEDULE I

Patents Owned by [Name of Grantor]

*U.S. Patent Registrations*

Type	Registration No.

*U.S. Patent Applications*

Type	Application No.

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Exhibit II-B to  
the Collateral Agreement

[FORM OF] TRADEMARK SECURITY AGREEMENT dated as of [ ], 2016 (this "*Agreement*"), among Aspen Technology, Inc. (the "*Borrower*"), the other Domestic Subsidiary Loan Parties from time to time party hereto and JPMorgan Chase Bank, N.A. ("*JPMCB*"), as Administrative Agent.

Reference is made to (a) the 364-Day Bridge Credit Agreement dated as of January [11], 2016, (as amended, restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), among the Borrower, the Lenders from time to time party thereto and JPMCB, as Administrative Agent, and (b) the Collateral Agreement dated as of [ ], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "*Collateral Agreement*"), among the Borrower, the other Domestic Subsidiary Loan Parties from time to time party thereto and JPMCB, as Administrative

Agent. The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. The Domestic Subsidiary Loan Parties party hereto (other than the Borrower) are Affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit. Accordingly, the parties hereto agree as follows:

SECTION 1. Terms. Each capitalized term used but not otherwise defined herein shall have the meaning specified in the Credit Agreement or the Collateral Agreement, as applicable. The rules of construction specified in Section 1.03 of the Credit Agreement also apply to this Agreement, *mutatis mutandis*.

SECTION 2. Grant of Security Interest. As security for the Payment In Full of the Obligations, each Grantor pursuant to the Collateral Agreement did, and hereby does, grant to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in all right, title and interest in, to and under any and all of the following assets now owned or at any time hereafter acquired by such Grantor or in, to or under which such Grantor now has or at any time hereafter may acquire any right, title or interest (collectively, the “*Trademark Collateral*”):

(a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, domain names, global top level domain names, other source or business identifiers, designs and general intangibles of like nature, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar office in any State of the United States of America, all extensions or renewals thereof, and all common law rights related thereto, including, in the case of any Grantor, any of the foregoing set forth under its name on Schedule I; and

(b) all goodwill associated therewith or symbolized thereby.

SECTION 3. Collateral Agreement. The security interests granted to the Administrative Agent herein are granted in furtherance, and not in limitation of, the security interests granted to the

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Administrative Agent pursuant to the Collateral Agreement. Each Grantor hereby acknowledges and affirms that the rights and remedies of the Administrative Agent with respect to the Trademark Collateral are more fully set forth in the Collateral Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the Collateral Agreement, the terms of the Collateral Agreement shall govern.

SECTION 4. Counterparts. 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. 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.

[Signature Pages Follow]

2

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

[NAME OF GRANTOR]

By: \_\_\_\_\_

Name:

Title:

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent

By: \_\_\_\_\_

Name:

Title:

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#### SCHEDULE I

Trademarks/Trade Names Owned by [Name of Grantor]

*U.S. Trademark Registrations*

**Mark**

**Registration No.**

Mark	Registration No.



Mark	Application No.

Exhibit II-C to  
the Collateral Agreement

[FORM OF] COPYRIGHT SECURITY AGREEMENT dated as of [ ], 2016 (this “Agreement”), among Aspen Technology, Inc. (the “Borrower”), the other Domestic Subsidiary Loan Parties from time to time party hereto and JPMorgan Chase Bank, N.A. (“JPMCB”), as Administrative Agent.

Reference is made to (a) the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), among the Borrower, the Lenders from time to time party thereto and JPMCB, as Administrative Agent, and (b) the Collateral Agreement dated as of [ ], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “Collateral Agreement”), among the Borrower, the other Domestic Subsidiary Loan Parties from time to time party thereto and JPMCB, as Administrative Agent. The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. The Domestic Subsidiary Loan Parties party hereto (other than the Borrower) are Affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit. Accordingly, the parties hereto agree as follows:

SECTION 1. Terms. Each capitalized term used but not otherwise defined herein shall have the meaning specified in the Credit Agreement or the Collateral Agreement, as applicable. The rules of construction specified in Section 1.03 of the Credit Agreement also apply to this Agreement, *mutatis mutandis*.

SECTION 2. Grant of Security Interest. As security for the Payment In Full of the Obligations, each Grantor pursuant to the Collateral Agreement did, and hereby does, grant to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in all right, title and interest in, to and under any and all of the following assets now owned or at any time hereafter acquired by such Grantor or in, to or under which such Grantor now has or at any time hereafter may acquire any right, title or interest (collectively, the “Copyright Collateral”):

(a) (i) all copyright rights in any work subject to the copyright laws of the United States of America or any other country or any political subdivision thereof, whether as author, assignee, transferee or otherwise, (ii) all registrations and applications for registration of any such copyright in the United States of America or any other country, including, registrations, recordings, supplemental registrations, pending applications for registration, and renewals in the United States Copyright Office, including, in the case of any Grantor, any of the foregoing set forth under its name on Schedule I and (iii) any other adjacent or other rights related or appurtenant to the foregoing, including moral rights; and

(b) all exclusive Copyright Licenses under which any Grantor is a licensee, including those listed on Schedule I.

SECTION 3. Collateral Agreement. The security interests granted to the Administrative Agent herein are granted in furtherance, and not in limitation of, the security interests granted to the Administrative Agent pursuant to the Collateral Agreement. Each Grantor hereby acknowledges and affirms that the rights and remedies of the Administrative Agent with respect to the Copyright Collateral are more fully set forth in the Collateral Agreement, the terms and provisions of which are hereby

incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the Collateral Agreement, the terms of the Collateral Agreement shall govern.

SECTION 4. Counterparts. 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. 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.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

[NAME OF GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE I

Copyrights

Registered Owner	Title	Copyright Number

Copyright Applications

Registered Owner	Title	Application Number	Filing Date

Exclusive Copyright Licenses

Licensee	Licensor	Title	Copyright Number

EXHIBIT D

**[FORM OF] COMPLIANCE CERTIFICATE**

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (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. Each capitalized term used but not defined herein shall have the meaning specified in the Credit Agreement.

The undersigned hereby certifies, in his or her capacity as a Financial Officer of the Borrower and not in a personal capacity, as follows:

1. I am a Financial Officer of the Borrower.

2. [Attached as Schedule I hereto are the audited consolidated balance sheet and audited consolidated statements of income, comprehensive income, shareholders' equity and cash flows required to be delivered by Section 5.01(a) of the Credit Agreement as of the end of and for the fiscal year ended [-] setting forth in comparative form the figures for the previous fiscal year, all reported on by [KPMG LLP](1), and related narrative report containing management's discussion and analysis of the financial position and financial performance for such fiscal year.](2)

[or]

2. [Attached as Schedule I hereto are the unaudited consolidated balance sheet and unaudited consolidated statements of income and cash flows required to be delivered by Section 5.01(b) of the Credit Agreement as of the end of and for the fiscal quarter ended [-] and the then elapsed portion of such 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, and related narrative report containing management's discussion and analysis of the financial position and financial performance for such fiscal quarter. The financial statements referred to in this Section 2 present 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 consistently applied, subject to normal year-end audit adjustments and the absence of certain footnotes.]

3. I have reviewed the terms of the Credit Agreement and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of the Borrower and the Subsidiaries during the accounting period covered by the [attached financial statements]. [Except as set forth in a separate attachment to this Certificate,] [t][T]he foregoing examination did not disclose, and I have no knowledge of (a) the existence of any condition or event that constitutes a Default has occurred and is continuing, except as set forth in a separate attachment, if any, to this Certificate, specifying the details thereof and the action that the Borrower has taken or proposes to take with respect thereto or (b) any change in GAAP or in the application thereof since the date of the consolidated balance sheet [most recently delivered pursuant to Section 5.01(a) or 5.01(b) of the Credit Agreement] / [referred to in Section 3.04 of the Credit Agreement] that has had, or would reasonably be expected to have, a material effect on the calculations of the Leverage Ratio.

(1) An independent registered public accounting firm of recognized national standing may be substituted for KPMG LLP in accordance with Section 5.01(a) of the Credit Agreement.

(2) Delivery not required to the extent posted or available on the website of the SEC at <http://www.sec.gov>.

4. Attached as Schedule [II][III] hereto is the name of each Subsidiary, if any, that (a) is an Excluded Subsidiary as of the date of this Certificate but has not been identified as an Excluded Subsidiary, as the case may be, 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, as the case may be.

5. Attached as Schedule [III][IV] hereto are reasonably detailed calculations of the Leverage Ratio for such fiscal quarter and the Interest Coverage Ratio for such fiscal quarter.

6. The foregoing certifications are made and delivered on [·], pursuant to Section 5.01(d) of the Credit Agreement.

[Remainder of page intentionally left blank]

Very truly yours,

ASPEN TECHNOLOGY, INC.

By: \_\_\_\_\_

Name:

Title:

EXHIBIT E

**[FORM OF] INTEREST ELECTION REQUEST**

JPMorgan Chase Bank, N.A.,  
as Administrative Agent  
10 South Dearborn Street  
Chicago, Illinois 60603  
Attention of J.P. Morgan Loan & Agency Servicing  
(Telecopy No. (888) 303-9732)

with a copy to,  
JPMorgan Chase Bank, N.A.  
270 Park Avenue, 43rd Floor  
New York, New York 10017  
Attention of Justin B. Kelley  
(Telecopy No. (917) 464-6072)

[Date]

Ladies and Gentlemen:

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (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 2.07 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:  
Type:(1)  
Interest Period:(2)
2. Effective date of this election:(3)
3. Resulting Borrowing[s](4)  
Principal Amount:(5)

(1) Specify ABR Borrowing or Eurocurrency Borrowing.

(2) In the case of a Eurocurrency Borrowing, specify the last day of the current Interest Period therefor.

(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.

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Type:(6)  
Interest Period:(7)

(6) Specify whether the resulting Borrowing is to be an ABR Borrowing or Eurocurrency Borrowing.

(7) Applicable only if the resulting Borrowing is to be a Eurocurrency 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.

2

Very truly yours,

ASPEN TECHNOLOGY, INC.

By \_\_\_\_\_

Name:

Title:

3

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EXHIBIT F-1

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE FOR FOREIGN LENDERS THAT ARE NOT PARTNERSHIPS FOR U.S. FEDERAL INCOME TAX PURPOSES

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (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.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (d) it is not a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or Form W-8BEN-E. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent and (b) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which any payment is to be made to the undersigned, or in either of the two calendar years preceding any such payment.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date:

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EXHIBIT F-2

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE FOR FOREIGN PARTICIPANTS THAT ARE NOT PARTNERSHIPS FOR U.S. FEDERAL INCOME TAX PURPOSES

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (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.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (d) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or Form W-8BEN-E. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing and (b) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which any payment is to be made to the undersigned, or in either of the two calendar years preceding any such payment.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date:

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EXHIBIT F-3

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE FOR FOREIGN PARTICIPANTS THAT ARE PARTNERSHIPS FOR U.S. FEDERAL INCOME TAX PURPOSES

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (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.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN or Form W-8BEN-E or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (b) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which any payment is to be made to the undersigned, or in either of the two calendar years preceding any such payment.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date:

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EXHIBIT F-4

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE FOR FOREIGN LENDERS THAT ARE PARTNERSHIPS FOR U.S. FEDERAL INCOME TAX PURPOSES

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (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.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)

(B) of the Code and (e) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN or an IRS Form W-8BEN-E or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or an IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent and (b) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which any payment is to be made to the undersigned, or in either of the two calendar years preceding any such payment.

[NAME OF LENDER]

By:

Name:

Title:

Date:

EXHIBIT G

[FORM OF] CLOSING CERTIFICATE OF [LOAN PARTY](18)

[·], 2016

Reference is made to the 364-Day Bridge Credit Agreement, dated as of January [11], 2016 (as amended, restated, supplemented or otherwise modified from time to time, 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 and not defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

Pursuant to Section[s] [4.02[(b)][(c)](19) [and] [4.02(j)] of the Credit Agreement, the undersigned officer of [ ] (the “Company.”) certifies, in the name and on behalf of the Borrower, and not individually, that:

a. [1. [The Scheme Circular was posted to the shareholders of the Target on [ ], 2016. The Court has sanctioned the Scheme and the Court Order has been duly delivered to the Registrar on [ ], 2016. Each copy of the Scheme Circular and the Press Release attached hereto as Exhibit A is correct and complete and has not been amended or superseded on or prior to the Closing Date, except to the extent such changes thereto have been required pursuant to the City Code or required by the Panel or to the extent not prohibited by the Loan Documents.](20) [The Takeover Offer Document was posted to the shareholders of the Target on [ ], 2016. Each copy of the Takeover Offer Document and the Offer Press Announcement attached hereto as Exhibit A is correct and complete and has not been amended or superseded on or prior to the Closing Date, except to the extent such changes thereto have been required pursuant to the City Code or required by the Panel or are not prohibited by the Loan Documents. The Takeover Offer has been declared unconditional in all respects without any material amendment, modification or waiver of the conditions to the Takeover Offer or of the Acceptance Condition except to the extent not prohibited by the Loan Documents.]](21)(22)

[2. All the Certain Funds Representations are true or, if a Certain Funds Representation does not include a materiality concept, true in all material respects.](23)

[3. No Certain Funds Event of Default has occurred and is continuing or would result from the proposed Borrowing.](24)

[4. [The Target Acquisition shall have been, or substantially concurrently with the occurrence of the Closing Date shall be, consummated in all material respects in accordance with the

(18) NTD: Remains subject to review by UK counsel.

(19) Applicable to the Borrower’s certificate only.

(20) Applicable where the Target Acquisition is to be implemented by way of a Scheme.

(21) Applicable where the Target Acquisition is to be implemented by way of a Takeover Offer.

(22) Applicable to the Borrower’s certificate only.

(23) Applicable to the Borrower’s certificate only.

(24) Applicable to the Borrower’s certificate only.

terms and conditions of the Scheme Documents (it being understood that substantially concurrently shall include the payment for Scheme Shares being made), without giving effect to (and there shall not have been) any modifications, amendments, consents, requests or waivers by the Borrower (or its applicable Affiliate) thereunder that are materially adverse to the interests of the Lenders, without the prior written consent of the Administrative Agent, except, in each case, to the extent such modifications, amendments, consents, requests or waivers have been required pursuant to the City Code or the Panel or are not prohibited by the Loan Documents.](25) [The Takeover Offer shall have become unconditional in accordance with the terms of the Offer

Document, without giving effect to (and there shall not have been) any modifications, amendments, consents, requests or waivers by the Borrower (or its applicable Affiliate) thereunder that are materially adverse to the interests of the Lenders, without the prior written consent of the Administrative Agent, except, in each case, to the extent such modifications, amendments, consents, requests or waivers have been required pursuant to the City Code or the Panel or are not prohibited by the Loan Documents.]](26)(27)

[5][1]. Attached hereto as Exhibit [A][B] is a true, correct and complete copy of the [Certificate of Incorporation] / [Certificate of Formation] / [Certificate of Organization] / [Articles of Incorporation] of the Company (the "Charter")], as certified by the Secretary of State of the State of [·]]. The Charter is in full force and effect on the date hereof, has not been amended except as set forth in Exhibit A or cancelled and no amendment to the Charter is pending or proposed.

[6][2]. Attached hereto as Exhibit [B][C] is a true, correct and complete copy of the [By-Laws] / [Operating Agreement] of the Company. Such [By-Laws] / [Operating Agreement] [have] / [has] not been amended, repealed, modified, superseded, revoked or restated except as set forth in Exhibit B, and [are] / [is] in full force and effect on the date hereof and no amendment to such [By-Laws] / [Operating Agreement] is pending.

[7][3]. Attached hereto as Exhibit [C][D] is a true, correct and complete copy of the resolutions (the "Resolutions") duly adopted by the [board of directors] / [members] of the Company (the "Authorizing Body") on [ ], 2016, authorizing the execution, delivery and performance of each of the Loan Documents to which the Company is a party and the transactions contemplated thereby. The Resolutions (i) were duly adopted by the Authorizing Body and have not been amended, modified, superseded or revoked in any respect and (ii) are in full force and effect on the date hereof.

[8][4]. Attached hereto as Exhibit [D][E] is a good standing certificate, dated [ ], 2016 for the Company [from the Secretary of State in the State in which the Company is [incorporated] / [organized]].

(25) Applicable where the Target Acquisition is to be implemented by way of a Scheme.

(26) Applicable where the Target Acquisition is to be implemented by way of a Takeover Offer.

(27) Applicable to the Borrower's certificate only.

[10][5]. Each individual set forth below is a duly authorized representative of the Company and is authorized to sign the Loan Documents and all other agreements, documents and instruments relating thereto on behalf of the Company. The signature written opposite the name of such officer below is his or her genuine signature.

Name	Office	Signature
[ ]	[ ]	
[ ]	[ ]	

1. IN WITNESS WHEREOF, I have executed this Certificate as of the date first written above.

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

I, a duly authorized signatory of the Company, do hereby certify that the person whose signature appears immediately above is a duly authorized signatory of the Company and the signature of such person set forth immediately above is true and genuine.

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

**Exhibit A**

[Scheme Circular and Press Release] / [Takeover Offer Document and Offer Press Announcement]

**Exhibit [A][B]**

[Certificate of Incorporation] / [Certificate of Formation] / [Certificate of Organization] / [Articles of Incorporation]

**Exhibit [B][C]**

[By-Laws] / [Operating Agreement]

**Exhibit [C][D]**

Resolutions

**Exhibit [D][E]**

Good Standing Certificate

EXHIBIT H

**FORM OF GUARANTEE AGREEMENT**

GUARANTEE AGREEMENT

dated as of

[ ], 2016,

among

ASPEN TECHNOLOGY, INC.,

THE SUBSIDIARIES OF Aspen Technology, Inc.  
IDENTIFIED HEREIN

and

JPMORGAN CHASE BANK, N.A.,

as Administrative Agent

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GUARANTEE AGREEMENT dated as of [ ], 2016 (this "Agreement"), among certain Subsidiaries of the Borrower (as defined below) from time to time party hereto and JPMorgan Chase Bank, N.A. ("JPMCB"), as Administrative Agent.

Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Aspen Technology, Inc., as Borrower (the "Borrower"), the Lenders from time to time party thereto and JPMCB, as Administrative Agent. The Lenders have agreed to extend credit to the Borrower on the terms and subject to the conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. The Subsidiary Guarantors are Affiliates of the Borrower and will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit. Accordingly, the parties hereto agree as follows:

## ARTICLE I

## Definitions

SECTION 1.01. Defined Terms. (a) Each capitalized term used but not defined herein and defined in the Credit Agreement shall have the meaning specified in the Credit Agreement.

(b) The rules of construction specified in Section 1.03 of the Credit Agreement also apply to this Agreement, *mutatis mutandis*.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Agreement" has the meaning assigned to such term in the Preamble hereto.

"Borrower" has the meaning assigned to such term in the Recitals hereto.

"Claiming Party" has the meaning assigned to such term in Section 3.02.

"Contributing Party" has the meaning assigned to such term in Section 3.02.

"Credit Agreement" has the meaning assigned to such term in the Recitals hereto.

"Guarantor Limit" means, with respect to any Person that becomes a Subsidiary Guarantor after the date hereof, any applicable limit on the guarantee of such Subsidiary Guarantor as set forth in the Supplement pursuant to which such Person became a Subsidiary Guarantor.

"Guarantors" means the Subsidiary Guarantors.

"JPMCB" has the meaning assigned to such term in the Preamble.

"Obligations" means (a) all the Loan Document Obligations, (b) all the Secured Cash Management Obligations and (c) all the Secured Hedging Obligations (other than any Excluded Swap Obligation).

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“*Payment In Full*” means when all Loan Document Obligations have been paid in full (except contingent indemnification and expense reimbursement obligations and tax gross-up or yield protection obligations which, in each case, survive the termination of the Loan Documents and in respect of which no claim has been made) and the Lenders have no further commitment to lend under the Credit Agreement.

“*Subsidiary Guarantors*” means, collectively, (a) the Designated Subsidiaries identified on Schedule I and (b) each other Subsidiary that becomes a party to this Agreement after the Effective Date.

“*Supplement*” means an instrument substantially in the form of Exhibit I hereto, or any other form approved by the Administrative Agent, and in each case reasonably satisfactory to the Administrative Agent.

## ARTICLE II

### Guarantee

SECTION 2.01. **Guarantee.** Each Guarantor irrevocably and unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, for the benefit of the Secured Parties, by way of an independent payment obligation, the punctual payment of the Obligations when due (other than, with respect to any Loan Party, any Excluded Swap Obligations of such Loan Party). Each Guarantor (solely in its capacity as such) further agrees that the Obligations may be extended or renewed (in the case of the Loan Document Obligations, in accordance with the terms of the Credit Agreement), in whole or in part, or amended or modified (in the case of the Loan Document Obligations, in accordance with the terms of the Credit Agreement), without notice to or further assent from it, and that it will remain bound upon its guarantee hereunder notwithstanding any such extension, renewal, amendment or modification of any Obligation. To the maximum extent permitted by applicable law, each Guarantor waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Obligations, and also waives notice of acceptance of its guarantee hereunder and notice of protest for nonpayment.

SECTION 2.02. **Guarantee of Payment; Continuing Guarantee.** Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether or not any bankruptcy, insolvency, receivership or other similar proceeding shall have stayed the accrual or collection of any of the Obligations or operated as a discharge thereof) and not merely of collection, and waives any right to require that any resort be had by the Administrative Agent or any other Secured Party to any security held for the payment of the Obligations or to any balance of any deposit account or credit on the books of the Administrative Agent or any other Secured Party in favor of the Borrower, the Borrower, any other Loan Party or any other Person. Each Guarantor agrees that its guarantee hereunder is continuing in nature and applies to all Obligations, whether currently existing or hereafter incurred.

SECTION 2.03. **No Limitations.** (a) Except for the termination or release of a Guarantor’s obligations hereunder as expressly provided in Section 4.11 or any Guarantor Limit, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations, any impossibility in the performance of the Obligations or otherwise. Without limiting the generality of the foregoing, except for the termination or release of its obligations hereunder as expressly provided in Section 4.11 or any Guarantor Limit, to the fullest extent permitted by applicable law, the obligations of each Guarantor

hereunder shall not be discharged or impaired or otherwise affected by (i) the failure of the Administrative Agent or any other Secured Party to assert any claim or demand or to enforce any right or remedy under the provisions of any Loan Document or otherwise; (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement; (iii) except for the release of any Guarantor’s Collateral as expressly provided in any Collateral Agreement to which such Guarantor is a party, the release of, or any impairment of or failure to perfect any Lien on or security interest in, any security held by the Administrative Agent or any other Secured Party for any of the Obligations; (iv) any default, failure or delay, willful or otherwise, in the performance of any of the Obligations; or (v) any other act or omission that may or might in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than Payment In Full). Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in accordance with and subject to the terms of the Loan Documents in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Obligations, all without affecting the obligations of any Guarantor hereunder.

(b) To the fullest extent permitted by applicable law, each Guarantor waives any defense based on or arising out of any defense of the Borrower or any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower or any other Loan Party, other than Payment In Full. The Administrative Agent (acting on behalf of the Secured Parties) may, at its election and in accordance with and subject to the terms of the Loan Documents, foreclose on any security held by it by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with the Borrower or any other Loan Party or exercise any other right or remedy available to it against the Borrower or any other Loan Party, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent Payment In Full shall have occurred. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against the Borrower or any other Loan Party, as the case may be, or any security.

SECTION 2.04. **Reinstatement.** Each Guarantor agrees that unless released pursuant to Section 4.11, this Agreement and its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned by the Administrative Agent or any other Secured Party upon the bankruptcy, insolvency, dissolution, liquidation or reorganization of the Borrower, any other Loan Party or otherwise.

SECTION 2.05. Agreement to Pay; Subrogation. In furtherance of the foregoing provisions of this Article II and not in limitation of any other right that the Administrative Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, but subject to any Guarantor Limit, upon the failure of the Borrower or any other Loan Party to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will promptly pay, or cause to be paid, to the Administrative Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Obligation. Upon payment by any Guarantor of any sums to the Administrative Agent as provided above, all rights of such Guarantor against the Borrower or any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article III.

SECTION 2.06. Information. Each Guarantor (a) assumes all responsibility for being and keeping itself informed of the Borrower's and each other Loan Party's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and (b) agrees that none of the Administrative Agent or the other Secured Parties will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

### ARTICLE III

#### Indemnity, Subrogation, Contribution and Subordination

SECTION 3.01. Indemnity and Subrogation. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 3.03), each Guarantor agrees that in the event a payment in respect of any Obligation shall be made by any Guarantor (other than such Guarantor, if such Obligation is of such Guarantor) under this Agreement, such Guarantor shall indemnify such other Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the Person to whom such payment shall have been made to the extent of such payment.

SECTION 3.02. Contribution and Subrogation. Each Guarantor (each such Guarantor (other than, in the case of any payment referred to in this sentence in respect of any Obligation of such Guarantor, such Guarantor) being called a "*Contributing Party*") agrees (subject to Section 3.03) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any Obligation (other than any such payment made by any Guarantor in respect of its own Obligations) and such other Guarantor (the "*Claiming Party*") shall not have been fully indemnified by the applicable Guarantor, as applicable, as provided in Section 3.01, such Contributing Party shall indemnify the Claiming Party. Any Contributing Party making any payment to a Claiming Party pursuant to this Section 3.02 shall (subject to Section 3.03) be subrogated to the rights of such Claiming Party under Section 3.01 to the extent of such payment. Notwithstanding the foregoing, to the extent that any Claiming Party's right to indemnification hereunder arises from a payment made to satisfy Obligations constituting Swap Obligations, only those Contributing Parties for whom such Swap Obligations do not constitute Excluded Swap Obligations shall indemnify such Claiming Party.

SECTION 3.03. Subordination. (a) Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Sections 3.01 and 3.02 and all other rights of the Guarantors of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to Payment In Full. No failure on the part of any Guarantor to make the payments required by Sections 3.01 and 3.02 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Guarantor with respect to its obligations hereunder, and each Guarantor shall remain liable for the full amount of the obligations of such Guarantor hereunder.

(b) Each Guarantor hereby agrees that all Indebtedness and other monetary obligations owed by it to any other Guarantor or any other Subsidiary shall be fully subordinated to Payment In Full.

### ARTICLE IV

#### Miscellaneous

SECTION 4.01. Notices. All communications and notices to the Administrative Agent and the Borrower hereunder shall (except as otherwise expressly permitted herein) be in writing

and given as provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to any Guarantor shall be given to it in care of the Borrower as provided in Section 9.01 of the Credit Agreement.

SECTION 4.02. Waivers; Amendment. (a) No failure or delay by any Secured Party 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 Secured Parties hereunder and under the other Loan Documents 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 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 4.02, and then such waiver or consent shall be effective only in the specific instance and for the 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. No notice or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified (other than supplements expressly contemplated hereby) except pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is applicable, subject to any consent required in accordance with Section 9.02 of the Credit Agreement; *provided* that 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 herein or in any other Security Document to the extent such departure is not inconsistent with the Collateral and Guarantee Requirement or with any other limitation on the authority of the Administrative Agent set forth in the Credit Agreement.

(c) This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

SECTION 4.03. Administrative Agent's Fees and Expenses; Indemnification. (a) The Loan Parties party hereto jointly and severally agree to reimburse the Administrative Agent for its fees and expenses incurred hereunder as provided in Section 9.03(a) of the Credit Agreement as if each reference therein to the Borrower were a reference to the Guarantors.

(b) The Guarantors jointly and severally agree to indemnify and hold harmless each Indemnitee as provided in Section 9.03(b) of the Credit Agreement as if each reference to the Borrower therein were a reference to the Guarantors.

(c) Any amounts payable hereunder, including as provided in Section 4.03(a) or 4.03(b), shall be additional Obligations secured hereby and by the other Security Documents. All amounts due under Section 4.03(a) or 4.03(b) shall be payable promptly after written demand therefor.

(d) To the extent permitted by applicable law, no Guarantor shall assert, or permit any of its subsidiaries to assert, and each Guarantor 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), unless

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determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, or (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) BY ACCEPTING THE BENEFITS OF THIS AGREEMENT AND THE GUARANTEES CREATED HEREBY, EACH SECURED PARTY ACKNOWLEDGES THE PROVISIONS OF ARTICLE VIII OF THE CREDIT AGREEMENT AND AGREES TO BE BOUND BY SUCH PROVISIONS AS FULLY AS IF THEY WERE SET FORTH HEREIN.

SECTION 4.04. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the 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 Secured Parties and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by or on behalf of any Secured Party and notwithstanding that any Secured Party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any Loan Document is executed and delivered or any credit is extended under the Credit Agreement, and, subject to Section 4.11 hereof, shall continue in full force and effect until Payment In Full.

SECTION 4.05. Counterparts; Effectiveness; Successors and Assigns. 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. This Agreement shall become effective as to any Loan Party when a counterpart hereof executed on behalf of such Loan Party shall have been delivered to the Administrative Agent and a counterpart hereof shall have been executed on behalf of the Administrative Agent, and thereafter shall be binding upon such Loan Party and the Administrative Agent and their respective successors and assigns, and shall inure to the benefit of such Loan Party, the Administrative Agent and the other Secured Parties and their respective successors and assigns, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or any interest herein (and any attempted assignment or transfer by any Loan Party shall be null and void), except as expressly contemplated by this Agreement or the Credit Agreement. 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 4.06. 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 4.07. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Each party hereto irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of the courts of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the Loan Parties hereby irrevocably and unconditionally agrees

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that all claims arising out of or relating to this Agreement brought by it or any of its Affiliates shall be brought, and shall be heard and determined, exclusively in such New York State or, to the extent permitted by law, in such federal court. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Loan Party or any of its properties in the courts of any jurisdiction.

(c) Each of the Loan Parties hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in

paragraph (b) of this Section 4.07. Each of the Loan 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 hereto irrevocably consents to service of process in the manner provided for notices in Section 4.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 4.08. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY 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, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.08.

SECTION 4.09. 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 4.10. Guarantee Absolute. All rights of the Administrative Agent hereunder and all obligations of each Loan Party hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment to or waiver of, or any consent to any departure from, the Credit Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (c) any exchange, release or non-perfection of any Lien on other collateral securing, or any release or amendment to or waiver of, or any consent to any departure from, any guarantee of, all or any of the Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party in respect of the Obligations or this Agreement (other than a release of any Guarantor in accordance with Section 4.11).

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SECTION 4.11. Termination or Release. (a) This Agreement and the Guarantees made herein, subject to Section 2.04, terminate and be released upon Payment In Full.

(b) The Guarantees made herein shall also terminate and be released (in whole or in part) at the time or times and in the manner set forth in Section 9.14 of the Credit Agreement.

(c) In connection with any termination or release pursuant to this Section 4.11, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents by the Administrative Agent pursuant to this Section 4.11 shall be without recourse to or warranty by the Administrative Agent.

SECTION 4.12. Additional Subsidiaries. Pursuant to the Credit Agreement, certain Subsidiaries not party hereto on the Effective Date may be required to enter into this Agreement. Upon the execution and delivery by the Administrative Agent and any such Subsidiary of a Supplement, such Subsidiary shall become a Guarantor hereunder, with the same force and effect as if originally named as such herein. The execution and delivery of any Supplement shall not require the consent of any other Loan Party. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor as a party to this Agreement.

SECTION 4.13. Administrative Agent Appointed Attorney-in-Fact. Each Guarantor hereby appoints the Administrative Agent the attorney-in-fact of such Guarantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Administrative Agent may deem necessary to accomplish the purposes hereof at any time after and during the continuance of an Event of Default, which appointment is irrevocable and coupled with an interest. The Administrative Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their Related Parties shall be responsible to any Guarantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

SECTION 4.14. Secured Cash Management Obligations and Secured Hedging Obligations. No Secured Party that obtains the benefit of this Agreement shall have any right to notice of any action or to consent to, direct or object to, any action hereunder other than in its capacity as a Lender or the Administrative Agent, as applicable, and, in any such case, only to the extent expressly provided in the Loan Documents, including without limitation Article VIII of the Credit Agreement. Each Secured Party not a party to the Credit Agreement that obtains the benefit of this Agreement shall be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of the Credit Agreement, including, without limitation, under Article VIII of the Credit Agreement.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

[NAME OF EACH SUBSIDIARY GUARANTOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent

By: \_\_\_\_\_

Name:  
Title:

Schedule I to  
the Guarantee Agreement

**SUBSIDIARY GUARANTORS**

Subsidiary Name	Jurisdiction of Incorporation

Exhibit I to the  
Guarantee Agreement

SUPPLEMENT NO. [ ] dated as of [ ] (this “*Supplement*”), to the Guarantee Agreement dated as of [ ], 2016 (the “*Guarantee Agreement*”), among each subsidiary of Aspen Technology, Inc. (the “*Borrower*”) listed on Schedule I thereto (each such subsidiary individually a “*Subsidiary Guarantor*” and, collectively, the “*Subsidiary Guarantors*”; the Subsidiary Guarantors and the Borrower are referred to collectively herein as the “*Guarantors*”) and JPMORGAN CHASE BANK, N.A., a national banking association (“*JPMCB*”), as Administrative Agent (in such capacity, the “*Administrative Agent*”).

A. Reference is made to the 364-Day Bridge Credit Agreement dated as of January [11], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among the Borrower, the lenders from time to time party thereto and JPMCB, as Administrative Agent.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Guarantee Agreement and the Credit Agreement referred to therein, as applicable.

C. The Guarantors have entered into the Guarantee Agreement in order to induce the Lenders to make extensions of credit to the Borrower under the Credit Agreement. Section 4.12 of the Guarantee Agreement provides that additional Subsidiaries may become Guarantors under the Guarantee Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “*New Subsidiary*”) is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Guarantor under the Guarantee Agreement [in order to induce the Lenders to make additional extensions of credit under the Credit Agreement] [and/or] [as consideration for such extensions of credit previously made].

Accordingly, the Administrative Agent and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 4.12 of the Guarantee Agreement, the New Subsidiary by its signature below becomes a Loan Party and a Guarantor under the Guarantee Agreement with the same force and effect as if originally named therein as such, and the New Subsidiary hereby agrees to all the terms and provisions of the Guarantee Agreement applicable to it in such capacities. Each reference to a “*Loan Party*” or “*Guarantor*” in the Guarantee Agreement shall be deemed to include the New Subsidiary. The Guarantee Agreement is hereby incorporated herein by reference.

SECTION 2. The New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3. This Supplement 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. This Supplement shall become effective when a counterpart hereof executed on behalf of the New Subsidiary shall have been delivered to the Administrative Agent and a counterpart hereof shall have been executed on behalf of the Administrative Agent. Delivery of an executed counterpart of a signature page of this Supplement by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Supplement.

SECTION 4. The New Subsidiary hereby represents and warrants that Schedule I sets forth, as of the date hereof, the true and correct legal name of the New Subsidiary and its jurisdiction of organization.

SECTION 5. Except as expressly supplemented hereby, the Guarantee Agreement shall remain in full force and effect.

**SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

SECTION 7. Any provision of this Supplement 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 8. All communications and notices hereunder shall be in writing and given as provided in Section 4.01 of the Guarantee Agreement.

SECTION 9. Subject to the terms of the Loan Documents, the New Subsidiary agrees to reimburse the Administrative Agent for its reasonable and documented out-of-pocket expenses, including the reasonable fees, charges and disbursements of outside counsel, incurred by it in connection with this Supplement, including the preparation, execution and delivery thereof.

[SECTION 10. [Insert limitations, if any, consistent with the terms as set forth in the definition of the term "Collateral and Guarantee Requirement" in the Credit Agreement].]

IN WITNESS WHEREOF, the New Subsidiary and the Administrative Agent have duly executed this Supplement to the Guarantee Agreement as of the day and year first above written.

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[NAME OF NEW SUBSIDIARY]

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

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SCHEDULE I

New Subsidiary Information

<u>Name</u>	<u>Jurisdiction of Organization</u>
_____	_____
_____	_____

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## Contacts:

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**AspenTech Announces Intent to Acquire KBC**

*Proposed transaction combines leading software and consultancy to drive significant value creation for oil & gas industry*

**Bedford, Mass. — AZPN** January 12, 2016 — Aspen Technology, Inc. (“AspenTech”) today announced the terms of a recommended all cash offer for the entire issued and to be issued share capital of KBC Advanced Technologies plc (“KBC”) by ATI Global Optimisation LTD, a wholly owned subsidiary of AspenTech. Under the terms of the offer, KBC shareholders will receive 185p in cash for each share. The transaction values KBC at approximately £158 million or approximately \$230 million at the current exchange rate. Both companies’ boards of directors unanimously support the transaction.

The transaction will be funded by cash on hand of approximately \$91 million and committed financing. AspenTech plans to replace the committed financing with proceeds from a proposed \$250 million revolving credit facility.

The proposed acquisition will be implemented by means of a scheme of arrangement under the UK Companies Act 2006 and is therefore subject to the approval of KBC shareholders and the High Court of Justice in England and Wales and to other terms and conditions as set out in the joint offer announcement released by AspenTech and KBC earlier today. This press release should be read in conjunction with such joint announcement which is available at [www.aspentech.com/corporate/press/press-releases.aspx](http://www.aspentech.com/corporate/press/press-releases.aspx). AspenTech has obtained irrevocable undertakings to vote or procure votes in favor of the scheme in respect of KBC shares representing approximately 42% of the issued share capital of KBC. It is expected that the transaction will close in the first calendar quarter of 2016.

**KBC Overview**

KBC is a leading provider of strategic consulting and software to the oil and gas industry, focused on operational excellence and profit improvement for oil refining, refinery-integrated petrochemicals and oil production assets. KBC has two main areas of business focus:

- **KBC Consulting**, which provides a unique combination of management and engineering consulting focused on operational excellence and profit improvement for refinery and refinery-integrated petrochemicals. KBC’s consultants have deep domain expertise and extensive C-level customer relationships, which is expected to increase AspenTech’s mindshare among these key decision makers.
- **KBC Technology**, which is comprised of a software portfolio of process unit reactor models and refinery-wide simulation software that is complementary to AspenTech’s existing suite of solutions.

**Strategic Rationale**

AspenTech believes the strategic rationale for the proposed acquisition of KBC is compelling:

- **Strengthens C-level relationships:** KBC’s world-class consulting services would enhance AspenTech’s ability to serve as a trusted advisor to customers.
- **Drives increased usage and adoption:** KBC’s highly differentiated consulting capabilities represent a unique opportunity for AspenTech to drive software adoption and increase client engagement, particularly in developing markets.
- **Adds complementary software portfolio:** KBC would add new and complementary technology, including in refinery operations and reactor modeling, enabling further innovation in refining as well as upstream markets.
- **Accelerates asset optimization strategy:** KBC would accelerate AspenTech’s holistic asset optimization strategy, which is expected to generate significant value for AspenTech’s customers through improved capital and operating efficiency.
- **Consistent with capital allocation strategy:** The acquisition of KBC is a measured use of AspenTech’s financing capacity for strategic M&A, which is one of the components of AspenTech’s capital allocation strategy.

Antonio Pietri, President and Chief Executive Officer of AspenTech, said, “We are excited to announce the proposed acquisition of KBC, which is viewed as a trusted advisor to C level executives in the oil and gas industry. We believe KBC’s deep domain expertise and customer relationships, particularly in developing markets, will help drive greater adoption and usage of AspenTech’s broad and expanding suite of software solutions.”



“In addition, we believe combining KBC’s industry leading reactor software models with AspenTech’s strength in engineering design will create a highly differentiated solution for the refining industry. Also, KBC’s software assets will meaningfully accelerate the build out of our vertical- specific analytics solutions,” Pietri added. “KBC’s domain expertise and software will be important additions to our asset optimization strategy, which focuses on driving improved capital and operational efficiency for owner-operators across an asset’s entire lifecycle. Acquiring KBC will enhance AspenTech’s ability to capitalize on its market opportunity and leadership position and generate substantial value for our customers.”

Ian Godden, Chairman of KBC, said “Over the last few years, KBC has proactively reshaped and broadened its business to make it more adaptable and successful. AspenTech is a strong partner that can continue to develop KBC’s business. Following the transaction, KBC will become a key part of AspenTech’s business and will continue to provide its market leading solutions to the customers we serve.”

J.P. Morgan is acting as exclusive financial advisor to AspenTech in connection with the acquisition and has committed to provide credit facilities to finance the acquisition. Evercore is acting as exclusive financial advisor to KBC in connection with the acquisition.

### **Conference Call and Webcast**

AspenTech will host a conference call and webcast today, January 12, 2016, at 8:00 a.m. (Eastern Time), to discuss the details of the acquisition.

The live dial-in number is (866) 604-6127 or (706) 634-5625, conference ID code 24843348. Interested parties may also listen to a live webcast of the call by logging on to the Investor Relations section of AspenTech’s website, <http://www.aspentech.com/corporate/investor.cfm>, and clicking on the “webcast” link. A replay of the call will be archived on AspenTech’s website and will also be available via telephone at (855) 859-2056 or (404) 537-3406, conference ID code 24843348, through February 12, 2016.

### **About AspenTech**

AspenTech is a leading supplier of software that optimizes process manufacturing — for energy, chemicals, engineering and construction, and other industries that manufacture and produce products from a chemical process. With integrated aspenONE solutions, process manufacturers can implement best practices for optimizing their engineering, manufacturing and supply chain operations. As a

result, AspenTech customers are better able to increase capacity, improve margins, reduce costs and become more energy efficient. To see how the world’s leading process manufacturers rely on AspenTech to achieve their operational excellence goals, visit [www.aspentech.com](http://www.aspentech.com).

### **Forward-Looking Statements**

This release contains “forward-looking” statements concerning future events and financial performance. These forward-looking statements include statements regarding AspenTech’s proposed acquisition of KBC (including financing of the proposed transaction and the benefits, results, effects and timing of a transaction), all statements regarding KBC’s (and AspenTech’s and KBC’s combined) expected future business strategy, competitive positions, growth opportunities, plans and objectives of management, and statements containing the use of forward-looking words such as “expects,” “believes,” “plans,” “will” and similar expressions. Such statements are subject to risks and uncertainties, which could cause actual results to differ materially from those expressed or implied. Risks and uncertainties related to the proposed acquisition include the risk that KBC’s stockholders do not approve the acquisition, potential adverse reactions or changes to business relationships resulting from the announcement, pendency or completion of the acquisition, uncertainties as to the timing of the acquisition, the possibility that the closing conditions to the proposed acquisition may not be satisfied or waived, including that a governmental entity may prohibit, delay or refuse to grant a necessary approval, adverse effects on AspenTech’s stock price resulting from the announcement or completion of the acquisition, competitive responses to the announcement or completion of the acquisition, costs and difficulties related to the integration of KBC’s businesses and operations with AspenTech’s businesses and operations, the inability to obtain, or delays in obtaining, cost savings and synergies from the acquisition, uncertainties as to whether the completion of the acquisition or any transaction will have the accretive effect on AspenTech’s earnings or cash flows that it expects, unexpected costs, liabilities, charges or expenses resulting from the acquisition, litigation relating to the acquisition, the inability to retain key personnel, and any changes in general economic and/or industry-specific conditions. Other factors that may affect AspenTech’s plans, results or stock price are set forth in its filings with the Securities and Exchange Commission, including its most recent Annual Report on Form 10-K and Quarterly Report on Form 10-Q, which are available on AspenTech’s website and at [www.sec.gov](http://www.sec.gov). AspenTech undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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**Source:** Aspen Technology, Inc.

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